

## **KEY REGULATORY UPDATES**

### ➤ **Decree on New Operating Rules of MACSE**

Following the approval by the European Commission in December 2023, the Ministry of Environment and Energy Security (MASE) adopted, with Ministerial Decree No. 346 of October 10, 2024, the operating rules for the Electricity Storage Capacity Procurement Mechanism (known as "MACSE" – "*Meccanismo di approvvigionamento di capacità di stoccaggio elettrico*"), submitted by Terna in its note dated August 2, 2024. The discipline attached to the decree, which forms an integral part thereof, concerns the forward procurement of new capacity through the first auction, scheduled for the first half of 2025, and is dedicated only to lithium-ion batteries and storage technologies other than lithium-ion batteries and hydro storage.

### ➤ **Environmental Decree: publication in the Official Gazette**

On October 17, 2024, the Decree-Law No. 153/2024 (known as "Environmental Decree") was published in the Official Gazette, containing provisions, among other things, on environmental protection and the streamlining of environmental assessment and authorization procedures. Among the main updates, Article 1 of the Environmental Decree stipulates that the MASE will issue a decree identifying project types that, based on certain criteria, will receive priority review in the Environmental Impact Assessment (EIA) (*Valutazione di Impatto Ambientale – VIA*) process. Additionally, the Environmental Decree provides that, for renewable energy projects, the EIA (VIA) application must be accompanied by a declaration certifying legitimate availability, by any title, of the surface area intended for the implementation of these projects.

The bill converting the decree has been assigned to the Senate to initiate the conversion process.

### ➤ **Suitable Areas: decree on the Digital Platform for Suitable Areas**

Following an agreement reached in the Unified Conference, on October 15, 2024, the MASE published Decree No. 320, establishing the rules and regulations, as required under Article 21 of Legislative Decree 199/2021, for the operation of the Digital Platform for Suitable Areas (so called "*PAI*"), implemented by the Energy Services Operator ("*GSE*"), aimed at ensuring support to Regions and Provinces in the process of identifying these areas and in the related monitoring activities. In relation to the decree on suitable areas, it should be noted that appeals against the same are pending before the Lazio Regional Administrative Court.

### ➤ **Energy Release: GSE Operational Rules approved**

The MASE has approved, with Directorate Decree No. 11 of October 30, 2024, the GSE's operating rules on the mechanism covered by the so-called Energy Release Decree (MASE Decree No. 268 of July 23, 2024), aimed at controlling the electricity price as a measure to support energy-intensive companies that implement new

electricity generation capacity from renewable sources. It is now expected that, within the next 15 days, the GSE will publish the notice of assignment, and that, within the following 60 days, energy-intensive end users may submit an expression of interest to participate in the allocation procedure.

➤ **Offshore facilities: approval of the maritime spatial management plans**

On October 7, 2024, the announcement on the approval of the maritime spatial management plans, one for each of the three maritime reference areas ("Tyrrhenian-Western Mediterranean" – "Adriatic" – "Ionian-Central Mediterranean") was published in the Official Gazette. The approval occurred through the Ministry of Infrastructures and Transports (MIT) Decree no. 237 of September 25, 2024, in accordance with Article 5, para. 5 of Legislative Decree No. 201 of October 17, 2016. This measure allows to determine the spatial and temporal distribution of activities and uses of marine waters and received favourable opinion from almost all members of the State-Regions Conference, with the sole exception of Sardinia Region, which complains about the failure to identify suitable areas for the installation of offshore wind farms in the maritime space management plans related to the "Tyrrhenian-Western Mediterranean" area and prospects potential appeals.

➤ **Biomethane: published a GSE response to a new FAQ**

In response to a new FAQ, on October 30, 2024, the GSE clarified that if a biomethane production facility has been authorized by 30 June 2024 and has obtained an extension of the deadline for works completion under Decree Law 21/2022, the final deadline for entry into operation from the admission to the ranking list under Ministerial Decree 15 September 2022 and the deadline for the notice of entry into operation for the access to incentives are extended by 30 months. However, it is specified that the extension under Decree Law 21/2022 "does not entail the extension of the deadline for entry into operation for access to the capital subsidy (30/06/2026) and the deadline for communication of entry into operation for access to the capital subsidy (30/07/2026). This response is aligned with two GSE responses to previous FAQs regarding, instead of the incentives under Ministerial Decree of 15 September 2022, the incentive mechanism for biomethane under Ministerial Decree of 2 March 2018, and the incentives for renewable energy sources (RES) under Ministerial Decree of 4 July 2019.

➤ **Formal notice to Italy for failure to fully transpose the RED III Directive**

On September 26, 2024, the EU Commission initiated infringement proceedings against 26 Member States (excluding Denmark) by sending a letter of formal notice, contesting the failure to fully transpose into national law the provisions of Directive (EU) 2023/2413 (known as RED III Directive). These provisions, which should have been implemented by July 1, 2024, specifically concern the simplification and acceleration of authorization procedures for renewable energy projects and the necessary infrastructure to integrate such energy into the electricity system.

## CASE LAW

### ➤ **Court of Cassation: 9% registration tax for easement deeds**

The tax section of the Court of Cassation, with judgment No. 23489/2024 dated September 2, 2024, has ruled again on the registration tax rate applicable to an easement deed, reiterating its previous stance and reaffirming that, regardless of whether the easement is impressed on agricultural land or land not intended for agricultural use, such deeds shall be subject to a 9% tax rate (pursuant to Article 1, paragraph 1, Table 1 attached to Presidential Decree No. 131/1986). The Court did not agree with the position of the Tax Agency, which argued that a 15% tax rate (pursuant to paragraph 3 of the same provision) should apply to deeds constituting easement rights on agricultural lands.

