

Fifty Shades of Restoration in Italy: an Analysis of Legal Tools and Drivers for Transformative Change

Francesca Leucci
PhD Candidate in *Law and
Economics* at Bologna,
Hamburg, Rotterdam
Universities

Eleonora Ciscato
PhD Candidate in *Law,
Economics and Ethics* at
Milan University



Outline

1. Background
2. Research question(s) and methodology
3. The eco-legal landscape
4. Cross analysis: the legal-ecological nexus
5. Case studies: Conservation Law vs Remediation after Damage
6. Conclusions

1. Background



CONSULTATION STRATEGY

IMPACT ASSESSMENT ACCOMPANYING A DRAFT LEGISLATIVE PROPOSAL ON EU NATURE RESTORATION TARGETS

1. BACKGROUND INFORMATION

Healty ecosystems – from forests and grasslands to coastal wetlands and seaweed meadows, from croplands to urban green areas – support rich biodiversity and deliver essential benefits to society. For instance, they sequester and store carbon and contribute to climate change adaptation and risk disaster control by reducing flooding or acting as coastal buffers. However, recent assessments of the state of biodiversity in the EU show that biodiversity and ecosystems continue to be degraded as a result of pressures from human activities, and essential ecosystem services that people depend on are in decline.

Ecosystems can be effectively restored by reducing pressures (such as pollution, human-induced disaster risks or over-exploitation of resources), or by actively helping damaged ecosystems to recover (for example by re-introducing native species or changing landscape / seascape features). To date, efforts to restore ecosystems in the EU have been insufficient. The EU Biodiversity Strategy to 2020 set a [voluntary target](#) to restore at least 15% of degraded ecosystems by 2020. This target has not been met. Restoration plans were developed just by few Member States. Some progress has been reported, in particular in areas where legal obligations exist, but implementation and enforcement challenges remain.

2. Research question(s) and methodology

Do environmental laws facilitate/hinder ecological restoration?

