

The Renewables Decree: Introduction of a New System of Incentives for Renewable Energy Plants

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On 29 March 2011, the so-called Renewables Decree entered into force. It substantially revises the system of incentives for the production of electricity from renewable sources in Italy and provides for modifications to the procedures for the authorisation of renewable plants. The Renewables Decree, which aims at creating a long-lasting stable framework for the support of renewable energy plants, has as its short-term effect the suspension of the currently applicable feed-in tariffs for solar PV plants and the reduction of the price offered by the GSE for the purchase of green certificates.

On 3 March 2011, the Italian Council of Ministers approved a Legislative Decree for the implementation of EC Directive 2009/28 on the promotion of the use of energy from renewable sources (Renewables Decree). The Renewables Decree entered into force on 29 March 2011, the day after its publication in the *Official Gazette*.

Section 25, par. 1, of the Renewables Decree provides that the currently applicable incentive schemes shall be limited in duration until 31 December 2012, and as of 1 January 2013 a new incentive system shall apply. Such new system shall be set forth in one or more decrees to be adopted by the Ministry of Economic Development and the Ministry of Environment, and shall be based on feed-in tariffs for all types of renewable energy sources, including wind and biomass. The new feed-in tariff system shall be developed along the following principles, *inter alia*:

- A fair retribution of the investment
- A duration equal to the average lifetime of the plants
- Stability for the whole period of incentivisation

These ministerial decrees shall establish fixed feed-in tariffs for smaller sized energy plants and provide for a bid mechanism to the lowest offer (*asta al ribasso*) for all renewable energy plants exceeding a certain power threshold. Such threshold shall not be lower than 5 MWp. The ministerial decrees shall set forth in detail the terms and conditions of such bid and the minimum tariff that will in any event be awarded in the bid procedure.

It is expressly provided that the new tariffs and the minimum bid values shall be revised two years after their entrance into force, and every three years after that. This provision is intended to give greater stability and reliability to the Italian renewable energy market.

The ministerial decrees shall ensure fair and predictable modalities for the transition from the current to the new support systems.

The ministerial decrees establishing the new incentive systems shall be adopted within six months as of the entrance into force of the Renewables Decree, *i.e.*, on or before 28 September 2011.

Amendments to the Current Incentive System for Solar PV Plants

The Italian support system for solar PV plants was recently revised by the so-called Third *Conto Energia* (Ministerial Decree of 6 August 2010), which made available subsidies for 3,000 MW of installed ordinary PV plants, 300 MW of integrated PV plants with innovative features and 200 MW of concentrated PV plants. Once these thresholds were reached, a grace period of 14 months should have been applied, during which grid-connected PV plants should still have been entitled to the feed-in tariffs under the Third *Conto Energia*. The Third *Conto Energia* applied to photovoltaic plants starting operations as of 1 January 2011 and was meant to remain in force until 2013.

The Renewables Decree now establishes that only those PV plants that start operations as of 31 May 2011 shall be eligible for the feed-in tariffs under the Third *Conto Energia*, whereas all PV plants that start operations later shall receive a new—and supposedly considerably lower—tariff. An exception is made only for PV-plants qualifying for the 2010 tariff under the so-called “*salva-Alcoa*” law which will remain entitled to such tariff, provided they are connected to the grid by 30 June.

The new feed-in tariffs applicable as of 1 June 2011 shall be defined by decree to be adopted jointly by the Ministry of Economic Development and the Ministry of Environment by 30 April 2011. In particular, the ministerial decree shall take the following actions:

- Establish an annual cap on the overall capacity of PV plants that can be granted with the feed-in tariff
- Determine the amount of the feed-in tariffs in light of the reduction of costs of technology and installation, and of the incentives granted to PV plants in other European Member States
- Provide for a differentiation of tariffs and caps depending on the classification of the area where the PV plants have to be installed

In addition to the new feed-in tariffs that will become applicable as of 1 June 2011, the Renewables Decree introduces restrictions to the entitlement to the feed-in tariff (even under the current Third Conto Energia) for ground-mounted PV plants located on agricultural land, except where the land had been abandoned for at least five years. Such PV plants shall be entitled to the feed-in tariff only if all of the following conditions are met:

- The nominal peak power of the PV plant must not exceed 1 MWp.
- In case of land belonging to the same owner, the PV plants must have a distance of at least 2 kilometres from each other.
- The PV plant must not occupy a surface of more than 10 per cent of the agricultural land available to the plant operator.

The foregoing restrictions do not apply to ground-mounted PV plants for which the authorisations have been released before the entrance in force of the Renewables Decree nor for which the request for authorisations has been filed prior to 1 January 2011. In both cases, however, the PV plants must start operations within one year of the entrance in force of the Renewables Decree.

Amendments to the Current Incentive System for Wind power plants

In the short run, the Renewables Decree has confirmed the incentive scheme based on the two-fold mechanism of an all-inclusive tariff (the so-called *tariffa onnicomprensiva*) for microgeneration plants with a production capacity of up to 200 kWp and green certificates for the wind power plants exceeding such threshold.

