

KEY REGULATORY UPDATES

➤ **GSE: call for the 15th auction and register procedure**

On June 26, 2024, GSE published the call for the 15th auction and register procedure to support the development of renewable energy power plants. Applications must be submitted through the RES-E Portal by 12:00 p.m. on Friday, July 26, 2024. As condition for submitting the application, the plant shall be registered on GAUDÌ and having the status of "Plant Validated".

➤ **Publication of the reform on the electricity market on EU Official Gazette**

On June 26, 2024, Regulation (EU) 2024/1747 and Directive (EU) 2024/1711 for the improvement of the Union's electricity market design have been published in the Official Journal of the European Union, entering into force on July 16, 2024. The Directive shall be implemented by Member States by January 17, 2025.

Key new features include the introduction of support schemes through two-way Contracts for Difference (CfDs) and an EU-wide PPA market, EU-wide renewables auctions, limits on CO₂ emissions, and the Council's ability, in the event of exceptionally high prices, to declare a state of crisis and introduce consumers protecting measures.

➤ **Publication of the «suitable areas» decree on the Official Gazette**

The Ministerial Decree of 21 June 2024, the so-called «suitable areas» decree, which incorporates the provisions and the outcomes of the United State-Regions Conference, was published on the Official Gazette on July 2, 2024. The measure, on the one hand, establishes the principles and criteria for identifying the so-called suitable areas, granting the Regions and the Autonomous Provinces of Trento and Bolzano considerable discretion in this regard; on the other hand, it includes the new Burden Sharing quotas, that is, the distribution of power among the various Regions and Autonomous Provinces to achieve the national target of installed renewable capacity by 2030.

Among the main innovations, there is the distinction made by Article 7, para. 3, which, on the one hand, provides that areas included in the perimeter of the assets subject to protection under Articles 10 and 136, para. 1, of the Cultural Heritage and Landscape Code are always considered non-suitable, whereas, on the other hand, it gives the Regions discretion in assessing the suitability of areas included in the perimeter of other assets subject to protection by the aforementioned Code.

CASE LAW

➤ **Ruling of the Constitutional Court no. 111/2024 on Extraprofits**

The Constitutional Court ruled the partial illegitimacy of Article 37 of Decree Law 21/2022, converted into Law No. 51/2022, by which an extraordinary solidarity contribution had been established for companies operating in the energy sector. In particular, the Court found the presupposition of the tax on so-called Extraprofits to be legitimate, as the surge in prices in the energy market was considered as a revealing index of wealth. However, the inclusion of excise taxes in the tax base was found to be contrary to Articles 3 and 53 of the Constitution, as it «exceeds the threshold of reasonableness».

➤ **The Constitutional Court rules on areas encumbered by civic use**

With ruling no. 103/2024 on Article 13, para. 1 (b) of Sardinian Regional Law No. 9/2023, the Constitutional Court declared unfounded the question of constitutionality raised by the Government on the issue of the change of destination of areas encumbered by civic use following installation of renewable power plants. In this regard, the Government argued that such legislation allowed the installation of RES plants in areas encumbered by civic use, which, pending the identification of suitable areas, shall be considered non-suitable as per Article 20, para. 8, lect. *c-quater*, of Legislative Decree 199/2021. However, the Court considered such an interpretation to be contrary to the provision of para. 7 of the same Article 20 of Legislative Decree 199/2021, since the non-inclusion among suitable areas does not automatically imply non-suitability.

➤ **State Council ruling against the Council of Ministers' appeal**

In its ruling no. 4871/2024, the Council of State (CdS) rejected the appeal against the Apulia Regional Administrative Court (TAR) ruling no. 788/2023, which annulled for lack of motivation the resolution by which the Council of Ministers (CdM), resolving the conflict between the Ministry of Culture (MiC) and the Ministry of Ecological Transition (Mite), had rendered a negative judgment on the environmental compatibility of a wind farm in the Province of Foggia. Notwithstanding the mere fact that the project not falling among the non-suitable areas, as established by the guidelines approved at the United State-Region Conference, does not automatically imply its admissibility, the provision of the Council of Ministers still remains illegitimate, given its lack of adequate motivation on the divergences from the aforementioned guidelines and from the favorable opinion on the plant expressed by the Mite.

➤ **Umbria Regional Administrative Court (TAR): ruling n. 473/2024**

In the aforementioned ruling, the Umbria Regional Administrative Court stated that, with the entry into force of Article 22-*bis* of Legislative Decree 199/2021, any Regional provision «having the effect of subordinating the installation of ground-mounted photovoltaic systems in areas for industrial, craft and commercial use to the acquisition of permits, authorizations or acts of consent» should be considered implicitly repealed, with the exception, where provided for, of the environmental assessments referred to in Title III of the Environmental Code. In fact, the enactment of a framework State regulation in a concurrent matter determines the automatic repeal of pre-existing Regional regulations contrasting with it.

REGULATIONS IN THE PIPELINE

➤ European Commission: approval of the Fer2 Decree

Long overdue, the EU Commission finally approved the scheme of the so-called Fer2 decree, aimed at promoting the construction of renewable power plants that are not fully developed or have high operating costs. The draft shall now be signed by the concerting Ministers and then forwarded to the Court of Accounts for registration and publication. The relevant Operating Rules will be issued within the following 30 days. The Ministry of Environment and Energy Security's stated purpose is to incentivize the construction power plants for an overall capacity of 4.6 GW before the end of 2028.

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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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