1. Which laws mention ecological restoration in the Italian legal framework?
2. Do they aim for ER?

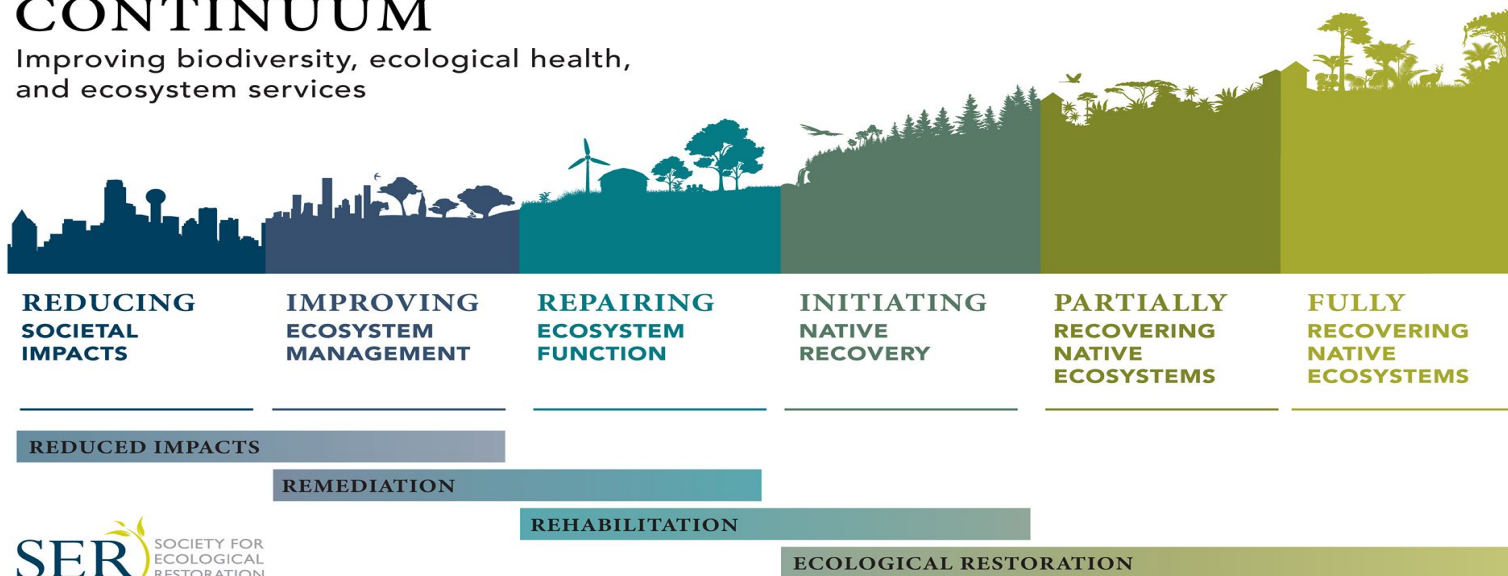
□ qualitative analysis of the law

2.1 Definitions

ER: “*Intentional activity that initiates or accelerates the recovery of an ecosystem with respect to its health, integrity and sustainability*”
(Gann et al., 2019)

THE RESTORATIVE CONTINUUM

Improving biodiversity, ecological health,
and ecosystem services



Restorative activities:
can be implemented
to support the
recovery of
ecosystems and they
can “*be conceived of
as a continuum*”.

