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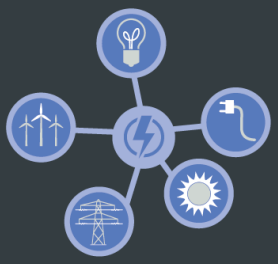
Changes in the energy sector introduced by the Simplification Decree II

(updated to the conversion into law)



Contents

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(updated to the conversion into law)

Decree-Law No. 77 of 31 May 2021 (published in the Italian Official Gazette No. 129 of 31 May 2021 and in force since 1 June 2021; converted by Law No. 108 of 29 July 2021, in the Italian Official Gazette No. 181 of 30 July 2021, in force since 31 July 2021) on "Governance of the National Recovery and Resilience Plan and initial measures aimed at strengthening administrative structures and accelerating and streamlining procedures".

1. Introduction

The Decree-Law under review ("**DL**"), whose converting law (No. 108/2021) was approved by Parliament on 28 July and published in the Italian Official Gazette on 30 July, in force as of 31 July 2021, is aimed at defining the national regulatory framework to simplify and enable the goals and objectives set out by:

- The Recovery and Resilience Plan (RRP)
- The National Plan for Complementary Investments
- The Integrated National Energy and Climate Plan 2030 (NECP)

In this document, we will summarise the new updates introduced in the energy sector, providing a guide to the reading of the new provisions, taking into account the further changes resulting from the completed conversion into law.

With reference to renewable sources and to the "*Ecological Transition*", the decree dedicates the entire Title I to the simplification and acceleration of the "Environmental and Landscape Procedure", **along five main elements:**

a) Identification of RRP-NECP strategic projects and their qualification (Article 18 of the DL)

This qualification was due by the legislative intention - which is difficult to understand in terms of simplification - to establish a double process with different timeframes for both strategic and non-strategic projects. Thus, not using this opportunity for a general simplification. Whilst the scope of the RRP projects is relatively limited, the definition of NECP projects may include all wind and photovoltaic projects relating to renewable energy power plants.

b) **The new framework for Development Consent Orders ("*Provvedimento Unico Ambientale*", hereinafter "PUA") - Article 22 of the DL**. To avoid procedural burdens, it is clarified that the authorisations included in the Development Consent Order are only those exhaustively listed by law. The applicant can therefore omit any authorisations that require too detailed levels of planning to the detriment of the speed of the *process*.

This solution should make the PUA process more predictable and enable its application.

c) **The new framework for Regional Development Consent Orders ("*Provvedimento Autorizzatorio Unico Regionale*", hereinafter "PAUR") - Articles 23 and 24 of the DL)**. The call of a preliminary services conference is aimed at speeding up the process. This will help the preparation of the documentation required for the preliminary audit (including the environmental impact study) as well as streamlining the procedure. Simplification measures are also introduced.

The solution should streamline the management of PAUR procedures, which are a very significant part of the authorisation procedures for renewable energy plants.

d) **Amendments to the Environmental Impact Assessment ("EIA") procedure and EIA screening**:

1 Extension of the scope of application of the State EIA (article 18 of the DL) to NECP strategic, including all photovoltaic plants of more than 10MW

The willingness to extend state competence for EIA in the renewables sector - which already exists for wind projects above 30MW - is intended to ensure greater consistency in the assessment and to avoid disparities between regions or obstacles to authorisation arising from local issues.

2 The new RRP-NECP Technical Commission (article 17 of the DL), which replaces and strengthens the NECP Commission

The creation of a special central body, made up of dedicated professionals and responsible for assessing all the RRP-NECP projects, is undoubtedly an important step towards rationalising environmental assessments and reducing the uncertainties linked to the existence of so many decision-making centres at a regional level. However, the time needed to set up the body (60 days), which has not been reduced by the converting law, might delay the start of these simplified procedures.

