

## **KEY REGULATORY UPDATES**

### ➤ **Terna: First MACSE auction scheduled for September 30, 2025**

Following the approval by the Ministry of Environment and Energy Security (MASE) of Ministerial Decree No. 53 dated February 27, 2025 – which ratified the proposal for new electricity storage capacity demands for the delivery year 2028 – Terna announced on March 7 that the 2028 auction for forward procurement of new storage capacity related to lithium-ion batteries and electrical storage technologies other than lithium-ion batteries and hydroelectric storage will take place on September 30, 2025 (from 10.00).

All documentation regarding the MACSE regulation and related annexes has been made available on Terna's website, along with detailed deadlines to be met in order to participate in the aforementioned auction.

In this regard, it is noted that applications for admission may be submitted from May 13 to June 3, 2025 (by 4:00 PM).

### ➤ **MACSE: Arera proposes 32.000€/MWh/year maximum premium**

With the consultation document No. 168/2025/R/EEL, Arera outlined its guidelines on the profiles of its competence regarding the definition of the maximum premium that will be applied in the first auction of the system for the forward procurement of electricity storage capacity dedicated to batteries, proposing that it be equal to €32,000/MWh/year.

Interested parties may submit their comments and proposals in writing to Arera no later than May 16, 2025.

### ➤ **Transitional FER-X: first procedure quotas published**

On 1 April, the Ministry of the Environment and Energy Security (MASE) published Directorial Decree No. 12, defining the quotas (minimum, target and maximum) for the first FER-X procedure, the date of which, however, has not yet been released. The overall maximum quota was set at 11.52GW (of which 8GW for solar and 2.5GW for wind power), as opposed to the 14.65GW envisaged by the MASE decree of December 30, 2024. The decree stipulates that, after the outcome of the first procedure, the MASE will consider opening a further call for tenders.

Before launching the first procedure and within 90 days of the entry into force of the FER-X Decree, published on 28 February, the GSE will have to publish the relevant operating rules.

### ➤ **GSE extra-profits: extension of the exemption request deadline**

On March 31, the Energy Services Manager (*Gestore dei Servizi Energetici* – GSE) announced the reopening of the deadline for requesting an exemption from the

billing related to the return of profits, pursuant to the rule on extra-profits (Article 15-*bis*, Decree-Law No. 4/2022).

The decision is part of the complex ongoing litigation against the so-called extra-profits regulation, the essential elements of which can be summarised as follows:

- as part of pilot lawsuits filed by industry operators against Article 15-*bis* and its subsequent implementing acts, the Lombardy Regional Administrative Court had referred the preliminary question of the compatibility of Article 15-*bis* with European Union Law to the Court of Justice of the European Union (CJEU) (Order No. 1744/2023 of 7 July 2023);
- pending the judgement, the GSE suspended the regulation of the financial amounts owed by operators under Article 15-*bis*, interrupting billing;
- in February 2025, the Advocate General filed its conclusions in the case pending before the CJEU, pointing out that the national measure would not in itself be contrary to European Union Law, it being for the national court to verify whether – in concrete terms – the determination of the reference price complies with the principles established by EU Regulation 2022/1854, taking into account the specific features of the internal market.

Following the Advocate General's conclusions, the GSE reactivated billing, without waiting for the CJEU's ruling, ordering the operators to pay the amounts due under Article 15-*bis* and reserving the right to offset those amounts against the amounts due to the producers (also by way of incentive) in the event of non-compliance. This led to opposition from operators, including through legal proceedings (with requests for precautionary protection), and the GSE:

- communicated that no enforcement actions for forced recovery or offsetting will be taken until the CJEU's ruling is published;
- reopened the deadline for exemption requests, acknowledging that some operators and their respective trade associations had reported not submitting the exemption declaration on time.

For the operators and their respective trade associations who submitted the relevant notification via the GSE Customer Service Portal by the new deadline, the GSE will allow the exemption declaration to be submitted from May 5 to May 30, 2025.

#### ➤ **ARERA: resolution published on non-production of energy from RES**

With Resolution no. 128/2025/R/EFR of March 27, 2025, ARERA issued the first provisions regarding the failure to produce electricity for production plants powered by non-programmable renewable sources, resulting from extraordinary downward modulations operated by Terna (previously known as dispatching orders).

The regulatory intervention responds to the need: (i) to implement the transitional

FER-X Decree, which provided for the participation of renewables in the "*Balancing and Redispatching Market*"; (ii) of the high possibility (pointed out by Terna in its communication of February 28, 2025) that as of next spring, in conditions of high production from non-programmable renewable sources and low load, it will be necessary to use the procedures for the dispatching of production from non-programmable sources.

From a substantive standpoint, the Resolution extended to all non-programmable renewable sources the rules already set forth in Resolution ARG/elt 5/10 (concerning the non-productibility of wind power plants).

