

THE “DECRETO SEMPLIFICAZIONI” – NEW MEASURES RELATED TO THE ENVIRONMENT AND THE GREEN ECONOMY

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On 17 July 2020, Law Decree no. 76, known as the “*Decreto Semplificazioni*” (or the “Decree”), on “urgent measures for simplification and digital innovation” came into force. The Decree was published in the Official Gazette on 16 July 2020 and must be converted into law within the next 60 days (noting amendments are possible) or risk losing its effectiveness.

The remit of the Decree aims to simplify procedures for the following: (i) public contracts and construction; (ii) public procedures and responsibilities; (iii) digital administration; and (iv) business, environment and green economy activities.

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The passing of the Decree indicates a concerted governmental effort to simply and digitalise procedures and, more widely, improve the effectiveness and efficiency of administrative action. This will undoubtedly benefit the renewable energy sector by streamlining various processes.

The Decree sets out broad and transferable proposals for the simplification and modernisation of various public administration activities, including those related to the environment and the green economy. It presents challenges to those public authorities in particular which are being called upon to take significant steps to implement all the reforms.

However, to fully evaluate the effectiveness of the reforms introduced by the Decree, it will be necessary to await both the outcome of the conversion process

and, more importantly, the text of the decrees and regulations issued in order to implement the Decree, as well as the result of any changes subject to a temporary duration.

KEY POINTS – GREEN ECONOMY AND RENEWABLE ENERGY

I. ENVIRONMENTAL SIMPLIFICATIONS – EIA (ENVIRONMENTAL IMPACT ASSESSMENT) AND SCREENING

Rationalisation of EIA procedures

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Effective from the 30th day following the date of entry into force of the conversion law, art. 50 of the Decree provides for the streamlining of EIA procedures in relation to the Environmental Code. In particular:

- **for the purposes of issuing an EIA**, the applicant is required to submit the feasibility study or, if available, the definitive project;
- **Integrated National Plan for Energy and Climate (PNIEC)**: regarding the verification of the eligibility of projects falling under the state's remit, within 30 days from the date of entry into force of the relevant provision, the government, in agreement with the regions, must identify any sites suitable for the installation of large renewable energy plants and the types of projects and works necessary to implement the PNIEC;
- **Verification of eligibility for an EIA – Screening**: Article 19 of the Environmental Consolidation Act dedicated to the verification of eligibility for an EIA has been completely revised. In general terms, the time required to complete the procedure has been reduced – in particular, the deadline for submitting observations for a preliminary environmental study has been reduced from 45 to 30 days – and measures have been implemented to address inactivity preventing the conclusion of the procedure. The procedure is as follows:

Step	Timetable
Submission of the preliminary environmental study	-
Checking the completeness and adequacy of the preliminary environmental study.	Within 5 days of receipt of the preliminary environmental study
Option to request, on one occasion only, clarifications/documental integrations	
Production of additional documentation/clarifications (if required)	Within 15 days from the request, (failure to do so being penalised via archiving of the application)
Publication of the preliminary environmental study on the institutional website of the competent authority and communication to the authorities and all competent territorial bodies. Alternatively, publication may be by the proposer	-
Submission of observations from authorities and any third parties	Within 30 days from the communication of the publication of the preliminary environmental study

Step	Timetable
Adoption of the measure of verification of eligibility for an EIA	<p>Within 45 days from the deadline for submitting observations.</p> <p>In extraordinary circumstances there can be a single extension for a maximum of 20 days.</p>