3 Acceleration of the EIA procedure (article 19 of the DL)

4 New EIA regulations and special provisions for RRP-NECP actions (article 20 of the Decree-Law), as well as determination of the relevant authority (article 25 of the DL)

Procedural acceleration and reduction tools are introduced to create a 'fast track' for RRP-NECP projects.

e) **Acceleration of renewable sources procedures - actions and simplifications also in relation to bordering areas, storage, and circular economy (Articles 30-37 of the DL)**.

This is an important set of actions aimed at supporting initiatives for the development of renewable energy plants, storage systems and large thermal plants. It is worth mentioning the raising of the power threshold to 20MW - at the time of conversion - for photovoltaic projects in productive areas that can be authorised with a Simplified Consent Procedure ("Procedura Abilitativa Semplificata", hereinafter PAS). In addition, the so-called 'agrivoltaic' has been excluded from environmental assessment procedures, its repowering procedures are brought under PAS and incentives have been reintroduced. However, uncertainties persist on the definition of the areas of application, even if improved during the parliamentary process.

2. New rules on environmental impact assessment and special provisions for RRP-NECP actions

Article 19 introduces general acceleration measures for EIA screening, establishing that the time-limit for completion of such procedures must be set in 45 days from the date of closure of the deadline for public comments (30 days for comments from the date of online publication of the preliminary environmental study + 45 days for project examination = an overall of 75 days). Nevertheless, the applicant can ask for a postponement of the procedure for a maximum of 45 days in case of requests for additional documents. It is also provided for accelerated time-limits of 30 days for clarifications. Upon the applicant's request, the competent authority shall indicate the measures that may be necessary to prevent a project excluded from the EIA procedure from having significant impacts, as well as, in the case of projects where an EIA is necessary, to deal with preliminary requests for details on the information to be included in the environmental impact study submitted as part of the EIA procedure.

Article 20 of the DL intervenes on the rules for the issuance of the EIA by the Ministry for ecological transition ("**State EIA**") referred to in Article 25, paragraphs 2 and 2-bis of Legislative Decree No. 152 of 3 April 2006 ("Code on the Environment") (concerning, respectively, projects not included and projects included in the RRP-NECP).

For EIA purposes, the list of NECP projects - which seem to almost completely overlap with the actions foreseen in the RRP's Mission II - Green Revolution and Ecological Transition - is contained in the new Annex I *bis* to Part II of the Code on the Environment (introduced by article 18 of the DL). It includes in this category, amongst others, all renewable energy power plants, infrastructures for the production, transport and storage of hydrogen and other projects aimed at decarbonisation (alternative fuel refuelling plants for road, air and naval transport; deep energy redevelopment of productive areas; development of electricity transmission and distribution networks; development of electrochemical storage and pumping capacity; targeted actions on gas transmission and distribution networks and on the conversion and decommissioning of refineries and oil platforms).

In a nutshell, the **amendments concern:**

- The consent of the Ministry of Culture

It's worth mentioning that this conciliation procedure was necessary to avoid eventual late actions taken by this authority, through the Supervising Authority, after the issuing of EIA procedures. In this sense, it seems significant that a special Supervising Authority is foreseen for the RRP projects.

- The acceleration of procedures by reducing time-limits

This measure, along with the following two measures, are clearly intended to speed things up but their effectiveness will have to be assessed in practice.

- The standardisation of procedures foreseen in cases of unnecessary expiry of deadlines as well as the activation of the resulting substitution powers aimed at adopting EIA procedures
- The introduction of an automatic reimbursement equal to the 50% of the preliminary investigation fees due to the applicant when the deadlines for the conclusion of the EIA procedure related to RRP-NECP projects are not met (the converting law confirmed the automaticity of the mechanism, but made the calculation of the deadlines for the conclusion of the procedures start from the date of the establishment of the RRP-NECP Commission)
- The provision for substitution mechanisms with strict deadlines in the event of inaction of the bodies responsible for adopting EIA procedures or the agreement from the Ministry of Culture.

Article 8 of Decree-Law No. 92 of 23 June 2021 specifies that the procedural changes introduced cover applications submitted after 31 July 2021.