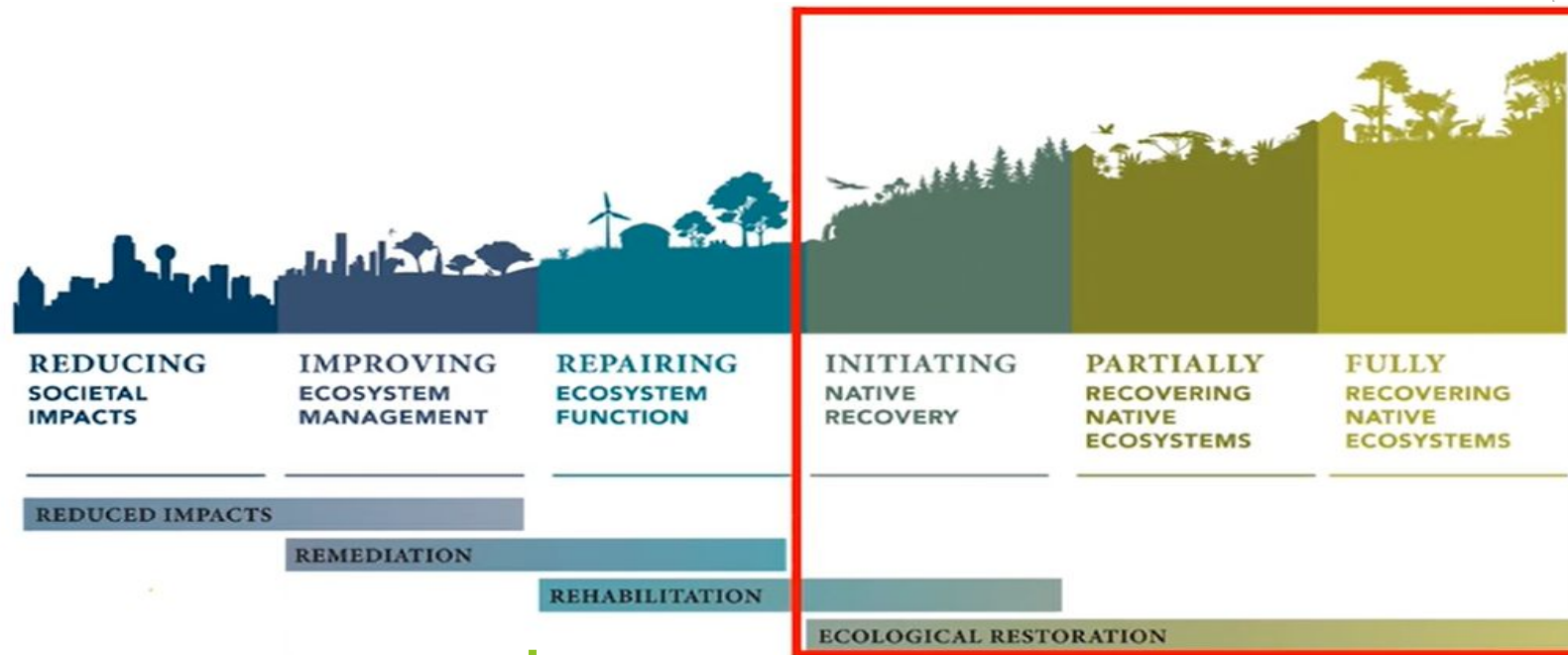
3. The eco-legal landscape

Environmental law	Sources of national laws	Italian terms	Restorative activity
Development laws and industry-specific regulations (release of permits) EX ANTE	Legislative Decree n. 152 of 2006 (Environmental Code), R.D. 29/7/1927 n. 1443 D.P.R. n. 616/1977	Rivegetazione, rimboschimento, recupero ambientale, ripristino, ricomposizione, rinnovazione artificiale, ripristino dello stato dei luoghi, risanamento	Rehabilitation
Remediation after damage (unknown polluter/identifiable polluter) EX POST	Legislative Decree n. 152 of 2006 (Environmental Code) part IV "Rifiuti e bonifica", art. 239ss, part VI "Tutela risarcitoria contro i danni all'ambiente", art. 298bis ss	Messa in sicurezza operativa Messa in sicurezza permanente Bonifica Ripristino ambientale Riqualficazione del sito e del suo ecosistema	Remediation, rehabilitation, ecological restoration
Criminal/administrative sanctions	Criminal Code (modified by Law n. 68/2015), Art. 452-terdecies	Ripristino, recupero dello stato dei luoghi	Remediation, rehabilitation
Conservation laws (protected areas)	Law 06/12/1991, n. 394 D.P.R. 12/03/2003, n. 120	Ripristino, risanamento, restauro ecologico, riconnessione ecologica, riqualficazione, ripopolamento, recupero, reintroduzione	Remediation, rehabilitation, ecological restoration
Land use planning	D.lgs 34/2018, National Strategy on Forests D.Lgs. 22/01/2004, n. 42, Code of cultural heritage and landscape	Ripristino delle condizioni di sicurezza e di instabilita' ecologica dei boschi Recupero produttivo delle proprieta' fondiarie frammentate Miglioramento, Rimboschimento	Remediation, Rehabilitation, Ecological restoration

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4. Cross-analysis: the legal-ecological nexus



- DEVELOPMENT LAWS AND INDUSTRY-SPECIFIC REGULATION
- CRIMINAL SANCTIONS
- LAND USE PLANNING OUT OF PROTECTED AREAS

- CONSERVATION LAWS
- REMEDIATION AFTER DAMAGE
- LAND USE PLANNING INSIDE PROTECTED AREAS

Intermediate conclusions:

- Italian terms for restoration:

rivegetazione, rimboschimento, recupero ambientale, ripristino, ricostituzione, ricomposizione, sistemazione, rinnovazione artificiale, ripristino dello stato dei luoghi, risanamento, messa in sicurezza, bonifica

Do conservation laws and remediation after damage effectively **aim for** ER?

SYSTEMIC AND FINALISTIC INTERPRETATION OF THE LAW

5. Conservation law: L. 06/12/1991, n. 394 Framework Law on Protected Areas

Purpose Art. 1.3

- The law aims at conserving animal and plant species, but also aims at achieving integration between man and the natural environment

Incentive measures Art. 7

- Incentives reflect such balancing of values

Park Regulation Art. 11

- The planning of activities within protected areas cover both ecological works and cultural activities

Is the environment really protected?

