

Renewable Energy: recent developments

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1. Conversion in law of the so called "*decreto manovra*"

On 30 July 2010, Law no. 122/2010, concerning "Conversion in law, with amendments, of Law-Decree 31 May 2010, no. 78, concerning urgent measures for financial stabilization and economic competitiveness" has been enacted and published on the ordinary supplement no. 174 of the Official Gazette.

The so called "*decreto manovra*" has been converted in law following a double vote of confidence (*voto di fiducia*) granted respectively, first, by the Italian Senate (*Senato*) and, subsequently, by the Italian Chamber of Deputies (*Camera dei Deputati*). The decree contains important innovations related to the energy sector, some of which are summarised here below:

1.1 Green certificates (article 45)

Article 45 of the so called "*decreto manovra*", in its original version, provided for the abrogation of article 2, paragraph 149, of the Budget Law 2008 and of article 15, paragraph 1, of the Decree of the Ministry of the Economic Development dated 18 December 2008, essentially ceasing the GSE's obligation of purchase the excess of green certificates available on the market, with a disruptive effect on both the green certificates system and the bankability of the operations in the renewable energy sector.

Implementing several requests formulated by a large number of operators acting in this sector, the new decree, as modified by the law of conversion, reintroduces the GSE's obligation of purchase the green certificates in excess available on the market.

The new version of article 45 provides, as alternative to the previous general cut, for a reduction of 30% of the costs borne by GSE starting from 2011 in order to purchase the green certificates expiring within such year, compared with the same costs borne by the GSE for 2010.

A decree to be issued by the Ministry of Economic Development, acting together with the Ministry of Economics and after prior consultation with the Authority for Electric Energy and Gas (*Autorità dell'Energia Elettrica e il Gas*), and to be enacted within 31 December 2010, shall set the modalities to achieve this aim, save the following laconic sentence "*at least 80% of such reduction shall be caused by the control of the number of green certificates in excess*".

1.2 "Segnalazione certificata inizio attività" (article 49)

Another relevant provision impacting on the energy sector (with particular reference to its application to the authorisation process relating to plants fed by renewable sources) is the substitution of article 19 of Law 241/1990, concerning the "*dichiarazione di inizio attività (DIA)*", with the so-called "*segnalazione certificata inizio attività*" regulation.

A notice to be sent by the relevant person to the competent public authority by the replaces any authorization, permit, licence or "nullaosta", no matter how the relevant authorisation is named, including such as any request for the admission to any register or list, request for starting a commercial or handicraft enterprise, so far requested.

In particular, the notice replaces any act of the public authority, whose issuance only depends either by the assessment of the law requirements or assumptions or by any general administrative act, and for the issuance of which no limit or aggregate limits or specific means in relation to the planning of the relevant

sector are required. The aforementioned mechanism does not apply when the relevant authorisation is subject to any environmental, landscape or cultural constraint and is related to national defence, public security and immigration, public refuge, citizenship, justice administration, tax administration, or required by any EU regulations and provisions.

Such new law allows the relevant construction works to be started on the same day on which the notice is sent to the competent authority, without waiting for 30 days as provided for the DIA procedure. In any case, the construction works can be stopped by public authority in the following 60 days in case the necessary requirements are not assessed and, even after the expire of such 60 days, the public authority could proceed with inspections and controls while the construction works are in place and therefore take the necessary actions ("*autotutela*").

Many concerns arose in relation to the new procedure, in particular with respect to the possible breach of the Italian constitutional chart (*dichiarazione di incostituzionalità*) caused by the "intrusion" by the Government into a legislative competence reserved to the Regions in this field.

1.3 Simplification of the Steering Committee ("Conferenza di servizi") (article 49)

New measures have been introduced in order to simplify the functioning of the Steering Committee, a specific committee composed by different public entities competent in the authorization procedure's phases in which the renewable energy projects are involved.

Among others, please note that when the project is subject to a landscape authorisation, the competent authority will issue its definitive opinion during the Steering Committee, if convened, in relation to any aspect of which he is in charged of pursuant to legislative decree 42/2004 (*Codice dei beni culturali e del paesaggio*).

1.4 Hydroelectric licenses (article 15)

Article 12 of Legislative Decree 79/99, regulating the hydroelectric licenses, provides for some deadlines concerning the large derivation licenses (*concessioni di grande derivazione*) for hydroelectric use.

In respect to this provision, a large number of such licenses will expire on 31 December 2010. Furthermore, five years before each license expires, the competent authority shall call a public tender for selecting the new licensee.

Due to the amendment of some laws, subsequently declared unconstitutional by the Italian Constitutional Court, tenders were not held on time.

Article 15, partially amending article 12 of the Legislative Decree 79/99, states that licenses are extended for five years in order to respect the term to call a tender procedure.

