

## **KEY REGULATORY UPDATES**

### ➤ **PNIEC: final version submitted to the EU Commission**

On 1 July 2024, the Ministry of the Environment and Energy Security ("MASE") and the Ministry of Infrastructure and Transport ("MIT") submitted the final text of the 2024 Integrated National Energy and Climate Plan ("PNIEC") to the EU Commission. According to the Plan, Italy must achieve a renewable energy capacity of 131 GW by 2030, distributed as follows: 79.2 from solar, 28.1 from wind, 19.4 from hydro, 3.2 from bioenergy and 1 from geothermal sources. Additionally, the portion of gross final energy consumption covered by renewable energy sources ("Res") is expected to reach 39.4%.

### ➤ **Decree on «suitable areas» comes into force**

Following its publication in the Official Gazette on 2 July 2024, the decree on «suitable areas», which sets out the regulations for identifying surfaces and areas suitable for the installation of renewable energy plants, came into force on 3 July. Within the next 180 days, the Regions must adopt the related laws to identify the areas where the installation of new renewable energy plants will be allowed those where such installation will be prohibited.

### ➤ **Sardinia: Res moratorium approved**

On 2 July 2024, Sardinia's Regional Council approved Law no. 5 of 2024 ("*Urgent measures to safeguard the landscape and environmental assets*"), which came into force the following day. Article 3 provides that, pending the approval of the regional law identifying the suitable areas, the approval of the Regional Development Programme (PRS), the updating of the Sustainable Development Strategy and the Regional Landscape Plan (PPR), and in any case for a period not exceeding 18 months from its entry into force, the construction of new renewable energy production and storage plants in the areas identified by the recalled provision is forbidden. This prohibition also applies to those projects currently undergoing authorization procedures. Paragraph 3 provides for some exceptions, regarding, for example, storage plants that do not entail land consumption, self-consumption projects, revamping and agrivoltaic plants up to 10 MWp for the benefit of agricultural enterprises, having panels installed at a minimum height of 2.10 meters above the ground.

### ➤ **Capacity market: prohibition on cumulation of Cfd and GSE incentives**

On 5 July 2024, implementing ARERA Opinion No. 265/2024, MASE published the Ministerial Decree No. 248. By replacing paragraph 1 of Article 5 of the Decree of the Minister of Economic Development of 28 June 2019, Article 1 introduces a prohibition on the cumulation of remuneration from the capacity market and from the incentives provided by the *Gestore dei Servizi Energetici* ("GSE"), particularly in the form of Contracts for Difference (Cfd). The aim is to prevent undue advantages for the tariff beneficiaries and to reduce the risk of opportunistic behaviours. For the Cfd, if the incentives are waived and the payment is suspended for the delivery period covered by the capacity market auction, the beneficiary is still required to

return any amounts owed to the GSE in case of negative differentials between the auction price and the wholesale electricity market price.

➤ **DL Agricoltura: conversion law published in the Official Gazette**

Law no. 101/2024 converting with amendments the Agricultural Decree, so-called "DL Agricoltura", was published in Italy's Official Gazette no. 163 of 13 July 2024. Thus, the significant limitations on the installation of photovoltaic systems with ground-mounted modules on agricultural land, provided for by Article 5, which introduces a new paragraph 1-*bis* to Article 20 of Legislative Decree No. 199/2021, have definitively come into force. Several changes to the original version were made during the conversion process: the reference to Article 6-*bis*, letter b), of Legislative Decree 28/2011 for the definition of this type of plant was removed; areas where installation is permitted now also include quarries already subject to environmental restoration and those with completed cultivation plans that have not been restored yet, as well as landfills or closed or restored landfill sites; additionally, it was clarified that paragraph 1-*bis* does not apply to projects which, as of the date of entry into force of the decree, have at least one of the administrative procedures in place, including those of environmental assessment, necessary for obtaining the permits for the construction and operation of the plants and related works, or to projects which already obtained at least one of such permits.

Finally, Article 5 was implemented with a new paragraph 2-*bis* that establishes a duration limit for those contracts, including preliminary ones, granting the surface right on lands falling within suitable areas (as per Article 20, paragraph 1, letter a), Legislative Decree No. 199/2021) for the installation and operation of renewable energy plants. The duration of such contracts is provided to be at least equal to 6 years (with automatic renewal for a further 6-year period) and, should it be shorter or unspecified, the same shall be automatically set as per the recalled legislative provision. Moreover, these rules also apply to contracts already executed but not yet expired, without prejudice to the right of the parties to withdraw within 60 days from the entry into force of the conversion law.

