

## **Aid Decree**

(Law Decree no. 50 of May 17, 2022)

Law Decree no. 50 of May 17, 2022, entered into force on May 18, 2022 (hereinafter also referred to as the “Aid Decree”) adopted “*Urgent measures on national energy policies, business productivity and investment attraction and social and Ukrainian crisis's policies*”.

Main provisions: the Aid Decree introduced some innovations with regard to:

- 1) *authorization procedures*;
- 2) *identification of suitable areas for renewables energy*;
- 3) *measures on tax credits and other incentives*;
- 4) *provisions for the agricultural sector*.

### **1. Authorization procedures**

(artt. 6, 7, 10 Aid Decree)

**(i) Simplifications of the statal Environmental Impact Assessment (EIA)** - For projects subject to an EIA under state jurisdiction, it is stipulated that, in case the opinions of the other administrations involved are conflicting, any resolutions adopted by the Council of Ministers<sup>1</sup> replace the EIA measure (art. 7 Aid Decree).

Such provision sets out that these deliberations merge into the single authorisation procedure, which must be concluded by the competent administration within the following 60 days. If the Council of Ministers decides to issue the EIA measure, after the expiration of the prescribed 60 days, the authorisation is deemed to be granted;

**(ii) Extension of the EIA** - An important clarification is introduced in Article 25 paragraph 5 of Legislative Decree 152/2006, that specifies that, where the environmental context of reference has not changed in the meantime, the measure extending the EIA may not contain further and different prescriptions with respect to

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<sup>1</sup> According to art. 5, par. 2, let c-bis) of Law No. 400 of 23 August 1988: “*The President of the Council of Ministers may refer to the Council of Ministers, for the purpose of an overall assessment and harmonisation of the public interests involved, the decision of matters on which conflicting assessments have emerged between administrations with different competences in the definition of acts and measures*”.

those already contained in the original EIA measure;

**(iii) Exclusion of overhead power lines from the EIA** - Overhead power lines with a nominal operating voltage of more than 150 kV and a route length of more than 15 km are now excluded from the Statal EIA; in addition, those in alternating current underground cables with a route length of more than 40 km are excluded (Art. 10 of the Aid Decree, which deleted point 4 of Annex II to Part Two of Legislative Decree 152/2006);

**(iv) Authorisation Procedures for Eligible Areas** - In case of electrical infrastructures for the connection of RES plants and those necessary for the development of the national transmission grid (functional to the increase of energy produced from renewable sources) falling in eligible areas, in the authorisation procedures (including those for the adoption of the EIA), the competent authority for landscape matters shall express a non-binding mandatory opinion. Once the deadline for expressing this opinion has expired in vain, the competent authority shall in any case decide on the application for authorisation (Article 6 of the Aid Decree amended Article 22 of Legislative Decree 199/2021, introducing paragraph 1-bis).

## **2. Identification of suitable areas for renewables energy**

(art. 6 Aid Decree)

Some amendments have been introduced with regard to the identification of the so-called "suitable areas" for the installation of RES plants pursuant to Article 20, paragraph 8 of Legislative Decree 199/2021.

In particular, areas that do not fall within the perimeter of the assets subject to protection (pursuant to Legislative Decree no. 42 of 22 January 2004<sup>2</sup>), nor within the buffer zone of such assets have been added to the hypotheses already provided for by art. 20, paragraph 8 of Legislative Decree 199/2021. In this regard, it is specified that *"the buffer zone is determined considering a distance from the perimeter of protected assets of seven kilometres for wind farms and one kilometre for photovoltaic plants"*.

However, this new provision does not affect the previous hypothesis of suitable areas

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<sup>2</sup> The Cultural Heritage and Landscape Code.

provided for by Article 20, paragraph 8 of Legislative Decree 199/2021.

### **3. Measures on tax credits and other incentives**

(Artt. 2, 4 e 14 Aid Decree)

**3.1** Article 2 of the Aid Decree amended the regime of the extraordinary contribution, in the form of tax credit, provided for the purchase of electricity and natural gas in favour of companies, raising the percentage values already provided for by previous decrees.

In particular, the threshold of the aforementioned contribution was raised in the following measures:

- 25% of the expenditure incurred for the purchase of the same gas, consumed in the second calendar quarter of the year 2022, referred to in Article 4 of Law Decree no. 21/2022 (Contribution, in the form of tax credit, in favour of companies for the purchase of natural gas);
- 25% of the expenditure incurred for the purchase of the same gas, consumed in the second calendar quarter of the year 2022 referred to in Art. 5 of Law Decree no. 17/2022 (Extraordinary contribution, in the form of tax credit, in favour of companies with high consumption of natural gas);
- 15% of the expenditure incurred for the purchase of the energy component, used in the second quarter of the year 2022 pursuant to Article 3 paragraph 1 of Law Decree 21/2022 (Contribution, in the form of tax credit, in favour of companies for the purchase of electricity) .

**3.2** Article 4 of the Aid Decree - amending the regulations set forth in Law Decree no. 4/2022 - now provides, for companies '*with a high consumption of natural gas*'<sup>3</sup> an extension to the first quarter of 2022 of the extraordinary contribution in the form of a tax credit, equal to 10 per cent of the expenditure incurred for the purchase of the same gas.

The tax credit can only be used as compensation and can be transferred to parties other than the aforementioned companies, e.g. credit institutions.

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<sup>3</sup> I.e. companies operating in one of the sectors listed in Annex 1 of the Decree of the Minister of Ecological Transition No. 541 of 21 December 2021 and which consumed, in the first calendar quarter of the year 2022, a quantity of natural gas for energy uses not less than 25 % of the volume of natural gas indicated in Article 3, paragraph 1, of the same Decree, net of the consumption of natural gas used in thermoelectric uses.

**4. Provisions for the agricultural sector**

(Art. 8 Aid Decree)

Aid may be granted to enterprises in the agricultural, livestock and agro-industrial sector for the construction of renewable energy production plants on the roofs of their production facilities, with a capacity exceeding the average annual electricity consumption (including household consumption).

These enterprises can also sell the electricity produced to the grid.

However, since this measure is considered as state aid, it is necessary to wait for the European Commission's authorisation for the effectiveness of such provision.

Please note that the effectiveness of the provisions of the Aid Decree is subject to its conversion into law, which must necessarily take place within 60 days of its entry into force.

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Avv. Pinella Altiero

Avv. Nicoletta Bezzi

[pinella.altiero@lexia.it](mailto:pinella.altiero@lexia.it)

[nicoletta.bezzi@lexia.it](mailto:nicoletta.bezzi@lexia.it)