### ➤ **CdS: the MiC must compensate the operator for unlawful refusal**

The Council of State (CdS), with judgment No. 7559/2024, has ruled again on the issue of compensation for damages sought by operators whose authorization for renewable energy projects was unlawfully denied. In this particular case, compensation for lost expected income was denied, but damages were awarded for the less favourable market conditions the company faced in entering the energy market, compared to those it would have obtained if the Superintendence had not taken unlawful actions that effectively delayed the start of business operations (so called "differential damages").

### ➤ **MASE: interpretation of Art. 20, par. 8, lett. c-quater (suitable areas)**

Consulted by the Province of Alessandria regarding the correct interpretation of Article 20, paragraph 8, letter *c-quater*, of Legislative Decree 199/2021, the MASE declared that, pending the identification of suitable areas based on the criteria and methods established by the decrees referred to paragraph 1 of the same article, the following areas shall be deemed suitable: (i) the areas falling under the cases referred to in letters a), b), c), and *c-bis*), even if they are within the perimeter of assets subject to protection under the Code of Cultural Heritage and Landscape and if they fall within the protective buffer zone of assets subject to protection under Part II or Article 136 of the same Code; (ii) the areas referred to in letter *c-ter*), in the absence of constraints under Part II of the aforementioned Code, exclusively for ground-mounted photovoltaic systems and biogas production plants; (iii) all areas indicated in letter *c-quater*).

### ➤ **Constitutional Court: hearing set on Sardinia's Res moratorium**

It is necessary to wait until 11 December 2024 for the Constitutional Court's hearing on the merits of Law 5/2024 of Sardinia Region, better known as the Fer moratorium. Until then, this measure will remain in full force, as the Court has decided to reject the Government's request for a suspension, on the ground that the measure is not in clear violation of the Constitution nor it poses any danger to the achievement of energy transition goals set for 2030.

➤ **CdS: could wind farms become part of landscape heritage in the future?**

The Council of State, with judgment No. 7400/2024, dismissed the appellant's claim but expressed an interesting point of view regarding the coexistence of wind farms and landscape protection. Although the CdS did not agree with the conclusions of the environmental impact study submitted by the appellant, which argued that the presence of existing wind farms in the area had already transformed the perception of the landscape from "natural" to "wind-powered", the judges from Palazzo Spada clarified that, while this may not be the case in the present historical context, *«it cannot be ruled out that in the future wind turbines may be considered as distinctive elements of the landscape, worthy of enhancement or protection»*.

## **REGULATIONS IN THE PIPELINE**

➤ **Sardinia: approval of draft law on suitable areas for Res plants**

On September 19, 2024, the Regional Government of Sardinia approved the draft law for identifying suitable and unsuitable areas for the installation of renewable energy plants ("Res"), which is now under discussion ahead of its final approval. The law, which applies even to plants currently under authorization or already authorized (provided that they have not caused irreversible changes to the state of the land), has faced significant criticism from market operators, who consider the regulations overly restrictive for the development of new renewable energy plants, as well as for the revamping and repowering of the existing ones.

➤ **Fer X: published the opinions of the Unified Conference**

On October 17, 2024, the Unified Conference, pursuant to Articles 6 and 7 of Legislative Decree 199/2021, issued two favourable opinions on the two draft of the so called Fer X MASE decrees and containing, respectively, the "transitional support mechanism for renewable energy plants with generation costs close to market competitiveness, expiring on December 31, 2025" and the support mechanism "expiring on December 31, 2028".

➤ **Apulia: approval of draft law on suitable areas for Res plants**

On 23 October 2024, the Apulia Regional Government approved a bill to identify the so-called suitable areas for the development and installation of energy production plants from renewable sources. Some of the most notable points include the priority given to the use of existing built facilities, in relation to which an accelerated authorization process is envisaged, and the prohibition to install plants in agricultural areas under the current urban plans, save for some exceptions provided for by law. Therefore, a public consultation phase has been launched and will last until 16 November 2024, aimed at improving the draft approved by the Regional Government before the Regional Council can pronounce on it.

➤ **Renewable Energy Code (Testo Unico Fer): key updates**

With opinion No. 1216/2024, the Council of State issued a negative ruling on the draft legislative decree outlining the administrative regimes for renewable energy production (known as the "Testo Unico Fer"). The court noted that such draft was *«deficient, not only failing to align with specific provisions of European Union sour-*

ces, but also substantively counterproductive, as it employs a method of non-specific repeals, which is contrary to the goal of simplifying the national regulatory framework». Furthermore, the text of the draft had not been accompanied by the agreement to be obtained in the Unified Conference, which is particularly awaited by the parliamentary committees, who will issue their opinion only after it is reached.

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Gregorio Gitti, Managing Partner  
Email: [gregorio.gitti@grplex.com](mailto:gregorio.gitti@grplex.com)

Francesca Bogoni, Partner  
Email: [francesca.bogoni@grplex.com](mailto:francesca.bogoni@grplex.com)

Matteo Patrignani, Counsel  
Email: [matteo.patrignani@grplex.com](mailto:matteo.patrignani@grplex.com)

Mattia Peretti, Counsel  
Email: [mattia.peretti@grplex.com](mailto:mattia.peretti@grplex.com)