



The new provisions provided by the energy decree, as converted into law

EFFECTIVE AS OF 8 FEBRUARY 2024

This note outlines the main regulatory provisions regarding renewable energy introduced by the Decree-Law no. 181/9 of December 2023, converted with amendments into Law 2 February 2024 no. 11 (Energy Decree). It contains “Urgent provisions for the energy security of the country, the promotion of renewable energy sources, support for enterprises with high energy consumption, and reconstruction in areas affected by exceptional flood events occurring since 1 May 2023.” The Energy Decree was published in the Official Gazette no. 31 of 7 February 2024 and came into force on 8 February 2024.

Below we look at the new energy regulatory provisions provided for by the Energy Decree (the order of discussion follows the articles of the Energy Decree):

(i) Investments for self-production of renewable energy in sectors with high electricity consumption (Article 1 of the Energy Decree)

- Preference for photovoltaic or wind plants aimed at satisfying the energy needs of entities listed in the register including the high electricity-consuming companies managed by the Fund for Energy and Environmental Services (CSEA), in case of multiple competing requests for the concession of the same areas for the realization of plants powered by renewable energy.
- Within 60 days, the Minister of Environment and Energy Security (MASE) will define a mechanism for developing new capacity for energy from renewable plants managed by the companies listed in the CSEA register based on the following criteria:
 - the new capacity must be realized by the companies listed in the abovementioned CSEA register, either individually or through aggregation, or by third parties with whom the same companies indirectly sign forward procurement contracts (*contratti di approvigionamento a termine*) for renewable energy, for a total power equal to at least double that subject to restitution. If the new capacity is realized by third parties, the companies listed in the CSEA register must ensure they undertake to return the renewable energy to the Energy Services Manager – GSE S.p.A. (GSE);

- the new capacity must be realized by means of new photovoltaic, wind, and hydroelectric plants with a minimum power of 200 kW each, also subject to repowering or reconstruction allowing an increase in power of at least 200 kW, which must enter into operation within 40 months from the date of conclusion of the contract.
- Pending the entry into operation of new capacity system, companies listed in the CSEA register can apply to the GSE for the anticipation – for 36 months – of a portion of the quantities of renewable electricity and the relative guarantees of origin, by concluding two-way contracts for difference (*contratti per differenza a due vie*).

(ii) Natural gas supplies (Article 2 of Energy Decree)

- Authorization in favour of the GSE, based on the directives from MASE, to initiate procedures for long-term supply of national natural gas production at reasonable prices through an invitation to concessionaries of existing concessions whose natural gas cultivation plants are located in areas qualified as compatible pursuant to the “Plan for the sustainable energy transition of eligible areas.”
- Entities adhering to these procedures for long-term natural gas supply have the right to use existing concessions or new concessions in the stretch of sea between the 45th parallel North and the parallel distant from the latter 40 km to the south and at least 9 nautical miles from the coastline *or* in-sea areas between 9 and 12 nautical miles from the coastline along the entire national coastal perimeter *or* in-sea areas between 9 and 12 nautical miles from the outer perimeter of protected marine and coastal areas, provided that the relevant gas deposits have a mineral potential of gas for a certain reserve quantity exceeding a threshold of 500 million m³.

(iii) Measures regarding geothermal concessions (Article 3 of the Energy Decree)

- Cultivating geothermal resources in thermal areas is also allowed, provided that the relevant applications are accompanied by the data resulting from hydrogeological-numerical modelling, “demonstrating the absence of any piezometric and thermal interference between the territories of the thermal area concerned and the plumes formed by the extraction and return wells of geothermal waters or any alteration of the chemistry of the waters in the subsoil.”
- Regions must ask the outgoing concessionaires to submit a multi-year investment plan in the territories, which must be approved by the Authority for the purpose of remodulating the concession. Tender procedures must be launched within two years before the expiration of the concessions force (considering that, pursuant to the Article of LD. 22/2010, the expiration date of concessions for the cultivation of geothermal resource will be extended for the time strictly necessary to complete the reorganisation of industry regulations and, in any case, no later than 31 December 2026).
- The deadline for commissioning geothermal power plants accessing incentives under the Ministerial Decree 23 June 2016 has been extended until 31 December 2027.