- **Early consultation:** ahead of submission of a project for an EIA, the applicant has the right to request a phase of consultation with the competent authority in order to define the scope and level of detail of the information necessary for the preparation of the environmental impact study;
- **Scoping:** reduction from 60 to 45 days (from publication on the competent authority's website) for the authority to give its opinion on the scope and level of detail of the information to be included in the environmental impact study.
- **Environmental Impact Assessment – EIA:** reduction from 15 to 10 days in the deadline for the authority to assess the completeness of the documentation submitted in relation to an EIA application:
 - The time limit for the applicant's counter-arguments in response to the observations by any third party made following the publication of the public EIA notice is reduced from 30 to 15 days;
 - Within 20 days, in case of modification or documental integration, the relevant authority may, on a single occasion only, set a time limit not exceeding a further 20 days (previously 30) for the electronic submission of the modified or integrated project documents. Upon the applicant's reasonable request (and also exercisable on one occasion only), suspension of the deadline for the submission of such supplementary documents for a period not exceeding 60 days (previously 180 days) may be granted. If this deadline is not met, the application will be archived as a penalty;
 - In case of amendment or documental integration of the project documents (with a subsequent publication phase), the new text of art. 24 of the Environmental Code provides a reduction from 30 to 10 days of the deadline for counter-deductions by the applicant to the observations made following the documental integrations themselves;
 - The deadlines for the adoption of the EIA measure have also been reduced. For projects falling under state competence (with the exception of projects and works necessary for the implementation of the PNIEC) the Ministry of the Environment and Protection of Land and Sea shall adopt an EIA measure within 30 days (previously 60), after obtaining the agreement of the Ministry of Cultural and Heritage Activities and Tourism, which is to be made within 15 days (previously 30) from the request. In the event of the expiry of these deadlines, as well as if a total period of 210 days from the start of the procedure for the adoption of the EIA measure (previously not provided for) has elapsed, at the request of the applicant or the Ministers concerned, the adoption of the measure may be referred to the Council of Ministers, which will make a decision on the outcome within the following 30 days; and
 - A provision is also inserted to combat inactivity by the Technical Commission in relation to the verification of the environmental impact. In such cases, the Director General of the competent Directorate General of the Ministry of the Environment and Protection of Land and Sea, acting on the basis of the opinion of ISPRA (the Higher Institute for Environmental Protection and Research) (to be obtained within 30 days) will transmit such EIA measure to the Ministry of the Environment and Protection of Land and Sea for subsequent adoption.

"The deadline for requesting additional documents following publication of the public notice of the commencement of the EIA procedure has been halved."

Single environmental measure pursuant to Article 27 of the Environmental Code

Art 27 of the "Decreto Semplificazioni" introduces several amendments to the Environmental Code:

- **Verification of documentation:** the time limit for verifying the documentation accompanying the relevant application to initiate the procedure and for telematic communications to all authorities and bodies competent in environmental matters and potentially interested has been reduced from 15 to 10 days;

• **Conference of Decision-services:** within 5 days from the verification of the completed documents or from the possible receipt of the requested documental integrations, the authority convenes the conference of services. Simultaneously, the notice of commencement of the EIA procedure is published. For 30 days after publication, any member of the public concerned may comment on the EIA, the impact assessment (where necessary), the integrated environmental permit, and any other permits included in the same environmental measure; and

- The deadline for requesting additional documents following publication of the public notice of the commencement of the EIA procedure has been halved.

PAUR (Single Regional Authorisation Measure)

- There is a reduction from 15 to 10 days in the deadline for the authority to verify the documentation accompanying the application to initiate the procedure, and for communications in relation to the publication of the documentation on its website to be sent by electronic means to all authorities and bodies competent in environmental matters and potentially interested; and
- The deadline for the submission of comments by the public following the publication of the notice to the public initiating the EIA procedure is reduced from 60 to 45 days.

Interventions and works in the reclaimed sites

- On sites subject to reclamation, including SIN (Sites of National Interest), various works may be carried out, including those for the construction of plants for the production of energy from renewable sources. This is with the provision that the interventions are carried out in a manner that does not affect or interfere with the execution and completion of the reclamation, nor which would present risks to the health of workers and other users of the area; and
- For the sake of simplification, the Ministry of the Environment (in relation to SIN areas) and the individual regions (for all other areas) will identify the categories of interventions that do not require prior assessment.

INTERVENTIONS WHICH FALL INTO THE CATEGORIES PROVIDED BY THE DECREE WILL BE SUBJECT TO A MERE DECLARATION OF SWORN START OF WORKS.

