

## KEY REGULATORY UPDATES

### ➤ **News on the auctions for the storage futures market and on MACSE**

The auctions for the Storage Futures Market, prepared by Terna to implement Article 18 of Legislative Decree no. 210/21, are scheduled to begin in the first quarter of 2025, and will only concern authorised storage capacity.

Terna has also started a new consultation on the changes to the Electricity Storage Capacity Supply Mechanism (MACSE) documents, which will last until May 3, 2024; with respect to the previous one, the current draft proposal incorporates the contents of the European Commission's decision of December 21, 2023, as well as some amendment resulting from the previous consultation phase.

### ➤ **BESS plants: publication of the operational guide for AU applications**

On 16 April 2024, the operating guide for the submission of applications for the single authorisation (AU – *Autorizzazione Unica*) of electrochemical storage systems in stand-alone configuration, pursuant to Law Decree no. 7/2002 (Article 1, paragraph 2-quater, lett. b), was published on the MASE (Ministry of the Environment and Energy Security) website, together with a check list and the forms relative to the necessary documentation for the submission of the applications. This documentation constitutes the minimum recommended content for the preparation of the application and the start of the relevant authorisation procedure.

### ➤ **The MASE published the decree on the overcoming of the PUN**

Following Arera's positive assessment, on 18 April 2024 the MASE published a decree, implementing the provisions of Article 13 of Legislative Decree No. 210/21, as amended by Article 19 of Decree-Law No. 181/23 (so-called *D.L. Energia*), aimed at establishing, as of 1 January 2025, the conditions and criteria for the application to final customers of zonal prices based on the trends in the wholesale electricity market, thus superseding the single national price (PUN).

The *Gestore dei Mercati Energetici* (GME) will determine the reference price of energy traded within the Day-Ahead Market as the weighted average of the zonal prices for the quantities purchased in relation to zonal offtake portfolios in each geographical market zone. This price will be operated through an equalisation mechanism until at least 31 December 2025.

### ➤ **REC: news on the portals for incentives and the Operating Rules**

As of 8 April 2024, the portals for submitting applications for the contributions for renewable energy communities (REC) and self-consumption configurations provided for by the CACER Decree and the Integrated Text on Diffuse Self-Consumption are active.

Moreover, the MASE has approved a new version of the Operating Rules concerning energy communities and diffuse self-consumption. The main new provisions concern: the requirements and time constraints for the entry into operation of production plants in order to be able to benefit from the transitional mechanism provided for by the Ministerial Decree 16 September 2020, provided that such requests have been submitted by 24 April 2024; the determination of the calculation criteria for applying the deduction in cases of accumulation of the incentive tariff

with other public contributions; the definition of the modalities for determining the threshold value of the quota of shared energy; the introduction of the assignment of credit and the mandate for collection, which may be allowed in compliance with the principle of the allocation of the surplus premium tariff to consumers other than companies and/or if used for social purposes.

➤ **Offshore wind farms: released the public notice for Port Authorities**

On 18 April 2024, in execution of Article 8 of Law Decree no. 181/2023, the MASE released the Public Notice to acquire expressions of interest from the Port System Authorities interested in identifying maritime state-owned areas to be allocated for the installation of infrastructures for the production, assembly and launching of floating platforms, as well as the electrical infrastructures functional to the development of shipbuilding for the offshore production of wind energy. These expressions of interest will have to contain, among other things, the proposed activities, timing and technical-economic feasibility of the proposed interventions.

## CASE LAW

➤ **Council of State: voiding of the solvency requirements for dispatching**

The Council of State, upholding the appeal against the Lombardy Regional Administrative Court's sentence no. 2217/2023, annulled Arera's Resolution no. 398/2021/R/EEL in the part where it dictated, that companies be in possession of the requirements as per no. (i), (ii) and (iii) of point 4.3.1.2 of the Grid Code (so-called solvency requirements) in order to sign the dispatching service contract with Terna, extending them also to the relevant subsidiaries or parent companies and to the entities subject to the same control or direction and coordination as the company requesting the dispatching contract. These requirements demanded that the aforesaid companies (i) did not hold a similar contract that had been terminated due to non-fulfilment, (ii) were not in breach of payment obligations towards Terna that were not backed by the guarantees provided, and (iii) did not have directors in common with companies that fell under the scope of points (i) and (ii) above.