Moreover, within six months, the Ministry of the Economic Development, together with the Ministry of Environment and of protection of territory and of sea, upon a prior agreement with the "Conferenza Unificata", shall settle the minimum organizational and financial requirements, the terms and conditions of the tender procedure, taking into consideration both the strategic interest of plants fed by renewable sources and the grant given by the hydroelectric plants in covering the supply and the consumption peak.

2. "Sblocca-reti" decree (decreto-legge July 8, 2010, n. 105)

On 4 August 2010 the Italian Parliament finally passed the Law Decree no. 105/2010. Such law shall enter into force the day after its publication on the Italian Official Gazette. At the date of this Newsletter, the "sblocca-reti" decree has not been published yet on the Italian Official Gazette.

2.1 *Maintaining into force of the effects of the DIA*

With reference to the photovoltaic plants with a power capacity higher than 20 kW authorised by mean of DIAs, article 1-quarter of the Law states that the relevant DIAs shall be considered valid and effective subject to the following rules:

- (a) the DIAs procedures have been carried out pursuant to the terms and conditions provided under the applicable regional provisions (*"impianti di produzione di energia elettrica da fonti rinnovabili che risultino avviati in conformità a disposizioni regionali, recanti soglie superiori a quelle di cui alla tabella A del decreto legislativo 29 dicembre 2003, n. 387"*); and
- (b) the relevant photovoltaic plants enter into operation within 150 days following the entrance into force of the Law at issue (*"a condizione che gli impianti siano entrati in esercizio entro centocinquanta giorni dalla data di entrata in vigore della legge di conversione del presente decreto"*).

2.2 *Delay in the connection to the grid*

In addition to the provision concerning photovoltaic Plants, higher than 20 kW, authorised by virtue of the DIA, article 1-septies of Law Decree no. 105/2010 repealed the Alcoa Decree rule, stating that the 2010 Subsidy will be secured in case the following conditions are satisfied by the applicant:

- (a) the construction of the relevant photovoltaic plant has been finished by 31 December 2010, being the completion of such works duly certified by a qualified engineer (asseveration);
- (b) the completion of the works, as evidenced by the aforementioned asseveration, related to the photovoltaic plant has been notified by 31 December 2010 to:
 - the public authority in charge of the issue of the authorisation for the construction and operation of the plant (i.e. Region or Province in case the single authorisation has been issued; or Municipality in case the DIA or building permit has been filed or obtained);
 - the competent grid operator; and
 - the GSE.
- (c) the entrance into operation of the plant occurs within 30 June 2011.

In order to stop speculations in the renewable sector, the decree demand to the AEEG the power to enact, within 90 days from the entry into force of the decree, regulations aiming at avoiding "capacity booking" cases (also with respect to connection requests already processed) for renewable energy plants whose concrete feasibility cannot be verified within a given period of time.

2.3 *Ancillary works*

It is worth mentioning, that article 1 octies of the decree, in line with the provision of the Renewable Energy Guidelines (hereafter the "**Guidelines**") recently approved by the Conferenza Unificata and briefly described under paragraph 4, definitely states that grid connection infrastructures are included among the "connected works" whose realisation is included in the perimeter of the Single Authorisation pursuant to article 12, paragraph 1, of legislative decree 387/2003.

3. Nuovo Conto Energia

On 8 July 2010, the "Conferenza Unificata" (collective committee of Government, Regions and other public entities) approved the draft of the inter-ministerial decree concerning the "New criteria for the incentive the production of energy by mean of the photovoltaic conversion of the solar source" (*nuovo conto energia*). The decree, in its draft version, has not been published on the Official Gazette yet, but the approval by the "Conferenza Unificata" makes unlikely that other changes will be made to the decree, which reasonably can thus be considered definitive.

3.1 New tariff for 2011-2013

Feed-in-tariffs are recognized for a period of 20 years from the entry into operation of the relevant photovoltaic plant. Tariffs for plants entering into operation between 2012 and 2013 shall be subject to a further reduction equal to 6% per year, compared to the tariff provided for the third quarter of 2011. Another decree shall provide the tariff level for the following years.

The decree regulates both the new tariffs and the relevant procedure. Such decree refers to photovoltaic plants entering into operation from 31 December 2010 to 31 December 2013, although tariffs are also granted to photovoltaic plants entered into operation between the date of publication of the decree and 31 December 2010.

