

KEY REGULATORY UPDATES

➤ **Lombardy: publication of the operating rules on photovoltaics in agricultural areas**

The Lombardy Region has published in the BURL of March 4, Ordinary Series No. 10, the D.g.r. No. XII/1949 of Feb. 26, 2024, approving the first operating rules of Annex 13 of the Regional Energy Environment Climate Program (PREAC), providing, pending the identification of suitable areas for renewable energy plants, the first indications on the installation of ground-mounted photovoltaic systems and agrivoltaic systems in agricultural areas.

PREAC divides the agricultural areas of Lombardy into two categories: Category A (agri-food productions of particular quality and typicality) and Category B (remaining agricultural areas), further divided into B1 (specific productions: rice fields, orchards, permanent meadows) and B2 (arable production). In general, the operating rules consider agrivoltaic systems as "feasible" and ground-mounted photovoltaic systems as "technically difficult to implement", due to the reduction they cause in the cultivation capacity of the land.

CASE LAW

➤ **TAR Puglia: compliance ruling against the Council of Ministers**

The Regional Administrative Tribunal (TAR) of Apulia (Bari branch) has upheld three appeals for compliance aimed to ascertain the illegitimacy of the inaction of the Presidency of the Council of Ministers in executing three rulings that annulled three resolutions by which it had issued negative assessments of environmental compatibility of three wind power projects.

The TAR reiterated the obligation to take due measures and assigned to the Presidency a 90-day deadline to schedule a new assessment of these projects on the agenda of the Council of Ministers, in order to settle the conflict that, in this specific case, had arisen between the Ministry of Environment and Energy Security (MASE) and the Ministry of Culture (MiC) in relation to the national Environmental Impact Assessment (VIA) procedure.

➤ **Council of State: annulment of Campania's rule on cumulative impacts**

In its ruling no. 2392/2024, the Council of State declared the unlawfulness of Regional Council Resolution no. 532/2016 of the Campania Region for being contrary to State regulations in the part in which it provided for the extension of the obligation of cumulative assessment of environmental impacts for wind power plants with a capacity greater than 20kW. The Council of State pointed out that art. 4, co. 3, of Legislative Decree 28/2011 delegates to the Regions only «the cases in which the submission of several projects for the construction of plants powered by renewable sources and located in the same area or in contiguous areas are to be evaluated in cumulative terms within the scope of the VIA» in order to prevent evasion of the mandatory thresholds «through an artificial fragmentation of projects». This delegation does not also entail the possibility for regions to change the scope of applicability of the environmental assessment and remains limited

only to identifying ways and criteria to prevent undue evasions.

REGULATION IN THE PIPELINE

➤ **FER X: MASE draft decree and start of interlocutions with the EU**

Interlocutions with the European Union began in March on the content of the ministerial measure known as Fer X, aimed at supporting the production of electricity from renewable sources and, once entered into force, at replacing the so-called Fer 1 decree.

This measure will establish the terms and conditions for accessing the new incentive mechanism for four types of plants for the production of electricity from renewable sources (photovoltaic, wind, hydroelectric and treatment of residual gases from purification processes).

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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