

## THE NEW INCENTIVE SCHEME FOR RENEWABLES OTHER THAN PV AND THE DISCIPLINE PERTAINING TO PLANTS – ALSO PV - CONTIGUITY AND MODIFICATIONS.

The Ministerial Decree dated 23 June 2016, concerning the regulation of incentives for renewable energy plants (other than photovoltaic plants) ("**New FER Decree**"), was published in the Official Gazette on 29 June 2016 and entered into force on 30 June 2016.

The New FER Decree maintains the same typology of incentive mechanisms provided for by the Ministerial Decree of 6 July 2012 ("**FER 2012 Decree**") aimed at encouraging plants powered by renewable energy (other than photovoltaic), and also introduces some specifications with reference to:

1. the so called "*artato frazionamento*" (fractioning) of plants in order to get higher incentives - applicable to all types of plants (including photovoltaic ones);
2. procedure to be followed in the case of maintenance work or modernization of installations (including photovoltaic installations);
3. participation in auction procedures for incentives also for plants located in other Member States of the European Union or in other countries that have signed reciprocal agreements, and which export their production of electricity from renewable sources in Italy.

Similarly to the FER 2012 Decree, three mechanisms are envisaged for obtaining the incentives managed by Gestore Servizi Energetici S.p.A. ("**GSE**"):

1. direct access, set up for small-scale installations and for the construction of small modernization / renovation works;
2. registration in the register kept by the GSE for plants with a nominal power of less than 5MW ("**GSE Register**");
3. participation in an auction procedure for plants with a rated power of over 5MW ("**GSE Auction**").

Two different types of rates are provided:

1. the all-inclusive incentive tariff ("**TO**") which includes both the value of the incentive and the price of the energy produced, in this case the production is entirely withdrawn by the GSE; is

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2. the incentive tariff ("**TI**").

The amount of incentives that can be attributed to each plant are identified in the two annexes of the New FER Decree. The incentives are guaranteed to the plants for the duration of their useful life (*vita utile*), i.e. a period of time, expressed in years, between 15 (fifteen) and 30 (thirty), depending on the type of renewable energy used and the power plant.

The right to receive incentives under the New FER Decree is not compatible with the energy withdrawal schemes offered by the GSE (*scambio sul posto* - on-site exchange and *ritiro dedicato* - dedicated withdrawal).

### **Application**

The New FER Decree, and the relative right to access incentives, expires 30 (thirty) days after:

1. from 1 December 2016 (1 December 2017 only for installations that have direct access to incentives); or
2. from the date on which the average annual cumulative indicative cost of the incentives reaches Euro 5.8 billion.

### **The new criterion for calculating the cumulative indicative cost of incentives**

The new system for calculating the cumulative cost of incentives deserves particular attention. The new regulation defines the average annual indicative cost, which is used to verify the achievement of the maximum expenditure threshold mentioned above, as the average, for the next three years, of the monthly expenditure values calculated by the GSE. To this end, it is envisaged that for the calculation of the price of the reference energy the previous year's one or, as the case may be, the current one will not be applied, but an average of the prices in the previous 24 months and 12 months following (as resulting from the results of the forward market published on the GME website).

This new calculation system allows - according to the analysts' evaluations - to significantly postpone the estimated date for reaching the limit of Euro 5.8 million and therefore to dispel the concerns of investors and financiers regarding an imminent stop of incentives.