### ➤ **Abruzzo: Law on Suitable RES Areas approved**

Abruzzo is the third Italian Region, after Sardinia and Friuli-Venezia Giulia, to approve its own law on suitable areas, in force since March 27, implementing Article 20, paragraph 4 of Legislative Decree 199/2021 and the Ministerial Decree of 21 June 2024.

With this measure, the Region has identified in Article 2 a list of areas and surfaces suitable for the installation of RES plants, including areas of lesser environmental value and sites where plants of the same source are already installed and where modification works, including substantial ones, are carried out for repowering, refurbishment or full reconstruction, possibly combined with storage systems, provided that the occupied area does not increase by more than 20% (without prejudice to the Article 20, paragraph 1-*bis* of Legislative Decree 199/2021 for ground-mounted photovoltaic systems, for which such interventions may not entail an increase in the occupied area). In addition, areas inside industrial plants and factories, as well as agricultural areas (excluding those referred to in Article 3, paragraph 2) that are no more than 500 metres from industrial plants and factories are considered suitable for photovoltaic plants with ground-mounted modules and for biomethane plants, in the absence of constraints under part two of the Cultural Heritage and Landscape Code (Legislative Decree 42/2004).

Article 3, on the other hand, identifies non-suitable areas, including those within the Natura 2000 Network, areas defined as "forest" (pursuant to Regional Law 3/2014), and agricultural areas with permanent crops and that have benefited from public subsidies.

### ➤ **DL Bollette: Conversion Law published in the Official Gazette**

Law No. 60 of April 24, 2025, converting the so-called DL Bollette (Decree Law No. 19/2025), was published in the Official Gazette on 29 April 2025 and came into force the following day. Among the main measures, in addition to those aimed at households and businesses, the measure amended the regulations for the remuneration of the production of electricity from RES by untying it from the prices on the electricity market (Article 3-*ter*) and included some specific amendments to Legislative Decree No. 190/2024 (RES Consolidated Text), including the provision for greater involvement of the Regions for the construction of offshore wind farms, an issue that had been at the centre of the appeal to the Constitutional Court of the RES Consolidated Text by the Region of Sicily.

➤ **Sardinia: resolution to appeal MASE's EIAs before Constitutional Court**

On April 11, 2025, the Autonomous Region of Sardinia resolved to raise a conflict of attribution before the Constitutional Court against the State, in relation to three Environmental Impact Assessment (EIA) authorisations issued by the MASE. According to the Region, the MASE had issued a positive assessment of the projects without verifying whether or not they fell within an area considered suitable under Regional Law no. 20 of 2024, pre-emptively excluding the applicability of that legislation. In this way, the conduct of the MASE would be in breach of the legislative powers attributed to the Region by the Special Statute of Sardinia.

➤ **Re-opening of the auction for PNRR incentives for agri-voltaics plants**

On 27 March, the MASE published a decree reopening the terms for participating in the auction to obtain PNRR incentives for the construction of innovative agri-voltaic plants. The new deadlines run from April 1 to June 30, 2025.

➤ **Sicily Region: new agri-voltaic guidelines published**

Following the revocation of the previous agri-voltaic guidelines due to a significant deviation from the content of the ministerial guidelines, the Region of Sicily has approved the new "Technical-Agronomic Guidelines" (LTA) for agri-voltaic systems to be built in the Region. The main purpose is "the integration of the economic systems of agriculture and PV into a single sustainable economic system based on clean energy and the revitalisation of local agriculture".

➤ **Veneto: New Regional Energy Plan published**

The New Regional Energy Plan (NPER), approved by the Regional Council on March 18, 2025, was published in the Official Bulletin of the Veneto Region No. 45 of April 8, 2025. This strategic document, updated and aligned with the national legislation approved after its adoption by the Regional Government in April 2024, defines the guidelines and coordination for planning on the promotion of renewable energies and energy saving.

➤ **Surface right on agricultural land: Revenue Agency confirms 9% rate**

With resolution No. 23/E published on April 3, 2025, the Revenue Agency confirmed the application of registration tax at the rate of 9% on deeds establishing surface rights on agricultural land, instead of the 15% rate, thus aligning itself with the consolidated case law of the Supreme Court, which last addressed this matter in Order No. 27293 of 2024.

➤ **Offshore: MASE vademecum approved**

On March 11, the MASE approved the "*Vademecum for submitting single authorisation applications for offshore wind energy plants powered by renewable sources*", which contains the guidelines for starting authorisation procedures for offshore wind energy plants. In particular, the document includes a list of the documentation to be attached to the application to start proceedings and guidelines

for compiling said documentation.

