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The Energy Decree as converted in law. News on renewable energies and simplification of authorization procedures

On 28 April 2022, the Law no. 34 converting in law the Law Decree no. 17 of 1st March 2022, concerning “Urgent measures for the containment of electricity and natural gas costs, the development of renewable energies and the revitalisation of industrial policies”, was published in the Italian Official Journal and entered into force on 29 April 2022 (the “Energy Decree”).

1. Areas of intervention

The new measures affect several matters and are intended to meet the following purposes intended to introduce: (i) measures to contain the effects of price increases in the electricity and natural gas fields; (ii) structural and simplification measures in the energy field; (iii) measures to revitalise industrial policies; (iv) financial measures in favour of regions and local entities; (v) additional urgent measures.

The most significant measures introduced by the Energy Decree concerning the energy field are the following¹:

- ✓ [Suitable areas for the installation of photovoltaic plants;](#)
- ✓ [Simplification for authorization procedures of](#)
- ✓ [Installation of rooftop photovoltaic plants;](#)
- ✓ [Self-consumption;](#)
- ✓ [Development of photovoltaic plants in agricultural areas;](#)
- ✓ [Simplification of authorization procedures for off-shore plants.](#)

2. Renewable Energies

In a nutshell, these are the most significant innovations concerning the simplification of authorisation procedures for renewable energy plants.

2.1 Suitable areas for the installation of photovoltaic plants

Articles 12 and 18 of the Energy Decree respectively on the “Simplification for renewable energy plants located in suitable areas” and the “Identification of additional suitable areas for the installation of renewable energy plants”. These two Articles updated the regulation introduced by Legislative Decree no. 199/2021 concerning the identification and installation of renewable energy plants located in suitable areas, by extending the list of areas considered suitable by law.

¹ The Energy Decree is available in Italian at the following [link](#).

- ✓ **Update of the Guidelines for the authorization of renewable energy plants:** following the implementation of the state and regional regulation for the identification of suitable areas for the installation of renewable energy plants, the Guidelines for the authorization of renewable energy plants will be updated with a specific decree of the Ministry for Ecological Transition in accordance with the Ministry of Culture prior agreement within the unified conference.
- ✓ **Identification of suitable areas:** when defining the criteria and principles for the identification of suitable areas, privilege must be accorded to areas for industrial and artisan use for services and logistic.
- ✓ **Suitable areas by law:** until the identification of suitable areas by interministerial decrees, the following areas are considered suitable for the installation of renewable energy plants by law:
 - areas where photovoltaic plants are already installed on which substantial modifications are carried out for renovation, upgrading or complete reconstruction;
 - agricultural areas not more than 300 meters away from areas of industrial use;
 - areas inside industrial facilities and factories as well as areas classified as agricultural within a perimeter no more than 300 meters away from the same plant or establishment;
 - areas located near the highway network within a distance of no more than 150 metres;
 - areas and facilities available to the companies of the Italian State Railways Group (*gruppo Ferrovie dello Stato*) and to railway infrastructure, and highway concession operators.
- ✓ **Nature of the opinion of the competent landscape authority in the Environmental Impact Assessment (EIA) procedure:** the opinion of the landscape competent authority is **mandatory and non-binding** in the authorization procedures for renewable energy plants to be located in suitable areas, **including procedures for the adoption of the EIA determination.**
- ✓ **Authorisation procedures for plants located in suitable areas:** for the construction and operation of the newly built photovoltaic plants in the suitable areas and the ancillary works, as well as for the upgrade, refurbishment and complete reconstruction of existing photovoltaic plants and ancillary works (without affecting the interested area), the authorization procedures are regulated as follows:
 - a) **plants with a power capacity up to 1 MW:** the sworn declaration of commencement of works (*Dichiarazione di Inizio Lavori Asseverata*) (the “DILA”) applies to all works to be carried out on areas in the availability of the applicant;
 - b) **plants with a power capacity of more than 1 MW and up to 10 MW:** application of the simplified authorization procedure (*Procedura Abilitativa Semplificata*) (the “PAS”);
 - c) **plants with a power capacity exceeding 10 MW:** application of the Single Authorization procedure (*Autorizzazione Unica*) (the “AU”).

Please note that the authorization procedures described herein are also applicable, if requested by the applicant, to proceedings pending as of the date of entry into force of the Energy Decree².

