ENVIRONMENTAL LAW

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The **value of the environment** is not a new concept, rather its **legal significance** is.

Difficulties

- The **interest for the environment** overlaps with other sectors, competences and organizations
- **Territorial closeness** among the territory that produces an environmental impact and the organization that manages it

NIMBY approach

This explains the **strong supra-national connotation** of the **environmental laws**

THE MATERIALIZATION OF THE INTEREST FOR THE ENVIRONMENT

The transversality of the interest for the environment raised a scientific-dogmatic question: does the environment exist as a defined ,delimited, object, which can be identifies separately from others?

Is it therefore *quid* that can be a **subject of rights?**

THE MATERIALIZATION OF THE INTEREST FOR THE ENVIRONMENT

On an **European level,** untill the beginning of ‘80s there were only **sector-specific** laws.

In **Italy** the first environmental-related law, was in 1966, against *atmospheric pollution*.

In the **Constitution** the protection of the *lanscape* – art 9 – was taken into consideration essentially for its aestetic aspects.

ITALY
THE MATERIALIZATION OF THE INTEREST FOR THE ENVIRONMENT

The increase of the pollution determined a **new problem,** which did not find any adeguate solution in the already existing organizations.

This brought to the birth of **associations** for the protection of the environment

ITALY – INSTITUTION OF MATTM

1986 – Institutional law of the **Ministry of the Environment**

With the ambitious objective of:

«Assuring in a comprehensive frame, the conservation and restoration of the environemntal condition, corresponding to the fundamental interests of the community and of the quality of life; the conservation and valorization of the national natural heritage and the defense of natural resources from pollution»

ITALY - JURIDICAL LEVEL

Today, the environment represent a **subject**, as an omogeneous set of competences:

legal, of adiministrative power, of juridical centers and legally protectable situations

THE BIRTH AND EVOLUTION OF ENVIRONMENTAL LAW

INTERNATIONAL

Environmental law was formed primarly on a supra-national level:

the first environmental problems involved multiple countries

No country had the right to utilize its territory in a way that could **harm** other countries

INTERNATIONAL

1972

➢ **United Nations Conference on the Human Environment in Stockholm:**

Affirmation of general principles, such as:

- **The fundamental human right to an environment that assures dignity and well being**
- The **duty** of the **human** beings to preserve the environment for the **future generations**
- The **duty** of **countries** to not produce negative environmental effects out of the borders of their own countries and to cooperate to the protection and improvement of the environment.

Instituition of **UNEP : the first international organization with environmental competences.**

INTERNATIONAL

1987 ➢ **Brundtland Report :**

- **Definition of sustainable development:**

  "*Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs*"

  The concept is vague in quantitative terms, therefore also largely appliable

- Affirmation of **multilateralism** and **interdependence** of nations

INTERNATIONAL

1992 Rio de Janeiro Earth Summit

- The countries have **Common but Differentiated Responsibilities and Respective Capabilities (CBDR–RC)**

- The **developed countries** have the duty to spend **bigger efforts** for a sustainable delopment

INTERNATIONAL

1992 Rio de Janeiro Earth Summit

The declaration were also expressed:

- **PRECAUTIONARY PRINCIPLE -** The prevention of harmful events has to not wait untill the certainty of their occurence

- **-> PASSAGE FROM BURDEN OF PROOF TO THE CONCEPT OF RISK**

- **POLLUTER-PAYS PRINCIPLE –** The polluter has to cover the cost of his pollution

–> possible mishapprention of the right to pollute, if paying

INTERNATIONAL

1992 Rio de Janeiro Earth Summit

The conference producted three important documents:

- **The Rio Declaration on Environment and Development**
- **Agenda 21**
- **Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests**

INTERNATIONAL

Rio de Janeiro Earth Summit

➢ **Agenda 21** – About changes to adopt in the 21th century

- It represents a tool to foster the development programs **on a local level** , as reccomended by chapter 28
- These programs are often known as **Local Agenda 21**
- Meaning the choices and the actions has to be **bottom-up** in order to answer more effectively to the needs of the local communities
- Likewise, it is fundamental that the choices and objectives are agreed upon all the economical and social actors, throu **partecipatory processes**

CONFERENCES OF REGIONAL-EUROPEAN NATURE

1979 **Geneva Convention on Long-range Transboundary Air Pollution** > Athmosferic pollution

1991 **Convention on Environmental Impact Assessment in a Transboundary Context** (informally called the **Espoo Convention** > Transboundary Environmental Impact Assessment

1998 **Aarhus Convention** > Access to information and partecipation of citizens in decision making processes

1997 **Kyoto Protocol** > Relationships among market and environment – assessing what was needed to protect the environment even if it implies a decrease of the freedom of trade > Reduction of green house emissions

