

## KEY REGULATORY UPDATES

### ➤ **MASE Decree no. 414 of 7 December 2023 – CER Decree**

As of January 24<sup>th</sup>, 2024, the so-called «CER decree» (Renewable Energy Communities) came into force, regulating the incentive modalities for plants powered by renewable sources and included in self-consumption layouts or energy communities. Within 30 days, the Ministry of the Environment and Energy Security (MASE) will issue the operating rules governing the modalities and time constraints of accessing the incentives.

### ➤ **Budget Law 2024 – Law no. 213/2023**

In the field of renewables, the Budget Law 2024 introduces amendments to the TUIR: as of January 1<sup>st</sup>, 2024, consideration received from the business or professional activity for the establishment of surface rights will be subject to progressive IRPEF as “miscellaneous income” (*redditi diversi*), thus eliminating the possibility of applying the 26% substitute tax. The latter will remain applicable, save for acquisitions by inheritance, for the transfer of such rights following their establishment.

### ➤ **Energy Law Decree no. 181/2023**

During its session of January 31<sup>st</sup>, 2024, the Senate finally approved the bill converting the law decree of December 9<sup>th</sup>, 2023, no. 181 (so called Energy Law Decree).

Major changes include: the abrogation of the rule providing the so called FER offsets by operators of certain plants; the possibility for photovoltaic plants located in agricultural areas to participate in auctions for incentives; the coverage of stranded costs for operators in the greater protection market; the strengthening of technical commissions (VIA-VAS and PNRR-PNIEC) within the MASE.

### ➤ **Regulation (EU) 2024/223**

Regulation (EU) 2024/223, aimed at extending the application of certain measures of Regulation (EU) 2022/2577, in particular those aimed at accelerating the authorization procedures for the construction of renewable energy production plants, came into force on January 11<sup>th</sup>, 2024, and will be applicable as of July 1<sup>st</sup>, 2024. Other rules will be immediately effective, such as those that define the compliance with the condition regarding the absence of alternative or satisfactory solutions for the plant.

### ➤ **Union Database for Biofuels (UDB)**

The EU biofuels database (UDB), provided for by Red II Directive (Directive

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2018/2001/EU) and aimed at improving transparency and traceability of biofuels, became operational on January 15<sup>th</sup>. Economic operators transacting in liquid renewable fuels and fuels derived from recycled carbon will now be able to register online.

## CASE LAW

### ➤ **Two-way contracts: Council of State refers a preliminary question to the European Court of Justice**

The Council of State has referred to the European Court of Justice a question for a preliminary ruling on interpretation under art. 267 TFUE, regarding the possible conflict between art. 7, para. 7, of the Ministerial Decree July 4<sup>th</sup>, 2019 (Fer 1 Decree) and art. 3 of Directive 2009/28/EC as well as art. 4 of Directive 2018/2001/EU. It is questioned whether the “two-way” tariff is compatible with European rules, because of the obligation to transfer to the GSE the revenues exceeding the value of the tariff arising from the sale of electricity, as well as the possibility to have the contract for difference as the sole incentive option for plants with a capacity above 250kW, considering that smaller plants can also opt for the energy withdrawal scheme by the GSE.

### ➤ **Extraprofits: Constitutional issue**

Due to a possible violation of Regulation (EU) 1854/2022, the Regional Administrative Court of Lazio (TAR Lazio), in several ordinances, raised a constitutionality issue on Law no. 197/2022 on extraprofits of energy companies, with reference to the subjects to which this measure is applicable, the criteria for calculation and the non-deductibility of the contribution. This remittal is not an absolute novelty: already in July 2023 the TAR Milano had raised a preliminary question before the European Court of Justice for a possible violation, again related to the extraprofits, of the same European legislation.

### ➤ **Extraprofits: the position of the Italian Tax Agency**

The Italian Tax Agency, in relation to the temporary solidarity contribution due for the year 2023 (Law no. 197/2022), responded to interpellation nos. 16 and 18 of 2024, according to which the amounts collected against compensation for a damage as a result of litigation, as well as incentive refunds from the GSE, should contribute to the determination of the taxable amount.

## REGULATION IN THE PIPELINE

### ➤ **Agri-voltaic Decree**

The Ministry of the Environment and Energy Security (MASE) has signed and transmitted to the Court of Auditors (*Corte dei Conti*) the decree outlining the

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criteria and the modalities for incentivizing the implementation, by June 30<sup>th</sup>, 2026, of innovative agri-voltaic systems, for an overall capacity of at least 1.04 GW and an indicative production of at least 1,300 GWh/year. Systems meeting these requirements are granted an incentive consisting of a capital contribution and an incentive tariff applied to the production of net electricity fed into the grid.

**DISCLAIMER**

This Client Alert is solely intended to provide general information. Consequently, it does not constitute legal advice and cannot be considered a substitute for specific legal consultation.

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