

Italy: Incentive Regimes for Renewable Energy Plants

March 2015



For more information, please contact
your regular McDermott lawyer, or:

Carsten Steinhauer

+39 06 462024 1
csteinhauer@mwe.com

Anna Vesco

+39 06 462024 1
avesco@mwe.com

Riccardo Narducci

+39 06 462024 1
rnarducci@mwe.com

For more information about
McDermott Will & Emery visit
www.mwe.com

Table of Contents

3	Overview
3	Plants That Started Operating On or Before 31 December 2012
4	Plants That Started Operating Between 1 January 2013 and 30 April 2013
5	Plants That Started Operating After 30 April (or June) 2013
8	Outlook

Overview

In Italy, the system of incentives for electricity production plants that use renewable energy sources is managed by the Gestore dei Servizi Energetici S.p.A. (GSE), a state-owned company whose sole shareholder is the Ministry of Economy and Finance.

Since 1999, electricity produced by renewable energy sources (RES) other than photovoltaic energy, *i.e.*, wind, biomass, geothermal, hydropower, *etc.*, had been supported by an incentive scheme based on so-called green certificates, which were issued by the GSE and traded between operators on a dedicated market or redeemed by the GSE at a fixed price. By law, a proportion of the total amount of energy produced or fed into the grid by any one producer in Italy had to be sourced from renewable energy. Energy producers and importers could meet their obligations by generating energy from RES and purchasing green certificates.

The Ministerial Decree of 6 July 2012 (the RES Decree) introduced a radical change in the incentive system for RES plants. It reduces the mandatory amount of energy from RES year by year until the end of 2015, at which point the obligation will end. At the end of 2015, the green certificates regime will be fully replaced by a feed-in tariff (FiT) scheme. RES plants that started operating after 30 April 2013, or 30 June for waste treatment plants, already fall under the new FiT regime; those that started operating in the transition period before those dates and after 1 January 2013 can choose between the two systems.

Plants That Started Operating On or Before 31 December 2012

RES plants that started operating on or before 31 December 2012 currently benefit from the green certificate system.

GREEN CERTIFICATE SYSTEM

Green certificates are granted for a period of 12 years to RES plants that were in operation or refitted during the period from 1 April 1999 to the end of 2007, and for a period of 15 years to plants that entered into operation or were refitted after 1 January 2008. As outlined above, the green certificates will be replaced by a feed-in premium for the residual incentive period, starting 1 January 2016.

For each MWh of electricity produced by RES plants that started operating before 1 January 2008, the GSE issues one green certificate. For plants that entered into operation after 1 January 2008, the power produced by the renewable plant is multiplied by a coefficient “k”, which varies according to the source of energy:

	Renewable Energy Source	Coefficient k
1	Onshore wind above 200 kWp	1
1bis	Offshore wind	1.5
3	Geothermal	0.9
4	Wave and tidal	1.8
5	Hydro	1
6	Biodegradable waste and biomasses different from those below	1.3
7	Biomasses and biogas produced from short-chain agricultural, farming or forestry activities	1.8
7-bis	Biomasses and biogas that fall under 7 above, supplied to high efficiency cogeneration, with re-use of thermal energy for agricultural activities	1.8
8	Landfill gas, gas deriving from the purification processes and biogases different from those under 7 above	0.8

Green certificates can be either traded on the market managed by the Gestore dei Mercati Energetici S.p.A. (GME), a subsidiary of the GSE, or sold directly to the GSE at a fixed price. The price payable by the GSE for a green certificate corresponds to 78 per cent of the difference between €180/MWh and the average electricity price, which is determined each year by the National Authority for Electricity and Gas and for the Water Systems (AEEGSI). For 2015, the AEEGSI determined the average electricity price as €55.1/MWh. On this basis, 78 per cent of the difference between €180/MWh and the average electricity price results in a payment of €97.42/MWh.

REPLACEMENT OF GREEN CERTIFICATES BY A FEED-IN PREMIUM

As of 1 January 2016, the GSE will no longer issue green certificates, but will instead directly pay a feed-in

premium. This premium will be determined according to a formula that is designed to make sure that each MWh of RES production continues to be granted the same euro amount that was previously achieved by selling the green certificates to the GSE.