2 Without prejudice to the special regulation provided for in relation to: (i) photovoltaic plants with a power capacity up to 20 MW located in specific areas, such as those intended for industrial use, decommissioned landfills, quarries not subject to further exploitation (as provided for under Art. 6, paragraph 9-bis of the Legislative Decree no. 28/2011); (ii) modifications and replacement of photovoltaic plants’ modules involving a variation in service volumes of no more than 15% and a variation in the maximum height aboveground of no more than 20% and for plants on buildings, interventions of replacement of photovoltaic plants’ modules that do not involve changes or that involve decreasing variation in the angle between the plane of photovoltaic plants’ modules and the plane of the surface on which the modules are located (as provided for under Art. 6-bis of the Legislative Decree no. 28/2011); (iii) the

- ✓ **Transitory regulations:** pending the identification of suitable areas, the plants located in unrestricted areas and not included in areas declared as unsuitable under regional regulations, in relation to which an authorisation procedure is pending, at the date of the publication of the Energy Decree, are subject to the authorisation procedure provided for under Art. 22 of Legislative Decree no. 199/2021³.

2.2 Simplification for authorization procedures of renewable energy plants

Art. 9, on “*Simplification for the installation of renewable energy plants*”, has simplified the authorization procedures.

- ✓ **Simplification for the modification works on renewable energy plants:** in case of non-substantial changes that involve an increase in installed power **and the need for additional related works without increasing the occupied area**, the implementation of related works is subject to DILA under Art. 6-bis of Legislative Decree no. 28/2011.
- ✓ **Extension of PAS to interconnection works in high voltage:** the PAS **is also applied for the implementation of interconnection facilities to the high and medium voltage electricity grid** related to photovoltaic plants with a power capacity up to 20 MW located in areas of industrial, productive or commercial use, as well as in landfills or closed landfills lots not susceptible to further exploitation, for which the competent authority for the issuance of the authorization has certified the completion of the environmental restoration activities.
- ✓ **PAS for installations of up to 10 MW in suitable areas:** the PAS is also applied to projects for new photovoltaic plants to be built in suitable areas with a power capacity up to 10 MW.
- ✓ **PAS for agrivoltaic plants:** the PAS also applies to agrivoltaic plants that implement innovative integrative solutions with the assembly of modules elevated from the ground with the possibility of rotation **located no more than 3 km away from areas of industrial, artisanal and commercial use**.
- ✓ **Thresholds for the screening EIA procedure:** In case of:
 - (i) Photovoltaic plants with a power capacity up to 20 MW located in areas for industrial, productive or commercial use as well as in landfills or closed and restored landfills lots or in quarries or quarry lots not susceptible to further exploitation for which the competent authority for the issuance of the authorization has certified the completion of the environmental restoration activities;
 - (ii) Projects for new photovoltaic plants with a power capacity up to 10 MW to be built in suitable areas;
 - (iii) Agrivoltaic plants that are no more than 3 kilometers away from areas of industrial, artisan and commercial use.

If the applicant declares that the areas are located outside the areas considered sensitive and / or vulnerable to territorial or landscape transformations pursuant to letter f) of Annex 3 to the Ministerial Decree of 10 September 2010, the threshold for the screening EIA procedure is raised to 20 MW.

installation of photovoltaic and thermic plants on buildings / structures and /or manufacturers aboveground other than building and works functional to the connection to the electricity grid (as provided for under Art. 7-bis, paragraph 5).

3 Art. 22 of the Legislative Decree no. 199/2021 provides that in authorization procedures for the construction of plants on suitable areas (i) the opinion of the competent landscape authority is mandatory but no-binding and (ii) the procedural time limits are reduced by one third.

- ✓ **Application of DILA to photovoltaic plants with on-shore modules with an electricity power of less than 1 MW in suitable areas:** the DILA is applied to photovoltaic plants with on-shore modules with an electricity power of less than 1 MW, as well as the ancillary works and the infrastructures required for the construction and operation of the plants located in suitable areas, which are not subject to the protection provisions under the Code of Cultural Heritage and Landscape and outside the areas of historical, artistic and environmental interest (Zone A under Art. 2 of Ministerial Decree no. 1444/1968), for the realization of which no expropriation procedures are needed.

2.3 Installation of rooftop photovoltaic plants

- ✓ **Simplification for the installation of rooftop photovoltaic plants:** pursuant to Art. 9, paragraph 1, the installation, by any means, even in areas of historical, artistic and environmental interest (Zone A pursuant to Art. 2 of Ministerial Decree no. 1444/1968), of photovoltaic and thermic plants on buildings, or structures, and manufactures aboveground other than buildings, including structures, manufactures and buildings already located within ski resorts, and the implementation of works required for the interconnection to the grid in such buildings or structures and manufactures, as well as in their appurtenances, including any upgrade or adjustment of the grid outside the areas of the same buildings, structures and manufactures, are considered to be ordinary maintenance interventions and are not subject to the acquisition of permits, authorizations or any other acts of approval, including those provided for under the Code of Cultural and Heritage and Landscape.

However, in case of plants located on buildings and in areas considered of significant public interest by a specific administrative measure, the installation of plants is permitted subject to authorization issued by the competent authority.

