Oil Regulation

In 28 jurisdictions worldwide

Contributing editor
Bob Palmer

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GETTING THE DEAL THROUGH

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Italy

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Italy has always been highly dependent on conventional energy sources and imports to cover its energy needs. Hence, although Italy is a relatively small producer of crude oil, it has always regarded its domestic oil production as very important for the security of oil supply and for the purpose of reducing dependence on foreign sources.

Italy is undoubtedly competitive in respect to production costs, which are lower than in other comparable countries. In 2014, Italian proved recoverable oil reserves amounted to 840,807 million tonnes, and, according to the estimated capacity of recently drilled wells in southern Italy, reserves may increase up to 930,090 million tonnes.

Although there have not been new discoveries of oilfields since 2008, oil production in 2014 has increased up to 5.75 million metric tonnes, 2 per cent more than 2013 (5.48 million tonnes). Such a positive result is mainly due to the exploitation of fields in the Basilicata region.

According to the data released by the General Office for Energy and Mineral Resources (DGERM) of the Ministry of Economic Development, in Italy, there are 894 producing wells (532 onshore and 362 offshore). Of these, 695 wells produce gas while the remaining 199 are mineralised by oil.

With a view to increasing domestic production, the Italian government has made considerable efforts to simplify the administrative procedures for the installation of oil production units, and has played an important role in liaising with the developers and the local authorities (in particular the regions) involved in the granting of permits and authorisations. In accordance with Law No. 239/2004, new administrative instruments named 'single procedure' and 'conference of administrations' have been introduced in the licensing process for the purpose of simplifying and speeding up such process. Other encouraging developments for the promotion of the oil extracting businesses are:

- incentives for the development of secondary fields;
- incentives for geophysical studies; and
- draft regulation on the decommissioning of offshore facilities.

These governmental initiatives have led to a small but important increase of exploration and production activities in Italy.

In this respect, it is worth mentioning two important oilfields that will further support the oil-extracting industry: Val D'Agri and Tempa Rossa Concessions, both located in the same area. Val d'Agri is operated by Eni and the co-owner Shell, and has a production capacity of 100,000 bbl/d, covering 6 per cent of Italy's demand. The oilfields provide a high-quality product, superior to the Brent standards. Approximately 87 per cent of domestic oil is extracted onshore, mostly from the Basilicata (69 per cent) and Sicilian (16 per cent) fields. On the other hand, the fields in Piemonte are rapidly depleting. A significant increase in production is expected in the coming years, following the start of the exploitation of Tempa Rossa reservoir, in Basilicata, which has an expected production capacity of 50,000 bbl/d (plus associated gas).

Italy has advanced refining facilities with a transformation capacity of 100,000 kilotonnes per year of crude oil and can guarantee a speedy transportation of the produced and imported crude over its 30,000 kilometre pipelines.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Approximately 67 per cent of Italy's energy needs are covered by traditional oil and gas supplies. Most of this is covered by imports. With regard to domestic production, at present, crude oil represents 33 per cent of national energy consumption, while domestic gas production contributes to 32 per cent of Italy's demand. With regard to trends, the oil and gas sectors are stable, whereas renewable energy sources are playing an important role covering more than the 27 per cent of the country's energy needs (although the incentives provided by the government in recent years to foster the Italian photovoltaic sector are decreasing). As regards nuclear sources, following the 2011 Japanese nuclear accidents, the Italian government put a one-year moratorium on plans to revive nuclear power. In June 2011, Italian voters passed a referendum to cancel plans for new reactors.

Among other relevant events concerning Italy's upstream sector, the state has recently signed with the Basilicata region a memorandum of understanding to double the production of crude oil, beginning from this year, at both the Val D'Agri and Tempa Rossa fields. Planned increases in production from these two areas, totalling up to 180,000–190,000 barrels per day, would represent 14 to 15 per cent of Italy's demand.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Italy is very attractive to new investors for its high prices resulting from a high-demand growth, its dependence on energy imports (77 per cent of the overall domestic energy demand) and in general, the low efficiency of existing generating capacity and high fuel costs. Hence, the government has strengthened its undertaking to attract new energy utilities, to encourage investment and to promote competitive supply by providing a clear and stable institutional framework for the energy sector. The uncertain legal framework, together with the authorisation approval process, has been the main constraint on project finance. The Italian parliament has therefore adopted a number of measures to reorganise the regulatory environment, by adopting a more comprehensive reform of the entire Italian energy sector, providing for a stricter timetable for the public authorities to deal with applications to implement oil development projects (Law No. 239 of 23 August 2004).

4 Is there an official, publicly available register for licences and licensees?

The General Directorate for Mineral Resources and Energy of the Ministry of Economic Development provides for constantly updated data on licences and licensees through its website (www.unmig.sviluppoeconomico.gov.it/unmig), its monthly Official Bulletin of the Hydrocarbons and an annual report published both in Italian and English. All those sources provide for an overview on activities carried out by oil and gas operators in Italy and contain a list of all licences and licensees. The Official Bulletin is freely accessible online.