➤ **DL Emergenze/PNRR: Conversion Law published in Official Gazette**

Law No. 20 of February 28, 2025, converting the so-called DL Emergenze/PNRR (Decree Law No. 208/2024), was published in the Official Gazette on March 1 and came into force the following day. Among the implementing measures of the PNRR, Article 8 confirmed the assignment to the Energy Services Manager (*Gestore dei Servizi Energetici* – GSE) of the role of guarantor of last resort for the management of counterparty default risks in long-term power purchase agreements (PPAs) for renewable energy, negotiated on the upcoming platform managed by the Energy Market Operator (*Gestore dei Mercati Energetici* – GME) pursuant to Article 28 of Legislative Decree 199/2021. The market and risk containment criteria, as well as the operating procedures of this mechanism, will be defined by a subsequent decree of the GME.

## **CASE LAW**

➤ **Constitutional Court: Sardinia's moratorium illegitimate**

With sentence No. 28/2025, the Constitutional Court ruled on the Sardinia Region's law no. 5 of 2024 (the so-called Fer moratorium), declaring the constitutional illegitimacy of Article 3, which introduced a ban on the construction of plants fuelled by renewable sources for 18 months pending the approval of the regional law identifying suitable areas (later enacted with Regional Law no. 20/2024). The Court held that the contested act, although repealed by the regional law on suitable areas, violated the principles introduced by Article 20 of Legislative Decree 199/2021, such as the achievement of the decarbonisation objectives by 2030 (paragraph 5), the prohibition on introducing moratoria (paragraph 6) and the initiation of facilitated authorisation procedures for the installation of RES plants in areas temporarily identified as suitable (paragraph 8).

➤ **TAR Lazio: sentence No. 4994/2025**

With ruling no. 4994/2025, the Regional Administrative Court (TAR) of Lazio upheld an appeal filed against a denial issued at the end of the simplified authorisation procedure (PAS) for the construction of a photovoltaic plant. On the one hand, the Regional Administrative Court confirmed that the notion of "industrial plant" pursuant to Article 268, paragraph 1, letter h, of Legislative Decree 152/2006 (Environmental Code) should be interpreted not in a restrictive sense, and therefore as an industrial activity functional to the transformation of materials into new products, but also as an "activity aimed at transforming potential hydrostatic energy into kinetic energy and, therefore, into electrical energy". On the other hand, it ruled that, for the purposes of determining the suitability of an area for the construction of a RES plant pursuant to Article 20, paragraph 8, letter c-ter, point 2, an electricity transformation plant must be considered an industrial plant and/or establishment.

➤ **Council of State: sentence No. 2252/2025**

With sentence No. 2252/2025, the Council of State (CdS) annulled the measures by the GSE that denied access to incentives for two wind power plants of the same owner, located in different municipalities and authorised through separate and autonomous procedures, deeming a hypothesis of artificial splitting to be integrated pursuant to Article 5, paragraph 2, letter b) of the Ministerial Decree of June 23, 2016, due to the uniqueness of their connection point. The CdS specified that from the analysis of Article 29 of the same decree, it emerges unequivocally that the presence of a single energy collection node for plants linked to the same subject may constitute an indicator of an artificial splitting and that this circumstance cannot, per se and by virtue of an absolute presumption, be considered sufficient to integrate such abusive case.

➤ **TAR Lazio: sentence No. 6969/2025**

With ruling no. 6969/2025, the Regional Administrative Court (TAR) of Lazio upheld the appeal filed by a company against the inadmissibility of the Regional Unified Authorization Act (PAUR) application for an 8.369 MW agri-voltaic project in the Municipality of Acquapendente, in the Province of Viterbo.

On this occasion, the Court annulled the Guidelines containing the "Guidelines and transitional criteria for the development of renewable energy sources" (Resolution no. 171/2023), which introduced, on the one hand, priority criteria for the start of proceedings for projects located in suitable areas pursuant to Article 20, Legislative Decree No. 199/2021 or pertaining to the development of RES in the implementation of the PNRR, the National Complementary Plan and the Unitary Planning 21-27, and, on the other hand, a criterion of proportionality and subsidiarity between Provinces, such as to allow, in each individual Province, the development of RES up to a maximum of 50% of the total authorised amount expressed in MWp of the entire Region. Specifically, the Court ruled that the latter criterion would in fact introduce, in the Province of Viterbo (which hosts approximately 78% of all RES plants installed in the Region), a moratorium for non-priority proceedings in areas other than suitable areas, and, for a significant portion of the regional territory, a preliminary prohibition on the implementation of RES projects, thereby conflicting with the provisions of paragraphs 6 and 7 of Legislative Decree 199/2021 and with the guidelines set forth in Ministerial Decree 10.9.2010, respectively.

**DISCLAIMER**

This *Client Alert* is solely intended to provide general information. Consequently, it does not constitute legal advice and cannot be considered a substitute for specific legal consultation.

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