Two special provisions have been added (Article 18 and new Article 18-bis of the Decree-Law) on the converting law. On the one hand, the first provision concerns the possibility to obtain a preliminary environmental screening to assess the eventual need for an in-depth analysis of non-substantial changes to already authorised projects. On the other hand, the second provision refers to RRP NECP projects and provides for the obligation for regional authorities to express their agreement in expropriation procedures within 30 days, starting from the conclusion of the services conference (it. *Conferenza dei servizi*).

The latter action could help to exactly predetermine the "non-substantiality" qualification for project change. Therefore, over the years, it avoids the risk of a possible interpretative conflict that could lead to the initiation of a much more burdensome authorisation procedure for the project owner. However, without prejudice to the application of the environmental rules, simplification has not been fully achieved.

2.1 General rules on projects excluded from NIPEC and NRP

With reference to projects not included in the new *ad hoc* annex (I-bis) to Part II of the Code on the Environment, the Decree-Law sets out the following amendments to article 25, paragraph 2, of the Code:

- It specifies that the adoption of the EIA procedure by the relevant authority (i.e. Ministry of the Environment, according to the provisions of article 7-bis, paragraph 4) must come after obtaining the agreement from the relevant General Director of the Ministry of Culture within 30 days. The time-limit for the adoption of the EIA procedure is set at 60 days from the conclusion of the consultation phase (with a possible extension of 30 days for eventual preliminary requirements by the administration). In the event of inaction, the uniform substitutive legislation is also applied to the aforesaid projects under article 20 of the DL.
- The last three sentences of the previous text of paragraph 2, which regulated the cases of useless expiry of the time-limits and the activation of substitution powers for the adoption of the EIA procedure, have been deleted[1].

2.2. Rules governing RRP-NECP projects

The Decree-Law following the conversion phase, makes the following changes Article 25 paragraph 2-bis of the Code on the Environment provides for the following:

- The deadline given to the RRP-NECP Technical Commission to express its opinion through the EIA procedure is reduced. The previous legislation on RRP-NECP Commission (Decree-Law No. 76 of 16 July 2020, the so-called Simplifications I) lays down that the EIA procedure should be provided within 170 days from the publication of the documentation initiating the EIA procedure. Instead, the new legislation concerning the RRP-NECP Commission provides for a reduction of 40 days of the said deadline. Therefore,

[1] Despite being amended, these provisions have been reallocated in the new paragraph 2-quater, which provides for a uniform legislation for procedures to follow when any inaction occurs in terminating the procedure or activating substitution powers (this is applicable to both those projects that are included in RRP-NECP and those projects that are excluded).

the deadline is replaced to 130 days from the date of the publication. The new provision also says that this time-limit is an upper limit and lays down that within this limit, the RRP-NECP Technical Commission must give its opinion within 30 days from the conclusion of the consultation phase under article 24 (this time-limit may also be extended by up to 30 days according to the needs of the administration).

- An increase from 15 days to 20 days of the time-limit when the General Director of the Ministry of the Environment must acquire the agreement on the EIA procedure from the relevant General Director of the Ministry of Culture (if the project documentation is appropriately developed, the agreement must include the landscaping authorisation).
- The provisions on the activation of the substitution power are removed from paragraph 2-bis and they are relocated in the new paragraph 2-quater which provides a uniform legislation relating to procedures to follow when any inaction occurs in terminating the procedure or activating substitution powers (this is applicable to both those projects that are included in RRP-NECP and those projects that are excluded).
- A new paragraph 2-quater has been introduced, providing for an automatic 50% reimbursement of the preliminary investigation fees (under article 33 of the Code on the Environment) to the applicant when the deadlines for the conclusion of the procedure for RRP-NECP projects referred to in paragraph 2-bis (see the first and the second sentences) are not met. This reimbursement will be done using the resources entered in a dedicated chapter established for this purpose in the Ministry of Economic Development's estimates. During the conversion, it was provided that the first application of these terms would start from the first meeting of the RRP-NECP Commission.
- The first sentence of the new paragraph 2-quater contains a provision very similar to the previous text of the last sentence of paragraph 2-bis. It concerns the case of inaction in concluding the procedure and activating substitution powers. This provision has been supplemented with a clarification aimed at extending its application to all EIA procedures, regardless of the inclusion of the projects concerned in the RRP-NECP. In the new text it is specified that the inertia referred to is that in the conclusion of the procedure by the parties:
  - of the EIA-SEA Commission (article 8, paragraph 1 of the Code on the Environment);
  - or the RRP-NECP Commission (article 8, paragraph 2-bis of the Code on the Environment);
- The second sentence of the new paragraph 2-quater supplements the provisions by introducing a provision regulating the cases of:
  - inaction by the General Director of the Ministry of the Environment in concluding the procedure; and
  - delay in the granting of the agreement by the relevant General Director of the Ministry of Culture.