5 Describe the general legal system in your country.

The Italian system is a civil law jurisdiction. The sources of Italian law are mainly laws, including codes (which incorporate all main provisions in a given subject matter) and regulations. Apart from the Italian Constitution and constitutional laws, the sources of primary legislation are:

- ordinary laws of the state issued by the Italian parliament;
- legislative decrees issued by the government following prior delegation by the Parliament;
- law-decrees issued in special cases by the government and that must be submitted to the Parliament for conversion into laws; and
- regional laws issued by Italian regions that have a limited scope in terms of subject matter and applicable territory.

In relation to secondary legislation, some regulations may have the force of law (eg, regulations usually adopted by administrative authorities, setting out, for instance, mandatory prices, incentives and tariffs for goods and services) and other regulations may not have the force of law (eg, regulations that are designed to give specific implementation to the principles laid down by laws).

Under Italian law, case law does not create legal rules, although it may be important in creating specific trends and interpretations of laws and regulations that the Italian legislator may consider when developing new legislation.

Regarding the enforcement of contractual and property rights, under Italian law, there are basically three types of enforcement proceedings:

- enforcement of an obligation to pay a sum of money;
- specific enforcement of an obligation to deliver movable or immovable property; and
- enforcement of an obligation to perform (or not to perform) a specific act.

The most relevant of the three ordinary types of enforcement is definitely the enforcement of an obligation to pay a sum of money, which is carried out through the distraint of specific assets of the debtor and subsequent forced liquidation and sale of the said assets.

Bankruptcy (which is regulated in the Royal Decree of 16 March 1942, No. 267 as subsequently amended and supplemented) and other insolvency proceedings against insolvent business persons and business enterprises concern the enforcement of obligations through special procedures with the involvement of an appointed receiver who manages the liquidation of the debtor's assets along with the creditors' committee and the bankruptcy judge. Such procedures are not dealt with in this chapter.

As regards domestic and foreign judgments and arbitral awards, Italy is a signatory state to, and has duly ratified into domestic legislation, both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of other States. Arbitral awards are enforced though specific proceedings before the competent Italian court of appeal.

Finally, another point of interest to a foreign investor in the oil sector is that regarding the liability of legal entities under Legislative Decree No. 231/2001, as subsequently amended and supplemented. This decree provides for an administrative and criminal liability of companies arising whenever the directors and senior managers or employees of the said companies, in the best interests or to the sole benefit of the latter, commit certain offences listed in the decree (eg, crimes against the public administration, corporate crimes, bribery and corruption and money-laundering crimes).

Indeed, sanctions that could be imposed may be particularly burdensome for the defaulting companies and may include, inter alia, financial penalties and disqualifying sanctions (such as suspension or revocation of permits and authorisations).

The liability pursuant to Decree No. 231/2001 may be excluded where the relevant company has adopted and implemented specific measures, ahead of the commission of the relevant crime (ie, adoption of an ad hoc organisation and management system (a model) and setting up of a specific supervisory board).

As regards anti-corruption measures, Law No. 190/2012, introduced heavier sanctions and new categories of corruption-related offences aiming at improving transparency in the country's public sector. It provides for the establishment of a new National Anti-Corruption Authority with investigative and sanctioning powers. The new types of offences included in the above-mentioned law, especially relevant for the private sector, are the following:

- *induzione indebita a dare o promettere utilità* (induced bribery): this covers the offence by a public officer or a person charged with a public service who, abusing of his or her powers or office, induces a private party to give or promise money in exchange of a specific advantage; in this case the private party who is unlawfully induced to give or promise such money to the public officer also commits an offence.
- *traffico di influenze illecite* (traffic of illicit influence): this new crime is provided by new article 346-bis of the criminal code which provides that a person who, by taking advantage of his or her relationship with a public officer, receives money or other kind of economic advantage in exchange for his or her unlawful mediation, commits a crime and is subject to detention; any person who gives or promises money or other advantage in exchange for unlawful mediation also commits the same crime; and
- *corruzione tra privati* (private bribery): any manager, general executive, director, auditor, or liquidator of a company who acts in breach of the duties relating to their office, to the detriment of the company, in exchange for the payment or the promise of money commits this crime; any person who gives or promises money or other advantage to these individuals also commits the same crime.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

Oil activities are considered to be part of the mineral-extracting industries whose operation and title is regulated by statute. Over the past two decades, the statutory rules in this sector have been significantly affected by European legislation.

The central part of the statutory rules dealing with upstream industry is the regulation on the standards and requirements regarding the prospecting, exploration and production of hydrocarbons in Italy. Such regulations were introduced in Italy in 1927, but have been substantially modified by Law No. 6/1957 and then constantly updated and supplemented by recent legislation. Further, since the circumstances under which offshore and onshore activities may differ from one another, specific rules were adopted in 1967 for offshore operations. These statutory rules were updated in the context of a new domestic energy plan and a more competitive market by means of Law No. 9/1991.

