

# Renewables Decree

## Focus: on-shore Wind Farms

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The Italian Ministry for the Economic Development (“MSE”) has finally approved the decree (“**Renewables Decree**”) that provides for new incentives in favour of renewables other than photovoltaic. This note provides a general overview of the major points in this regime regarding newly built on-shore wind farms (“**Wind Farms**”).

### 1. The Incentives

In common with the previous Decree of the MSE which established an innovative regime for incentives to renewables (*i.e.* MSE decree dated 6 July 2012 (the “**Decree 2012**”), the Renewables Decree provides that Wind Farms can access different kind of incentives (the “**Incentives**”) through procedures which vary depending on the size of the Wind Farms. In particular:

- a. Incentives: Wind Farms with nominal power capacity (“P”) up to 500 kW will have the right to choose between an All-Inclusive Tariff (see paragraph 3.2 a. below) and the Feed-In Tariff (see paragraph 3.2 b. below) whereas, Wind Farms above 500 kW may only request access to the Feed-In Tariff;
- b. Procedures: (as summarised in Chart “A” below):
  - Wind Farms up to 60 kW will have right to direct access to the Incentives;
  - Wind Farms above 60 kW will have the right to receive the Incentives by participating in (A) a ranking list procedure (Medium Wind Farms: *i.e.* with  $60 < P < 5000$ ) or (B) a Rebate Auction procedure (Large Wind Farms: *i.e.* with  $P > 5000$ ).

Unlike the Decree 2012, the Renewables Decree only provides for one Rebate Auction procedure and only one ranking list procedure. No other procedures are contemplated for 2016 or the following years. On the contrary, Wind Farms up to 60 kW will have right to direct access to the Incentives until 1 December 2017 (or the date on which the cost of incentives to renewables reaches the 5.8 billion Euro threshold, if earlier).

### Chart “A”

Nominal Capacity (“P”) (kW)	Access to the Incentives
<b>Small Wind Farms (P&lt;60)</b>	Direct access (see paragraph 5 below)
<b>Medium Wind Farms (60&lt;P&lt;5000)</b>	Ranking list (see paragraph 6 below)
<b>Large Wind Farms (P&gt;5000)</b>	Rebate Auction (see paragraph 7 below)

Both the ranking list and the Rebate Auction procedures are aimed at limiting the access to the Incentives of Medium and Large Wind Farms. In fact, the Incentives will be available only up to certain amounts of power capacity ("**Incentives Budgets**", please see paragraph 4 below) which also vary depending on the size of the Wind Farms. The Incentive Budgets will be made available to the Wind Farms on the basis of the rankings which will be created according to the criteria of priority indicated in paragraph 6.

## 2. Period of Incentivization

Same as under Decree 2012, Incentives will be granted for a period of 20 years to be counted from the date of "commercial entry into operation", i.e. the date of entry into operation communicated to the GSE ("**Commercial Entry into Operation**").

The 20 years will be extended to consider:

- a. any stops due to safety reasons imposed by the competent Authorities pursuant to the applicable legislation;
- b. any suspension of the payment of the Incentives due to the price of the electricity (*prezzo zonale orario*) being equal to (or below, when applicable) Euro "0" for more than 6 consecutive hours.

## 3. Incentives

### 3.1 Base Values for the Incentives

The base values for calculating the Incentives are set out in Chart "B" below ("**Base Values**").

Chart "B"

Typology of plant	Nominal Capacity (P) (kW)	Base Values for 2016 (€/MWh)
<b>On-shore Wind Farms</b>	$1 < P \leq 20$	<b>250</b>
	$20 < P \leq 60$	<b>190</b>
	$60 < P \leq 200$	<b>160</b>
	$200 < P \leq 1000$	<b>140</b>
	$1000 < P \leq 5000$	<b>130</b>
	$P > 5000$	<b>110</b>

### 3.2 All-Inclusive Tariff or Feed-In Tariffs

- a. Wind Farms up to 500 kW may opt for an all-inclusive tariff (“**All-inclusive Tariff**”): the GSE will purchase the electricity produced by the Wind Farm and pay the producer an all-inclusive tariff that includes both the Incentives and the hourly zone-price (*prezzo zonale orario*) of the electricity.
- b. Wind Farms above 500 kW (and those below 500 kW that do not opt for the all-inclusive tariff) will instead receive the applicable feed-in tariffs (“**Feed-In Tariffs**”), but the GSE will not purchase the electricity produced by the Wind Farm. In fact, same as under the Decree 2012, Wind Farms above 500 kW cannot benefit from both the Feed-In Tariffs and the right to have, upon request, a PPA with the GSE (the so called “*Ritiro Dedicato Regime*”).

### 3.3 Calculation of the Incentives and auxiliary services

Wind Farms have the right to receive the Incentives applicable on the date of the first parallel with the grid (“**Actual Entry into Operation**”).