3. Initiation of the EIA procedure and public consultation

Article 21 of the DL makes two sets of amendments to the Code on the Environment:

- The first group of amendments concerns article 23 and is aimed at modifying the deadlines for the verification of the EIA request, for the possible request of supplementary documentation, and at specifying that these deadlines are peremptory.
- A second group of amendments concerns article 24 and is mainly aimed at halving the time-limit for the public consultation phase; this is only addressed to EIA procedures concerning RRP-NECP projects.

Point 1, letter a) amends article 23, paragraph 3 of the Code on the Environment to:

- Increase the time-limit given to the relevant authority to examine the EIA request from 10 days to 15 days, starting from the submission of the request.
- Introduce a time-limit given to the relevant authority to send the applicant a request for additional documentation if the documentation is incomplete. The amendment in question specifies that the request must be sent within the same time-limit as that set for the verification of the application, i.e. 15 days from its submission.

- Clarify that the time-limits laid down in Article 3 paragraph 3 are mandatory.

In detail and limited to EIA procedures related to RRP-NECP projects, it lays down:

- The halving of the time allowed to the public ("*any person having an interest*") to submit comments to the relevant authority. It provides that comments may be submitted within 30 days from the publication of the notice to the public, instead of the 60 days provided for in the previous text (the time-limit for comments on projects not included in the RRP-NECP perimeter remains 60 days).
- If the project drawings or the documentation acquired must be modified or integrated following the consultation with the public or the presentation of counter-deductions by the applicant to submitted comments, the time-limit (from 20 days to 10 days) granted to the relevant authority to establish a new deadline for the transmission, in electronic format, of any amendments and integrations to the project drawings or the documentation. This can only be done once.
- The converting law extends to 120 days the maximum duration of the suspension of applications upon request of the applicant. This can only be done once when more in-depth studies are deemed necessary in relation to the technical complexity of the investigations.
- The halving of the deadline for consultation relating to amendments or additions made to the project drawings and documentation. It is foreseen that, in relation to such modifications and integrations, the presentation of the observations of the public and the transmission of opinions of the administrations and public bodies concerned must take place within 15 days. The previous text provided for a timeframe of 30 days.

A further amendment concerns the simplification of the provisions relating to the phase after the receipt of the supplementary documentation (amendments or additions made to the project documentation and to additional documentation). This simplification generally applies, and it is not only limited to RRP-NECP projects. In particular, this amendment provides that, upon receipt of the supplementary documentation, the relevant authority shall immediately publish it on its website, and it shall initiate a new public consultation by means of a specific notice.

4. New rules on Development Consent Orders

Article 22 introduces a series of changes to Article 27 of the Code on the Environment, which provides for (in the event of State EIA) the issuance of the Development Consent Order ("*Provvedimento Unico Ambientale*", hereinafter "PUA"). The main aim of these amendments is restricting the content of the PUA to those authorisations listed in paragraph 2 of the same article and not to all authorisations (or acts of consent, however named) in environmental matters. Moreover, additional amendments have been done on (i) the deadline for the publication of the public notice and (ii) the timing to hold the services conference aimed at issuing the PUA.

Paragraph 1, letter a) outlines the content of the PUA, governed by Article 27 of the Environmental Code.