The protection of the environment is considered to be one among different legitimate interests, implying “not absolute, but relative unbuildability” (art. 6)



to be assessed on a case-by-case basis (T.A.R. Salerno, 06/06/2012, n. 1225) through a special environmental impact assessment (T.A.R. Cagliari, 07/04/2016, n. 329)

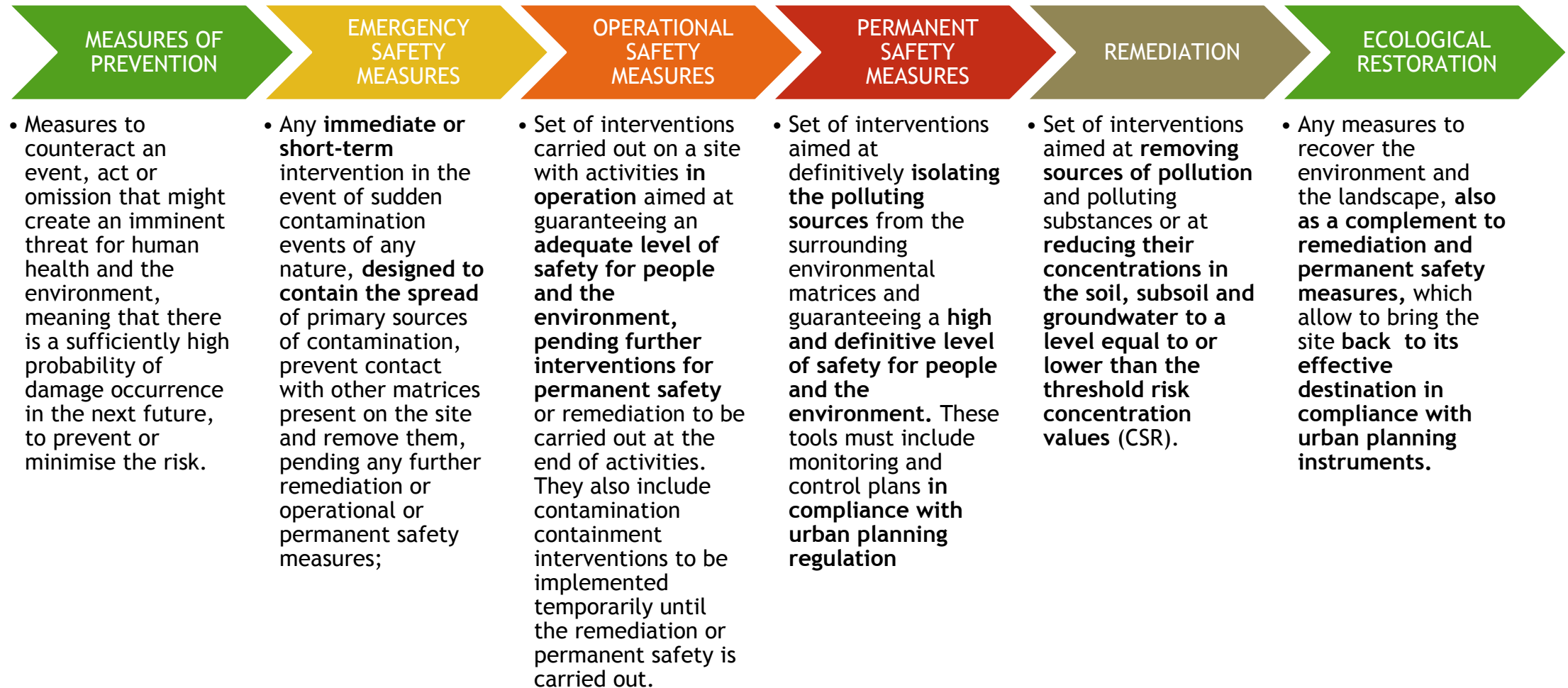
Preminance of environmental interests

Grounds for projects' annulment (examples):

