

KEY REGULATORY UPDATES

➤ **Transitional FER X into force as of February 28**

Following its publication on the website of the Ministry of the Environment and Energy Security (MASE) on February 27, the FER X Transitional Decree for 2025, already signed on December 30, 2024, has come into force on February 28.

From its entry into force, the MASE, with the support of Terna and the Energy Services Operator (*GSE – Gestore dei Servizi Energetici*), will have 60 days to define, through a decree, the timeline for the target capacity quota, as well as the methodology for calculating the minimum and maximum quota.

Within 90 days from the entry into force of the FER X Decree, the MASE must also approve, with another decree and upon the proposal of the GSE, the operational rules for accessing the tariff and, within the following 30 days, the GSE will issue the first public notice based on the auction schedule set by the operational rules.

➤ **MASE: approved the 2028 MACSE demand of 10 GWh**

With a ministerial decree dated February 28, 2025, the MASE approved the proposal for new electricity storage capacity demands for the delivery year 2028, transmitted by Terna with a note on December 6, 2024, for the purpose of forward procurement of new capacity through the first auction dedicated to lithium-ion batteries and to electric storage technologies other than lithium-ion batteries or electric storage. The auction may take place after 180 days following the publication of the demand, thus not before September 2025.

➤ **Friuli-Venezia Giulia Region: regional law on suitable areas RES approved**

After Sardinia, Friuli-Venezia Giulia becomes the second Italian Region to approve its own law on suitable areas, implementing the Ministerial Decree of June 21, 2024. Among others, the law positively approaches towards plants to be built in areas having low environmental value (including industrial sites, quarries, already built-up areas, etc...), which will benefit from simplified authorization procedures. The law also introduces some limits to the surface area of each municipality where renewable power plants can be built. In particular, in agricultural areas, photovoltaic systems with ground-mounted modules having a capacity of more than 12 MW will require a contiguous agricultural area vast at least 9 times the area of the power plant, located in the same municipality or in neighbouring municipalities, to be subjugated to the plant by means of a non-construction constraint, and the extension of a power plant added to those the plants of the same type authorized in the same areas shall not exceed 3% of the agricultural area of each municipality's territory. The law will enter into force definitively once it is published in the Official Bulletin of the Region.

➤ **DL "Emergenze/PNRR": final approval arrived from the Parliament**

On February 26, the Senate definitively approved the bill converting into law the so-called "DL Emergenze" (Decree Law No. 208/2024), containing organizational measures to address situations of particular emergency, as well as for the implementation of the National Recovery and Resilience Plan (PNRR). The decree now awaits publication in the Official Gazette.

Among the PNRR implementing measures, Article 8 confirms the appointment of the Energy Services Operator (*Gestore dei Servizi Energetici* – GSE) as the last-resort guarantor to manage the risk of counterparties' defaults under power purchase agreements (PPAs) negotiated within the system to be implemented and to be managed by the GME pursuant to Article 28 of Legislative Decree 199/2021. The market and risk containment criteria as well as the modalities of operation of this mechanism will be defined by a subsequent MASE decree.

➤ **Sicily: Technical-Agronomic Guidelines for agrivoltaic approved**

With the Decree of the General Manager No. 1545 of February 13, 2025, the Sicily Region approved the new Technical-Agronomic Guidelines (LTAs) for agrivoltaic plants falling under the PAUR (regional single authorization measure), the AU (single authorization) or the PAS (simplified authorization procedure), inspired by the similar LTAs of the MITE (now MASE) of June 2022.

Specifically, the Decree establishes the requirements for agrivoltaic plants and the relevant evaluation criteria, among which the so-called overall surface area of the agrivoltaic plant (in other words, the size of the plant) stands out.

CASE LAW

➤ **Sicily: appeal to the Constitutional Court against FER Consolidated Text**

With Resolution No. 27 of February 4, 2025, the Sicilian Regional Council authorized the President of the Region to file an appeal before the Constitutional Court against the FER Consolidated Text (Legislative Decree 190/2024). The profiles of constitutional illegitimacy would seem to involve, in particular, Article 9 and the accompanying Annex C. This rule, in fact, would exclude the Region from any competence for plants over 300MW, thus configuring a possible violation of the exclusive competence of the Region in relation to electrical plants, considered as pacifically falling under the area of industry, and of the principle of loyal collaboration in the case of offshore plants, given the Region's exclusive competence over fisheries.