In addition, in case of State EIA, the previous text provided that the applicant could request the issuance of EIA procedure from the relevant authority as part of a single order, including all the environmental permits required by the legislation in force for the construction and operation of the project. The new text, instead, provides that the PUA shall include only those environmental authorisations listed in paragraph 2 and required by the legislation in force for the construction and operation of the project.

Consequently, it is specified that the public notice shall not include all environmental authorisations but only those referred to in paragraph 2.

Letter b) complements paragraph 2 of article 27, adding a sentence relating to specific cases where the sector regulations require an executive planning level to allow a complete technical-administrative investigation. In such cases the new sentence grants the applicant the right to request the exclusion from the procedure for the issue of the PUA for the acquisition of authorisations, understandings, concessions, licences, opinions, agreements, permits and consents howsoever named.

Letter c) amends paragraph 4, article 27 of the Environmental Code. Previously, it required the relevant authority to notify all the administrations and bodies potentially interested and relevant to environmental matters that the documentation containing the request to initiate the procedure has been published in the website of the relevant authority. Following the delimitation of the PUA content as of letter a) of the same article, the new text provides that this communication must be sent only to the administrations with the power to issue the environmental authorisations referred to in paragraph 2.

Letter d) extends the deadline granted to the relevant authority to publish the public notice opening the consultation phase. The deadline has been extended from five days to ten days - starting from the verification of the completeness of the documents, or, in case of requests for supplementation, from the date of their receipt.

Lastly, the new text removes the section of the paragraph granting the same deadline for the calling of the services conference. This phase is relocated, by letter e) of paragraph 1, in the text of paragraph 7 of article 27 of the Environmental Code, and therefore moved forward in time, after the acquisition of public comments has been completed.

5. Regional Development Consent Orders (PAUR)

Article 23 introduces an optional preliminary phase in PAUR procedure. This phase is aimed at giving the applicant the opportunity to ask for clarifications on the content that should be included in the submitted documentation, and therefore, immediately detecting specific conditions and requirements set by administrations. It also sets forth the call of a preliminary services conference to define a clear picture of the preliminary requirements set by all the parties involved.

Article 24 provides for several amendments to the rules on the procedure for issuing the Regional Development Consent Orders (PAUR), contained in Article 27-bis of the Code on the Environment. These amendments are mainly aimed at providing clarifications on the procedures to be followed for the issuance of permits required for the construction and operation of the project, as well as in relation to any changes to planning variant:

- Letter a) of paragraph 1 amends paragraph 3 of article 27-bis of the Code on the Environment, deleting the provision for the relevant authority to assess not only the completeness of the documentation submitted by the applicant but also its adequacy.

- Letter a) also adds a sentence in paragraph 3 claiming that the relevant administration must verify compliance with requirements that must be fulfilled to access further phases where the planning variant under article 8 of Presidential Decree 160/2010 is also requested within the time-limit under first sentence (30 days from the publication or no later than 30 days from the request for additions).

- Letter b) of the same paragraph amends paragraph 4 of article 27-bis of the Code on the Environment. It removes the section of the previous provision claiming that comments submitted by the public shall concern the environmental impact assessment phase and, where necessary, the impact assessment and the integrated environmental permit.

- Therefore, the new text only provides that the public may submit comments. The purpose of this amendment is to broaden the scope of public comments.

- Letter b) also introduces a sentence to paragraph 4 of article 27-bis of the Environmental Code. This sentence states that if the project involves a change in the planning variant, observations of the public shall also concern this change and, where necessary, the strategic environmental assessment.

- Letter c) of the same paragraph amends paragraph 5 of article 27-bis of the Environmental Code by providing that, upon receipt of the supplementary documentation, the relevant authority shall publish it on its website and, by means of notice, it will start a new public consultation whose time-frame shall be halved with respect to the traditional consultation phase.

– Letter d) of the paragraph amends and integrates paragraph 7 of Article 27-bis of the Environmental Code. A significant integration compared to the previous text concerns the authorisations issued for the implementation and operation of the project.