- Protection of breeding sites for protected species (Wind energy site - T.A.R. Sardegna, 23/10/2020, n. 573)
- Lack of adequate assessment (Restaurant construction, T.A.R. Cagliari, 07/04/2016, n. 329)
- Disturbance to protected species and inadequate compensation measures (T.A.R. Abruzzo, 03/01/2022, n. 1)
- Insufficient level of detail in compensation measures (Florence airport, Cons. Stato, Sez. IV 13 febbraio 2020, n. 1164)

Event	Activities	Legal consequence	Mandatory	Order
Activity not in accordance with the Plan Art. 6.6 -> Environmental Impact Assessment	Safeguard measures	Immediate restoration to original state and the possible restoration of damaged plant and animal species	Contracting authority, Owner of the undertaking, Works director	Ministry, Managing Authority
Activity not in accordance with the Plan, regulation or authorization Art. 29	Safeguard measures	Immediate suspension of the activity itself and in any case the restoration to original state or the restoration of plant or animal species	Offender	Protected Natural Area Management Body
Infringement of the Penal Code Art. 30	Sanctions	Seizure of what has been used to commit the offences. Restoration to the original state of the damaged area , where possible , and in any case is obliged to compensate for the damage	Offender	Court, other body in case of flagrante reato

5. Remediation after Damage: Legislative Decree n. 152 of 2006 (Environmental Code) Art. 240 Definitions of restorative measures



Event	Activities	Legal consequence	Mandatory	Voluntary
Discovery of a threatening event / historical past pollution	Measures of prevention	Obligation to inform the PA within 24h , implementation prevention measures	Liable party AND landowner	Third interested (non liable) party
Analysis pollution levels after adoption of prevention measures (or not)	Emergency safety measures	Obligation to reduce the level of pollution and to inform the PA on site conditions within 48h and to send out a remediation plan before the following 30 days	Liable party AND LOCAL AUTHORITY (if liable party is unknown) or REGIONAL AUTHORITY	Third interested (non liable) party
Pollution level higher than thresholds for risk concentration	Remediation and permanent safety measures	Possibility to complement remediation with ecological restoration aimed at bringing the site back to uses in compliance with urban laws	X	X

Remediation after damage: Legislative Decree n. 152 of 2006 (water, protected areas, soil)

Art. 302, par. 9

By "restoration", even "natural", we mean: in the case of protected waters, species and habitats, the **return of damaged natural resources or services to their original conditions**

Art. 303

(These provisions) do not apply to pollution situations for which remediation procedures have actually started, or **remediation of sites** has been initiated or has been carried out in compliance with the regulations in force, unless environmental damage still occurs.

The interpretation of restoration obligations in case of insolvency

- ❖ The obligations to restore upon the **insolvency administrator** have been delineated either by the doctrine and the jurisprudence.
- ❖ **Two main judicial approaches**
- ❖ First judicial approach: the insolvent administrator takes on **all the obligations** lagging on the insolvent party.
- ❖ Second judicial approach: the mere fact that the administrator has some power over the insolvent goods is not sufficient to charge him of active duties, including safety measures.
- ❖ **The Italian highest court (Corte di Cassazione) upheld the second approach in 2014.**
- ❖ It is up to the public administration to execute the obligation to remediate the damage and then to ask for being refunded by the insolvent company.
- ❖ Given that **the public might not have sufficient money to remediate** the damage and that **remediation procedures might last longer than the normal length of the insolvency procedure**, it is obvious that insolvency makes hard to implement the polluter pays principle (Vitiello 2014).

7. Conclusions

- ▶ Based on the research, there are **obligations to achieve ecological restoration**

Yet, there are many hindering factors:

- ▶ Plurality of values
- ▶ Lack of definitions
- ▶ Ambiguous/partial obligations to restore

Next steps:

- ▶ Complement the systematic interpretation of the law with interviews of stakeholders
- ▶ Stakeholders' analysis of costs bearers and beneficiaries of ER
- ▶ Incentives by policy tools