Such authorization is not necessary – therefore the abovementioned provisions for ordinary maintenance interventions apply – in case of installation of modules integrated in the rooftops that are not visible from outdoor public spaces and panoramic viewpoints, except for rooftops whose coverings are made of traditional local materials.

- ✓ **Single application (“Modello Unico”) for plants with a power capacity of more than 50 kW and up to 200 kW:** Art. 10, entitled “*Definition of a single application for plants with a power capacity of more than 50 kW and up to 200 kW*”, extends the single application provided for by Art. 25, paragraph 3, letter a), of Legislative Decree no. 199/2021 to plants with a power capacity of more than 50 kW and up to 200 kW.

In particular, within 60 days from the entry into force of the Energy Decree, the Minister for ecological transition in accordance with the Minister for Regional Affairs and the Autonomous Communities must issue a specific decree setting out the conditions and methods for extending the abovementioned single application.

2.4 Self-consumption

Art. 10 *ter*, on “*Measures for the development of renewable energies and for the containment of energy prices*” partially amended the regulations introduced by Legislative Decree no. 199/2021 concerning self-consumption.

- ✓ **Self-consumption at 10 km:** a self-consumer of renewable energies is also anyone who produces and stores renewable electricity for personal consumption with one or more renewable energy plants located on buildings or on areas other than those where the self-consumer operates, without prejudice to the fact that such buildings or areas must be in the self-consumer’s availability. In this case, the plant can be directly interconnected to the final customer’s utility with a direct connection no longer than 10 km to which on other utilities can be connected.

- ✓ **Access to incentives:** the self-consumer of renewable energies – that uses the existing distribution grid to share the energy produced by renewable energy plants and consumes it at its own withdrawal points – can access to incentives for sharing energy (collective self-consumption or energy communities), provided for under Art. 8 of Legislative Decree no. 199/2021, and to the compensations provided for under Art. 32, paragraph 3, letter a) of Legislative Decree no. 199/2021⁴.

2.5 Development of photovoltaic plants in agricultural areas

Art. 11, on “*Regulation of the development of photovoltaic plants in agricultural areas*” partially amended Art. 65 of the Law-Decree 24 January 2012, no. 1 (as converted in law by Law no. 27/2012) concerning, among others, the agrivoltaic plants.

- ✓ **Incentives for photovoltaic plants in agricultural areas:** the condition for the admission to incentives for agrivoltaic plants is the implementation of monitoring systems to be adopted on the basis of Guidelines to be approved within 30 days from the entry into force of the Energy Decree (*i.e.*, 30 May 2022) by the Council for Research in Agriculture and Analysis of Agricultural Economics (CREA), in cooperation with the Manager of the Energy Services Manager (*Gestore dei Servizi Energetici – GSE S.p.A.*).
- ✓ **No installation of photovoltaic plants for 10 years on areas where agrivoltaic plants are located:** the parcels (even if resulting from a fractioning or transfer of lands) where the agrivoltaic plants with the assembly of the modules elevated from the ground with the possibility of rotation, cannot be object of further requests for the installation of photovoltaic plants for 10 years following the issuance of the incentives.

2.6 Simplification of authorization procedures for off-shore plants

Art. 13, on “*Streamlining and simplification of authorization procedures for offshore plants*” simplified the procedures for the construction of off-shore electricity production plants.

- ✓ **Single authorization also for interconnection works:** the AU procedure⁵ applies not only to off-shore plants but also to the relevant interconnection works.
- ✓ **Simplification of authorization procedures:** in the authorization procedures for off-shore plants located also in areas not subject to constraints (i) the opinion of the competent landscape authority is mandatory but not-binding and (ii) the procedural time limits are reduced by one third.
- ✓ **Prohibition of moratoria:** pending the identification of suitable areas, moratoria or suspensions of the terms of the authorization procedures cannot be arranged for applications already submitted, also with reference to the construction of renewable energy plants located in areas not subject to constraints incompatible with the establishment of off-shore plants.

4 However, in the event that the self-consumer (i) builds a renewable energy plant directly interconnected to the final customer’s utility by means of a direct connection no longer than 10 km, may access to the incentives for plants with a capacity exceeding 1 MW (as provided for under Art. 6 of Legislative Decree no. 199/2021), for small plants (as provided for under Art. 7 of Legislative Decree no. 199/2021), and energy sharing (as provided for under Art. 8 of Legislative Decree no. 199/2021).

5 For off-shore plants, the AU is issued by the Ministry of Ecological Transition in agreement with the Ministry of Infrastructure and Sustainable Mobility and after consulting the Ministry of Agricultural, Food and Forestry Policies (and no longer by the Ministry of Transport, after consulting the Minister of Economic Development and the Ministry of the Environment and Protection of Land and Sea, following the granting of a concession for use of state property by the competent maritime authority).

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