

Energy Law and Law 102

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Introduction

The Italian Parliament has recently approved two important Laws providing for certain news in the energy field.

In particular, reference is made to:

- I. Law 23 July 2009 no. 99 which entered into force starting from August 15, 2009 (**Energy Law**); and
- II. Law Decree no. 79 effective since 1st July 2009, then approved and confirmed by Law August 3, 2009, no. 102/2009 (**Law 102**).

Energy Law and Law 102 set out important provisions for energy sector and in particular for the nuclear and renewable energy field and for the gas market.

Please consider that several provisions will need to be further implemented by specific measures to be issued by the Italian Government.

PART I

Energy Law

1. Nuclear energy sector

1.1. Localization

The Government shall adopt, in respect of rules on environmental impact assessment (**EIA**), legislative decrees regulating the localization of: (i) nuclear power plants sites; (ii) plants for production of nuclear fuel; and (iii) nuclear wastes storages defining criteria for the adoption of compensative measures in favour of the interested areas and inhabitants. The Government shall also regulate the authorization procedures and the specific requirements regarding the performance of the activities of construction, operation and decommissioning of the nuclear power plants.

The Government is entitled to declare the nuclear power plants sites of strategic national interest subject to special forms of surveillance and protection.

The Intergovernmental Committee for Prices and Energy (*CIPE*), within 6 months from the entrance into force of the Energy Law, must define the typologies of nuclear power plants that can be constructed in Italy.

1.2. Single authorization

The construction and operation of nuclear power plants, of plants for nuclear wastes storage and *decommissioning* activity as well as ancillary infrastructures will be subject to the granting of a single authorization to be granted by the Ministry for Economic Development (**MSE**) together with the Ministry

for Environment and the Ministry for Infrastructures and Transport, upon authorisation by the Unified *Conferenza di Servizi*. The single authorization substitutes each and every permit, license and/or concession required for the purposes except for the EIA and SEE (strategic environmental evaluation) procedures.

1.3. Nuclear agency

An *ad hoc* Agency for nuclear safety will be established with specific powers concerning, inter alia, the granting of the authorizations concerning the nuclear power plants, controls on the disposal of radioactive wastes and environment protection. The Agency is entitled to request other authorities to open infringement procedures.

2. Energy sector

2.1. AEEG

The control powers of Authority for Electricity and Gas (AEEG) have been strengthened. In particular, the AEEG is entitled to avail itself of Gestore dei Servizi Elettrici (GSE) and Acquirente Unico S.p.A. (AU) for the performance of controls with reference to the costs borne by the final customers.

2.2. Access to the "power exchange service" (*scambio sul posto*) for the Municipalities

To promote the use of renewable energy, the Municipalities with a number of resident inhabitants lower than 20,000 are entitled to request access the "power exchange service" (*scambio sul posto*) that allow to balance the volumes of power generated with those off-taken. For such purpose, the renewable energy plants must be owned by the Municipalities and cannot have a power capacity higher than 200 kW.

2.3. Green Certificates

The so-called "Renewable Obligation" (i.e. the obligation to provide the competent authorities with the green certificates (Green Certificates) pursuant to article 11 of the Legislative Decree no. 79/99), will be transferred from the producers/importers of power from conventional (i.e. non "green") sources to all entities which enter with Terna S.p.A. (Terna) into one or more withdrawal dispatching contracts (*contratti di dispacciamento in prelievo*) (i.e. wholesalers and big consumers). This, therefore, regardless of such entities' ownership of energy production assets.

With reference to the above, it is worth noting that the wholesalers, as the producers/importers has always done so far, will be allowed to overturn the cost of Renewable Obligation on the retailers and at last on the final customers.

Within 6 months from the enactment of the Energy Law, the MSE must implement such mechanism by issuing a specific decree.

The transfer of the obligation should entry into force starting from year 2011, with reference to the electricity withdrawn during year 2010. Very much will depend on such regulation to be issued by MSE that will implement the envisaged changes in Green Certificates and Renewable Obligation regulation.

A clear legal framework and the real impact, also from a legal point of view, on the power market will be therefore available only once such regulation is available.

2.4. Biomasses

The number of Green Certificates awarded to the bio-power plants (i.e. fed with biogas or biomasses) with a power capacity above 1 MW is now calculated as the product between the yearly net production

(*"produzione annua netta"*) and a new ratio, which has been increased up to 1.3 (previously 1.1).