➤ **Publication of the Fer2 Decree**

Following the EU Commission's approval, MASE published the so-called Fer2 Decree, aimed at promoting the development of innovative renewable energy plants or with high operating costs; the relevant operating rules are expected to be published within mid-September.

➤ **Agrisolar Park: publication of the third auction for southern enterprises**

Starting from 16 September and within 14 October 2024, agricultural enterprises from the south of Italy will be able to submit applications to enjoy subsidies under the third call of a measure from the National Recovery and Resilience Plan ("Pnrr"), namely "Agrisolar Park". It will be possible to finance the installation of photovoltaic modules on roofs of farm buildings for a maximum capacity of 1 MW per building, through the provision of non-refundable aids covering up to 80% of the eligible expenses.

## CASE LAW

### ➤ **TAR Lecce: ruling No. 935 of 2024**

The Lecce Regional Administrative Court ("TAR"), in its ruling No. 935/2024, ruled that for the screening of an Environmental Impact Assessment ("VIA") for a photovoltaic project, the "cumulation with other projects" criterion under Article 4.1 of the guidelines attached to the Ministerial Decree of 30 March 2015, and the related halving of the applicable thresholds, are relevant only with regard to "projects" pertaining to "new works or interventions" and therefore not yet materially realised, while they do not apply also to already existing photovoltaic plants.

### ➤ **TAR Palermo: ruling n. 2475 del 2024**

In its recent ruling No. n. 2475/2024, the Palermo Regional Administrative Court ("TAR"), in annulling the challenged measures, reiterated the orientation of administrative jurisprudence regarding the application of Article 20, par. 8, letter *c-quater*, of the Legislative Decree No. 199/2021, which defines the "suitable areas" by recalling the parameter of 500 meters from the constrained areas. The TAR clarified that this provision does not introduce a prohibitive measure for the "non suitable" areas; paragraph 7 of Article 20 provides that the non-inclusion in the "suitable areas" does not imply the automatic qualification of the area as "non suitable", requiring specific justification for the protection of the interests opposed to the installation of renewable energy plants.

### ➤ **Constitutional Court and EU Commission: Res moratorium under scrutiny**

Barely a month after its publication, the Council of Ministers has challenged the law from Sardinia Region on the Res moratorium before the Constitutional Court (see *above*). At the same time, *Elettricità Futura* ("EF") filed a complaint before the EU Commission to urge the opening of an infringement procedure in relation to the same law. According to the Italian government, which also requested the suspension of Article 3, the Sardinian legislation would conflict with Articles 3, 41 and 117 of the Italian Constitution. EF, on the other hand, complains of an incompatibility of the Res moratorium with the TFEU, the EU Charter of Fundamental Rights, the RED II Directive, and the EU principle of the primacy of the interest in the construction of renewable energy plants over competing interests until climate neutrality is achieved. The violation of such principle, argues EF, should "lead administrations and courts to disapply the law".

### ➤ **CGA for Sicily Region: ruling No. 678/2024**

The Court of Administrative Justice ("CGA") for Sicily Region, in ruling No. 678/2024, pronounced on the competence over VIA procedures concerning the Sicilian territory. In particular, the Court affirmed that the competence to express the opinion under Article 24 of Legislative Decree 152/2006 belongs to the Regional Department of Cultural Heritage and Sicilian Identity rather than the Ministry of Culture, thus confirming the first instance ruling issued by the Palermo Regional Administrative Court.

## REGULATIONS IN THE PIPELINE

### ➤ "Testo Unico Fer" under examination of the parliamentary committees

After the approval by the Council of Ministers in early August, the text of the Legislative Decree on administrative regimes for the production of renewable energy, known as "*Testo unico Fer*", is currently under the examination of the parliamentary committees from the Chamber of Deputies and the Senate, which are expected to express their opinions by September 25. The Testo Unico Fer aims to unify all provisions concerning the use of renewable energy into a single regulatory framework, overcoming the current fragmentation of regulations, and to simplify the authorization procedures related to renewable energy plants. The draft currently under the exam of the Chamber of Deputies contains several critical elements that are worthy being reviewed. Among others, the current wording of the regulation seems to complicate rather than simplify procedures that are already streamlined, such as the revamping and repowering of existing plants. It is necessary to wait for the final text from the Chamber in order to analyse the related provisions in detail.

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