Accordingly, RES plants will receive an incentive payment “I”, which is determined as follows:

$$I = k * (\text{€}180/\text{MWh} - \text{average electricity price as determined by the AEEGSI}) * 78\%.$$

The coefficient “k” is equal to 1 for any RES plants that were operational before 2008. For plants that became operational after 2008, it varies according to the source of renewable energy and is the same as previously fixed for the determination of the amount of green certificates per MWh (see table above).

To give an example, an onshore wind park (coefficient $k = 1$) previously received one green certificate per MWh, which could be sold to the GSE for 78 per cent of the difference between €180/MWh and the average electricity price as determined by the AEEGSI. As of 1 January 2016, the same wind park will directly receive a feed-in premium of 78 per cent of the difference between €180/MWh and the average electricity price.

VOLUNTARY DEFERRAL OF INCENTIVES

Law Decree 145/2013, converted into Law 9/2014, provides under Article 1, paragraphs 3 and following, for RES plant owners to choose between one of the following two options:

- Continue to benefit from the current incentives for the remaining period. In this case, the RES plant (or one replacing it on the same site) will not qualify for any further incentives during the 10 years following the expiry of the original incentive period.
- A redistribution of the remaining incentives, consisting of a seven year extension of the incentivising period with a correspondent reduction of the applicable incentive. The amount of the reduction is different for each type of RES plant.

The choice between the two options had to be exercised by 17 February 2015.

A Ministerial Decree implementing these legislative measures was issued by the Minister of Economic Development on 6 November 2014. The GSE further clarified this Ministerial Decree by means of its guidelines issued on 19 December 2014.

The voluntary deferral of incentives does not apply to

- Plants whose incentives period ends before 31 December 2014 or, in the case of biomass and biogas plants below 1 MWp, before 31 December 2016.
- Plants incentivised under the “CIP6” regime.
- New plants incentivised under the RES Decree, except for those that fall under the transitory regime (see below).

SALE OF ELECTRICITY

It is important to note that both the green certificates (until end of 2015) and the feed-in premium (starting 2016), are in addition to the prices achieved for the sale of the electricity. As a consequence, the revenues generated by a RES plant that started operating on or before 31 December 2012 are composed of the price for the green certificates or the incentive “I”, plus the price obtained for the sale of the electricity.

These RES plants are entitled to benefit from the so-called *ritiro dedicato* system, a simplified sales procedure that entitles the RES plant to sell the electricity directly to the GSE at the average hourly zonal market prices (*prezzi zonali orari*). Although no threshold applies to wind, solar, hydro, wave and tidal energy, other RES plants can access the *ritiro dedicato* only if they have a nominal power lower than 10 MW.

Plants That Started Operating Between 1 January 2013 and 30 April 2013

The RES Decree provides for a transitory regime for RES plants that started operating between 1 January 2013 and 30 April 2013, or 30 June 2013 for waste management plants. These plants had the option to choose between the previous incentive regime (green certificates, replaced by a feed-in premium as of 2016) and the new incentive system (the overall FiT).

For these plants, however, the incentives are being reduced by a 3 per cent factor per each month they started operating after January 2013.

RES plant owners who opted for the previous incentive regime also had the option to choose, by 17 February 2015, a voluntary redistribution of the incentives over a longer period.

Plants That Started Operating After 30 April (or June) 2013

RES plants that started operating after 30 April, or 30 June for waste management plants, 2013 will benefit from a completely new overall FiT system.

OVERALL FEED-IN TARIFF

The new FiT has a basis of calculation that is completely different from the feed-in premium granted to older RES plants. It is not compatible with the simplified sale of

electricity to the GSE (*ritiro-dedicato*), nor with the benefits of net metering. It is granted for a period equal to the presumed life-cycle of the plant, which varies between 15 and 30 years, depending on the type of RES and the power capacity of the plant.

The base amounts of the overall FiT, which differ depending on the type and size of the RES plant and the duration of its payment, are below. The tariffs in the table apply to RES plants that started operating on or before 31 December 2013. They are decreased by 2 per cent per calendar year after 2013, provided that in the preceding year at least 80 per cent of the GSE's budget for FiTs has been spent. On 5 November 2014, the GSE reported that the 80 per cent threshold was not reached in 2013 or 2014, so the 2 per cent reduction will not apply to any RES plant that started operations in 2015 and in 2016.