In 1996, Italy opened up all such activities by implementing the European Hydrocarbons Licensing Directive No. 94/22/EC, banning the monopoly of the state-owned incumbent, Eni. Due to a constitutional reform in 2001 (which has been further developed by Law No. 239/2004, also called the 'Marzano Law'), both the regulatory power and the involvement of the regions in the administrative proceedings for the granting of permits and concessions have been consistently increased in the oil-extracting sector.

Depending on the size and the location of an oil-extracting project, its development will require either a specific environmental assessment or a preliminary screening by the interested public authorities. The environmental assessment is a procedure introduced by EU regulations in 1985 for projects that have a significant impact on the environment. The environmental assessment procedures, as well as the identification of onshore areas, are mainly administered by the local authorities (regions, provinces and municipalities).

The construction, extension works and operation of an oil production unit and transmission facilities are subject to several permits and authorisations (modification of zoning plans, industrial emission authorisation, environmental, landscape and archaeological restrictions, etc), which are dealt with in special regulations.

In relation to all mineral-extracting businesses, Italy has had its own health and safety regulations since 1959. These regulations were amended after the implementation of minimum health and safety requirements for workers in the mineral-extracting industries (both on the surface and underground), as well as the particular requirements for drilling activities that are laid down in several EU directives.

Finally, the oil-extracting business is included in the list of utility sectors in which works, supply and service contracts exceeding a certain amount are subject to a specific procurement procedure (Directive 2004/17/EC, coordinating the procurement procedures of entities

operating in the water, energy, transport and postal services sectors). The present value thresholds, excluding VAT, are work contracts exceeding €5,278 million and service and supply contracts exceeding €422,000. According to Directive 2014/25/EC, which will repeal and replace Directive 2004/17/EC, starting from 18 April 2016, the new thresholds will be €5,186 million as regards work contracts and €414,000 as regards service and supply agreements.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

According to Law No. 6 of 1957, the Ministry of Economic Development may revoke a mining title if, inter alia, the licensee does not perform the exploitation of the field within the timeframe envisaged in the licence, does not comply with the instructions of the Ministry or does not pay the annual royalties, taxes and any other amount due in compliance with the law.

Moreover, according to Law No. 9/1991 any research, exploration or production licence may be revoked when the activities carried out by the licensee may put in danger state assets of particular environmental value or archeological sites.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The regulatory body for the oil industry is the Ministry of Economic Development (the Ministry), which also issues concessions and authorisations for the exploration and development of oilfields. Other than the electricity and gas sector, there is no independent authority.

Within the Ministry, two internal agencies and a technical commission deal with the oil-extracting industry. The DGERM issues the national energy and mineral policy guidelines and liaises with the European Union and other international organisations. Further, the DGERM sees to the implementation of the statutory rules of the oil-extracting sector.

Within the DGERM, administrative tasks are carried out by the UNMIG. The UNMIG is responsible for:

- technical oversight of the projects;
- granting the prospecting and exploration permits, and the production concessions;
- the upstream management survey;
- the royalties survey;
- planning and statistics;
- safety studies and laying down of the secondary health and safety regulation;
- the on-site health and safety inspection;
- map-making of the titles and the oil transportation system; and
- the following up of expropriation procedures.

Finally, the Ministry must require the opinion of the Technical Commission for Hydrocarbons in relation to:

- the feasibility technical programmes of the permit and concession holders;
- the health and safety survey;
- the location and size of the exploration and production area; and
- all technical issues related to the oil-extracting business.

9 What government body maintains oil production, export and import statistics?

All operators in the oil upstream industries have a statutory duty to provide Italy's National Statistical Institute with a full report on volumes and prices.

The statistics of the oil industry are mainly held within the different agencies of the Ministry.

The statistics on exploration activities, oil production and reserves are collected by UNMIG and are available on the website of the Ministry.

Information on the import, export and the position of the upstream production in respect of the overall energy business is processed and published by the DGERM.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Whereas landowners are, as a general rule, free to develop the subsurface according to their own private and economic needs, the Italian civil law lays down an exception for mines (including oilfields) and excavations that are state property and cannot be transferred. This inalienability rule is not dependent on whether the oilfields are located on private or public land.

As a consequence, the development and operation of sub-surface and surface mineral rights can only be granted by authorisation (prospecting and exploration activities) or concession (production) issued by the Italian state (through the Ministry).

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

In Italy, oil exploration and production activities are carried out both onshore and offshore. The share of onshore production is nevertheless consistently higher than that of offshore production. The Basilicata region is the most important area for the oil extracting business; Sicily ranks second.

As of 31 December 2014, Italy counted 117 exploration permits and 201 production concessions. These activities are mainly onshore.

Exploration and production activities are prohibited in natural parks and in certain maritime zones.