### **Application of 2012 FER Decree**

The 2012 FER Decree continues to apply to plants:

1. usefully ranked in the register of the GSE Register or that have obtained the right to receive the incentives following a GSE auction procedure;
2. that directly access to the incentive mechanisms introduced with the 2012 FER Decree, provided that they entered into operation within 30 (thirty) days prior to the entry into force of the New FER Decree and that the relevant request for obtaining the incentives have been submitted within 30 (thirty) days of commencement of operation (*entrata in esercizio*);

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The incentives and bonuses (*premi*) provided for by the 2012 FER Decree continue to apply to the plants:

1. usefully ranked in the GSE Register or that have obtained the right to receive the incentives following a GSE Auction pursuant to the 2012 FER Decree;
2. that directly access the incentive mechanisms provided for by the New FER Decree and which enter into operation within one year of the entry into force of the New FER Decree (i.e. by 29 June 2017);
3. registered in a useful position in the GSE Register under the New FER Decree and which enter into service within one year of the entry into force of the New FER Decree (i.e. by 29 June 2017).

### **Access to incentives**

The New FER Decree provides that the incentives are granted only until a specific contingent of power is achieved. The contingent varies depending on the type of renewable source and category of access to incentives.

According to the New FER Decree, in order to benefit from the, the owner of the plant must, within 30 (thirty) days from the entry into service (*entrata in esercizio*) of the plant, upload to the GSE website the incentive request of all the documentation listed in Annex 3 of the New FER Decree.

Within 90 (ninety) days from the request, the GSE will evaluate the submitted documentation and stipulate a special "Agreement" with the owner of the plant in order to regulate the payment of the incentives.

### **GSE Registers**

Under the New FER Decree, GSE is required to publish the call for applications to be included in the GSE Register by 20 August 2016.

The announcement is published within 10 (ten) days prior to the submission of applications for access, the interested parties will have 60 (sixty) days to present such an application. The GSE will analyze the submitted applications and then publish on its website the ranking of the plants that were suitable for obtaining the incentives.

Within 15 (fifteen) days of the entry into force of the New FER Decree, the GSE must issue specific application procedures, specifying the procedures that must be followed in order to be included in the GSE Register.

The plants usefully ranked in the GSE Register must commence operation within specific terms, to start from the date of publication of the GSE Register on the GSE website and varying on the basis of the applicable technology (by way of example, for onshore wind a 19 months term is set forth).

Failure to commence operation within said deadline will result in an incentive reduction of 0.5% for each month of delay, for a maximum period of 6 (six) months. Subsequently, at the end of the aforesaid 6 (six) additional months, the plant will no longer be eligible to receive the incentives and will be canceled from the GSE Register.

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## GSE Auctions

Under the New FER decree, the GSE is required to publish the call for tenders for the GSE auction by 20 August 2016.

The notice is published 10 (ten) days prior to the submission period, the interested parties will have 90 (ninety) days to present their offers.

The New FER Decree sets the specific financial requirements to take part in the GSE Auction. In particular, bidders must submit to the GSE:

1. the declaration issued by a bank that certifies the financial and economic capacity of the participant in relation to the specific project for which incentives are requested, or alternatively the commitment of the bank to finance the project; or
2. minimum capitalization levels, defined according to the size of the investment.

Tenderers must present a guarantee of their offer, a provisional security bond, amounting to 5% of the investment costs envisaged for the construction of the plant for which the offer is made (this amount is predetermined in the Annex 3 of the New FER Decree), which must be issued by a guarantee bank. In the event that the incentives are awarded, this security must be replaced by a final deposit issued by a bank, amounting to 10% of the investment costs envisaged for the construction of the plant for which the offer is made (this amount is predetermined in Annex 3 of the New FER Decree).

The downward auction takes place through the presentation of offers for the percentage reduction of the basic incentive set at the auction base and must be between 2% and 40%. In the event that the same percentage reduction is offered by two or more bidders, the following priority criteria apply:

1. have a legality rating (*rating di legalit *) of at least two stars;
2. anteriority of the authorization title;
3. anteriority of the concession title.

Within 15 (fifteen) days of the entry into force of the New FER Decree, the GSE will publish specific technical and application rules that will govern the procedures to be followed to participate in the GSE Auction procedures.

The plants winners of the GSE Auction will be entitled to receive incentives only if they enter into service within the following terms, starting from the date on which the results of the GSE Auction procedure are published: onshore wind - 31 months, hydroelectric - 43 months, biomasses - 52 months, geothermal 51 - months; thermodynamic solar 39 months.

