

Energy Decree:
updates concerning renewable energies

(Law Decree no. 17 of March 1, 2022, converted with amendments in Law no. 34 of April 27, 2022)

The Law Decree no. 17 of March 1, 2022 on urgent measures aimed at containing the cost of electricity and natural gas and affecting the renewable energy sector (hereinafter also referred to as the “*Energy Decree*”) has been converted with amendments in law by Law no. 34 of April 27, 2022 and entered into force on April 29, 2022.

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

- 1) **authorization procedures;**
- 2) identification of **suitable areas** for renewables energy plants;
- 3) **new facilities for interventions to be carried out in the regions of Southern Italy and other interventions;**
- 4) **public incentives.**

1. Authorization procedures

(artt. 9, 9-ter, 12, 16 of the Energy Decree)

1.1 PAS and screening procedures

According to article 6, paragraph 9-bis of Legislative Decree no. 28 of March 11, 2011 (“**LD 28/2011**”) - which lists all the possible authorization procedures for the realization of renewable energy plants - PAS applies also to:

- (i) PV Plants up to 20 MW and related works of connection to the high and medium voltage electricity grid located in areas of industrial, productive or commercial use (as well as in landfills or landfill lots closed and restored or in quarries or quarry lots not susceptible to further exploitation for which the authority responsible for issuing the authorization has certified the completion of the recovery and environmental restoration activities);

- (ii) PV Plants up to 10 MW located in the so-called “suitable areas” (*aree idonee*)¹ pursuant to Article 20 of Legislative Decree No. 199 of November 8, 2021 (“LD 199/2021”);
- (iii) **agrovoltaic plants** which have the characteristics referred to in Article 65, paragraph 1-quater, of Decree-Law January 24, 2012, n. 1² and are not more distant than 3 km from areas of industrial, craft and commercial use.

For the above-mentioned plants, the limit for the application of the "screening" procedure is raised to 20 MW, provided that the applicant submits a self-declaration stating that the plant is not located within areas qualified by the Regions as sensitive areas to territorial or landscape transformations and falling within the list referred to in letter f) of Annex 3 of the Ministerial Decree of 10 September 2010 (art. 9 of the Energy Decree).

1.2. Declaration of commencement of works (the so-called "DILA"):

Article 5, paragraph 3 of LD 28/2011 now lays down that, in case of non-substantial modifications leading to an increase in installed power and the need for further connected works, without increasing the occupied area, the execution of the connected works is subject to the (art. 9 of the Energy Decree).

1.3. Floating Plants

PAS is applicable also to PV Plants up to 10 MW, including the works functional to the connection to the electricity grid, placed in floating mode on the water surface of reservoirs and water basins, including reservoirs in disused quarries, or installed to cover irrigation channels (art. 9-ter of the Energy Decree).

1.4. Simplified procedures for renewable energy plants located in the “Suitable Areas”

The article 4 of LD 28/2011 now provides that, in the so called “suitable areas” according to art. 20 of LD 199/2021, the interventions of:

¹ Please see below par. 2.

² I.e., plants that adopt innovative integrative solutions with the assembly of the modules elevated from the ground, also providing for the rotation of the modules themselves, however, so as not to compromise the continuity of agricultural and pastoral cultivation activities, also allowing the application of digital and precision agriculture tools.

- (i) construction and operation of new PV Plants and related works, and/or
- (ii) repowering, renovation and complete reconstruction of existing PV Plants and related works without changing the area involved

are subject to:

- 1) **DILA:** in case of plants' capacity \leq 1 MW,
- 2) **PAS:** in case of plants' capacity between 1 MW and 10 MW,
- 3) **AU:** in case of plants' capacity $>$ 10 MW

Please consider that, such procedures are applicable without prejudice for the specific – and more simplified – procedures set in art. 6 paragraph 9-bis, 6-bis and 7-bis paragraph 5 of LD 28/2011³.

1.5. Simplified Unique Model

Plants having a capacity between 50 KW and 200 KW built according to art. 7, paragraph 5 of the LD 28/2011⁴ will be subject to the **Simplified Unique Model** document, once the related decree will be issued (60 days after the Energy Decree entry into force) (art. 10 of the Energy Decree).

2. Identification of suitable areas for renewables energy plants

(Art. 10 – bis, 12, 18 of the Energy Decree)

2.1 With regard to the identification of suitable areas for RES plants, the Energy Decree excluded that the opinion of the landscape authority is binding in case of authorization procedures concerning plants to be installed in suitable areas, including environmental impact assessment procedures (art. 12 Energy Decree, partially amending art. 22 of LD 199/2021).

³ Art. 6 paragraph 9-bis of Legislative Decree 28/2011- **PAS** applicable to: (i) PV Plants up to 20 MW in areas for industrial, production or commercial use, or in landfills or landfill lots that are closed and restored (or in quarries or lots of quarries not susceptible to further exploitation); (ii) plants up to 10 MW in areas classified as suitable; (iii) agrovoltaic plants distant not more than 3 km away from industrial, artisanal and commercial areas;

Art. 6-bis of Legislative Decree 28 / 2011- cases of application of the **DILA**.

Art. 7-bis paragraph 5 of Legislative Decree 28/2011 - **exemption from permits and authorizations for PV and termic Plants** on buildings or on above ground structures and artifacts other than buildings

⁴ Concerning interventions not requiring specific authorizations or permits.

