

The Fifth *Conto Energia* (Draft Decree) and the new conditions for photovoltaic plants on agricultural areas to access the *Conto Energia* incentives

I. Fifth *Conto Energia* (Draft Decree)

The current photovoltaic incentive scheme set forth under fourth *Conto Energia* (Ministerial Decree 5 May 2011) will soon cease to apply because in the next few months the targets set out by the fourth *Conto Energia* will be reached: *i.e.* Euro 6 billion as yearly cumulated cost of the incentives under the *Conto Energia* regime.

The Italian Ministry for the Economic Development has therefore already published the draft of the new Decree ("**Draft Decree**") that will substitute the fourth *Conto Energia* with a new one ("**Fifth Conto Energia**") and has already sent it to the State-Region Committee (*Conferenza Unificata*) for final approval.

This newsletter provides a general overview of the major issues set out under the current version of the Draft Decree.

1. Scope of the new regime

According to the Draft Decree, the new regime and the incentive tariffs provided under the Fifth *Conto Energia* ("**Tariffs**") will apply after the achievement of the threshold of yearly cost of the incentive tariffs provided in the Fourth *Conto Energia* (*i.e.* Euro 6 billion). The Italian gas and power Authority ("**AEEG**") will issue a resolution confirming such achievement and the Fifth *Conto Energia* will start applying 30 days after the publication of said resolution. This, unless the Euro 6 billion threshold is achieved before 1 June 2012; in such a case, the Fifth *Conto Energia* will apply starting from 1 July 2012.

Starting from its enactment ("**Enactment Date**"), the Fifth *Conto Energia* will apply to the following plants entering into operation for the following 5 periods of six months:

- (a) photovoltaic plants ("**PV Plants**");
- (b) integrated PV Plants with innovative features ("**Integrated PV Plants**"), and
- (c) concentration PV Plants ("**Concentration PV Plants**").

2. The Tariff Budgets

During each six-month period after the Enactment Date, photovoltaic plants will benefit from the Tariffs only within the tariff budgets fixed by the Fifth *Conto Energia* ("**Tariff Budgets**") indicated in the Chart "A" below.

Chart "A"

PLANTS TYPOLOGY	TARIFFS BUDGET FOR EACH 6 MONTH PERIOD
(a) PV Plants	Euro 80 million
(b) Integrated PV Plants	Euro 10 million
(c) Concentration PV Plants	Euro 10 million

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In case during a six-month period the relevant tariff budget is not entirely exhausted, the remaining resources will be added to those available for the following six-month period.

3. Conditions for eligibility for the PV Plants to be granted with the tariffs

In addition to the above, PV Plants will be granted benefit from the Tariffs only if they meet certain technical requirements¹ and at least one of the following ones:

- they are installed on buildings for which a valid energy efficiency certification has been obtained, based on the National Method of Calculation under Annex A to the Ministerial Decree 26 June 2009, which must include the specification of the possible intervention to improve the energetic performance of the buildings;
- they are installed on roofs of buildings containing *eternit* or *asbestos*, and the PV modules entirely substitute those materials;
- they are installed on greenhouses, pergolas, acoustic fences, shelters, and/or platform roofs;
- they are located in exhausted waste disposal sites or contaminated zones (under Article 240 of Legislative Decree 3 April 2006 no. 152);
- they are realised on agricultural lands in accordance with Article 65 of the *Decreto Liberalizzazioni* (i.e. Legislative Decree 24 January 2012 no. 1). Please refer to Part II of this Newsletter; or
- they have obtained the building permit or relevant authorisation before the Enactment Date, subject to complying with the requirements provided under Article 65 of the *Decreto Liberalizzazioni*. Please refer to Part II of this Newsletter.

Additional technical requirements regarding the inverters and the photovoltaic modules are set forth in Section 7, paragraph from 3 to 6, of the Fifth *Conto Energia*.

4. Ranking list

To benefit from the tariffs, Integrated PV Plants and Concentration PV Plants with power capacity above 12 kW² must request the enrollment in appropriate ranking lists within 15 days from entrance into operation³.

For the first six-month period, the GSE will open the relevant procedure 10 days after the Enactment Date and the requests of enrollment can be made by the producers in the following 60 days. For the other six-month periods, the GSE will open the relevant procedure six months after the opening of the previous one.