II. SIMPLIFICATIONS IN THE FIELD OF GREEN ECONOMY – AMENDMENTS TO THE “DECRETO ROMANI” (“THE ROMANI DECREE”)

With regard to simplifications in the field of *green economy*, **art. 56** of the “*Decreto Semplificazioni*” introduces several amendments to Legislative Decree no. 28/2011 (known as the “*Decreto Romani*”).

- **The GSE’s (*Gestore dei Servizi Energetici*, the Italian Energy Service System Operator) sanctioning powers:** the changes made to art. 42 of the Romani Decree relating to controls and sanctions with regard to incentives (including subsidies) have a considerable impact. Under the new formulation, except in the case where doing so would constitute a crime, if violations found by the GSE are relevant for the purposes of granting the incentives, the GSE itself provides for the rejection of the application or forfeiture of the incentives where the conditions for the exercise of the cancellation ex officio (“*autotutela*”) are met. In accordance with the above-mentioned regulations, it is possible to proceed with the ex officio cancellation: (i) if there are reasons of public interest; (ii) if such cancellation is within a reasonable time period (in any case not exceeding 18 months) from the time of the adoption of the authorisation measures or the granting of economic advantages; and (iii) taking into account the interests of the recipients and other interested parties;
- **Amendments/EIA:** in relation to projects for the modification of renewable energy plants requiring complete reconstruction, refurbishment, reactivation and upgrading, the EIA will only examine changes in the environmental impact of the proposed project;
- **Non-substantial changes:** non-substantial changes, including those relating to projects authorised but not yet completed, are subject to the PAS (Simplified Enabling Procedure). Interventions to be carried out on photovoltaic and hydroelectric projects or plants that do not involve changes in the physical dimensions of the equipment, in the volume of the structures and in the area intended to house the plants themselves, nor in the related works, are not considered substantial and are subject to the communication relating to free building activities (*attività in edilizia libera*);
- **Declaration of sworn start of works (*Dichiarazione di inizio lavori asseverata*):** interventions on existing plants and modifications to authorised projects which, without increasing the area occupied by the plants and related works (regardless of the electrical power resulting from the intervention), fall into the categories provided by the Decree will be subject to a mere declaration of sworn start of works to be submitted to the competent Municipality:
 - a) **wind farms:** interventions consisting of replacing the type of rotor that result in an increase in the physical dimensions of the blades and service volumes of no more than 15% in each case;
 - b) **photovoltaic plants with ground modules:** interventions that, following the replacement of the modules and other components and through the modification of the layout of the plant, result in a variation in the service volumes not exceeding 15% and a variation in the maximum height above ground not exceeding 20%;
 - c) **photovoltaic installations with modules on buildings:** interventions to replace photovoltaic modules on industrial buildings and, in relation to residential buildings, interventions that result in a decrease in the angle between the plane of the modules and the plane of the surface on which the modules are placed or no change in such angle; and
 - d) **hydroelectric installations:** interventions which, without increasing the derived flow rate, result in a variation in the physical dimensions of the components and the volume of the structures housing them of no more than 15%.

"Failure to respond within a certain period will be taken as implied consent, even when a response to the contrary is received after such period."

The increase in energy production resulting from an increase in power output above the thresholds currently provided for (being 5% for plants up to 20 kW and 1% for others) is qualified as obtained by without incentives. As a result of this amendment, the GSE is called upon to adapt the implementing rules relating to the Ministerial Decree of 23 June 2016.

III. PROCEDURAL SIMPLIFICATIONS

- **Monitoring timings of procedures:** public authorities will have to measure and make publicly available the actual timing of the conclusion of administrative procedures, in comparison with the deadlines provided for by the relevant regulations and, **by 31 December 2020**, must carry out a **review of the duration of the procedures for**

which they are responsible, with the aim of reducing such durations;