The provision claiming that the decision to grant the relevant permits was taken on the basis of the EIA decision is deleted and replaced by a set of rules stating the following:

- Where sector-specific permits are included in a single order, administrations responsible for the issuance of each single permit shall participate in the services conference and each single permit shall be incorporated into the PAUR (new text, last sentence of paragraph 7).

In other words, the duplication of procedures only formally unified in the final PAUR should be avoided. In some cases, this duplication became an additional procedural burden after the conclusion of separated EIA and AU procedures. The new framework aims at ensuring that services conference and procedures are truly unified.

- Where, according to the sector's regulations, an executive project level is required for the issuance of one or more permits or where the commissioning / start-up of the plant requires additional verifications, reviews or permits following its realisation, in the context of the services conference, the relevant administration shall indicate the necessary conditions to be verified. They should also include a schedule for the issuance of the final permit. These conditions may be modified or supplemented only in the presence of significant elements that emerge during the following procedure for the issuing of the final permit.
- The final determination under paragraph 7 shall include any acknowledgement made by the services conference relating to permits having public utility, nondifferentiation and urgency elements, changing the planning variant tools or constituting a constraint to expropriation.

6. Simplification for storage, photovoltaic and large thermal plants

Article 31 contains provisions to encourage the development of storage and photovoltaic plants, as well as to overcome *impasses* in the authorisation process for thermal plants with a capacity of more than 300MW.

6.1 New features for electrochemical storage systems

Paragraph 1 of article 31 adds two paragraphs to article 1 of Law-Decree No. 7 of 7 February 2002:

- With reference to stand-alone electrochemical storage plants (batteries) intended for mere storage or local consumption, letter a) removes the request for an environmental impact assessment.
- Where the interinstitutional committee does not reach an agreement with the regional authorities concerned in the issuance of the single permit, letter b) provides that it may conclude the preliminary investigation within 90 days.
- By amending paragraph 2-quater of article 1 of Decree-Law No. 7 of 2002, the law converting the Law-Decree also provides that the simplified municipal authorisation procedure ("*Procedura Abilitativa Semplificata Comunale*" or "PAS" under article 6 of Legislative Decree No. 28 of 3 March 2011) shall be applied where storage plants are connected to renewable energy power plants that already have all the necessary permits and they do not involve new areas.

6.2 Simplification of authorisation and environmental assessment procedures for photovoltaic plants having a capacity of up to 20MW and placed in industrial, manufacturing or commercial areas

Paragraph 2 adds a paragraph to article 6 of Legislative Decree No. 28 of 3 March 2011, providing that the simplified municipal authorisation procedure ("*Procedura Abilitativa Semplificata Comunale*" or "PAS") also applies to the construction and operation of photovoltaic plants of up to 20MW (the threshold has been doubled when the Legislative Decree was converted) connected to the medium voltage electricity grid (also specifically provided for in the converting law) and located in industrial, productive or commercial areas.

These type of plants - having a capacity of up to 10MW - are also excluded from the environmental impact assessment.

Therefore, there is a considerable simplification of authorisation and environmental requirements for plants having a capacity of up to 10MW as well as a simplification of authorisation requirements only for plants with a capacity of between 10 and 20MW. The latter will however be subject to a state EIA, an outcome that is perhaps inconsistent with the original aim of the Decree-Law.

The applicant must submit a self-declaration that the plant is not located in any of the areas specifically listed and identified under Annex 3, letter f) of the Decree issued by the Minister of Economic Development of 10 September 2010 defining "*Guidelines for the authorisation of renewable energy power plants*". Annex 3 identifies "*criteria for the identification of not entitled areas*", stating that "*the identification of not entitled areas and sites is not intended to slow down the construction of plants, but rather to provide operators with a certain and clear framework of reference and guidance for the location of projects*". Regional authorities shall identify not entitled areas by means regional provisions, considering the relevant environmental, territorial and landscape planning tools under specifically listed principles and criteria. Letter f) states one of these principles, referring to "*particularly sensitive and/or vulnerable areas*", such as:

- Sites included in the UNESCO World Heritage list and places of outstanding cultural interest
- Areas whose image also identifies places in terms of internationally renowned tourist attraction
- Areas close to archaeological sites
- Natural Protected Areas at different levels (national, regional, local)
- Internationally important wetlands
- Areas that make up the Natura 2000 network
- *Important Bird Areas* (I.B.A.)
- Sites that are important for conserving biodiversity
- Agricultural areas ensuring quality of agricultural and food products
- Areas characterised by instability and/or hydrogeological risk
- Areas under article 142 of Legislative Decree No. 42 of 2004 (Code of Cultural Heritage and Landscape).

6.3 New provision for State EIA relating to photovoltaic plants with a capacity of more than 10MW

With an amendment to Annex II to Part Two of Legislative Decree No. 152 of 2006, photovoltaic plants with a power exceeding 10MW are subject to State EIA, as already provided for wind plants with a capacity exceeding 30MW. Photovoltaic plants with a capacity between 1MW and 10MW (except for those plants located in productive, industrial or commercial areas) remain subject to the regional EIA.

Article 8 of Decree-Law No. 92 of 2021 has appropriately clarified that these changes in jurisdiction apply to applications submitted after 31 July 2021 and therefore they cannot have any impact on ongoing applications.

6.4 Procedural acceleration tools for plants with a thermal capacity of more than 300MW

Article 31 amends provisions on the single permit required for the construction and operation of electricity plants with a thermal capacity of more than 300 MW. A new paragraph is added to article 1 of Decree-Law No. 7 of 2002, providing for the activation of substitution powers in the event of failure to reach an agreement with the regional authorities concerned. In this case, the inter-institutional committee (with reference to the national network power lines under article 1-sexies, paragraph 4-bis of Decree-Law No. 239 of 29 August 2003) can decide to terminate the authorisation procedure within 90 days from its conclusion, which should be in turn concluded within 180 days from the presentation of the request, after having acquired the EIA.

7. Localised actions in neighbouring areas

Article 30, paragraph 1 amends the legislation on the single permit for renewable energy power plants, providing that the Ministry of Culture shall participate in the single procedure in relation to projects concerning plants located in protected areas, even in progress, pursuant to Code of Cultural Heritage, or close to (i.e. having common borders with) protected areas under the same legislative decree.

Pursuant to paragraph 2, the Ministry of Culture shall express its opinion in the context of the services conference with a non-binding mandatory opinion for authorisation procedures relating renewable energy power plants - as well as the relevant connected works and indispensable infrastructures - located close to environmental protected areas. If the deadline for the expression of the opinion is not met, the relevant administration shall in any case decide on the permit. Under no circumstances can the representative of the Ministry of Culture activate remedies against the decision to terminate the services conference under the legislation in force (article 14-quinquies of Law No. 241 of 1990). The remedies have an administrative nature (see below the description of article 14-quinquies of Law No 241/1990) and they are aimed at activating the Presidency of the Council of Ministers at first instance or the Council of Ministers where the conflict remains unresolved. Of course, remedies of judicial nature on the provision concluding the entire procedure cannot be ignored.

This is a particularly strong provision, as the tool of opposition has often been used to try to stop actions in non-protected areas.

With reference to authorisation procedures relating to renewable energy power plants close to protected areas, it is expressly stated that the Ministry may exercise the powers under article 152 of the Code of Cultural Heritage, providing for distances, measures and variants to ongoing projects, in order to ensure the preservation of the values expressed by the protected assets.

8. Simplification of renewable energy power production. Simplification of repowering procedures and reinstatement of incentives for so-called agrivoltaic systems

Article 31 amends and complements provisions on the single permit for renewable energy power plants, to introduce certain simplifications for the works of modification of these plants involving an increase in their capacity (repowering).

In particular, paragraph 1, letter a) - through the amendment and integration of paragraph 3, third sentence, of Legislative Decree No. 28 of 2011 - states that works on photovoltaic and hydroelectric plants not entailing a change in size, area or related assets, can be qualified as non-substantial changes and therefore shall be notified to the Municipality even if they only change the technological solution used and regardless of the resulting capacity reached after the work.