Plants with a power capacity below 1 MW continue to be awarded with an "all-inclusive tariff" (i.e. including both the incentive and the cost of the power produced) equal to 28 €cent/kWh, except for those fed with biodiesel and bio-ethanol (including palm oil and gas from dumps or from purification plants), for which the all-inclusive tariff provided is equal to 18 €cent/kWh.

It is worth noting that the application of major incentives (*ratio* 1.8) to the production of energy from local biomasses (*biomasse da filiera corta*) has not been enacted yet and it is still subject to the approval of a further Ministerial Decree to be issued by the Ministry for the Agricultural and Forestry and the Ministry for the Environment. Therefore, until such enactment the 1.3 ratio applies also to local biomasses.

2.5. The municipalities may use public areas to construct PV plants

The Municipalities may use areas being part of *patrimonio disponibile* for the construction of PV plants and assign such areas, by means of public auctions, to private parties for that purpose.

2.6. Electricity pipelines (*elettrodotti*)

The construction of the electricity pipelines is subject to the single authorisation proceeding pursuant to article 1 of legislative decree n. 239/2003. According to the Energy Law the single authorisation is extended to all ancillary works and infrastructures essential for the operating of the same electricity pipelines. In addition, as said above the single authorization substitutes each and every permit, license and/or concession required for the purposes except for the EIA and SEE (strategic environmental evaluation) procedures.

With reference to the single authorisation proceeding the Energy Law introduces a safeguard measure pursuant to which following the communication to the relevant municipalities relating to the proceeding to obtain the single authorisation any other application submitted to the municipality and relating to possible construction in the same area which is object of the single proceeding authorisation is suspended for a period of three years.

The Energy Law completely substitutes the paragraph 4-bis of article 1 of legislative decree n. 239/2003. According to the new provision in the failing of an agreement between the regions involved for the issuance of the single authorisation, within 90 days a committee among the institutions involved is constituted which will be in charge of issuance of the authorisation. If neither the committee issues the authorisation the competence is of the President of the Italian Republic, in coordination with the Ministries Board. Within 3 (three) months following the publication of the Energy Law MSE should define the rules of the functioning of such committee.

An important new provision has been introduced and is referred to the possibility to extend an electricity pipeline for a maximum of 1,500 meters by means of a simple commencement of works declaration (so called D.I.A.). The D.I.A. has to be equipped of a detailed report drafted by a qualified designer who declares the compliance of the construction with the applicable regulation.

2.7. Interconnectors and internal grid decongestion

Terna, following the financing from investors, will: (i) programme, construct and manage, under specific proxies/mandates (*mandati*) from the same investors, the electricity pipelines connecting Italy with other Countries, in the form of interconnectors under regulation (EC) no. 1228/2003, as well as the infrastructures necessary to decongestion of the internal electricity grid in order to increase up to 2000 MW the transmission capacity with the foreign countries, in particular, with those on northern border.

Terna will communicate to the AEEG and MSE a list of possible infrastructures to be constructed within

60 days from the entrance into force of the Energy Law. Within 60 days from such date, Terna will have to organize a bidding procedure in order to select entities that wish to finance the interconnectors. The bidding procedure will set out the mandate conditions to be entered into between Terna and the bidding procedure winners for the construction and management of the interconnectors. The bidding procedures will be opened only to the final customers, also established in the form of consortium, that meets some further requirements, connected with the quantity of engaged power (*potenza impegnata*) at the withdrawal points.

The efficacy (*perfezionamento*) of the above mandate for the construction and exercise will be subordinated to the obtainment of the TPA exemption for 20 years pursuant to ministerial decree 21 October 2005. Each interconnector that obtains the exemption shall enter into exercise within 3 months from the publication on the official journal of the TPA exemption granting, otherwise the selected entity may renounce the construction of the infrastructure and the relating rights of use, save for the reimbursement of the costs already sustained by Terna in execution of such mandates.

2.8. Internal grids defined

The internal grids (or *reti interne d'utenza*) are defined for the first time with a major in details. It is specified that such grids are not subject to the obligation to give TPA. The security obligations of the manager of such grids is limited, in relation to the consumption and generation units, with respect to the point of interconnection with the grid with obligation to give access to TPA.

3. Gas sector

3.1. Natural gas market

A new gas stock exchange ("**Gasex**") shall be implemented in order to facilitate the transactions of natural gas among the wholesalers. The ratio of such a measure is to increase the liquidity and the level of competition in the natural gas market, so to obtain the lowering of the prices.

The Gasex will be operated and regulated by the Gestore del Mercato Elettrico ("**GME**"), which is currently the operator of the power market. The related regulation for the operation of the Gasex should be provided in the following months by a specific Decree to be adopted by MSE.