The all-inclusive tariff (*tariffa onnicomprensiva*), which is a form of feed-in tariff that includes the price for the sale of the electricity, has not been amended. As a consequence, microgeneration wind power plants with a nominal peak power up to 200 kWh starting operations on or before 31 December 2012, shall continue to receive the current tariff of 30 (euro) cents/kWh for 15 years.

The Renewables Decree confirms until 2015 the obligation of the GSE (*gestore dei servizi energetici*) to purchase excess green certificates that operators of larger plants have not managed to sell to the market. But the prices paid by the GSE shall now be reduced from 100 per cent to only 78 per cent of the price at which the GSE collocates the certificates on the market—which is equal to the difference between a pre-established value of EUR 180,00/MWh and the annual average price of electricity. The price of the green certificates sold by the GSE in 2010 was equal to EUR 112.82 /MWh, so the GSE would now pay only EUR 88/MWh for the green certificates.

The GSE will purchase the excess green certificates at the reduced price only until 2015. After 2015, the binding quota of green energy to be fed into the national grid by producers of energy from conventional sources shall be eliminated, and there will no longer be a market for green certificates. Instead, as of 1 January 2013, wind power plants shall have access to the new feed-in tariff system, which shall be implemented by ministerial decrees within six months from the entrance into force of the Renewables Decree.

The ministerial decrees that implement the new incentive systems shall establish modalities for the coordination of the transition from green certificates to the new feed-in tariffs.

Amendments to the Current Incentive System for Biogas and Biomass Plants

Similar to the wind energy sector, the Renewables Decree has for the short term confirmed the current incentive scheme based on the all-inclusive tariff (*tariffa onnicomprensiva*) for biogas and biomass plants with a production capacity of up to 1 MWp and green certificates for larger plants.

Biogas and biomass plants with a production capacity of up to 1 MWp that start operations on or before 31 December 2012 will continue to receive an all-inclusive tariff, including the price for the sale of the electricity, of 28 (euro) cents/kWh. The tariff will be paid for 15 years as of the date of the start of operations.

For biogas and biomass plants exceeding the 1 MWp threshold, the same amendments to the green certificates system shall apply as previously described with respect to wind power plants: a reduction of 22 per cent of the price for which the GSE collects the green certificates that have not been sold to the market.

It is provided that green certificates and all-inclusive tariffs shall be granted also to biogas plants owned by, or operated jointly with, agricultural companies already prior to 1 January 2008. In such cases, the incentive period is calculated by deducting from the duration of the incentives (15 years) the period between the date of the plant's entrance into operation and 31 December 2007.

Biomass plants starting operations more than one year after the Renewables Decree's entrance into force shall have access to the incentives only if they perform a rate of conversion efficiency not lower than 85 per cent and if they respect certain technical criteria still to be set out by implementation of article 290 of the Environmental Code.

Like all other renewable energy plants, biogas and biomass plants shall be transitioned to a new feed-in tariff system as of 1 January 2013. The ministerial decrees that shall implement such new system shall take into consideration the origin and the traceability of the raw materials in order to channel each specific product to its most productive use, and to promote the efficient use of waste products, the construction of co-generation plants, and the construction of micro and mini co-generation plants.

80 per cent of the full feed-in tariff shall be obtained in case of partial revamping, and 90 per cent in case of full revamping of existing biogas or biomass plants.

Amendments to Authorisation Procedures

The Renewables Decree introduces modifications to the current procedures for the authorisation of the construction and operation of renewable energy plants with the purpose of accelerating and simplifying the permitting procedures.

The Single Authorisation procedure (*Autorizzazione Unica*, or AU) will remain regulated by section 12 of Legislative Decree no. 387 of 2003. But section 5 par. 2 of the Renewables Decree now provides that the procedure shall no longer last 180 days but only 90 days. This term does not include the time required for the performance of the environmental impact assessment (*Valutazione di Impatto Ambientale*).

A ministerial decree shall identify for each type of plant those “substantial modifications” to a project that require obtaining a new AU, whereas the other—minor—modifications can be authorised by a simplified process. Until the adoption of this ministerial decree, those modifications that do not change the physical dimensions of the plants or the volume of the structures and the involved land are considered not substantial and do not require a new AU.

The new provisions on the AU shall be applicable to all authorisation procedures that are commenced after the entrance into force of the Renewables Decree. Previously started authorisation procedures will continue to be subject to the previous authorisation regime.

Moreover, the Renewables Decree introduces a new simplified authorisation procedure for small plants, very similar to the DIA/SCIA (*i.e.*, the application to the competent Municipality and start of works after 30 days if the Municipality does not raise objections), which shall be applicable to all such plants that would currently be subject to the DIA/SCIA procedure. The Regions shall now be expressly entitled to extend this simplified procedure to renewable energy plants with a production capacity of up to 1 MWp nominal power—much like many southern Regions had done illegitimately in the past with the DIA

procedure. However, where specific environmental or landscape authorisations are required, the AU procedure shall remain obligatory.

The new simplified procedure shall automatically be applicable to the authorisation of small renewable plants for which the request of authorisation is filed after the entrance into force of the Renewables Decree. It shall also be available, upon the applicant's choice, for previously filed authorisation requests as long as the project meets the respective requirements.

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