➤ **Tar Bari: silence-consent is valid in EIA proceedings**

The Bari Regional Administrative Court (Tar Bari) ruled in Judgement no. 500/2024, affirming (in a judicial proceeding concerning a project for an offshore wind farm) that the mechanism of silence-consent between public administrations may be applicable to the procedure aimed at issuing an EIA decision. The Regional Administrative Court thus condemned the MASE to adopt the measure in the face of the inertia, in this specific case, of the Ministry of Culture, whose consent must be consequently considered acquired. The Regional Administrative Court specified that, in the absence of specific regulatory provisions, it is reasonable to consider that the deadline for the expression of such agreement runs from the day of receipt of the EIA Commission's decision, emphasising the peremptory nature of such terms, consistent with the favour granted to renewable energy sources.

➤ **Tar Campania: ruling no. 2204/2024**

The Campania Regional Administrative Court (Tar Campania) ruled with sentence no. 2204/2024 in an appeal to ascertain the illegitimacy of the silence of the MASE and the other resistant administrations in relation to an EIA application to be issued within the framework of the Single Environmental Assessment (PUA).

The Regional Administrative Court pointed out that, with reference to the order of priority set forth in Article 8, paragraph 1, of Legislative Decree 152/2006, no preference is established on the basis of the power capacity of the plant, neither by regulatory acts nor by organisational acts, therefore the greater power of the plant cannot be considered a priority criterion. Thus, the provision of the legal deadlines within which proceedings for renewable energy projects must be concluded remains in place.

➤ **Tar Lazio: ruling no. 1560/2024**

The Latium Regional Administrative Court (Tar Lazio), with sentence no. 1560/2024, annulled the Vetrella Municipality's resolution that identified the areas unsuitable for the installation of ground photovoltaic plants. In particular, the Court ruled that the provisions of the P.T.P.R. (*Piano Territoriale Paesistico Regionale* – Regional Territorial Landscape Plan) were not prescriptive in the absence of constraints or landscape assets. Moreover, in the opinion of the Court, the public administration should have adopted a more detailed motivation in assessing the suitability of the concerned area for the realisation of agri-voltaic plants, balancing the need to protect the agricultural landscape with the need to support agriculture and reduce pollution through the production of energy from renewable sources.

## RECENT REGULATIONS AND IN THE PIPELINE

➤ **Sardinia: ban on the construction of new power plants and storage system**

Pending the issuance of the decrees referred to in Article 20, paragraph 1, of Legislative Decree 199/2021, the approval of the regional law on the identification of suitable areas (pursuant to Article 20, paragraph 4, Legislative Decree 199/2021), and the subsequent adjustment and completion of the Regional Landscape Plan (PPR), on 30 April 2024 the Sardinian Regional Council approved a draft law having as its object a transitional regulation aimed at ensuring, for a period in any case not exceeding 18 months, that the entire regional territory is «subjected to measures for the protection of the landscape, territory and environment, which involve the prohibition to realize new plants for the production and storage of electricity from renewable sources that directly affect the occupation of land». The provisions also apply to plants «whose authorisation or concession procedures are in progress when this law comes into force».

➤ **Veneto: the Council adopts the New Regional Energy Plan (NPER)**

With Resolution no. 335 of 4 April 2024, the Veneto Regional Council adopted the New Regional Energy Plan (NPER), a strategic document that establishes the guidelines and coordination of planning in the field of promoting renewable energy and energy saving.

The Plan will now undergo the public consultation required by the SEA procedure before proceeding to its final approval in the Regional Council.

➤ **DL Agricoltura: stop to ground-based photovoltaic installations in agricultural areas**

On May 6, 2024, in its session No. 80 the Council of Ministers approved the so-called *DL Agricoltura* presented by MASAF (Ministry of Agriculture, Food Sovereignty and Forestry), which original draft, with regard to the world of renewables, introduced, as partial amendment to Article 20 of Legislative Decree No. 199 of

November 8, 2021, a provision to prevent the construction of photovoltaic plants with ground-mounted modules (referred to in Article 6-bis, letter b) of Legislative Decree No. 28 of March 3, 2011) on areas classified for agricultural use under the current urban plans. In the original draft of MASAF it was expressly stated that *“the authorization procedures in progress at the date of entry into force of this decree are concluded in accordance with the previous legislation.”*

During the approval phase, the text was amended and, although its publication is still pending, what has been approved introduces a ban on the installation of new photovoltaic systems with ground-mounted modules and on the increase of the extension of those already installed, in areas classified for agricultural use by urban plans, except for plants financed in the implementation of the PNRR, those related to agri-voltaic projects and those to be built in quarries, mines, areas under concession to *Ferrovie dello Stato* and airport concessionaires, highway strip buffer areas, and areas falling within industrial plants.

#### **DISCLAIMER**

The sole purpose of this *Client Alert* is to provide general information. Consequently, it does not represent a legal opinion nor can it in any way be considered as a substitute for specific legal advice.

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