EUROPE

- **The first** European measures with an environmental content were introducted in the form of directive and regulations, with the principles of international environmental laws: Directive 67/548, 70/157, 70/220

- **Today**, the protection of environment is in the Treaty on European Union: articles 2, 3, 6 e 174. Highlight: sustainable development principles, implicit right/duty of benefit/ensure a high standard of environmental quality

EU Environmental policy is founded on the following principles (art.174, CE) :

1. **PRECAUTIONARY PRINCIPLE**
2. **POLLUTER-PAYS PRINCIPLE**
3. **PREVENTION PRINCIPLE**
4. **ENVIRONMENTAL DAMAGE SHOULD BE RECTIFIED AT SOURCE**
5. **THE INTEGRATION PRINCIPLE**

1. PRECAUTIONARY PRINCIPLE

- Better safe than sorry
- When there is uncertainty about the environmental risk, measures can be adopted
- Cost-benefit analysis implementation

2. POLLUTER-PAYS PRINCIPLE

- Individual responsability
- Responsability for illicit behaviours: taxes, charge
- Responsability for environmental harm

3. PREVENTION PRINCIPLE

- Better preventing than cleaning up
- Allows measures that anticipate the risks in order to avoid an environmental harm
- Example: dir. 96/82/CE -> dir. 85/337 VIA

4. ENVIRONMENTAL DAMAGE SHOULD BE RECTIFIED AT SOURCE

Damages are dealt with when they occur

5. THE INTEGRATION PRINCIPLE

Implies that all the policy areas work along and with the environmental policies, with the common objective of sustainable development and common responsabilities

ITALY

2004 –the Parliament delagated the Government the adoption of one or more Legislative Decree of the legislative dispositions in the different sectors of environmental sectors, most of them converged in the «**Environmental Code**»:

CODICE DELL'AMBIENTE – d.lgs. 152/2006

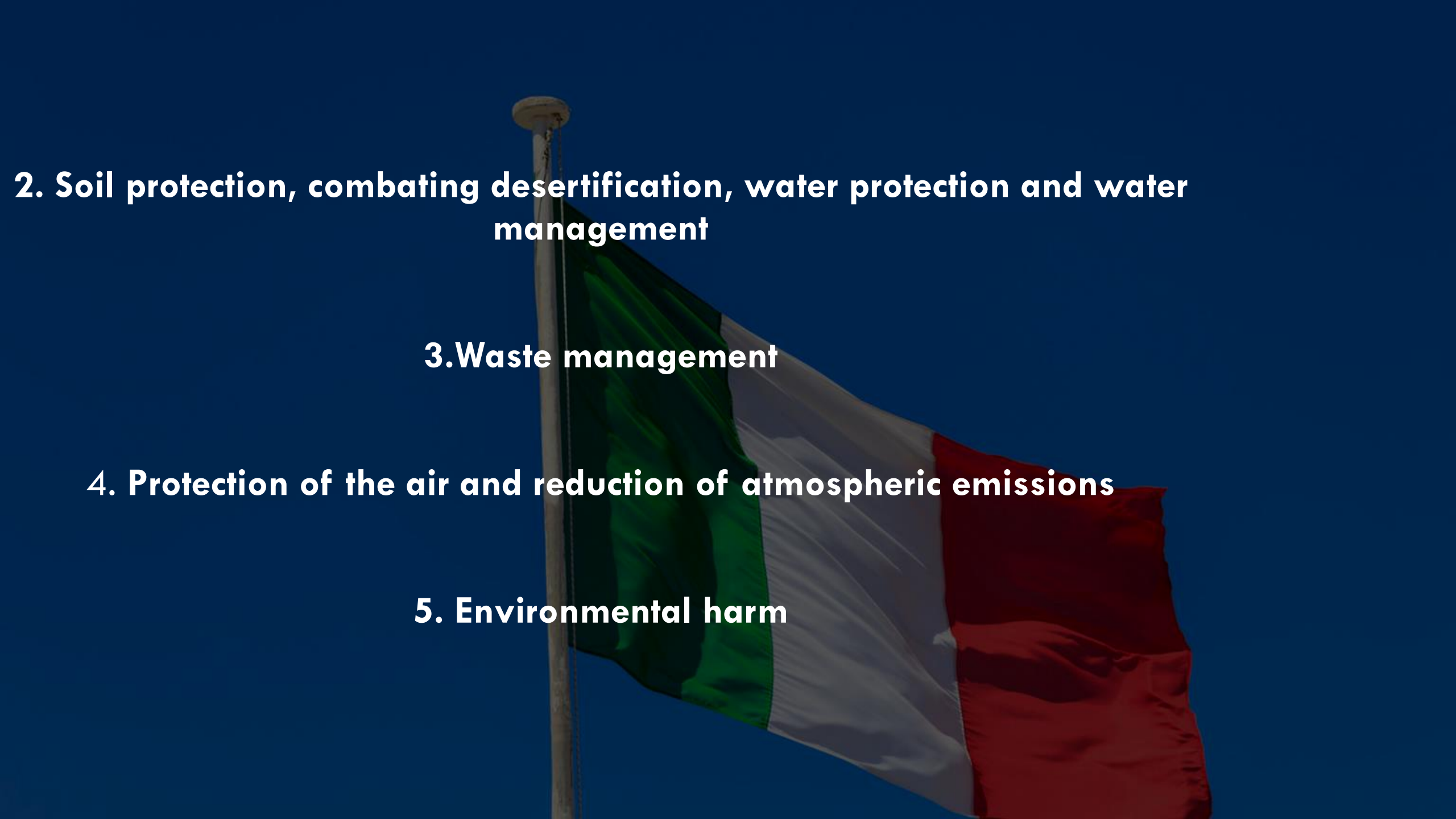
Composed of 6 parts, 318 articles and 45 technical annexes