In 2010, following the oil spill in the Gulf of Mexico, the Italian government implemented new measures (Legislative Decree No. 128/2010) aimed at protecting the environment and the ecosystem. Such measures prohibited offshore oil research and exploration within the boundaries of coastal and marine protected areas. The 2010 provisions banned offshore research and exploration within 12 nautical miles of the outer perimeter of the above-mentioned protected areas. However in 2012, the Italian government adopted a decree restoring opportunities relating to the exploration, prospecting and production of hydrocarbons. Indeed, by Decree No. 83/2012, it has been provided that all the restrictive measures set out in 2010 are inapplicable to those authorising procedures that were pending on the date of entry into force of Legislative Decree No. 128/2010.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

At present, oil exploration and production is regulated by state legislation with some secondary technical regulation issued by the Ministry. Further, the regions are increasingly using their recently granted regulatory powers to adopt independent regional regulation, in particular, to issue some procedural rules.

The existing regulation provides for three different phases in the oil-extracting business: prospecting, exploration and production activities.

All prospecting activities (geophysical survey) must be authorised by the Ministry.

The exploration of an area (including drilling activities) is subject to prior authorisation (exploration permit) of the Ministry, following a competitive tender procedure. The procedure in order to obtain an exploration permit is due to start upon specific application by the operator. Such an application, the cost of which is not noticeable, must be submitted along with a specific 'work programme' as well as relevant estimation costs and timeline for completion;

Since the operator has no title to the area, production activities can only be carried out on the basis of a concession, issued to the holders of an exploration permit who made a discovery capable of economic development.

All applications must be filed with the UNMIG, which will examine the respective prospecting, exploration and production programmes of the operators as a condition to the granting of the permit or concession. Therefore the timing for the granting of a permit or concession mostly depends on the relevant exploration and production programme.

If an exploration permit or a production concession is granted jointly to several titleholders, they are considered jointly liable towards the public administration and third parties for their obligations arising out of the relevant mining title. In addition, they are also bound to appoint a legal representative for all their relationships with the public administration and third parties.

That said, it must be pointed out that recently, in order to favour the exploitation of natural resources within the Italian national territory, foster the investments in hydrocarbons and achieve the supply targets as outlined in the National Energy Strategy Plan, the Italian legislator introduced a significant reform in the oil and gas regulatory framework.

By article 38 of the 'Sblocca Italia' (Unlock Italy) decree No. 133/2014 converted into Law No. 164/2014 of 11 November 2014, the government has introduced the 'single mining title' for onshore oil exploration and production, in lieu of the exploration and the concession titles. The said decree specifies that all the operators holding an exploration permit or with an application pending at the date of publication of the reform (11 November 2014), have 90 days to choose whether to turn to the new single mining title procedure by filing the relevant application with the competent Ministry of Economic Development or to stick to the current standard procedural regime (ie, exploration permit and subsequent production concession). It is worth pointing out that according to the Sblocca Italia decree, the new authorisation procedure shall be completed within 180 days from the date when the relevant operator has submitted its application; however, as of the date of this contribution (April 2015) the ministerial decrees implementing the Sblocca Italia decree and setting out in detail the steps required for the release of the single mining title have not yet been enacted.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

Although there is no specific prohibition on the Italian government participating in a licence, the government is not currently directly participating in any relevant licence or permit. However, the government controls a participation in ENI, the most important Italian oil operator. The participation in ENI is, at present, equal to approximately 30 per cent of the company's shares (the Ministry of Economic Development owns approximately 4.34 per cent of ENI's corporate capital while the Cassa Depositi e Prestiti, a state-owned joint-stock company, owns 25.76 per cent).

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

When developing oil resources, a royalty in favour of the Italian state is due from the operators.

In Italy the royalties for onshore production is, at present, at 10 per cent (following an increase of 3 per cent in 2009), while offshore production is at 7 per cent for gas and 4 per cent for oil. These are calculated on the sale value of produced quantities.

In addition, a small rental payment is to be paid to the Italian state, calculated on the basis of the number of square kilometres occupied for the prospecting, exploration and production activities.

15 What is the customary duration of oil leases, concessions or licences?

The prospecting permit has a duration of one year.

The exploration permit has a duration of six years and can be renewed for two additional three-year periods if the operator complies with the exploration programme approved by the Ministry.

The production concession has a duration of 20 years and can be extended for an additional 10-year period if the operator complies with the production programme approved by the Ministry. If, at the end of the concession, the operator has fully complied with the programme, he or she can apply each time for a five-yearly extension of the concession.

16 For offshore production, how far seaward does the regulatory regime extend?

Italy applies the criteria set in the 1982 Montego Bay Convention on the Law of the Sea. Hence, Italy has sovereign rights in a 200 nautical mile exclusive economic zone with respect to mineral extracting activities and exercises jurisdiction over environmental protection. Further, Italy has sovereign rights over the continental shelf for exploring and exploiting it. The shelf can extend at least 200 nautical miles from the shore and more under specified circumstances.