Works on wind projects and power plants and related assets, which are carried out on the same area of the wind power plant, regardless of the resulting capacity reached after the work, and involving a minimum reduction in the number of wind turbines compared to those already existing or authorised, shall also be notified to the Municipality.

The provision sets out specific requirements on the size of new wind turbines, firstly establishing a proportionality test with existing (or already authorised) wind turbines and, in any case, claiming that the height of new plants must not exceed the double of the height of the existing wind turbines.

However, the procedures for verifying the compatibility of the project and for assessing its environmental impact, if any, remain valid.

This last provision could significantly reduce the simplification effect pursued by the provision.

Furthermore, the provisions state that ground-mounted plants located in agricultural areas falling into the definition of so-called agrivoltaic systems are eligible for incentives.

This is an initial regulatory definition, refined during the parliamentary process, entitling for incentives those plants that "*adopt innovative integrative solutions with ground-mounted installations, also providing for the rotation of the installations themselves, in any case in such a way as not to compromise the continuity of agricultural and pastoral cultivation activities, also allowing the application of digital and precision farming tools"*, provided that monitoring systems are installed that are suitable for verifying "*their impact on crops, water savings, agricultural productivity for the different types of crops and the continuity of the activities of the interested farms*". The converting law also expressly provides that benefits will cease to apply when above listed conditions are no more fulfilled.

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Concluding remarks

It can already be concluded that - although the Simplification Decree *bis* contains many measures of actual simplification and procedural acceleration and many improvements have been made by the converting law - some points of uncertainty remain. In particular, we refer to the following:

1. *Repowering* projects. Uncertainty remains on the definition of cases requiring a complete repetition of procedures already carried out, which preserves the applicability of environmental provisions (with the risk that cases qualifying as non-substantial in terms of authorisation may instead be considered substantial in terms of the environment, reducing or even annulling the simplification of authorisation procedures). In this respect, the so-called "reblading" action under Decree-Law No. 76 of 2020 provided greater certainty because it expressly stated that environmental assessments were not applicable.
2. Ongoing applications and provisions on environmental assessments. Despite clarifications provided, uncertainty remains on the right and concrete applicability of the overall changes that has been introduced, both from procedural and competence point of view.
3. Effective inclusion of so-called agrivoltaic plants in the power quotas for the next auction under Ministerial Decree of 4 July 2019. Despite having more precisely defined agrivoltaic plants, using a more functional (compatibility with agricultural activity) than descriptive approach, uncertainty remains on their inclusion in the power quotas for the next auction under Ministerial Decree of 4 July 2019. However, clarifications are expected in the call for tenders by the energy services manager ("*Gestore dei Servizi Energetici*" or "GSE").
4. The full acceptance by the Supervising Authority of their diminished role with regard to actions in neighbouring areas, and the cessation of the use of the tool of opposition as a means of extending protection.

Procedural distinction between RRP-NECP actions and other actions. Uncertainties remain on the need of such a distinction without any consideration of the more urgent need to work towards more general forms of simplification and acceleration of administrative procedures.

Contacts

Simone Cadeddu
Partner

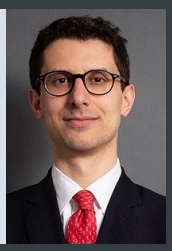
Tel: +390669667000
simone.cadeddu
@twobirds.com

Pierpaolo Mastromarini
Partner

Tel: +390669667000
pierpaolo.mastromarini
@twobirds.com

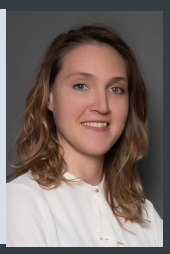
Jacopo Nardelli
Senior Associate

Tel: +390230356000
jacopo.nardelli
@twobirds.com



Maddalena Was
Associate

Tel: +390669667000
maddalena.was
@twobirds.com



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