Once these terms have elapsed, the plants will no longer have the right to have the incentives recognized.

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## Project transfers

Plants admitted to the incentives under the GSE Register or the GSE Tender procedures can be transferred only after (i) entry into operation and (ii) execution of the contract (*convenzione*) regulating the incentive granting between GSE and the plant responsible entity (*soggetto responsabile*).

## New provisions for hydroelectric plants

The New FER Decree envisages that, for the admission to incentive, hydroelectric plants that produce on the basis of a concession deriving from a water body (*corpo idrico*), must attach a certificate issued by the competent authority that ascertains or confirms that the provision of concession does not prejudice the maintenance or achievement of the quality objectives defined for the water body concerned as provided for in Article 96 paragraph 3 of Legislative Decree 152/2006 (Environmental Code).

## Plant splitting, the so called *Artato frazionamento* (applicable to all technologies including PV)

The New FER Decree provides that, in the presence of two or more plants:

1. powered by the same type of renewable source,
2. owned by the same legal entity (or which can be attributed to the same "group" or to the same final owner), and
3. built on the same cadastral parcel or on contiguous particles, these plants must be considered as a single plant having a nominal capacity equal to the sum of their respective nominal powers.

In assessing the above, as well as during the inspections of the GSE pursuant to Ministerial Decree of 31 January 2014, the GSE checks whether the plant has been subject to fractioning (*artato frazionamento*) in order to obtain higher incentives. In particular, the GSE can evaluate, as an indicator of this artificial division of the plants, if the latter are connected to the same electrical substation (MT / AT - medium or high voltage stations) or to the same medium voltage MV cabin or line.

If the GSE were to identify cases of plants splitting, it is required to consider the plants as a single plant (adding their total nominal power) and proceed with the assessment of compliance with the procedures for obtaining the incentives. If the rules applicable for the purposes of admission to the incentive have been respected by these plants, the GSE will recalculate the tariff applicable to these plants (now considered as a single plant).

If the artificial splitting had determined the violation of the rules applicable for obtaining incentives (for example in cases where the total power of the plants were to exceed the thresholds to obtain incentives through direct access or registration in the GSE Register and therefore the plant should have resorted to the auction procedure GSE), the GSE provides for the forfeiture of the incentives and asks for reimbursement of all sums already paid. In any case, the remaining profiles of criminal and administrative relevance remain in place.

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## **Maintenance and revamping works (applicable to all technologies including PV)**

The New FER Decree provides at article 30 that, within ninety days from its entry into force, the GSE publishes the procedure that the owners of the plants are required to follow in the event of maintenance and modernization work that must be carried out on the incentive facilities. In any case, only maintenance interventions that do not lead to increases in rated power of more than 1% are permitted. Only for plants with a nominal capacity of less than 20 kW this increase is allowed up to 5%. In case of definitive replacements of system components, only new or regenerated components may be used and

an obligation to notify the GSE within 60 (sixty) days from the replacement of main components of the plants. No type of notification is required for plants with nominal power up to 3 kW operating under the so-called *scambio sul posto* (On-site exchange) withdrawal mechanism with the GSE.

## **Plants not located in Italy**

Renewable energy plants located in other EU Member States or in other countries that have signed reciprocal agreements with Italy and which provide for the export of their production to Italy, can participate in the GSE Auction. There is a maximum power incentive threshold that is provided by applying a specific formula detailed in Article 31 of the New FER Decree.

### **DISCLAIMER**

La presente Newsletter ha il solo scopo di fornire informazioni di carattere generale. Di conseguenza, non costituisce un parere legale né può in alcun modo considerarsi come sostitutivo di una consulenza legale specifica.

The only purpose of this Newsletter is to provide general information. It is not a legal opinion nor should it be relied upon as a substitute for legal advice

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