Italy has ratified several international conventions with Mediterranean states (Albania, Greece, Spain, Tunisia and the former Yugoslavia) to govern the limits of the territorial sea, the exclusive economic zone and the continental shelf.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

Differences exist between onshore and offshore regimes. The administrative procedure for the granting of an onshore mining title, regardless of its nature (exploration permit or production concession), always requires the direct involvement of the relevant regional authorities and other local entities and bodies where the area concerned by the application is located. On the contrary, in relation to the offshore regime, the administrative procedure is more centralised and the main authorities involved are the Ministry of the Environment, the Ministry of the Ministry of Defence, the Ministry of Transport and the Ministry of Agriculture. Such difference is reflected also in the environmental impact assessment sub-procedure.

Moreover, royalties due by the company to the state on the revenues derived from the production of hydrocarbons are fixed at 10 per cent for onshore production while royalties for offshore production are fixed at 4 per cent.

The legislative framework regarding exploration and production of hydrocarbons does not provide for different regimes according to the type of activity. At the present time, the same rules apply for oil as well as for gas or shale gas exploration and production.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Any operator from the EU, or outside it, may apply for a prospecting or exploration permit and can be granted production concessions. Non-EU operators may be banned from the upstream market where the statutory rules of the country of origin do not allow Italian operators to carry on oil extracting activities (reciprocity rule). In addition, Italy can refuse an operator (regardless of the country of origin) from carrying out oil extracting activities for reasons justified by public interest.

The applicant must demonstrate that they have sufficient technical and financial capacity and warrant that they will set up an organisation with adequate administrative and technical skills. To this end, the Ministry has recently implemented a regulation clarifying the meaning of 'technical and economic capability' of oil and gas operators establishing that the latter must have corporate capital of €10 million or, alternatively, corporate capital of €120,000 plus a guarantee from a controlling company or from a bank. In addition, and for the purpose of assessing their technical requisites, operators willing to obtain a mining title must submit further documentation proving their technical capabilities (eg, details of the company and of its internal bodies and staff; report on the main works carried out in the past three years either directly or, in the case of a newco, through a controlling company).

Although there is no obligation to do so, prior to filing applications for licences with the Ministry, foreign operators usually incorporate an Italian subsidiary in the form of a limited liability company or a joint-stock company (in some cases, they establish a branch).The costs relating to the incorporation of a newco are not noticeable and amount to approximately €6,000 to €8,000, whereas the costs for the registration of a branch are in the region of €4,000. The timing required for the incorporation of a newco or the registration of a branch is approximately one week.

Prospecting activities

To obtain a non-exclusive prospecting permit, the applicant must file a work programme for approval and, in the case of offshore activities, a technical survey of an engineer specifying the environmental risks of the project and the measures adopted to reduce these risks.

The work programme must identify all prospecting activities that will be carried out, the methods and equipment used, the timing and possible recovery works.

The prospecting permit is granted for a specific area.

Exploration activities

The applicant must file a technical report including information on the geomineral status of the area and the purpose of the exploration, together with the work programme, specifying all activities that will be carried out, the methods and equipment used, the timing, possible recovery works, the development costs and the financial coverage.

Following the filing of an application by an operator, the Ministry will forward a notice to the European Commission inviting applications, which shall be published in the official journal of the European communities. Other interested entities shall have a period of at least 90 days after the date of publication to submit an application.

In the event of several applications for a specific exploration permit, the Ministry shall grant the title following a competitive tendering procedure, to the programme that is most efficient and innovating and has the least impact on the environment.

A permit shall give rise to an exclusivity right to explore the relevant geographical area, which may not exceed 750km^2.

Production concession

If the title holders of an exploration permit discover an oil reservoir during the exploration phase, it may apply for a production concession if the production capacity of the oilfield, based on the geological data and geophysical survey, justifies the technical and economical development of the same. The maximum extension of the production concession is, as a general rule, limited to 150km^2.

The application must include a technical report that provides documentary evidence of the production capacity of the discovered oil wells as well as a development plan that must mention the time necessary to carry out the development plan, the investments and further exploration activities, etc.

19 What is the legal regime for joint ventures?

Permits and concessions can also be granted to more than one entity, without requiring such entities to create a corporate joint venture. The share of each co-owner is mentioned in the administrative title.

The co-owners have joint and several liability towards the Italian authorities and third parties for all duties that may derive from the upstream activities.

The co-owners must appoint an operator that will represent the co-owners in their relationship with public authorities and third parties.

When one of the members of the production concession withdraws from the project, for whatever reason, the other co-owners will subrogate the rights of the withdrawing partner.

Any assignment of the participation interest in a permit or concession requires the prior approval of the Ministry.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

If the technical and financial level of the work programme justifies a joint development, the operators may apply for a reservoir 'unitisation'.

The same rule applies in circumstances where the oilfield extends over the continental shelf of Italy, as well as the territory of another state; in this case the operator must notify the UNMIG who must take the necessary diplomatic steps to agree upon a joint operation of the cross-border oilfield.