Source	Type	Power (kW)	Plant Average life-cycle (Years)	Overall Feed-in Tariff (Euro/MWh)
Wind	Onshore	1<P≤20	20	291
		20<P≤200	20	268
		200<P≤1000	20	149
		1000<P≤5000	20	135
		P>5000	20	127
	Offshore	1<P≤5000	25	176
		P>5000	25	165
Hydro	Flowing water	1<P≤20	20	257
		20<P≤500	20	219
		500<P≤1000	20	155
		1000<P≤10000	25	129
		P>10000	30	119
	Basin water	1<P≤10000	25	101
		P>10000	30	96
Tidal		1<P≤5000	15	300
		P>5000	20	194
Geothermal		1<P≤1000	20	135
		1000<P≤20000	25	99
		P>20000	25	85

SPECIAL REPORT

Source	Type	Power (kW)	Plant Average life-cycle (Years)	Overall Feed-in Tariff (Euro/MWh)
Landfill gas		1<P≤1000	20	99
		1000<P≤5000	20	94
		P>5000	20	90
Sewage treatment plant gas		1<P≤1000	20	111
		1000<P≤5000	20	88
		P>5000	20	85
Biogas	Organic products	1<P≤300	20	180
		300<P≤600	20	160
		600<P≤1000	20	140
		1000<P≤5000	20	104
		P>5000	20	91
	Organic sub-product	1<P≤300	20	236
		300<P≤600	20	206
		600<P≤1000	20	178
		1000<P≤5000	20	125
		P>5000	20	101
	Biodegradable waste	1<P≤1000	20	216
		1000<P≤5000	20	109
P>5000		20	85	
Biomass	Organic products	1<P≤300	20	229
		300<P≤1000	20	180
		1000<P≤5000	20	133
		P>5000	20	122
	Organic sub-product	1<P≤300	20	257
		300<P≤1000	20	209
		1000<P≤5000	20	161
		P>5000	20	145
	Biodegradable waste	1<P≤5000	20	174
		P>5000	20	125
Bioliquids		1<P≤5000	20	121
		P>5000	20	110

A premium that ranges between €10 and €40/MWh may be added to the FiT (possibly reduced by the 2 per cent factor) applicable to geothermal, biomass and biogas plants that use specific innovative technologies that reduce greenhouse gas emissions.

INCLUSION AND EXCLUSION OF ELECTRICITY PRICE

RES plants up to 1 MWp receive payment of the full overall tariff (as possibly reduced by the 2 per cent factor or increased by a premium). The electricity is sold to the GSE and the price is included in the overall FiT.

RES plants with a nominal power exceeding 1 MWp receive the FiT indicated in the table above, less an amount corresponding to the average hourly zonal market prices¹. The regulator clearly assumes that owners of RES plants exceeding 1 MW are able to sell their electricity privately and achieve at least the market price.

ACCESS TO THE FEED-IN TARIFF

The RES Decree provides for three different ways to access the FiT incentives, depending on the size and type of the RES plants: i) direct access, ii) a ranking system or iii) a reverse auction system. The power thresholds that determine the correct access regime are as follows²:

Renewable Energy Source	Direct Access	Ranking System	Reverse Auction
Wind	Up to 60 kW	Up to 5 MW	Over 5 MW
Hydro	Up to 50 kW ³	Up to 10 MW	Over 10 MW
Tidal	Up to 60 kW	Up to 5 MW	Over 5 MW
Geothermal	N.A.	Up to 20 MW	Over 20 MW
Landfill gas	N.A.	Up to 5 MW	Over 5 MW
Sewage treatment plant gas	N.A.	Up to 5 MW	Over 5 MW
Biogas	Up to 100 kW	Up to 5 MW	Over 5 MW
Biomass	Up to 200 kW	Up to 5 MW	Over 5 MW
Bioliquids	N.A.	Up to 5 MW	Over 5 MW

¹ If the zonal hourly electricity price is negative, which may occur when the imbalance costs of the national grid are higher than the hourly price of the energy fed into the national grid, then the price is deemed to be zero for purposes of determining the overall FiT.

² The thresholds for directly accessing the incentives are doubled for renewable energy plants that are built by means of a public tender process and are subject to the public administration's control.

³ This threshold is increased to 250 kW under specific circumstances.

Plants that fall under the direct access regime can obtain the FiT simply by filing an application with the GSE.

Incentives for plants that are larger than those eligible for direct access, but smaller than those requiring a reverse auction, are granted within the confines of the GSE's annual budget and on the basis of a ranking system that is managed by means of a register kept by the GSE. These RES plants must finish construction within certain time periods that start running from the communication of the positive outcome of the application to join the ranking system.