The GSE shall publish the ranking lists 30 days after closing of each 60 days period. With reference to the PV Plants, the ranking list will be built by the GSE according to the following order of priority:

- (a) PV Plants built over the roofs of buildings qualified as belonging to energy class "D" or to a higher energy class according to the relevant energy certificate, with modules substituting eternit or asbestos;
- (b) PV Plants built over the roofs of buildings qualified as belonging to energy class "D" or to a higher energy class according to the relevant energy certificate;
- (c) PV Plants built over the roofs of buildings, with PV modules substituting eternity or asbestos;

¹ *I.e.* PV Plants must (i) have power capacity above 1kW; (ii) be realised with new components; (iii) be connected through a sole interconnection point; (iv) be compliant with the technical specifications under Section 10 of Legislative Decree 28/2011.

² Plants, Integrated PV Plants and Concentration PV Plants with power capacity below 12 kW can access to the tariffs directly, if the relevant conditions are met.

³ If the request is filed at a later moment, the plant will not receive the applicable Tariff for the period encompassed between entrance into operation and filing of the request.

- (d) PV Plants for which the producer has accepted a 5% reduction on the applicable Tariff;
- (e) PV Plants built in contaminated zones (under Article 240 of Legislative Decree 3 April 2006 no. 152) and exhausted waste disposal sites (in such order);
- (f) PV Plants with a capacity lower than 200 kW belonging to an agricultural company;
- (g) PV Plants owned by Municipalities with a population lower than 5,000 people;
- (h) PV Plants built on greenhouses, pergolas, shelters, platform roofs and acoustic fences (in such order);
- (i) other PV Plants meeting the requirements set forth under Section 7 (see paragraph 4 above);
- (j) precedence of the date of obtainment of the relevant building permit;
- (k) lower power capacity;
- (l) precedence of the date of filing of the request of enrollment in the ranking list.

To safeguard the initiatives that are already at an advanced stage of realization, the first ranking list will accord first priority to the earlier date of obtainment of the relevant building permit, and the conditions for eligibility listed in paragraph 4 above will not apply.

The priorities listed in lett. a), b), c), e), f), h), i) and j)⁴ above also apply to the ranking lists concerning Integrated PV Plants. As to Concentration PV Plants, first priority will be accorded to the higher concentration factor and then the criteria listed in lett. h), i), and j)⁵ above.

Unlike the fourth *Conto Energia*, the ranking lists are not subject to shifting (*scorrimento*). Therefore, if a plant that is included in the list is not eventually granted with the Tariffs, the first excluded plant will not be allowed to benefit from the tariffs. The position in the ranking list can be transferred to third parties only after entry into operation of the plant.

Photovoltaic Plants, Integrated PV Plants and Concentration PV Plants are entitled to the relevant Tariff only if:

- they are enrolled in the relevant ranking list with a ranking allowing them to fall within the relevant Tariff Budget indicated above; and
- they enter into operation within a year from the publication of the relevant ranking list.

5. Tariffs

Plants admitted to benefit from the Tariffs will receive an all-inclusive tariff ("*tariffa onnicomprensiva*") based on the power capacity of the plant, staggered on a six month basis, which includes both the incentive tariff and the price for the energy produced. The Tariffs for **PV Plants** are set forth in the charts below.

⁴ The letters indicated in the current version of the Draft Decree does not seem to be correct. The correct references are more likely a), b), c), f), g), i), i) and k).

⁵ The letters indicated in the current version of the Draft Decree does not seem to be correct. The correct references are more likely i), i) and k).

Chart 1 – First six-month period

NOMINAL POWER OF THE PV PLANT	BUILT OVER BUILDINGS		OTHERS PV PLANTS	
	ALL INCLUSIVE TARIFFS	AUTO- CONSUMPTION TARIFFS	ALL INCLUSIVE TARIFFS	AUTO- CONSUMPTION TARIFFS
kW	Euro/kWh	Euro/kWh	Euro/kWh	Euro/kWh
1≤P≤3	237	155	229	147
3<P≤20	222	140	214	132
20<P≤200	199	117	191	109
200<P≤1000	161	79	153	71
1000<P≤5000	141	62	137	55
P > 5000	135	53	128	46

Chart 2 – Second six-month period

NOMINAL POWER OF THE PV PLANT	BUILT OVER BUILDINGS		OTHERS PV PLANTS	
	ALL INCLUSIVE TARIFFS	AUTO- CONSUMPTION TARIFFS	ALL INCLUSIVE TARIFFS	AUTO- CONSUMPTION TARIFFS
kW	Euro/kWh	Euro/kWh	Euro/kWh	Euro/kWh
1≤P≤3	207	125	200	118
3<P≤20	195	113	188	106
20<P≤200	178	96	172	90
200<P≤1000	148	66	141	59
1000<P≤5000	135	53	129	47
P > 5000	127	45	121	39

