November 2015

TOPICS COVERED

- Italy Climate opportunities
- Italy Energy Efficiency potentials
- Off-shore
- New draft Decree on non PV Renewables

Legal Pulse expresses its solidarity to the victims of terrorist attacks in Paris.

In this edition of Legal Pulse, we consider recent developments in the Italian Energy regulatory environment analyzing the investments opportunities. We invite you to read about these legal updates regarding Italy and welcome your thoughts on areas to be covered in future issues.

Italy Energy Environment – Eyes on

PARIS2015
UN CLIMATE CHANGE CONFERENCE
COP21·CMP11

"The challenges of the climate should be taken as an opportunity for the global economy, not as a constraint..."

(Angel Gurría (secretary general of the OECD) at G20 summit - Antalya, Turkey- 15 and 16 November 2015).

UE Climate and renewable commitments and related business opportunities

The G20 summit held on 15 and 16 November last in Turkey, seemed particularly determined in concluding by December 2015, at the 21st Conference of Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC), a robust, ambitious and inclusive agreement to govern collective climate action after 2020. Furthermore, on 14 October 2015, the European Parliament adopted the resolution 2015/2112(INI)[1] "*Towards a new international climate agreement in Paris*" encouraging the adoption of a Protocol "*legally binding and ambitious*" aimed at phasing out global carbon emissions by 2050, or shortly thereafter, therefore driving private investors - such as banks, pension funds and insurance companies – to the voluntary alignment of lending and investment practices to the global warming reduction target of minus 2 °C, as well as divesting from fossil fuels; this includes the phasing out of export credits for fossil fuel investments. The resolution also calls for specific public guarantees in favor of green investments and investments on energy efficiency projects, labels and fiscal advantages for green investment funds and for issuing green bonds.

[1] http://www.Europarl.Europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0359

On November 2015 Italy submitted to the UE Parliament Italy's fact sheet[2] related to the State of the Energy Union. The report shows how the Italian energy mix consumption, when compared to average EU levels, is characterized by a higher share of gas and oil products and a lower share of coal. It also shows a very limited availability of fossil fuel resources that causes Italy's dependency on energy imports.

Furthermore, on 24 November 2015 the EU launched a consultation[3] on a new renewable energy package which is likely to be issued before the end of 2016, targeting to increase the share of renewable energy sources in the EU[4]. The consultation includes a new renewable energy directive (REDII) for the period 2020-2030[5], an updated EU bioenergy sustainability policy as well as a revision on the current directive on Energy Efficiency. This package will include also a new framework aimed at decarbonising the heating and cooling sector as well as enhancing the use of renewable energy in the transport sector which represent almost half of the EU energy consumption and still remains dominated by fossil fuels and therefore dependent on imports.

What follows is an analysis on how such factors linked to the climate commitments, that Italy will be required to adopt, can represent business opportunities for a further development of the renewables energies industry and the Energy efficiency sectors.

Italy energy efficiency potentials

According to the International Energy Agency[6], Italy is a leader in supporting growth for the energy efficiency market. Cumulative costs for EE financial incentives are estimated in 25 billion Euro (2011-2020). These resources should mobilize private investments of 60 billion Euro in the forthcoming period provided that Italy manages to overcome the barriers that currently have hindered investments.

In brief Italy's energy efficiency policies are ruled in the Legislative Decree 102/2014 transposing Directive 2012/27/UE (currently under review[7] in order to achieve the 2030 energy efficiency target) which provides for: •White Certificates •Tax deductions and incentives deriving from the thermal feed-in tariff, addressed to public administrations as well as to private parties. Beneficiaries may implement the actions via an ESCo, by means of a third-party financing contract, an energy service contract or an energy performance contract.

Currently around 40% of the energy efficiency investment is financed with debt and equity while the balance is auto-financed by the private sector also by means of resources coming from public funds. Main challenges for developing the project finance within the EE sector are of technical nature, since each EE project is different and not replicable (differently from other sectors such as renewables financings)

[2] http://ec.Europa.eu/priorities/energy-union/state-energy-union/docs/italy-national-factsheet_en.pdf

[3] https://ec.Europa.eu/energy/en/consultations/preparation-new-renewable-energy-directive-period-after-2020

[4] As highlighted in the 2030 climate and energy framework (COM(2014) 15 final).

[5] For the period after 2020, binding national targets are replaced by a binding EU-level target of at least 27% renewable energy in final energy consumption by 2030 without sectorial targets or binding targets at national level.