2.2. Furthermore, significant amendments have been introduced with regard to the identification of the **suitable areas** for renewables energy plants:

(i) in the areas for industrial use, the construction of solar photovoltaic and thermal plants is allowed, provided that these plants cover an area not exceeding 60 percent of the industrial area of relevance⁵;

(ii) art. 20 of the LD 199/2021 provides for:

i) the issuing by the MITE of decrees concerning the principles and criteria for the subsequent identification, by the Regions, of suitable areas;

ii) **in the meanwhile, article 20, paragraph 8 of LD 199/2021 classified as suitable areas:**

a) only for PV Plants: sites on which there are already present PV plants and on which, without changing the occupied area, substantial modification works are carried out for renovation, repowering or complete reconstruction of them, also with the addition of storage systems (“*sistemi di accumulo*”) with a capacity not exceeding 3 MWh for each MW of power of the photovoltaic plant;

b) only for PV Plants: even with modules on the ground (in the absence of related constraints in the code of cultural heritage and landscape), the following areas are considered suitable:

1) **agricultural areas**, enclosed within a perimeter whose points are no more than 300 meters from areas of industrial, artisanal and commercial use, including sites of national interest, as well as quarries and mines;

2) **areas inside industrial plants and factories**, as well as areas classified as agricultural enclosed within a perimeter whose points are no more than 300 meters away from the same plant or factory;

3) **areas adjacent to the freeway network** within a distance of no more than 150 meters (art. 12 of the Energy Decree);

⁵ Also as an exception to the municipal planning instruments and the existing coverage indexes. It is also provided that the same plants can be installed on support structures specifically built (art. 10-bis of the Energy Decree).

- c) sites and plants at the disposal of companies in the **Italian State Railways group and railway infrastructure managers**, as well as freeway concessionary companies (art. 18 of the Energy Decree);
- d) **sites where plants from the same source are already installed and where non-substantial modification works are carried out**⁶;
- e) the areas of sites undergoing **reclamation** (“*bonifica*”);
- f) **quarries and mines that have been closed** down, not recovered or abandoned or in conditions of environmental degradation.

3) New facilities for interventions to be carried out in the regions of Southern Italy and other interventions

(Art. 14 – 17 of the Energy Decree)

3.1 Article 14 of the Energy Decree has provided for the new type of contribution, in the form of **tax credit** (“*credito di imposta*”), intended for companies that make investments related to the production of energy from renewable sources in the following regions: Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardinia and Sicily. Such contribution is also applicable if energy efficiency is achieved through the implementation of storage systems combined with photovoltaic systems.

As per article 14, paragraphs 2 of the Energy Decree, the facilitation is limited to the "*costs of the additional investments necessary to achieve a higher level of energy efficiency and for the self-production of energy from renewable sources within the production structures*". In addition, article 14, paragraph 1 of the Energy Decree states that the regulation also specifies that this credit is not intended to contribute to the formation of business income or the taxable base of the regional tax on production activities.

It is then recognized a **cumulability with other facilities** that have as their object the same costs, provided that such accumulation, taking into account also the non-competition to the formation of income and the taxable base of the regional tax on production activities, does not imply the exceeding of the cost incurred (art. 14, paragraph 1 of the Energy Decree).

⁶ Pursuant to art. 5, paragraphs 3 et seq. of Legislative Decree no. 28 of March 3, 2011.

3.2 Moreover, art. 17 of the Energy Decree aimed to promote the use of **biofuels** to be used in purity⁷. Furthermore, the "*Fund for the decarbonisation and green conversion of refineries falling within the remediation sites of national interest*" has been set up.

4)Public incentives

(art. 11 of the Energy Decree)

Art. 65 of the Law Decree no. 1 of January 24, 2012, converted in Law no. 27/2012, ("**LD 1/2012**") provides for the incentive to which the following plants may have access:

- **agrovoltaic plants which** adopt innovative integrative solutions with the assembly of the modules elevated from the ground, also providing for the rotation of the modules themselves, however, so as not to compromise the continuity of agricultural and pastoral cultivation activities, also allowing the application of digital and precision agriculture tools, provided that monitoring systems are implemented to verify the impact on crops, water saving, agricultural productivity and continuity of the activities of the farms⁸;
- **floating solar photovoltaic systems** to be installed on wet surfaces or on artificial reservoirs of small or large dimensions, where compatible with other uses (article 65, paragraph 1-septies of LD 1/2012);
- **Finally, it is foreseen that the plots of land on which the agrovoltaic plants are located may not be object of further requests for the installation of new photovoltaic plants for 10 years following the issue of public incentives, even if the land has been subject to splitting ("frazionamento") or transfer ("trasferimento")** (art. 65 paragraph 1-octies of LD 1/2012).

⁷ According to art. 17 of the Energy Decree, which amended art. 39 of Legislative Decree no. 199/2021, from 2023 a use equal to 200,000 tons with the possibility of reconvertng traditional refineries falling within reclamation sites of national interest. In fact, it is established, in addition to the hypotheses already regulated, that from 2023 the quota of sustainable liquid biofuels used in purity is equal to at least 500,000 tons and is increased by 100,000 tons per year in the following three years. In this regard, the production of sustainable liquid biofuels in purity is incentivized through the allocation of a contribution assigned on the basis of competitive procedures. The duration and value of such incentives will be defined by subsequent decrees.

⁸ Pursuant to art. 11 of the Energy Decree, such monitoring systems will have to comply with the guidelines to be adopted by the Council for Research and Agriculture and the GSE within 30 days from the effective date of the conversion law.

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Avv. Pinella Altiero

pinella.altiero@lexia.it

Avv. Nicoletta Bezzi

nicoletta.bezzi@lexia.it