The ENVIRONMENTAL CODE is divided in 5 chapters:

1. Procedures for:

Valutazione di Impatto Ambientale – VAS = Strategic Environmental Assessment – SEA

Valutazione d'impatto ambientale - VIA = "Environmental Impact Assessment" - EIA



2. Soil protection, combating desertification, water protection and water management

3.Waste management

4. Protection of the air and reduction of atmospheric emissions

5. Environmental harm

ENVIRONMENTAL IMPACT

Def.

Environmental impact is defined as “any qualitative or quantitative change to the environment, intended as the system of relation among the anthropic, natural, chimical-physical, climatic, landscape, architectonical, cultural and economical, as a consequence of the application on the territory of plans or programs or of the realization of projects of facilities, public or private, and of their functioning”

Tools:

Normative	Administrative	Economical	Market
Prohibition Autorization	Planning VIA VAS (SEA, EIA)	Incentive / Disincentive Taxes	Certifications (i.e: EMAS, ECOLABEL)

ENVIRONMENTAL IMPACT

- VIA
- VAS

VIA

Technical-administrative procedure aimed at the elaboration of a assessment of environmental compatibility of a specific construction in a specific site

Born in the USA in 1969, adopted from EC in 1985, received from ITA in 1988.

FIELD OF APPLICATION

EC

Directive CE 85/377/CEE:

1) **Mandatory VIA –** HIGHER RISK WORKS- environmental, health, social, etc. (Annex I)
2) **Optional VIA-** the signle countries can ask for a VIA for projects with characteristic that would require it (Annex II)

ITA

Criteria:

-List of works based of specificity

-List of works based of dimension

-List of works based of the particular sensitivity of a site

OBJECTIVE

«To protect human health, to contribute with a better environment to the quality of life, to provide to the maintenance of species and to preserve the reproductive capacity of the ecosystem, as an essential resource for life».

TARGET

Object of the evaluation: « *the direct and indirect impacts,* ***significant and negative****, of the* ***project*** *of the work on the environment and on the cultural heritage»*

WHO

Governmental (Minestries: MAATM and MIBACT)
For most relevant and with large-scale effects

Regional (public administration)
Localized relevanze

In case of **great public works,** the final competence is of **CIPE** (Comitato Interministeriale per la Programmazione Economica) Inter-ministerial committee for the Economical Programming

HOW

- Preliminary phase
- Conducting phase
- Preparatory phase
- Decisive phase
- Monitoring

HOW

1) Preliminary phase:

Screening > Establishes if **VIA** will be necessary

Scoping > Confrontation among private and administration, in order to establish what to inster in the SIA (Environmental Impact Assessment)

VIA

HOW

2) Conducting phase:

Presenting the SIA (Environmental Impact Assessment), which has to contain:

- Description of the project
- Description of the planned measures to avoid and reduce the negative impacts
- The data necessary to identify the negative impact
- Description of the main alternatives examined
- Description of the planned measures for the monitoring

HOW

3) Preparatory phase:

It is needed from the administration to gather informations for the decision, based on the evaluation of:

- Inspections
- Technical evaluations
- Reviews
- Documents
- Observations

HOW

4) Decisive phase:

The VIA procedure is concluded with the adoption of an «expressed and motivated» measure of the **MATTM** commission, within 150 days

5) Monitoring:

It is important in order to identify possible further negative impact. The competent authority can take action eventually suspending the work.