- a. All-Inclusive Tariff (Ait) is calculated as follows:

**Ait = Base Values**

- b. Feed-In Tariffs (T) are calculated as follows:

**T = Base Values (as reduced in case of Rebate Auction) – electricity hourly zone-price**

The GSE pays the producers the Incentives on a monthly basis according to the meter readings carried out by the grid operators.

In this respect, it is to be noted that the energy to be taken into account for the payment of the Incentives is the energy injected into the grid by the Wind Farms, net of the energy consumed by the auxiliary services (as calculated pursuant to article 22, paragraph 3, of the Decree 2012).

The payment of the Incentives is suspended if the zone price of the electricity (*prezzo zonale orario*) is equal to or below Euro “0” for more than 6 consecutive hours.

The Incentives will not be subject to any indexation adjustment.

## 4. Incentives Budgets

As noted above, the GSE will make available Incentives only up to the Incentives Budgets in Chart “C” below. The Incentives will be made available to the Wind Farms on the basis of certain criteria of priority as indicated in paragraphs 6 and 8 below.

### Chart "C"

Nominal Capacity ("P") (kW)	Incentives Budgets (MW)
<b>Medium Wind Farms</b> (60<P<5000)	60
<b>Large Wind Farms</b> (P>5000)	800

Both for Medium Wind Farms and for Large Wind Farms, the GSE will make the entire Tariff Budget (i.e. 60 or 800 MW) available in both procedures (i.e. ranking list and Rebate Auction).

#### 5. Direct Access to the Incentives for Small Wind Farms

Small Wind Farms will have the right to receive the Incentives (i.e. the All-Inclusive Tariff or the Feed-In Tariff) without participating in the ranking list or the Rebate Auction procedures.

In order to access the Incentives, they just need to communicate to the GSE the date of Actual Entry into Operation and send the associated technical documentation. They will have the right to the Incentive applicable at the date of Actual Entry into Operation.

#### 6. Ranking List for Medium Wind Farms

##### 6.1 Enrolment procedure

To access the Incentives, Medium Wind Farms (power capacity between 60kW and 5000kW) must enroll with the GSE ranking list. The GSE will publish the relevant enrolment procedure by 20 August 2016.

##### 6.2 Conditions for eligibility for enrolment in the ranking list

The request of enrolment may only be presented by Wind Farms that have already obtained the relevant building permit and must be presented within 60 days of the date on which the enrolment procedure is opened by the GSE.

The request must be filed with the GSE together with general information about the Wind Farm (e.g. location, power capacity, producer, technology utilised, estimated date of Actual Entry into Operation) and some additional documentation including: (a) technical report; (b) final project; (c) authorisation/building permit; (d) interconnection scheme as accepted by the producer; (e) a declaration from the producer stating that the Wind Farm does not benefit from other public incentives; and (f) further documentation that may be required by the GSE.

##### 6.3 Priority criteria for creation of the ranking list

The ranking list will be created by the GSE according to the following priority criteria and published on its website 30 days after the end of the 60 day period for enrolment with the GSE. The criteria below are listed in the order of most to least relevant for Wind Farms:

- a. Wind Farm enrolled in the previous ranking list but was not in a position to fall within the Incentives Budgets;
- b. earlier date of obtaining the authorization/building permit;
- c. lower power capacity;
- d. earlier date in filing of the request for enrolment.

#### 6.4 Deadline for Actual Entry into Operation

The Wind Farms included in the ranking that fall within the Incentives Budgets must then achieve Actual Entry into Operation within 19 months from the publication of the ranking list by the GSE.

In case of failure to meet this deadline, then the applicable Incentive will be reduced by 0.5% for each month of delay up to a maximum limit of 6 months' delay. If this maximum time limit is exceeded, then the applicable Incentive (i.e. the Incentive that would apply at the date of Actual Entry into Operation of the Wind Farm) will be reduced by 15%.

The 6 months above excludes any possible delays caused by natural disasters as declared by the competent authorities.

### 7. Rebate Auction for Large Wind Farms

#### 7.1 Auction procedure

The GSE will call for a public auction ("**Rebate Auction**") to award the Incentives to the Large Wind Farms (P > 5000 kW) up to the applicable Tariff Budget (i.e. 800 MW).

The GSE will publish the 2016 tender by 20 August 2016.

The producers have a 90 days period for filing the request for participation.

#### 7.2 Conditions for eligibility to participate in the Rebate Auction

##### Information, documents and guarantees

The GSE will set down deadlines by which participants must file the request of participation together with the information and documents required to participate in the enrolment procedures (see paragraph 6.2 above). The necessary documentation will be published by the GSE in the regulation of the auction procedures. In addition, the participants must indicate their Offer (see paragraph 7.3 below) and undertake to provide the GSE with a guarantee (see paragraph 7.2 - Guarantees below) to secure the realisation of the Wind Farms within the applicable deadlines (see paragraph 7.4 below).

Documents cannot be added at a later stage and in the case of failure to file the correct and complete set of documents, the participant will be excluded from that auction.