The Italian statutory rules also govern different situations in which the operators have conflicting interests, as follows:

- where different operators intend to carry out prospecting activities at the same time, the operator that obtained the permit first is given priority;
- the holder of an exclusive licence (exploration permit or production concession) must grant access to his or her area in order to allow permit holders of a neighbouring area to carry out prospecting activities; and
- where an operator is intending to drill a well that may affect another exploration or concession area, the operator must duly inform the affected operator and invite him or her to make observations within a fixed term. If the affected operator does not respond, the addressee is deemed to have agreed to the drilling activities.

21 Is there any limit on a party's liability under a licence, contract or concession?

Under Italian law, holders of permits or concessions are fully liable for their activities and must restore all damages deriving from the operation of the said activities. In the case of co-ownership of the permit or of the concession, co-owners are jointly and severally liable towards the public administration, and third parties for the obligations arising from the operation of the activity related to the concession.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

As mentioned in question 18, companies with a corporate capital lower than €10 million, must submit adequate guarantees from a bank or from a controlling company (or from a company of the group to which the applicant belongs to) whose corporate capital is at least €10 million.

If the guarantee is given by a parent company or by a company of the same group, the guarantor shall have to prove its financial capability by means of relevant documents (eg, financial statements).

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

There are no restrictions. The Italian law does not provide for an obligation to use a minimum amount of locally sourced goods, services and capital.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

There are no restrictions. See answer to question 23.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The transfer of an interest in a mining title from one company to another is subject to prior government authorisation issued by the Ministry of Economic Development. The authorisation is also required in the case of the transfer of a single quota of a shared mining title. In this case the relevant authorisation may only be issued by the Ministry if all other titleholders of the mining title have given their consent to the transfer. The approval is granted following due examination of the technical requirements and economic capabilities to carry out exploration or production activities. The law does not reserve pre-emptive rights for the Ministry in this respect.

The request, along with a draft of the relevant transfer deed, must be submitted to the Ministry, which usually takes up to 90 days to decide. Subsequently, the decree of transfer is published in the Official Bulletin of the Hydrocarbons.

In the case of a change of control in the titleholder of the mining title, no prior Ministry authorisation is needed, nonetheless, once the change of control has become effective, the Ministry must be duly informed of the new controlling entity and it must also be provided with all suitable guarantees issued by the new parent company in favour of the titleholder aimed at technically and financially supporting any exploration or production activity of the latter.

26 Is government consent required for a change of operator?

Yes, as mentioned in question 24, in the case of change of operator the transfer has to be notified to the Ministry for approval.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

There are not specific fees or taxes in relation to transfer or change of control to be paid other than those standard taxes levied according to the relevant corporate deal structure adopted for the transfer.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

All applications for an exploration permit or a production concession must include a specific work programme providing, inter alia, a comprehensive description of all operations expected and required to decommission any plant and facility used for the exploitation of hydrocarbons as well as for the full depletion and closure of any relevant well. Also, an estimation of the decommissioning costs must be provided for in the work programme.

According to article 31 of the Ministerial Decree of 22 March 2011, in order to proceed to any decommissioning activity, any operator is required to request a specific authorisation to the competent Territorial Office of the Ministry of the Economic Development as well as to specify in detail the work plan and the time frame needed to carry out any relevant reclamation activity.

The final release of the site by the titleholder is subject to the prior complete restoration of the same, together with its return to the landowner, anticipated by a prior releasing declaration issued by the competent public administration.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Companies are not bound to provide a security deposit with regard to decommissioning liabilities. However, applicants with a corporate capital of between €120,000 and €10 million when applying for the granting of a research or exploration permit must submit along with the work programme a specific guarantee to cover decommissioning liabilities. Such guarantee varies depending on the size of the well and ranges from a minimum of €1 million up to a maximum of €2.5 million.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The transportation, import and export of crude oil and crude oil products are not subject to any specific authorisation (see Law No. 239/2004). However, maritime transport is governed by regulations that impose port control on the safety of the vessel, classification of companies and the use of double-hull tankers. The sea and port authorities carry out the control.

Onshore pipelines and tanker trucks must comply with the safety and environmental requirements, which are enforced by the local health and safety authorities.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

No permit, licence, authorisation or concession is required for the transportation of crude oil and crude oil products. However, these activities must be carried out in compliance with the health, safety and environmental statutory rules.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Besides the standard employers' obligations to safeguard the safety and health of workers in the working place, Italian legislation provides for specific minimum requirements for the mineral extracting business, making a distinction between the requirements applicable to all mineral extracting industries, those related to onshore or offshore activities and those related to surface and subsurface activities.

The employer must provide a health and safety document (HSD), including an illustration and identification of the operational risks, the safety measures and a long-term health and safety improvement plan. The HSD must comply with the statutory rules applicable for each single issue included in the document. In particular, the HSD must provide a detailed description of numerous situations and related safety measures, including:

- protection from fire, explosions and health-endangering atmospheres;
- escape and rescue facilities;
- communication, warning and alarm systems;
- health surveillance;
- regular review of safety and health measures;
- operation and maintenance programmes for mechanical and electrical equipment;
- maintenance of safety devices;
- use and maintenance of means of transport;
- safety exercises;
- identification of deposits;
- support and ground stability;
- ventilation;
- location of areas within which risk of fire or explosion from ignition of gas, vapour or volatile liquid exists, or is likely to exist;
- outlets and precautions for the withdrawal of workers;
- rescue organisation;
- emergency routes and exits;
- training for emergency situations; and
- utilisation, transport, deposits of explosives and protection from risk of explosion.

