



The
**LEGAL
500**

**COUNTRY
COMPARATIVE
GUIDES 2021**

The Legal 500 Country Comparative Guides

Slovenia

ENVIRONMENT

Contributing firm

Odvetniška družba Neffat



Domen Neffat

Managing Partner | neffat@neffat.si

Vesna Lozak Polanec

Attorney | lozak@neffat.si

This country-specific Q&A provides an overview of environment laws and regulations applicable in Slovenia.

For a full list of jurisdictional Q&As visit legal500.com/guides

SLOVENIA ENVIRONMENT



1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

Slovenia's environmental Framework is set out with the Environmental Protection Act (Zakon o varstvu okolja – EPA), Nature Conservation Act (Zakon o ohranjanju narave – NCA); spatial planning laws and numerous implementing regulations and government decrees for individual areas (such as waste management, climate change, industrial pollution, environmental assessments, soil and water protection, etc.).

Due to Slovenia being a member of the European Union, most Slovenian environmental legislation contains implementations of European Union Directives.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

The primary environmental regulatory authority is Slovenian Environment Agency, (Agencija Republike Slovenije za okolje), hereinafter referred to as 'ARSO', a body of the Ministry of the Environment and Spatial Planning. ARSO performs expert, analytical, regulatory and administrative tasks related to the environment at the national level. ARSO is authorised to carry out different procedures, such as the Environmental Impact Assessment procedure, issues environmental protection consents and permits for specific activities, keeps registers of mandatory monitoring and notification reports.

Environmental requirements are also enforced by the Inspectorate for the Environment and Spatial Planning, a body within the Ministry of the Environment and Spatial Planning. The Inspectorate supervises the implementation of regulations in the field of environmental protection and nature conservation, water management, industrial pollution and performs administrative and expert tasks in the field of cross-

border shipment of waste through routine, non-routine and control inspections, coordinated inspection campaigns, minor offence proceedings, and enforcement.

3. What is the framework for the environmental permitting regime in your jurisdiction?

Slovenian legislation provides a wide range of permits, certificates and approvals. Framework is set out by EPA and government decrees, dependant on the type of intended waste management procedure and/or environmental encroachment. The requirement for an environmental permit usually depends on type of industry, the sector and size of the plant or installation. It can also be mandatory for the operation of other installations or activities, which are defined by special regulations.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Most environmental permits can be transferred from one operator to another. The process of transferring is set out in EPA and is carried out within a special administrative procedure on the basis of a written notification from the operator of the installation and completes with an approval of ARSO as the competent authority.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

The decision of ARSO as an environmental regulator ('first instance decision') to grant an environmental permit or not can be challenged by filing an appeal before the Ministry of the Environment and Spatial

Planning (as the authority that is hierarchically superior to ARSO) within 15 days from obtaining the decision. If the appeal is not successful, a claim can be filed before the Administrative Court of the Republic of Slovenia within 30 days from obtaining the decision regarding the appeal against the first instance decision.

The operator, applying for the permit, and certain third parties, can file appeal and/or action in court. Whether third parties have a right to appeal and on which grounds they may appeal depends on their role in the environmental administrative procedure (whether they have been officially granted the right to participate in the proceeding) or their right to participate in the procedures based on their function (such as non-governmental environmental organisations).

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

Projects which are likely to have effects on the environment require a comprehensive environmental impact assessment (EIA). Specific cases, when EIA needs to be carried out, are specified in the Annex of the Decree on categories of activities for which an environmental impact assessment is mandatory (Uredba o posegih v okolje, za katere je treba izvesti presojo vplivov na okolje). Some projects are subject to a preliminary check to assess whether the EIA is necessary, however, for some projects, EPA is always mandatory (such as spatial activities that are either causing major pollution or are representing greater risks to the environment). The main elements of EIAs are set out in EPA and the Decree.

EIAs can be carried out before ARSO as the competent authority or, for some projects, during issuing a building permit (integral process before Ministry of the Environment and Spatial Planning).

Final decisions can be challenged by third parties (such as NGO's) in accordance with the provisions of the Administrative Procedure Act and Administrative Dispute Act.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory

regimes?

Legal framework is set out in the EPA, Decree on types of measures for remediation of environmental damage and Rules on the content defining environmental damage.

Suspected contaminated sites are identified, assessed and evaluated by ARSO and the Inspectorate as competent authorities and all necessary measures are taken to remedy the adverse effects.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

When it is clear that environmental damage occurred, the polluter must prepare a proposal for remedial measures, which shall include ex ante evaluation of the feasibility and feasibility of remedial measures, and the definition of environmental damage. This could also mean he needs to investigate what the scope of contamination is.

However, there is no general affirmative obligation to investigate land for contamination for subjects, who are not responsible for the contamination ('polluters').