(iv) Incentives to regions to host plants powered by renewable energy (Article 4 of the Energy Decree)

- Repeal of the annual contribution in favour of the GSE to be paid by the holders of plants powered by renewable energy with a capacity exceeding 20 kW for the first three years from the plants starting operations.
- The fund in the MASE budget to be distributed among the Regions for adopting measures for decarbonization, promoting sustainable territorial development, accelerating and digitizing the authorization processes for plants and network infrastructures will be funded by a share of the proceeds deriving from carbon dioxide emission allowance auctions provided for by the Article 23 of LD. no. 47/2020, within the limit of EUR200 million per year for each year from 2024 to 2032.

(v) Simplifying environmental impact assessment procedures (Article 4-bis 2 of the Energy Decree)

- All interventions involving variations (including substantial variations) for refurbishment, repowering or complete reconstruction of wind plants or photovoltaic plants are subject to Environmental Impact Assessment screening (independently of the capacity of the plant and except for the exclusions by law).

(vi) Further provisions for promoting plants powered by renewable energy (Article 4-ter 3 of the Energy Decree)

A. PHOTOVOLTAIC PLANTS ON AGRICULTURAL LAND ARE AGAIN INCENTIVIZED:

- Photovoltaic plants on agricultural areas can access the new incentive mechanisms provided for by the LD. 199/2021. For these plants, the prohibition to access the incentives provided for by the Article 65 of DL. 1/2012 is limited to the incentives systems pursuant to the ministerial decrees implementing the LD. 28/2011.

B. PRIORITY FOR REFURBISHMENT INTERVENTIONS ON EXISTING PHOTOVOLTAIC PLANTS:

- Access to the incentives is facilitated, on a priority basis, for operators which carry on interventions on existing photovoltaic plants built in agricultural areas that involve the construction of new plants or new sections of the plant, on the same area and within the same agricultural surface area, implying an increase in total power.

C. GRADUAL EXIT FROM NET METERING SERVICE:

- ARERA will regulate – upon proposal from GSE – the modalities for the gradual exit from the net metering service of plants, with priority given to those with higher power and earlier commissioning dates.

D. RID TARIFFS CHANGE TO SEMI-ANNUAL PAYMENTS WITH DIFFERENTIATED TARIFFS:

- Tariffs related to dedicated energy withdrawal will be disbursed semi-annually and they will be determined based on average market prices defined by ARERA, upon proposal from GSE, including multi-year periods, differentiated by technology, power source, and commissioning date to account for different cost levels and production profiles of the plants.

E. CLARIFICATIONS ON AREAS SUBJECT TO REMEDIATION QUALIFIED AS "SUITABLE" PURSUANT TO THE ARTICLE 20, PARA. 8 OF THE LD. 199/2021:

- For areas subject to remediation identified under Title V – Part Four of the LD. no. 152/2006 qualified as "suitable" in accordance with the Article 20, para. 8 of the LD. no. 199/2021, where plants powered by renewable energy are located, the threshold concentration values of contamination as per column B of table 1 of the Annex to Title V – Part Four of the LD. no. 152/2006 will apply.

(vii) Extension of the terms for the commencement and the end of works provided for by the authorization titles (Article 4-quater of the Energy Decree)

- Terms for starting and completing works for the realization of plants powered by renewable energy provided for by authorization titles issued or formed up to 30 June 2024 (instead of 31 December 2023) are extended by 30 months (instead of the previous extension of two years).

(viii) Thermal energy production from renewable sources in the central Italy area affected by the 2016 earthquakes (Article 4-quater of the Energy Decree)

- An important simplification to assess the incentive systems for small-scale interventions to increase energy efficiency has been introduced: the Special Offices for Reconstruction can submit to GSE a preapplication form to reserve the incentive with the executive project relating to interventions.