The HSD must be consistent with the working plan that the operator has submitted for the granting of the production licence. The HSD is subject to an authorisation by UNMIG.

Further, the employer must appoint staff responsible for the supervision of health and safety requirements, for keeping workers up to date and for providing adequate medical inspections. The employer must operate the working place according to the approved HSD and the minimum health and safety requirements laid down in the Italian statutory rules. Adequate sanitary installations and services must also be available for the workers.

Workers have a general duty to comply with health and safety regulations and must act safely in the workplace, according to the instructions of their superiors. Health and safety inspections are carried out by the DGERM together with the local offices of the UNMIG and the local health authorities.

The operator must hold daily records of all prospecting, exploration and production activities.

All drilling activities require the prior authorisation of the UNMIG, together with the local authorities. The operator must keep a drilling journal and must keep samples until the end of the drilling activities.

All planned production plants and transportation facilities must take into account health and safety requirements. The same applies to offshore platforms, the planning of which must include a forecast of the worst meteorological conditions for the next 100 years. Specific provisions are laid down for the construction of undersea pipelines with a view to safeguarding the resistance of the installations.

Refineries and service stations are subject to the common health and safety provisions for hazardous activities.

Environmental requirements differ depending on the type of installation. The following activities are subject to an overall environmental assessment:

- the prospecting, exploration and production of hydrocarbons;
- the deposit of hydrocarbons and refineries with a capacity exceeding 40,000 tonnes per year, as well as refineries; and
- transportation facilities exceeding 20km.

In any case, the above facilities, as well as service stations, must comply with the overall environmental regulations governing the protection of water, air and electromagnetic emissions and noise, and must make specific provisions regarding petrol tanks, transportation of dangerous goods by road, transportation of hard asbestos, decontamination of polluted areas, important environmental incidents, waste disposal, polychlorinated biphenyls, polychlorinated trephines, etc.

Non-compliance with the above health, safety and environmental rules is sanctioned by administrative fines or, in cases of serious infringements, imprisonment.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The quality of petrol and diesel fuels, with a view to safeguarding the air quality, is laid down in different decrees that primarily implement community directives. The EU directives establish the technical and ecological requirements for commercial use. Other regulations relate to the reduction of the sulphur content of liquid fuels used by seagoing ships, marine gas oil, fuels intended for processing prior to final combustion and fuels to be processed in the refining industry. Volatile mineral oil intended for the operation of internal combustion engines used for the propulsion of vehicles must also comply with the lead content prohibitions laid down by the statutory rules.

The quality of the oils and fuels are subject to inspections carried out by the fiscal authorities.

Operators must also comply with the statutory rules on the disposal of mineral-based lubrication or industrial oils that have become unfit for the use for which they were originally intended and, in particular, used combustion engine oils and gearbox oils, mineral lubricating oils, oils for turbines and hydraulic oils. This means that the operators may no longer discharge waste oils or process them, as this causes air pollution that exceeds the allowed emission levels. The disposal of waste oils must be adequately recorded. Only duly authorised companies are allowed to dispose of waste oils.

Besides the statutory rules governing air emissions, Italian legislation also provides specific rules on the health and safety of production, refinement, deposit, use, transport and marketing of mineral oils. Specific fire safety rules apply for services stations.

The inspections are organised by the ministries of the environment, economic development, health and finance, each according to their area of competence.

Non-compliance with the above health, safety and environmental rules is sanctioned by administrative fines or, in cases of serious infringements, imprisonment.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The selection of the workers must be based on their professional qualifications, experience and training.

There are no restrictions on workers from the EU, although they still need to apply for a residence permit.

Update and trends

Government Decree No. 2014, No. 133 (the 'Unlock Italy' decree) converted into Law No. 2014, No. 164, introduced provisions aimed at simplifying and speeding up the authorisation procedures for the exploration and production of onshore hydrocarbons. Overall, the measures envisaged, although still to be fully implemented and integrated, are important and may foster the exploration and production market, considered the potential of the national reserves of oil and gas, and additionally may also attract new investments. Specifically, it provides for the implementation of a single mining title. in lieu of the exploration and the concession titles and for an authorisation procedure which should theoretically take only six months. The Ministry of Economic Development has the task of issuing the new guidelines, within the next few months, which will set out in detail the procedure for obtaining the said single mining title.