VAS

Evaluation of the effect determined form **plans and programs** on the environment

EC:
Dir. 2001/42/CE of the Europen Parliament and Committee

The Member States should have received the directive within the 21th of July 2004

ITA:

Italy received the directive with the second part of the ENVIRONMENTAL CODE , D.lgs. 3 aprile 2006, n. 152 entrata in vigore il 31 luglio 2007

FIELD OF APPLICATION

VAS is applied to **plans and programs** that can have significant impacts on the **cultural heritage**

Sectors: agricolture, energy, industrial, etc. exept for plans and programs for national defence, civil protection, financial.

OBJECTIVE

To ensure a high level of protection of the environment and to contribute to the integration of environmental considerations at the moment of the elaboration, adoption and approval of the **plans and programs,** assuring that they are coherent and they contribute to the conditions for a **sustainable development.**

TARGET

Governmental:
The plans and programs of which approval competes to governmental body

Regional:
The plans and programs of which approval competes to Regions or local authority

WHO

Depending on the level of competence of the plan or program, the VAS procedure can be **Governmental (MATTM and MIBACT)** or **Regional**

HOW

- Preliminary phase
- Conducting phase
- Preparatory phase
- Decisive phase
- Monitoring

HOW

1) Preliminary phase:

Screening > Establishes if **VAS** will be necessary

2) Conducting phase

Elaboration of the **Environmental Report,** which shows signficant **impacts on the environment**

3) Preparatory phase

Consultations and its results, after having rendered the proposal of plan or program **public,** as well as the environmental report. Whoever wants can consult it and present their osservations.

HOW

4) Decisive phase

The plan or program and the environmental report, together with all the documentation gathered are sent to the competent body to the adoption

5) Monitoring phase

Ensures the control of the significant impact on the environment produced by the application of the approved plans and programs.

VIA-VAS RELATIONSHIP:

Main common feature> They address the environmental impacts as a part of a greater procedure (i.e. productive activities)

Main distinctive feature > VIA is for projects, in a phase in which the possibility of making a great change is reduced, whereas VAS is instead for plans of a specific area of the territory, and it accompanies the draft of the plan itself

DIFFERENCES AMONG VAS AND VIA

	VAS	VIA
Type of action	Strategic	Construction/Managment
Target	Plans and programs	1 Project for 1 site
Time scale	Medium/ Long term	Short term
Data	Mainly qualitative	Mainly quantitative
Extent of impacts	National/ Regional	Local
Stringency of analysis	-strictness + uncertainty	+ strictness
Output	General	Detailed
Public perception	Vague / Distant	More reactive (NIMBY)
Commission	Pubblic	Pubblic/private

GOOD PRACTICES

PIANO DI ASSETTO DEL TERRITORIO DELLA CITTÀ DI PADOVA (P.A.T.)

This case is interesting since in an **urban tool**, emerges an environmental **sustainability** attention

Among the action proposed by the plan, we find:

"Realization of **green infrastructures,** with the goal to **connect the urban environment with the extraurban and rural one."**

This topic was resumed by the **objective 30** of the **Agenda 21**

"*Formation of a peri-urban green belt made of a system of public parks and rural spaces, green paths, agricultural areas, gardens, ecological gardens*" that sets the objectives to realize a green system accessible and integrated with various green areas of differen levels and quality.

The plan was realized throu a **partecipatory process**, from wich emerged the guidelines and the objectives of the plan:

- Improvement of the planning and managment processes
- Improvement of urban quality of the city center and of suburbs
- Reduction of the impact of climate change

The approach was based on co-management between institutions and citizens.

In order to reach these goals, the plan is developed on three main actions:

Pilot action 1: **e-management of green urban spaces**, throu technology both for spreading information and for urban planning

Pilot action 2: Partecipation of the community in the decision making processes for green areas

Pilot action 3: **New management tools**, meaning creating models of transnational governance, for a sustainable management of green urban areas

http://www.padovanet.it
www.interreg-central.eu/ugb

PIANO OPERATIVO DELLA CITTÀ DI PRATO, ACTION PLAN

Stratefic Comunal plan, of a medium and long period planning.

Main objectives:

- Definition of local sustainable development on a social, cultural, economical and environmental point of view
- Reuse of the components of the city
- Nature as natural green infrastructure, in order to connect the urban and rural area

Focus:

- Reduction of **soil consumption**
- Resilience to **climate changes**
- Maintenance of the **ecological function of ecological soils and their protection**

The **Action Plan** for urban and periurban afforestation aims to improve the environmental quality and the quality of life in the city through the re-naturalization of the urban area and through its connection with the surrounding rural areas.

The principle of keeping a high quality environment for the **future generations** and the inter-connetctivity of **different sectors** are the key fundamentals on which this plan is based.

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