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

In the event of environmental damage, the polluter must immediately inform the Ministry of all relevant facts, take all necessary measures to limit it and send the Ministry information on the environmental damage and a proposal for remedial measures for approval.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

Slovenian environmental legislation does not recognize these rights, however, in case of the purchase of contaminated land, such a contamination would

generally be considered as a defect, meaning a deviation from a contractual agreement with a previous owner. The buyer of contaminated land could invoke warranty claims and damages.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

The main law is the EPA and there are many Regulations and Decrees that regulate waste regime in Slovenia, such as Decree on Waste.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

A waste producer is obliged to consign the waste to an authorised third party or waste management operator which fulfils certain conditions set forth in the Decree of waste. It is not clearly defined if liability of the producer of waste remains, after the waste was transferred to another person for disposal/treatment off-site.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

The producers have an obligation regarding the take back and recovery of their waste in cases of illegal cross-border shipments.

For some products, an ('EPR') scheme has been introduced. An update of this system is foreseen for the next legislative change of the EPA.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

There is an Act Concerning Remediating the Consequences of Work with Asbestos (Zakon o odpravljanju posledic dela z azbestom) that determines occupational diseases due to exposure to asbestos dust or powder of materials containing asbestos at the time of production, use and disposal of asbestos products,

conditions for their identification, assessment and payment of a lump sum compensation and entitlement to a disability pension under more favourable conditions for persons who have been diagnosed with occupational disease due to asbestos exposure under this Act.

According to the Act Concerning Remediating the Consequences of Work with Asbestos production, transport and storage and import of asbestos and products containing asbestos is prohibited in the territory of the Republic of Slovenia. Compulsory management of asbestos-containing waste is defined in The Decree on management of waste containing asbestos. The Decree states that disposal of asbestos waste shall be carried out on the basis of regulations governing waste management, landfilling of waste or incineration of waste. The Decree also lays down other mandatory measures concerning the duties of owners/occupiers of premises in relation to asbestos on-site.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

Slovenian legislation uses the product regulation that is determined at the EU level and is thus implemented by national legislation.

In Slovenia we have the following regulations on this topic: Regulation implementing Regulation (EC). 1272/2008 of the European Parliament and the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC). 1907/2006; and Decree on implementation of EU Regulation on registration, evaluation and authorization and limiting of chemicals (REACH).

The CLP Regulation applies directly to all industrial sectors. With Decree REACH are set out control over the implementation of the regulation and penal provisions in this area.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

In the Republic of Slovenia, energy efficiency is

extremely important. It ensures the goals of energy policies, as well as the broader development goals of the country, such as improving the competitiveness of society, green growth and quality of life.

The area is governed by a wide range of legislation. Much of the legislation has been transposed from the EU level. In Slovenia, there are Energy Act, quite a few rules (Rules on efficient use of energy in buildings with a technical guideline, Rules on the ventilation and air-conditioning of buildings, Rules on the methodology for the production and issuance of energy performance certificates for buildings, ...), Decree on limit values due to light pollution of environment and also National Action Plan for Energy Efficiency.

The above legislation aims to ensure the acceleration of the use of energy-efficient means of transport, as well as greater efficiency of public transport, stricter standards and better labelling of devices, ensuring better energy efficiency of existing buildings and more efficient energy use.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

There is a special Division for Environment and Climate Change regulation, organised by the Ministry of the environment and spatial planning: The Environment directorate, which takes care of the preparation and monitoring of basic strategic documents and strategic orientations in the field of climate change mitigation and adaptation; and the reduction of greenhouse gas emissions and other air pollutants.

In addition to the EPA, there is no special climate protection act. There are, however, multiple other decrees and pieces of legislation specifically designated to decrease greenhouse emissions.

The legislation mainly regulates two areas, namely ozone-depleting substances (ozone-depleting substances) and certain fluorinated greenhouse gases. One of them is Decree on the use of fluorinated greenhouse gases and ozone-depleting substances.

With the Comprehensive National Energy and Climate Plan, which is an action strategy document for 2030 and with a view to 2040, it sets goals, policies and measures in the areas of decarbonisation, energy efficiency, energy security, the internal market and research,

innovation and competitiveness. In Slovenia, a program is planned to promote electricity produced from renewable energy sources, for which support has been established. The point is that the purchase of electricity produced in this way is guaranteed, as well as financial assistance for current operations.

18. To what extent are environmental, social, and governance (ESG) issues a material consideration in your jurisdiction? Is ESG due diligence for transactions and ESG due diligence in supply chains becoming mandatory or more common? To what extent are companies obliged to report on ESG matters? Has COVID-19 had any impact in relation to companies' approach to ESG in your jurisdiction?

ESG due diligences and reports are not a standard practice in Slovenia.

19. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

To what extent can somebody be liable depends on the type of liability, since there are different types of liabilities for breaches of environmental law and/or pollution caused by a company:

- **civil liability** (risk of being held liable for damages to persons or property under the law of torts),
- **special environmental liability for environmental damage** is based on EU Directive 2004/35 known as the environmental liability directive ('ELD'),
- **administrative liability** (in connection with the performance of its activity, the operator is responsible for preventing the imminent danger of environmental damage and for preventing or remedying environmental damage regardless of fault; in other cases the polluter shall be liable only for causing an imminent danger of environmental damage or of environmental damage to protected

species and habitat types, if it was done intentionally or through negligence),

- **administrative offences liability** and
- **Criminal liability.**

The liability for breaches of environmental law and pollution is always on the company. In some cases, the directors may attract personal liability for environmental wrongdoing committed in the corporation's interests (directors can be found liable for administrative or criminal offenses).

Slovenian environmental law does not dictate liability on shareholders, or a parent company for pollution. Shareholders have limited liability for obligations of the company except for those defined by law. The parent company could be sued only if it is established that it is responsible for the pollution its foreign subsidiary/affiliate directly caused (for example: direct instructions to the subsidiary, etc.). However, no special rules exist on this responsibility.

Other entities liability for environmental wrongdoing by the company is not recognised in Slovenia.

20. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

In a share sale, the purchaser buys the company with all its liabilities. In an asset purchase, where the operator remains the same entity, the past liabilities remain, in principle, with the previous operator. Environmental liabilities.

21. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

In general, the potential buyer must be informed of circumstances which significantly influence a purchase decision and about which disclosure is to be expected. The non-disclosure of environmental law issues may result in claims for compensation by the buyer.

Environmental due diligence is not common in Slovenia, but is on the rise.

22. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

There is a variety of environmental insurance available on the market and environmental liability insurances are usually obtained as an extension to general business liability insurances.

Insurance can cover different risks, such as third-party claims on the basis of civil liability, and also other liabilities. However, environmental risks insurance is still new and developing so it is hard to say how big a role it will play in Slovenia.

23. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

ARSO holds a Register of Environmental Protection which includes different public registers, such as list of operators that must obtain IED permits, list of issued permits, SEVESO register, list of issued environmental consents, list of waste incineration plant operators, list of public utilities service providers, etc. These registers are publicly accessible via ARSO's website.

24. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

Paragraph 13 of EPA states that environmental data is public and everyone has the right of access to environmental data in accordance with the law. The public has the right to participate in the procedures for the adoption of regulations, policies, strategies, programs and plans relating environment protection, and the right to participate in procedures relating to plans, programs and interventions in the environment in other countries that could affect the environment in the Republic of Slovenia. The public has also the right to participate in the procedures for issuing specific legal acts relating to interventions in the environment in accordance with this Act.

In light of general administrative procedure principles, only parties of certain proceeding are in entitled to

access and inspect all related files. However, third parties have the right to demand participation in such proceeding and if their right to participate is granted, environmental information regarding a specific administrative procedure shall be disclosed to them.

At the request of eligible individuals, ARSO must also provide its decisions, documents and other materials in accordance with Public Information Access Act (personal information and business secrets excluded).

25. What impact, if any, has COVID-19 had in relation to environmental regulations and enforcement in your jurisdiction?

N/A

26. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

There have been some updates and changes in environmental law in 2020.

In the **EPA**, three content sets were changed. The first amendment concerns the manufacturer's extended liability system, which would provide a better and clearer legislative framework for the implementation of the manufacturer's extended liability. The next change was in relation to the EU's greenhouse gas emission allowance trading system, which transposed into national law Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018

amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814. The last change was regarding the requirement for the implementation of operational monitoring, which provided that a person who is not entered in the records may also perform operational monitoring, insofar as there are exceptions provided by law.

A new draft of the Environmental Protection Act is being prepared and from 31 December 2020 to 1 February 2021, a proposal for a new EPA is in public discussion.

Another environmental law that was changed was Nature Conservation Act. The amendment was introduced based on an allegation of a breach of European law in connection with the Habitats Directive. The provision on non-governmental organizations in the field of nature conservation has also been changed, and new conditions have been set.

There were also changes in **Water Act**, with new arrangements regarding the Water Fund, namely regarding the purpose of spending funds from the said fund, and also a change was planned regarding the arrangement of coastal lands.

In addition, **Decree on waste** has been changed as a transposition of Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC into national law.

Decree on activities affecting the environment that require an environmental impact assessment was also changed. The amendment was introduced with the aim of administrative relief of the carriers of environment impacts.

Contributors

Domen Neffat
Managing Partner

neffat@neffat.si



Vesna Lozak Polanec
Attorney

lozak@neffat.si