Employees from outside the EU must first be employed by an Italian company in order to obtain a work permit. The application must be made by an employer, who must guarantee, among other things, adequate remuneration for the employee. Once the employer has obtained the work permit, the employee may apply for a residence permit, which has a maximum duration of two years. It is worth mentioning that the Italian government has limited the number of non-EU residents allowed to work in Italy. The above limitation does not apply to those directors or to those other highly specialised members of personnel who have been employed for at least 12 months prior to their temporary transfer (eg, posted workers). People with regular residence permits (students, families, etc) may require an alteration to the purpose of their permit in order to work in Italy. Nevertheless, legislation in respect to workers from outside the EU is often changing. There is no minimum amount of local labour that must be employed.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The production of oil products is accountable to a specific excise duty, the rate of which depends on the product. As a general rule, oil products used in the production process are exempt from taxation. As long as the transportation of the taxable products is carried out between fiscal warehouses, the products are exempted. Once the products are marketed and distributed an excise duty is due. Nevertheless, the tax regulation may exempt specific employment and products or apply a more favourable tariff.

The customs administration collects all the excise duties. Distribution and marketing services are subject to VAT.

In addition to the above, a special taxation regime has been introduced for oil companies that generate in Italy a yearly turnover exceeding the threshold of €3 million and declare a yearly taxable income exceeding the threshold of €300,000 by means of oil and gas marketing. Oil companies exceeding such thresholds are bound to pay an additional charge to the ordinary tax rate for companies (ie, IRES (corporate income tax) levied at 27.5 per cent). This additional charge is equal to 10.5 per cent for the fiscal year 2013 and 6.5 per cent for the following fiscal years.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Since 1994, Italy has abolished all kinds of price-setting regimes for crude oil or crude oil products. However, there is a high degree of price transparency, since the operators must notify all prices of import, export and consumption of crude oil to the Italian National Statistical Institute Programme. These figures are disclosed to the public.

Hence, it is possible to consult the monthly crude oil prices – free on board and cost, insurance and freight – and the average fuel price to customers.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Italian Competition Authority (the Authority) is an independent government body that assesses whether anti-competitive practices of undertakings in the upstream or downstream market constitute infringements of the Italian Competition Act.

The Italian Competition Act is modelled on the applicable EU regulations and the Authority commonly applies the same guidelines as the EU Commission. Briefly summarised, agreements between undertakings are prohibited if they have as their objective, or where they result in, significant prevention, restriction or distortion of competition within the relevant market, including: price fixing, market restrictions, market sharing, applying dissimilar conditions for equivalent transactions and tying.

It should be noted that cooperating joint ventures in the upstream and infrastructure markets are commonly accepted by the Authority, given that the facilities are difficult to divide or duplicate for technical reasons, as well as for reasons of profitability or environmental impact.

Holding a dominant position is not prohibited; however, abuse of such a position is. Since the exploration permits are granted by the Ministry on the basis of a tender system and traditionally separated from the downstream market, the upstream market is not greatly affected by dominant positions. On the other hand, the Authority has already sentenced several cases for abuse of a dominant position in respect of transportation or transmission facilities in the energy sector, where the behaviour of the operators were mainly assessed on the 'essential facilities' theory.

Besides the anti-competitive practices and abuse of dominant position, the Authority also surveys mergers and acquisitions within the upstream and downstream market.

A merger control procedure is only commenced if the transaction meets both of the following thresholds during the preceding financial year:

- the combined domestic aggregate turnover of all the undertakings concerned exceeds €492 million; and
- the domestic aggregate turnover of the target exceeds €49 million.

They are updated annually, to take inflation into account.

The acquisition of a share in an oil permit or concession is subject to merger control when it confers on the acquiring company the possibility of exercising a decisive influence over the activity of the joint venture.

Merger control consists of an assessment of whether the concentration creates or strengthens a dominant position in the relevant market. Since the market for hydrocarbons production is deemed to have a worldwide dimension, concentrations in Italy are likely to be cleared.

In the case of competition infringements, the Authority has the power to fine undertakings that infringe the Competition Act with a penalty amounting to a maximum of 10 per cent of their Italian turnover.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Where the operators want to create a cooperative joint venture (restrictive agreement) for upstream or transportation activities, they can apply for an exemption. The Authority will have to decide upon the filing within 120 days (exemption or opening of an investigation).

Where the Authority deems that the concentration is not likely to affect competition in the relevant market, it will clear the merger within 30 days of the notification.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Since the oil extracting industries have been liberalised both for Italian and foreign companies, the weight of international treaties has been considerably reduced. However, international treaties may still be relevant to govern the limits of the territorial sea, the exclusive economic zone and the continental shelf and where an oil operator has difficulties in obtaining market access.

Italy is a signatory state to, and has duly ratified into domestic legislation, both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

The oil upstream market is, as a general rule, open to foreign companies and individuals.

However, where Italian entities encounter difficulties (de jure and de facto) with access to, or the exercise of, the activities of prospecting, exploring for and producing hydrocarbons in non-EU member states, Italy must inform the European Commission. The latter may authorise Italy to refuse to authorise an entity that is effectively controlled by the third country concerned or by nationals of that third country.

As for the need to have a local presence, foreign investors usually incorporate an Italian subsidiary or in some cases, a branch. For further details see question 18.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Except for the tax regulation, import and export are not subject to any specific permit or licence.

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