3.2. Gas distribution

ATO (*ambiti territoriali ottimali*), under article 46 – bis of law decree no. 159/2007, converted with modifications in law no. 222/2007, will be defined by the MSE together with Ministry for relations with regions in consideration of the interconnection between the plants. ATO cannot be lower than a Municipality territory.

3.3. LNG Terminal's authorization procedures

The administrative deeds (*atti amministrativi*) relating to the construction and operation of the LNG terminals or to the increase of the existing capacity are granted as a result of a single authorization procedure under Law no. 241/90, prior EIA. The single authorization procedure must be concluded within the maximum term of 200 days from the date of the filing of the relevant application. The single authorization substitutes each and every license, permit and/or authorization.

Upon request of interested companies, the single authorization procedure can also apply on the administrative procedures relating to the LNG terminals and pending at the date of entrance. The request must be filled within 30 days from the entrance into force of the Energy Law.

3.4. Hydrocarbons research and exploration

Permits for the research of liquid and gas hydrocarbons under Law n. 9/1991 are granted under a single authorisation procedure pursuant to Law n. 241/1990.

The authorization to perform the perforation of the exploration well (*pozzo esplorativo*) and to construct the infrastructures necessary to the perforation are declared of public utility and granted, prior EIA, by the competent territorial mining office at the end of a single procedure.

The concession for cultivation of liquid and gaseous hydrocarbons under Law n. 9/1991 is also granted under a single authorisation procedure.

The activities aiming at improving the performance of the existing cultivation plants are subject to the authorization granted by the National mining office for geothermic and hydrocarbons.

4. Innovation promotion in the energy field

In order to promote the research and the testing in the energy field the Agency for the investments and enterprise development S.p.A. (Agenzia per l'attrazione degli investimenti e lo sviluppo d'impresa Spa) MSE and Environmental Ministry have executed a concession that provides for the resources that such agency can use to develop an operative plan. Such plan has the following purposes: the realization of projects to capture and storage of CO2 produced by thermoelectric plants, participation to international programmes with reference to the nuclear sector; adoption of particular measures for the support and financing of small renewable plants promotion, participation to projects related to the promotion of technologies with low CO2 content. In addition, such article provided that in order to guarantee the continuity of the projects in the electricity sector, MSE will issue a ministerial decree also by means of specific framework agreements (*accordi di programma*).

4.1. ENEA (Agenzia nazionale per le nuove tecnologie, l'energia e lo sviluppo economico sostenibile)

The Agency for new technologies, energy and economical development (ENEA) is established, which will operate under the control of MSE. ENEA is a public entity aimed at researching and technology innovation, energy services supply, with specific reference to nuclear field. It is an independent authority under the control of - and cooperating with - MSE, Environmental Ministry and Ministry of Education and University. MSE will define by a specific decree the functionality purposes, organs of administration and control and all the modalities related to its constitution. In order to grant the ordinary administration and the carrying out of the activities until the effective constitution of ENEA, MSE will appoint a commissioner and two sub-commissioners within 30 (thirty) days following the publication of the Energy Law.

Part II

1. Law 102

The relevant provision introduced by the Law 102, under article 3, paragraph 4-bis, is related to the Green Certificates connected to the district heating ("*telerscaldamento*"). Pursuant to the new provision

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For any further clarifications or research please contact:

Ottaviano Sanseverino
Tel. +39 02 763741
osanseverino@gop.it

the electricity produced by co-generative plants connected to agriculture areas has the right to receive Green Certificates with reference to the part of the thermal energy utilised.

Such provision is already under discussion by the competent authorities (e.g. APER) for its vagueness. Rumours say that one of the risks deriving from such provision should be the saturation of the Green Certificates market and consequently the decrease of the Green Certificates' price.

Article 3, paragraph 4-quarter, provides for some advantages for the distributors that have less than 5,000 withdrawal points. In particular, they would benefit of discounted electrical tariffs that will be, in terms and conditions, determined by AEEG by means of specific resolutions.

Article 4 of the Law 102 provides for the so called *grids clearing (sblocca reti)* pursuant to which the Council of Ministers must identify, (i) according to the MSE, the operations connected to the transmission and distribution on electricity and, (ii) according to the Regions and the relevant Provinces involved, the operations connected to the electricity production to be realised by means of private investment.

Conclusions

We are of course at your disposal to further investigate on any matters, if required, and to further expand on any relevant profile that may derive from the implementation of the new provisions to be implemented in Italy.

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