Under the new decree, tariffs are differentiated and decrease in relation to plants of different categories, as detailed in the table below:

TABLE A						
	A		B		C	
Size of power plants	Plants entered into operation after December 31, 2010 and within April 30, 2011		Plants entered into operation after April 30, 2011 and within August 31, 2011		Plants entered into operation after August 31, 2011 and within December 31, 2011	
	Plants over buildings	Other plants	Plants over buildings	Other plants	Plants over buildings	Other plants
[€/kWh]	[€/kWh]	[€/kWh]	[€/kWh]	[€/kWh]	[€/kWh]	[€/kWh]
1≤P≤3	0,402	0,362	0,391	0,347	0,380	0,333
3<P≤20	0,377	0,339	0,360	0,322	0,342	0,304
20<P≤200	0,358	0,321	0,341	0,309	0,323	0,285
200<P≤1000	0,355	0,314	0,335	0,303	0,314	0,266
1000<P≤5000	0,351	0,313	0,327	0,289	0,302	0,257
P>5000	0,333	0,297	0,311	0,275	0,287	0,244

3.2 Access procedures

With respect to the procedure for the access to the tariffs, article 4 of the decree states that the application for the granting of the tariff must be received by the GSE (in a telematic way) within 90 days from the entry into operation of the photovoltaic plant, failing which the plant loses the tariffs during the period from the date of entry into operation to the date of the communication to the GSE. The GSE ensure the granting of the tariff within 120 days as of the receipt of the relevant application (subject to the assessment that the application has been made in compliance with applicable law provisions). Moreover, any assignment of the photovoltaic plant must be notified to the GSE within 30 days from the registration of the relevant deed of assignment of rights (even if consequences of the delay are not expressly provided for).

The decree also focuses on the technological innovation, in particular to the "concentration" photovoltaic plants (*fotovoltaico a concentrazione*), plants with accumulation systems and high architectural integration.

Again, in order to achieve an higher aggregate energy efficiency, an increase of 20% of the tariff is granted to photovoltaic plants whose exchange is foreseeable (*sistema con profilo di scambio prevedibile*), where for a photovoltaic plant whose exchange is foreseeable we refer to any plant with the following characteristics:

- i. made of one or more photovoltaic plants operated by the responsible person together with an aggregate of injection points, withdrawals points and any energy storing system, recorded on an hourly basis and related to a single primary station (*cabina primaria*);
- ii. made by one or more photovoltaic plants with an aggregate nominal capacity higher than 200 kW and lower 10 MW;
- iii. whose aggregate exchange profile with the electrical grid respects a hourly programme between 8:00 and 20:00 notified the earlier day by the responsible and the implementing operator with a gap of default of 10% per each day;
- iv. respecting the profile under paragraph (c) above for at least 300 days per year.

3.3 Pergola, greenhouse, platform roof and shelter

Please note that, photovoltaic plants whose modules constitute the building elements of pergolas, greenhouses, platform roofs and/or shelters shall receive a tariff equal to the average amount of (i) the tariffs paid to photovoltaic plants built over buildings; and (ii) the tariffs paid to photovoltaic plants not built over buildings.

With particular reference to the greenhouses, the decree clarifies that in order to access to such tariff the modules shall constitute the building elements of the covering or of the walls of the building meant to be used, for all the duration of the tariff, as greenhouses for cultivation and floricultural purposes.

3.4 Total installed capacity available for incentivisation

Pursuant to the new decree, the Ministry of the Economical Development intends to achieve the European targets set by the European Community by 2020: the accumulated nominal photovoltaic capacity shall increase from the current 1,350 MW to 8,000 MW, whilst the availability of the aggregate energy power of the photovoltaic plants benefiting of the tariff set by "*nuovo conto energia*" is equal to 3,000 MW.

The maximum limit of the cumulative electrical power is as follows:

- i. 3,000 MW for photovoltaic plants;
- ii. 300 MW for integrated photovoltaic plants with innovative characteristics (i.e. *impianti integrati con caratteristiche innovative*);
- iii. 200 MW for "concentration" photovoltaic plants (*fotovoltaico a concentrazione*).

In case the maximum thresholds indicated under points (i), (ii) and (iii) above are achieved, plants entered into operation within 14 (fourteen) months as of the relative achievement's date (to be communicated by GSE on its website) will be entitled to be granted with the tariffs indicated under Table A above. The abovementioned 14-month term is extended to 24 (twenty-four) months if the owner of the plant is a public entity.

4. Renewable energy guidelines

On 8 July 2010 the "Conferenza Unificata", in compliance with the provisions of article 12, paragraph 10, of Legislative Decree 387/2003, approved the Guidelines related to authorization procedures for the construction and the operation of plants for power production by renewable sources.

These Guidelines aim to coordinate national legislation related to the authorization procedures and to ensure a correct instalment of the plants on the territory and to limit the relevant impact of such plants on the landscape, with particular attention to wind energy plants.

Within 90 days as of the publication on the Official Gazette (not yet occurred), the Regions shall adapt their regional regulations with the Guidelines.

In addition to the provisions regulating the administrative transparency of the authorization process and the plants monitoring, article 3 of the Guidelines regulates the authorization of the ancillary works associated to the relevant plants, with particular reference to the works for the grid connection infrastructures, fixing standards that allow their inclusion or not within the limits of the single authorization (*autorizzazione unica*).