(ix) Amendments to the composition of the environmental impact assessment and strategic environmental assessment technical commission (Article 4-sexies 6 of the Energy Decree)

- The number of Commissioners composing the Environmental Impact Assessment and Strategic Environmental Assessment Technical Commission has been increased to 70 (previously 50). The Commission may avail itself of the Higher Institute for Environmental Protection and Research, based on a specific agreement, with an annual expenditure limit of EUR500,000.

(x) Innovative mechanisms to support production from renewable sources (Article 4-septies 7 of the Energy Decree)

- A new incentive mechanism has been established, alternative to those already provided for by Articles 6 and 7 of the LD. 199/2021, aimed at promoting investments in renewable energy production capacity, by complying with the following criteria:
 - Multi-year two-way contracts for difference are envisaged between GSE and operators identified following competitive procedures.
 - Operators holding multi-year two-way contracts for difference are obliged to ensure that a minimum quantity of electricity (equal to a percentage quota of the electricity related to the standard contractual profile) produced by plants registered in a special register managed by the GSE (Register) and subject to a specific certification system is injected into the grid annually. For the purposes of fulfilling the obligation, the operator has to deliver to GSE, for its cancellation, a number of certificates corresponding to the same obligation, issued by the GSE itself.
 - The GSE will establish a special system for certifying the energy injected into the grid by plants on the Register. The certificates issued can be exchanged between operators, within a trading platform managed by the Energy Markets Manager – GME S.p.a. (GME). Mechanisms for compensation between different years can be envisaged. The percentage quota is also defined considering the electrical storage capacity.

(xi) Provisions regarding the use of revenues from ETS auctions to compensate indirect costs (Article 4-octies 8 of the Energy Decree)

- Modalities for allocating revenues from ETS auctions to the Fund for the Energy Transition in the Industrial Sector have been established, extending the allocation from EUR150 million in 2021 to EUR300 million starting from 2025.

(xii) Flexibility for non-authorized plants powered by sustainable bio-liquids (Article 5 of the Energy Decree)

A. GUARANTEED MINIMUM PRICES FOR PLANTS POWERED BY SUSTAINABLE BIO-LIQUIDS:

- For plants powered by sustainable bio-liquids (meeting the requirements and conditions set forth in Articles 40 and 42 of LD. 199/2021), which are already in operation at the date of entry into force of the Energy Decree, a mechanism for contracting production capacity has been established by means of a decree to be adopted by the MASE, upon proposal from ARERA.
- Pending the entry into force of the mechanism and in any case no later than 31 December 2025, guaranteed minimum prices defined based on the criteria set forth in Article 24, para. 8, of LD. 28/2011 will apply to sustainable bio-liquids plants that meet the requirements and conditions set forth in Articles 40 and 42 of LD. 199/2021.

B. INCENTIVIZATION FOR PLANTS POWERED BY SOLID BIOMASS:

- Reference to plants powered by biomass contained in the Article 24, para. 8, of the LD. 28/2011 also includes plants powered by solid biomass classified by GSE as hybrid thermo-electric type. For such plants, the incentive system provided for by Article 24, para. 8 only applies to the share of electricity obtained from the combustion of biomass.

C. PLANTS FOR BIOGAS PRODUCTION FROM ANAEROBIC TREATMENT OF ORGANIC WASTE:

- Operators owning plants for biogas production through the anaerobic treatment of organic waste subject to conversion are also allowed to participate in competitive procedures under the MD. 15 September 2022 to be initiated by GSE starting from 2024. For these plants, the reference tariff provided for new plants powered by organic waste applies. Within 30 days from the entry into force of the Law converting the Energy Decree, GSE shall publish on its website the value of the maximum allowable specific investment cost for the conversion of plants powered by organic waste and any other updates necessary for the participation to the competitive procedures.