Chart 3 – Third six-month period

NOMINAL POWER OF THE PV PLANT	BUILT OVER BUILDINGS		OTHERS PV PLANTS	
	ALL INCLUSIVE TARIFFS	AUTO- CONSUMPTION TARIFFS	ALL INCLUSIVE TARIFFS	AUTO- CONSUMPTION TARIFFS
kW	Euro/kWh	Euro/kWh	Euro/kWh	Euro/kWh
1≤P≤3	164	82	159	77
3<P≤20	156	74	151	69
20<P≤200	148	66	143	61
200<P≤1000	127	45	122	40
1000<P≤5000	119	37	115	33
P > 5000	113	31	108	26

Chart 4 – Fourth six-month period

NOMINAL POWER OF THE PV PLANT	BUILT OVER BUILDINGS		OTHERS PV PLANTS	
	ALL INCLUSIVE TARIFFS	AUTO- CONSUMPTION TARIFFS	ALL INCLUSIVE TARIFFS	AUTO- CONSUMPTION TARIFFS
kW	Euro/kWh	Euro/kWh	Euro/kWh	Euro/kWh
1≤P≤3	152	70	147	65
3<P≤20	145	63	141	59
20<P≤200	138	56	134	52
200<P≤1000	120	38	116	34
1000<P≤5000	113	31	110	28
P > 5000	108	26	104	22

Chart 5 – Fifth six-month period

NOMINAL POWER OF THE PV PLANT	BUILT OVER BUILDINGS		OTHERS PV PLANTS	
	ALL INCLUSIVE TARIFFS	AUTO-CONSUMPTION TARIFFS	ALL INCLUSIVE TARIFFS	AUTO-CONSUMPTION TARIFFS
kW	Euro/kWh	Euro/kWh	Euro/kWh	Euro/kWh
1≤P≤3	152	70	147	65
3<P≤20	145	63	141	59
20<P≤200	138	56	134	52
200<P≤1000	120	38	116	34
1000<P≤5000	113	31	110	28
P > 5000	108	26	104	22

For the following six-month periods, the applicable Tariffs will be those set out in Chart 5 above as reduced of a 15% every six-months.

Each plant shall be granted with the Tariffs applicable at the date of its entrance into operation even if the PV Plant has been enrolled in the ranking list opened for the following six-month period.

The Tariffs are granted for a period of twenty years from entry into operation of the plant and are fixed.

6. Contribution to the GSE

Together with (i) the request of the Tariffs (for plants with power capacity below 12kW) or (ii) the request of enrollment in the ranking list (for plants with power capacity below 12kW), the producer must pay to the GSE a contribution to cover the costs sustained by the GSE for the preliminary investigation. Such contribution is equal to Euro 5 for each kW of nominal capacity of the plant up to 20 kW. Above that level, it will be equal to Euro 2 for each exceeding kW.

In addition to the above, **all the photovoltaic plants, starting from 1 July 2012 and regardless of the date of entrance into operation** (therefore, also those incentivized under the previous *Conto Energia*) must pay a contribution to the GSE to cover the costs of the GSE for the management and control activities carried out under Legislative Decree 28/2011 (the “**Management and Control Contribution**”). The Management and Control Contribution is equal to Euro 0.1 cent per each kWh of energy produced and incentivized.

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II. The new conditions for photovoltaic plants on agricultural areas to access the *Conto Energia* incentives

As well known the so called Romani Decree (*i.e.* Legislative Decree no. 28/2011) has limited the possibility for all photovoltaic plants located on agricultural areas ("**APV Plants**") to receive the incentive tariffs provided under the *Conto Energia* regime ("**Tariffs**"). With the enactment of the so called Liberalisation Decree (*i.e.* Law Decree no. 1/2012), further limitations have been introduced so that the current scenario regarding the APV Plants can be summed up as follows:

- APV Plants entering into operation after 21 September 2012 will no longer be admitted to the Tariffs;
- APV Plants entering into operation in the period encompassed between 24 May 2012 and 21 September 2012 will be admitted to the Tariffs only if the APV Plant meets all the following conditions: (a) it has obtained the building permit before 25 March 2012; (b) it has a power capacity below 1MW; (c) it does not occupy more than 10% of the land in the availability of the applicant; (d) it meets the technical specifications provided under Annex 2 of the Romani Decree; and (e) in the event that the lands whereon the APV Plants are built belong to the same landlord, the same APV Plants are at least 2 Km distant from each other. Entitlement to Tariffs will benefit also APV Plant built on land owned by the Italian Army (*demanio militare*) that meet conditions from (b) to (e) above ("**Romani Conditions**");
- APV Plants entering into operation before 24 May 2012 will be admitted to the Tariffs without the need to meet the Romani Conditions if they have obtained the relevant building permit before 29 March 2011 or if they have filed the relevant request before 1 January 2011.

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