[6] https://www.iea.org/publications/freepublications/publication/MediumTermEnergyefficiencyMarketReport2015.pdf

[7] https://ec.Europa.eu/energy/en/consultations/consultation-review-directive-201227eu-energy-efficiency

but ENEA (the Italian National Agency for New Technologies, Energy and Sustainable Economic Development) has already drafted guidelines that in any case will develop and disseminate the adoption of standards able to constitute precedents so reducing costs and attracting institutional investors on project finance basis. In this regard, considered the importance of the role of the legal advisor - in drafting and providing legal vehicles with a market-driven and bankability approach - as a key factor for the development of your business.

New Interconnection procedures re: Off-shore plants

On 23 November 2015 the Italian Regulatory Authority for Electricity Gas and Water (AEEGSI) adopted Resolution 558/2015 amending and updating AEEG Resolution 99/08 that provides general conditions for the connections to the renewable energy plants to the national grid. Among others, the AEEGSI Resolution rules for the first time the connection procedures related to wind off-shore plants built on Italian national waters.

In this regard, the Resolution states that Terna (the national grid operator) subject to the prior consultation and approval by the AEEGSI will specify within the Grid Code (*Codice di Rete*) the possible solutions for the connection of the offshore wind plants. The Resolution also delegates other grid operators to issue their own solutions and contractual conditions in order to carry out the connection of offshore wind plants.

RES Incentives schemes

On November 6, 2015 the Unified State-Region Conference approved the draft Ministerial Decree of the Ministry of Economic Development, supporting the production of energy from renewable sources (other than photovoltaic) (Draft). Before the Draft can be considered final, it still needs a final submission to the European Commission for its consideration, which will verify if the measures are consistent with the European guidelines on State aid. Only after the approval of the European Commission the Decree Scheme (as amended and integrated) will be considered final and ready for publication the Official Gazette and its subsequent entry into force.

The Draft enacts the provision contained in article 3 paragraph 2 of the Ministerial Decree 6 July 2012 (2012 Renewables Decree) that settled, for the period 2013-2015, 5.8 Euro billion as maximum public expenditure available for all kind of incentives to be paid to renewable energy plants, ruling also that once such threshold is achieved, new thresholds could be settled by means of further ministerial decrees.

According to the energy counter published in the GSE's web site, it seems that such amount of 5.8 Euro billion is likely to be reached in the forthcoming days. Therefore the Draft needs to be duly approved and published within such time.

What follows is a brief summary of the provisions contained in the Draft that will replace the 2012 Renewables Decree and that will rule the incentives awarded to plants sourced by renewable energy other than photovoltaic until the end of 2016 in compliance also with the EU rules on state aids.

The Draft is framed within the system of registry, auctions and direct access to the incentives (depending on the type and capacity of the plant) introduced by the 2012 Renewables Decree.

Thresholds (called "*contingenti*") of power capacity that may be granted with incentives are established for each source of energy and divided also according to the modalities of access to the incentive.

The total amount of expenditure made available (equal to 5.8 Euro billion) will be divided in two equal tranches.

Large plants (i.e. such plants having a capacity beyond 5 MW) gain access to incentives through the mechanism of the auctions. In order to have the right to participate to such auctions, large renewable plants will be required to prove that they have financial capacity by means of: (a) delivering a bank statement attesting the financial capacity of the applicant, having regard to the expected income of the project as well as the financial soundness of the parent company or the soundness of the applicant itself in order to provide the necessary funds for the project; and (b) proving to have an amount of capitalization necessary to carry out the required investment in the project. Such amount of capitalization ranges from 10% in case of investments up to 100 Euro million to a 2% in case of investments exceeding 200 Euro million. Applicants are also required to file a provisional bank guarantee when filing the application for the participation to the auction. Once the auction is concluded, awarded plants need to enter into operation within a set time frame, which varies depending on the type of plant (for instance 31 months for wind plants, 43 for offshore wind plants, etc.).

By way of example, following is the feed-in premium contained in the Draft for wind, plants:

Renewable source	Type of plant	Power	Operational life of plant (years)	Tariff (€/MWh)
Wind	On-shore	$1<P\leq 20$	20	250
		$20<P\leq 60$		190
		$60<P\leq 200$		160
		$200<P\leq 1.000$		140
		$1.000<P\leq 5.000$		130
		$P>5.000$		110
	Off-shore	$1<P\leq 5000$	25	-
		$P>5.000$		165

* * *

Stefano Maria Zappalà*

zappala@strataspa.net

***Director of** strata S.p.A. Global Legal Advisor

eipf
Studio legale