(xiii) Biomethane production plants (Article 5-bis 2 of the Energy Decree)

- For biomethane production plants benefiting from incentives under MD. 2 March 2018, for which the biomethane cannot be injected into the grid with the obligation of third-party connection and it is subject to biomethane supply contracts in the transport sector, GSE will cancel the guarantees of origin in favour of final customers with whom the producer has signed the contracts.
- Starting from 2024, to determine the quantity of CICs assigned to biomethane production plants benefiting from incentives under MD. 2 March 2018, reference is made to the higher calorific value of the produced biomethane.
- The delays in the completion of works related to the qualified plant not attributable to the producer's responsibility (referred to in the Article 1, para. 3 of the MD. 5 August 2022) also include delays related to the activation of the connection to the natural gas network by the network operator as well as delays in issuing verifications or certificates by the Authorities. The same principles also apply regarding plants incentivized under the MD. 15 September 2022.

(xiv) Simplification of the procedures for the realization of air-cooled condensers in existing power plants (Article 6 of the Energy Decree)

- The construction of air condensation systems or condensation circuit fluid cooling systems in plants already equipped with water cooling systems, not involving an increase in electrical power and occurring on surfaces in existing thermoelectric power plants with a thermal power exceeding 300 MW is qualified as a non-substantial variation.
- The variations are subject to prior notification to the MASE to be made at least 60 days before the start of works.
- The variations fall into the scopes of application of the Articles 6, para. 9-bis and 29-nonies of the LD. 152/2006 and they are not subject to landscape authorization, provided that they are carried on as a replacement to the existing volumes in the same thermoelectric plant.

(xv) Floating wind plants (Article 8 of the Energy Decree)

- A national strategic hub will be established in the sector of design, production, and assembly of floating platforms and electrical infrastructure for developing shipbuilding for offshore wind energy production.
- Within 30 days from the date of entry into force of the Energy Decree, the MASE will publish a notice aimed at acquiring expressions of interest for the identification – in at least two ports in the South of Italy falling under Port System Authorities or in port areas adjacent to areas where the gradual elimination of coal use is underway – of maritime state-owned areas with relative water mirrors outside the breakwaters to be allocated for the realization of suitable infrastructures to ensure the development of investments in the shipbuilding sector for the production, assembly and launching of floating platforms and electrical infrastructures for the development of shipbuilding for offshore wind energy production.
- Within 120 days from the deadline for the submission of the cited expressions of interest, maritime state-owned areas and infrastructural interventions to be carried on in such areas will be identified. This will be done by means of a Ministerial Decree to be adopted by the MASE and the Ministry of Infrastructure and Transport (MIT) with the Minister of Economy and Finance (MEF), after consulting the Minister of Defence, the Minister for Civil Protection and Maritime Policy, and the Regions with territorial competence. The cited interventions are identified also based on a technical-economic feasibility analysis and the implementation times of the same interventions, as well as the methods of financing the interventions themselves.
- The MASE will adopt and publish on its website a guide for proposers, relating to the requirements and minimum information necessary to achieve the relevant authorization procedure for the facilities/infrastructures referred to in this provision.

(xvi) Digital portal accessible for electric network development and connection requests (Article 9 of the Energy Decree)

- Terna S.p.a. will establish a digital portal accessible by operators and Public Administration:
 - Reporting data and information, including those relating to the location of the interventions for developing the national electricity transmission network and the requests for connection to the network for plants powered by renewable energy, energy storage systems, and consumption facilities.
 - Allowing access to monitoring reports on the progress of procedures for connection to the national grid, in view of achieving the decarbonization objectives by 2030 and 2050, prepared by Terna S.p.a.