Moreover, for each specific renewable source, the Guidelines set specific plants typologies and installation modalities which allow the authorisation of the relevant photovoltaic plants to be subject to simplified authorization procedures.

In particular, a DIA shall be required for the following photovoltaic plants:

- (a) mini photovoltaic plants with a generation capacity lower than 20 kW;
- (b) photovoltaic plants on the building' coverings with panel surface not higher than the surface of the relevant building' coverings;
- (c) electric cogeneration biomass plants with maximum capacity lower than 1,000 kWe (piccolo cogenerazione) and 3,000 kWt;
- (d) biomass plants with generation capacity lower than 200 kW;
- (e) wind plants with a capacity lower than 60 kW with anemometric towers for the wind measuring system for periods longer than three years;
- (f) hydro electrical and geothermic plants with a capacity of generation lower than 100 kW.

The procedure for the granting of the aforementioned single authorization is defined in detail, determining minimum contents of the application and of the authorization itself. In this context, of particular interest is the provision providing for the VIA screening for renewable plants of overall nominal power capacity higher than 1MW (a threshold well below the one settled by some regional regulations, that nowadays shall be adapted with the Guideline's provisions).

Finally, the Guidelines set the criteria and modalities for the instalment of the plants in respect of the environmental impact with particular reference to wind farms in relation to which a specific annex has been prepared.

5. New rules for connection of renewable energy plants

5.1 The new TICA

On 4 August 2010, AEEG issued the Resolution ARG/elt No. 125/2010 concerning the proceeding of interconnection for plants producing electricity (including, therefore, plants fuelled by renewable sources) to the national or local electrical grid.

In particular, above-mentioned Resolution ARG/elt No. 125/2010 modified and integrated the AEEG Resolution ARG/elt No. 99/2008 (TICA). In this respect, the modified and integrated TICA (the integrated text is contained in Annex A to Resolution ARG/elt No. 125/2010) shall apply in case of interconnection requests filed with the relevant grid operator (Terna or Enel or other local operators) starting from 1 January 2011.

5.2 Rules applicable from 2010

However, Resolution ARG/elt No. 125/2010 also provided that Annex B to the same shall apply to all the interconnection requests filed with the relevant grid operator within 31 December 2010 (provided that the relevant interconnection works have not been completed). In this respect, it is worth briefly outlining the main features of the abovementioned Annex B.

First of all, article 2 of said Annex B provides that the relevant STMG/STMG should be considered forfeited if within specific deadlines (depending on the date of obtainment and/or acceptance of the STMG/STMG and on the voltage of the relevant connection) the producers will not file with the competent public authorities the request to obtain the authorisations to build and exercise the relevant plant producing electricity (e.g. single authorisation pursuant to Legislative Decree No. 387/2003). Within the same deadlines, the producers should send to the relevant grid operator a "self-declaration" attesting that the request to obtain the authorisations to build and exercise the relevant plant producing electricity has been filed with the competent public authority. In any event, in case of lack of this communication the forfeiture of the STMG/STMG is not automatic: in particular, the grid operator shall request for the sending of the abovementioned document by the producer and the latter should comply with this request within the following 30 working days. Only in the case that the producer does not fulfil the abovementioned request the STMG/STMG is deemed as forfeited.

Moreover, article 3 of Annex B at issue provides also that in the event that the producer fails to send to the relevant operators the communications provided by article 31 of TICA as modified by the same Resolution No. 125 of 4 August 2010, regarding the impossibility to start the building works regarding the plant producing electricity due to causes not directly attributable to the producer (e.g. if the relevant authorisation proceeding is still ongoing), the forfeiture of the relevant STMG/STMG is not automatic: the grid operator shall request for the sending of the abovementioned document by the producer and the latter should comply with this request within the following 30 working days by sending a specific "declaration substitutive of affidavit" (*dichiarazione sostitutiva di atto notorio*) attesting that:

- (a) the relevant building works have already started; or
- (b) that the building works have not yet been started, indicating the specific reasons and the authorisation proceeding that have been followed for the relevant plant.

Only in the case that the producer does not fulfil the abovementioned request the STMG/STMG is deemed as forfeited.

Furthermore, article 4 of Annex B provides that, starting from 1 November 2010, the STMG/STMG is considered forfeited in the event that the building works of the plant producing electricity are not completed within the terms set out by the relevant authorisation.

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5.3 Financial guarantees for connections in critical areas

Finally, please note that, within 15 October 2010, the grid operators shall give evidence of the areas and lines deemed as "critical" in accordance with the criteria and the principals set forth by article 4 of TICA, as modified by the same Resolution No. 125 of 4 August 2010. In the event that a plant shall be connected in critical areas or by critical lines, the relevant applicant shall have to deliver specific financial guarantees, unless the building works to realise the plant have been already completed.

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