RES	Months
Onshore wind	16
Offshore wind	22
Hydro	28 ⁴
Geothermal	28
Biomass ⁵ , biogas	22
Biomass ⁶	28
Bioliquids	16
Tidal	36

If the deadlines are not met, a 0.5 per cent decrease of the FiT will apply per each month of delay, up to a maximum of 12 months. If the construction works are completed more than 12 months past the deadline, the RES plant will lose its right to the incentives and be excluded from the register. These RES plants can still request access to the incentives at a later date and are entitled to the FiT that would apply at the date of actual start of operations, reduced by 15 per cent.

Incentives for large RES plants that are not eligible for either the direct access regime or the ranking system are allocated by means of a reverse auction system. Here again, a certain annual budget is made available and those applicants offering the lowest tariff will win the auction. Bids

⁴ For hydroelectric plants requiring geological works, the deadline is set at 36 months.

⁵ Organic products and sub-products.

⁶ Undifferentiated waste and biodegradable waste.

have to be at least 2 per cent, but not more than 30 per cent, lower than the base overall FiT indicated in the table above table, reduced by 2 per cent for each year after 2013. Construction works must be completed within certain time periods from the award of the tariff:

RES	Months
Onshore wind	28
Offshore wind	40
Hydro	40
Geothermal	40
Biomass ⁷ , biogas	40
Biomass ⁸	40
Bioliquids	28

If the deadlines are not met, a 0.5 per cent decrease of the FiT tariff will apply per each month of delay, up to a maximum of 24 months. If the construction works are completed more than 24 months past the deadline, the RES plant will permanently lose its right to the incentives.

Outlook

The currently applicable incentive regime offers overall FiTs for newly built RES plants until the threshold of €5.8 billion per year of incentive payments is reached. As of the date of publication of this white paper, the annual amount of incentive payments has already reached €5.769 billion. This also includes the budget reserved to the registries and the reverse auction system that took place in 2014 but may not be fully assigned.

It is worth noting that in 2015, several older RES plants that had been incentivised under the first generation incentive regimes will reach the end of their 12 year incentive period, thereby freeing-up incentives for new RES plants.

The key question is whether the € 5.8 billion threshold will be reached before or after the expiry of incentives for the

⁷ Organic products and sub-products.

⁸ Undifferentiated waste and biodegradable waste.

older RES plants (and the effects of the voluntary *spalma-incentivi*⁹) free-up new funds. The Vice Minister of Economic Development, Mr Claudio De Vincenti, recently addressed this issue by implying that, should the €5.8 billion threshold be reached before new funds are freed-up by the expiry of first generation incentives, a new Ministerial Decree would be issued in order to use the later funds to grant incentives to newly built RES plants.

At this point, and with only €31 million left in the budget, it is unlikely that the GSE will open any additional registers or reverse auctions in 2015, unless the Legislator grants more incentives.

The material in this publication may not be reproduced, in whole or part without acknowledgement of its source and copyright. *Italy: New Incentives Regime for Renewable Energy Plants* is intended to provide information of general interest in a summary manner and should not be construed as individual legal advice. Readers should consult with their McDermott Will & Emery lawyer or other professional counsel before acting on the information contained in this publication.

©2015 McDermott Will & Emery. The following legal entities are collectively referred to as "McDermott Will & Emery," "McDermott" or "the Firm": McDermott Will & Emery LLP, McDermott Will & Emery AARPI, McDermott Will & Emery Belgium LLP, McDermott Will & Emery Rechtsanwälte Steuerberater LLP, McDermott Will & Emery Studio Legale Associato and McDermott Will & Emery UK LLP. These entities coordinate their activities through service agreements. McDermott has a strategic alliance with MWE China Law Offices, a separate law firm. This communication may be considered attorney advertising. Previous results are not a guarantee of future outcome.

⁹ It appears that the effect of the voluntary *spalma-incentivi* on the annual budget threshold has not been taken into account by the Legislator. In fact, to the extent that RES plants opt for the voluntary *spalma-incentivi*, they only temporarily reduce the annual cost for RES incentives but, ultimately, create room for granting incentives to additional RES plants.



McDermott Will & Emery

Boston Brussels Chicago
Dallas Düsseldorf Frankfurt Houston London
Los Angeles Miami Milan Munich
New York Orange County Paris Rome
Seoul Silicon Valley Washington, D.C.

Strategic alliance with MWE China Law Offices (Shanghai)

www.mwe.com