(xvii) Simplifications for the realization of primary cabins and power LINES (Article 9 of the Energy Decree)

- Up to 31 December 2026, for the construction of primary cabins and power lines, without extension limits and up to 30 kV, relating to projects eligible for financing under Investment 2.1, Component 2, Mission 2 of the National Recovery and Resilience Plan (PNRR), as well as for the realization of necessary ancillary works for the implementation of these projects (except for the application of more favourable regimes provided by regional or provincial regulations) the following simplification measures in the authorisation procedures apply:
 - **Notice of commencement of works** (DIL) to be submitted to the competent Regions or Autonomous Provinces at least 30 days before the start of the works, provided that the consent of the owners of the areas concerned has been obtained, and there are no environmental, landscape, cultural constraints or those imposed by EU regulations. The DIL will be accompanied by the final project and a report. The report must certify that there are no constraints, that the works and infrastructure conform and are compatible with the approved planning instruments and the current building regulations. The report must also show the works and infrastructure comply with the regulations on electromagnetic protection of the population from exposure to electric, magnetic, and electromagnetic fields, regulations on the management of excavated soil and rocks, and regulations on the design, construction, and operation of power lines and technical standards for construction. The regulation set forth by the LD. 42/2004, regarding accidental discoveries and the consequent interventions for the protection of archaeological heritage remains unchanged.
 - **Single authorization** where there are environmental, landscape, cultural constraints or those imposed by EU regulations, or where the acquisition of the declaration of public utility or the authorization in variation to the existing urban planning instruments is necessary. A simplified steering committee procedure will apply. The single authorization application is considered accepted if, within 90 days from its presentation, no denial measure has been communicated/no dissent has been expressed with adequate motivation by an Administration responsible for landscape and territorial protection or cultural heritage.

- The same authorization procedure provided for the construction and operation of primary cabins also applies for the authorisation of the connection works to the national transmission grid when the manager of the distribution grid and the manager of the transmission grid present a joint request to the proceeding Authority if the same works have a nominal voltage not exceeding 220 kV and a length of less than 5 km if aerial (or 20 km if underground). In such case, the Environmental Impact Assessment and Environmental Impact Assessment screening procedures (if required) fall into the competence of the Region concerned. The single authorization is issued both in favour of the manager of the distribution grid and the manager of the transmission grid, for works within their respective competencies.
- Issuing the single authorization constitutes a title to build and operate the primary cabins and works in accordance with the approved project; it includes the declaration of public utility, indispensability, and urgency of the interventions, the possible declaration of immovability, and the imposition of the expropriation constraint; in case of non-compliance with the existing urban planning instrument, the single authorisation implies urban variation.

(xviii) Exemption from EIA and EIA screening for photovoltaic plants (Article 9 of the Energy Decree)

- Exemption from Environmental Impact Assessment and Environmental Impact Assessment screening for projects referred to in the Article 47, para. 1 bis of the DL. 13/2023 is extended until 30 June 2025 (EU Regulation 2024/223 amending EU Regulation 2023/2577).
- The thresholds for Environmental Impact Assessment of national competence and Environmental Impact Assessment screening of regional competence have been increased respectively up to 25 MW and 12 MW for:
 - plants located in a “suitable area,” as defined in Article 20 of LD. 199/2021;
 - plants located in the areas referred to in Article 22-bis of LD. 199/2021;
 - (outside the cases referred to in letters a) and b) above), plants not located within “unsuitable areas” pursuant to letter f) of Annex 3 to MD. 10 September 2010.

(xix) Increase of the threshold for PAS for plants located in suitable areas (Article 9 of the Energy Decree)

- Simplified authorisation procedure (PAS) applicable for the realization and operation of plants located in suitable areas with capacity up to 12 MW (Article 4, para. 2 bis, of the LD. 28/2011); above this threshold, the single authorization title is required.
- These provisions apply to proceedings initiated after the date of entry into force of the Law converting the Energy Decree.

(xx) Proceeding with the application for the single authorisation title without the network operator's consent (Article 9 of the Energy Decree)

- To proceed with the application for the single authorization for plants powered by renewable sources and electrochemical storage systems, including the related connection works, the manager of the network does not have to give technical approval for the project related to the connection works; approval will be acquired during the authorization procedure for the purpose of issuing the final authorisation title.
- However, the relevant application for the issuance of the authorisation title must be accompanied by the project related to the connection works, divided between user plants and network plants pursuant to the Integrated Active Connections Text (TICA), drawn up in coherence with the connection estimate issued by the manager of the network and duly accepted by the applicant.