➤ **Windfall Tax: referral to the Court of Justice of the European Union (CJEU)**

With Order No. 21/2025, the Constitutional Court decided to refer a preliminary question to the Court of Justice of the European Union (CJEU) regarding Law No. 197/2022, which addresses the windfall tax on energy operators. The Constitutional Court raised concerns about the legitimacy of the Italian legislator's decision to

extend the scope of the tax to entities not covered by Regulation (EU) 2022/1854, including producers, resellers, distributors and importers of electricity, petroleum products and methane and natural gas. Meanwhile, it is worthy to note that at the end of February the GSE issued invoices to owners of photovoltaic power plants under Conto Energia with a capacity of more than 20 kWp, thus not waiting for the ECJ's decision on the issue.

➤ **Council of State: ruling No. 867/2025**

With ruling No. 867/2025, the Council of State upheld the annulment of an EIA (Environmental Impact Assessment) rejection issued by the MASE, dismissing the appeal filed by the Ministry of Culture (MIC) and the MASE itself. The Council of State ruled that, within the national EIA procedure, the "horizontal silence-consent" mechanism under Article 17-bis Law No. 241/90 applies, pursuant to which the public administrations involved must provide their opinion within a period of 30 days, after which the opinion is taken as acquired. In the present case, this mechanism applies to the acquisition of the opinion of the MIC, whose consent to the project, in case of unnecessary lapse of time or late opinion, is deemed acquired.

➤ **Reasoned Opinion sent to Italy for failure to transpose RED III Directive**

Following the letter of formal notice sent in the last September, on February 12 the European Commission issued a reasoned opinion to Italy for failing to transpose into national law the provisions on accelerating authorization procedures for renewable energy projects, as required by Directive (EU) 2023/2413 (Red III). This marks the second phase of the EU infringement procedure.

Italy now has two months to respond and implement the necessary measures. In the event of failure, the Commission may decide to refer the case to the Court of Justice of the European Union.

➤ **TAR Puglia: ruling No. 212/2025**

With ruling No. 212 of February 13, 2025, the Puglia Regional Administrative Court (TAR) upheld the appeal against a refusal by a municipality to authorize the construction of a photovoltaic plant. Specifically, the Court confirmed the principle that, in areas legally qualified as "suitable" and in the absence of specific constraints, the construction of RES plants cannot be denied on the basis of alleged landscape incompatibilities. In such cases, conflicting factors, such as the landscape considerations, are recessive to the positive suitability assessment established by law, especially if they are, as in the case at hand, non-binding forecasts with a merely guiding function. On the basis of these assumptions, the Administration did not adequately consider the legal suitability of the area, failing to comply with the obligation of analytical motivation and balancing of interests placed on it in the conferential form under Article 14-bis of Law No. 241/1990.

➤ **TAR Basilicata – Potenza: ruling No. 95/2025**

With ruling No. 95/2025, the Basilicata Regional Administrative Tribunal (TAR) upheld the appeal brought by a company operating in the renewable energy sector

against the measure by which the Basilicata Region had annulled the expropriation constraint on some plots of land. The Regional Administrative Court, recalling Article 4 of Presidential Decree No. 327/2001, ruled that the existence of civic uses on an area designated for the installation of a plant does not automatically preclude expropriation. This provision, in fact, does not establish an absolute prohibition to subject to expropriation properties encumbered by civic uses, which in fact is allowed, pursuant to paragraph 1-bis, in the event that “the public work or work of public utility is compatible with the exercise of civic use.”

➤ **TAR Lazio: ruling No. 3929/2025**

Recalling what had already been expressed in its previous ruling No. 11289/2024, the Lazio Regional Administrative Court (TAR) recognized the jurisdiction of the ordinary courts for disputes between operators and Terna S.p.A., in its capacity as grid operator. According to the TAR, in fact, the grid operator acts as a private entity, as it merely applies technical prescriptions defined in detail by public authorities.

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Gregorio Gitti, Managing Partner
Email: gregorio.gitti@grplex.com

Francesca Bogoni, Partner
Email: francesca.bogoni@grplex.com

Matteo Patrignani, Counsel
Email: matteo.patrignani@grplex.com

Mattia Peretti, Counsel
Email: mattia.peretti@grplex.com