##### Financial capacity

In addition, to participate in the Rebate Auction, the owner of the project must prove that they have adequate financial capacity, to be demonstrated by fulfilling at least one of the following requirements:

- a. a statement from a bank declaring that the owner has sufficient financial and economical capacity in relation to the Wind Farm that it intends to realise, taking into account the expected profitability of the same Wind Farm and the financial and economical capacity of the group to which the owner belongs or a statement from the bank by which the bank undertakes to finance the Wind Farm; OR
- b. capitalization (corporate capital and/or reserves for future capital increases) the minimum value of which depends on the value of the planned investment for the construction of the plant as follows:
- 10% of the planned investment for investments up to EUR 100 million;
  - 5% of the planned investment for investments exceeding EUR 100 million and up to EUR 200 million;
  - 2% of the planned investment for investments exceeding EUR 200 million.

The value of the investment is set out by the Renewables Decree as indicated in Chart "D" below.

**Chart "D"**

Typology of plant	Nominal Capacity (P) (kW)	Investment Costs (EUR/kW)
<b>On-shore Wind Farms</b>	$1 < P \leq 20$	<b>3.300</b>
	$20 < P \leq 200$	<b>2.700</b>
	$200 < P \leq 1000$	<b>1.600</b>
	$1000 < P \leq 5000$	<b>1.350</b>
	$P > 5000$	<b>1.225</b>

#### Guarantees

Participants who are awarded the Incentive must deliver to the GSE a first demand bank guarantee for an amount equal to 10% of the investment costs for the Wind Farm as established by the Renewables Decree (please see Chart "D" above).

If the Actual Entry into Operation is within the relevant deadline (i.e. 31 months from publication of the ranking of the Rebate Auction), the GSE will return the guarantee to the participant within one month. Otherwise the GSE will enforce the guarantee.

#### 7.3 Base values of the Incentives and rankings

The base value of the Incentives to be awarded under the Rebate Auction is the Base Value for Large Wind Farms (i.e.  $P > 5000$ ) as indicated in Chart "B" above.

The participants in the Rebate Auction must offer a reduction on such Base Value in terms of percentage points (“**Offers**”). The Offers must propose a minimum reduction of the Base Value of 2%. The maximum reduction allowed is 40% of the applicable Base Value.

The ranking will be created by giving priority to the higher reductions on the Base Value (*i.e.* the lower Incentive offered in the Offers). If more Offers are equal, then precedence will be given to:

- a. companies holding a rating (*rating di legalità*) pursuant to Article 5-ter of Law Decree No. 1 2012 as converted into law No. 27/2012, of at least equal to two stars (“*stellette*”); and
- b. earlier date of the authorization / building permit (as applicable).

In it to be noted that holding a rating (*rating di legalità*) is a new criteria of priority and that it is the most important. Therefore, it is recommendable to start seeking for this requirement as soon as practicable in view of the upcoming Rebate Auction.

If the remaining available part of the Tariff Budget for the last Wind Farm is lower than the capacity of the relevant Wind Farm (e.g. 2 MW are available and the Wind Farm is 6 MW), the producer has the right to receive Incentives for the portion of power capacity of the Wind Farm that falls within the Tariff Budget (*i.e.* 2 MW).

The GSE should publish the auction ranking 30 days after the end of the 90 day period to file the requests of participation.

#### 7.4 No transfer before Actual Entry Into Operation

The transfer to third parties of a plant that has been awarded Incentives pursuant to the 2016 Rebate Auction is not allowed until the Plant has achieved Actual Entry Into Operation and the relevant agreement for payment of the Incentives has been entered into with the GSE. On the contrary, same as under Decree 2012, no change of control limitations are provided in the Renewables Decree.

#### 7.5 Deadline for Actual Entry into Operation

Wind Farms that are included in the ranking in a position that they fall within the Incentives Budgets must then achieve the Actual Entry into Operation within **31 months** from the publication of the ranking by the GSE. If Actual Entry into Operation is not achieved within this deadline, the producer immediately and automatically loses the right to benefit from the Incentives.

The 31 month period is calculated net of possible delays caused by natural disasters as declared by the competent authorities.

### 8. Other Provisions

Finally, it is important to mention that, even though the Renewables Decree provides for incentives in favour of renewables other than photovoltaic, nonetheless it contains provisions concerning also photovoltaic plants.

In particular, under Section 29, second paragraph, the GSE is empowered to investigate on any plant fed by any kind of renewable sources to verify whether the plants are part of a group of plants owned by the same person and which have been divided for the purposes of being granted with higher incentives. In such a case, the incentives can be reduced by the GSE to take into account the higher nominal power of the group of plants (as if they were a single plant) or, under certain circumstances, revoked the incentives.

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Moreover, under Section 30, the GSE shall publish the guidelines governing the maintenance activities concerning any plant fed by renewables (including photovoltaic plants) for the purposes of avoiding that maintenance interventions entail an increase of the incentives payable to renewables. In any case, only newly built or refurbished parts can be used and the interventions must be notified to the GSE.