

WFW OBTAINS REJECTION OF MINISTRY OF CULTURE APPEAL AGAINST TAYAN ENERGY

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Watson Farley & Williams (“WFW”) successfully represented Tayan Energy, a subsidiary of Spanish solar energy company Eland and multinational Shanghai Electric, before the Regional Administrative Court of Lazio (“TAR”) in proceedings brought by the Ministry of Culture (“MiC”) to obtain the annulment of Regional Single Authorisation Measures (*Provvedimenti Autorizzatori Unici Regionali* – PAUR) pursuant to Article 27 *bis* of the Environmental Code issued by the Lazio regional government for the construction of two ground-mounted photovoltaic plants. The plants, with total capacity of approximately 55 MW, will be located in the municipalities of Tessennano and Viterbo and are owned by Tayan Energy.

The two projects, to be built on land not subject to any restrictions, had previously been authorised for construction, despite a negative opinion issued at the Conference of Services (*Conferenza dei Servizi*) by the State Superintendency for the Protection of the Landscape and Archaeology – an opinion considered non-binding by the regional government.

With decisions no. 11732/2021 and no. 11734/2021 of 15 November 2021, TAR did not express an opinion on the merits of the case – in which the defence referenced the related favourable decision of no. 4793 of 7 May 2020 – but acknowledged the objection of lateness raised by the regional government and Tayan Energy in their defence and determined that the time limit for MiC’s appeal began from the date of communication the PAUR measures and not their subsequent publication date in the Regional Bulletin as they had argued. It was also deemed irrelevant that the authorisation measure was sent to the Lazio Regional Secretariat of the Ministry of Cultural Heritage and Activities’ central email, rather than to the local Archaeological Superintendency for the Province of Viterbo.

TAR has, therefore, distinguished the position of the parties involved in the authorisation procedure from those of extraneous third parties and does not intend to endorse a formalistic approach in the internal relations of public authorities, reiterating that the duty of loyal cooperation requires an office receiving an institutional communication not to ignore it and forward it on to relevant colleagues.

In these rulings, TAR followed the same approach adopted in other judgments concerning conflicts of interest between regional authorities and the Ministry of Economic Affairs on the authorisation photovoltaic projects, the continuation of which could also affect the timeframe for achieving national renewable energy production targets, as set out in the relevant EU programme.

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As evidence of the importance of these decisions, Law Decree 77/2021 (the so-called Simplification Decree *bis*) has restricted the participation of the MiC to proceedings concerning projects located in or adjacent to restricted areas though, in instances of the latter, it is entitled to express non-binding opinions and excluded from activating the administrative remedies provided for by the applicable laws (Article 14-*quinquies* of Law No. 241/1990).

The WFW Italy Regulatory team advising Tayan Energy comprised Partner Tiziana Manenti, Counsel Giannalberto Mazzei and Senior Associate Arcangelo Pecchia.

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