- **Silence as implied consent:** failure to respond within a certain period will be taken as implied consent, even when a response to the contrary is received after such period. Where consultation is sought, if 20 days elapse without acknowledgement, the body requesting such input may proceed with no obligation to take into consideration any response received after such date, regardless if it is unsupportive of the proposed action. With the exception of the assent of authorities in charge of environmental, landscape, cultural heritage and health protection, if the proposal of further public authority input is foreseen to be required, it will be communicated within 30 days from the relevant request, with the obligation of feedback in the following 30 days. Otherwise, the procedure will progress and the consultation requirement deemed fulfilled;
- **Digitisation of the procedures:** there will be a change of step regarding the digitisation of the procedures and the use of telematics, which will be used as a standard. Public authorities will have to use telematic tools both internally between the different authorities, and externally between them and private individuals;
- **Pre-notice of rejection (10-bis Law no. 241/1990):** the relevant public authority may serve a pre-notice of rejection, setting out the reasons for such rejection. It is expected that such notice will suspend the terms of conclusion of the process, which will restart 10 days after the submission of the observations or, in the absence thereof, 10 days after receipt of the pre-notice;
- **Self-certifications:** in proceedings initiated at the request of a party that have the purpose of disbursing economic benefits or which are in relation to the issue of authorisations and clearances, affidavits and self-certifications will replace any type of documentation usually required to prove all the subjective and objective requirements required by the reference legislation;
- **Acceleration of proceedings in a conference of services:** until 31 December 2021 in all cases in which a decisional conference of services is to be convened, the proceeding authorities are entitled to adopt the instrument of the simplified conference, with the following particularities:
 - all authorities must issue the determinations of competence within the mandatory 60-day period; and
 - Except in cases where authorities in charge of environmental, landscape-territorial, cultural heritage, or health protection are involved, and within 30 days of the expiry of the deadline for the issue of decisions falling within the competence of the individual authorities, the proceeding authority shall hold a virtual meeting and conclude, without delay, the conference of services.

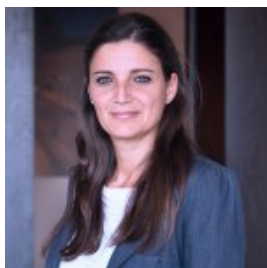
- **Extension of the Single Authorisation pursuant to art. 12 of Legislative Decree no. 387/2003:** this has been extended to interventions also consisting of the demolition of buildings or environmental restoration for the purposes of area requalification.

IV. FURTHER INNOVATIONS INTRODUCED BY THE “DECRETO SEMPLIFICAZIONI”

- **Access to GSE calls for tenders for owners of plants that benefit from incentives in the form of green certificates, all-inclusive tariffs or premium tariffs:** the GSE will publish special calls for tenders, ad hoc rankings for producers of electricity from renewable sources owning plants that benefit from incentives in the form of green certificates, all-inclusive tariffs or premium tariffs, in each instance who in accordance with the provisions of art. 1, Section 3, of Decree Law No. 145 of December 23, 2013 (converted, with **amendments**, into Law No. 9 of February 21, 2014 (Provisions for the Reduction of Costs Burdening Electricity Rates) have made the relevant selections.
- **Tax liability of public administrators:** until July 31, 2021, liability for tax damages is limited in cases of fraudulent misconduct with regard to actions; while it will have no limits with regard to omissions;
- regulations for the construction of electric vehicle charging points and stations;
- statistical transfers of renewable energy (*trasferimenti statistici di energia rinnovabile*);
- authorisation procedures for the infrastructure of national energy networks and electricity distribution networks;
- **the on-site exchange:** it is extended the on-site exchange “elsewhere” for municipalities up to 20,000 inhabitants without power limits – a mechanism which is limited for the Ministry of Defence “*within the limits of its own energy requirements and subject to payment of the recognised network charges for public lighting*”;
- electric power plants with a capacity exceeding 300 thermal MW for which (among other criteria) substantial modifications are identified, subject to the single authorisation issued by the MISE – Ministry of Economic Development (i.e. interventions that produce negative and significant effects on the environment or lead to a positive change in electrical power of more than 5% compared to the project originally authorised);
- electrochemical storage plants, which, dependent on criteria including the threshold and the characteristics of the area in which they are located, may be authorised without the issue of an authorisation (free building activity), PAS, Single authorisation issued by the MISE, Single authorisation pursuant to art. 12 of Legislative Decree no. 387/2003; and
- the issue of guarantees on loans for green new deal projects.

"On-site exchange
"elsewhere" is
extended for the
municipalities up to
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without power
limits."

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