(xxi) Registering technologies for photovoltaic plants (Article 12 of the Energy Decree)

- To map European quality products for companies and end-users, the National Agency for New Technologies, Energy and Sustainable Economic Development (ENEA) will create and maintain a register of products that meet the following territorial and qualitative requirements:
 - photovoltaic modules produced in EU Member States with a module-level efficiency of at least 21.5%;
 - photovoltaic modules with cells, produced in EU Member States with a cell-level efficiency of at least 23.5%;
 - modules produced in EU Member States composed of bifacial silicon heterojunction or tandem cells produced in EU.

(xxii) Managing photovoltaic panel disposal (Article 12-bis of the Energy Decree)

- Regarding the management of photovoltaic panel disposal, the documentation referred to in Article 24-bis, para. 1 of the LD. 49/2014 must include the list of serial numbers of the photovoltaic modules. The GSE will update the list of serial numbers registered in its database with that submitted by the responsible party and communicated to the chosen collective system. In case of incomplete correspondence of the serial numbers, the sanctions referred to in Article 42 of the LD. 28/2011 do not apply, without prejudice to the obligation for the responsible party to report to GSE maintenance interventions involving the replacement of photovoltaic modules.
- To enable rational and orderly management of waste electrical and electronic equipment in the territory, each collective management system is called to register in the National Register and to communicate the entities that have provided financial guarantees.

(xxiii) Identifying SOGESID S.P.A. (Article 12-ter of the Energy Decree)

- SOGESID S.p.a. is identified as an in-house company of central administrations to ensure the necessary support for the timely implementation of public interventions aimed at the full implementation of the ecological transition.
- SOGESID S.p.a. can enter into agreements with public Administrations for technical-specialist activities related to implementing interventions.

(xxiv) Further energy regulatory news

The Energy Decree includes further regulatory provisions including:

- provisions on CO₂ geological storage (Article 7 of the Energy Decree);
- refinancing of the Italian Climate Fund (Article 13 of the Energy Decree);
- competitive procedures and protection of domestic customers in the retail electricity market (Article 14 of the Energy Decree);
- development of district heating and cooling projects (Article 10 of the Energy Decree);
- infrastructure for decommissioning and managing radioactive waste (Article 11 of the Energy Decree);
- increasing the Single Fund to support the enhancement of Italian sports movement (Article 14-bis of the Energy Decree);
- integrating the powers of the Single Commissioner to implement interventions concerning urban wastewater (Article 14-ter of the Energy Decree);
- energy recovery and waste management in the Sicily Region (Article 14-quater of the Energy Decree);
- subdivision of the PNRR-PNIEC Technical Committee into subcommittees and Instructional Groups (Article 14-quinquies of the Energy Decree);
- reconstruction activities in areas affected by flooding events since 1 May 2023 (Article 15 of the Energy Decree);
- access to the national solidarity fund for agricultural enterprises having suffered damage due to exceptional atmospheric events in October/November 2023 (Article 16 of the Energy Decree);
- provisions in favour of the territories of the Tuscany Region affected by flooding events since 9 October 2023 (Article 17 of the Energy Decree);
- provisions in favour of the territories of the Umbria Region affected by seismic events on 9 March 2023 (Article 18 of the Energy Decree).



Germana Cassar

Partner

+39 02 80 618 1

germana.cassar@dlapiper.com



Josilda Pelani

Lawyer

+39 02 80 618 1

josilda.pelani@dlapiper.com



Mattia Malinverni

Senior Lawyer

+39 02 80 618 1

mattia.malinverni@dlapiper.com



Ludovica Gennaro

Lawyer

+39 02 80 618 1

ludovica.gennaro@dlapiper.com



Michele Rondoni

Lawyer

+39 02 80 618 1

michele.rondoni@dlapiper.com