

WFW WINS SOLAR PLANT DISPUTE FOR TAYAN ENERGY BEFORE ITALIAN COUNSEL OF STATE

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Watson Farley & Williams (“WFW”) successfully represented Tayan Energy before the Italian Counsel of State (“CdS”) 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 with a total capacity of approximately 55 MW in the municipalities of Tessennano and Viterbo.

The two projects, which are being built on land in a restriction-free zone, had previously been authorised for construction by the Lazio regional authorities, despite the negative opinion issued by the MiC’s Superintendency for Landscape and Archaeology – an opinion considered by the regional government to be non-binding and to contain no useful information on how to overcome the expressed issues.

With first instance decisions no. 11732/2021 and no. 11734/2021 of 15 November 2021, the Regional Administrative Court (“TAR”) did not express an opinion on the merits of the case, in which it referred to the favourable precedent by sentence no. 4793 of 7 May 2020, but acknowledged the objection of lateness raised by the defence. The MiC considered that the time limit for the appeal began from the date of communication of the PAUR and not from the subsequent date of its publication in the Regional Bulletin. The TAR considered it irrelevant that the communication of the PAUR had been sent to another office of the MiC rather than to the Superintendency.

In judgments no. 5566/22 and 5567/22, the CdS confirmed the first instance assessment and declared the two appeals inadmissible due to lateness with respect to time limits set forth in Article 119 of the Code of Administrative Proceedings.

The halved time limit is in fact applicable in cases in which, like the one in question here, in order to carry out works, not only an authorisation of title is required, but also the activation of an expropriation procedure. This confirms the principle already expressed by previous CdS rulings (no. 1377 of 15 February 2021 and no. 2243 of 28 March 2022).

In terms of the regulatory aspects of the case, Law Decree 77/2021 (the so-called Simplification Decree *bis*) restricts the MiC to proceedings that concern projects located in or near restricted areas, though in instances of the latter, it can only express non-binding opinions and is excluded from activating administrative remedies provided for by the applicable laws (Article 14-*quinqies* of Law No. 241/1990).

WATSON FARLEY & WILLIAMS

Tayan Energy is a subsidiary of Spanish solar energy company Eland and multinational Shanghai Electric which provides renewable energy solutions in Europe and beyond with a focus on the solar sector and energy storage.

The WFW Italy Regulatory team advising Tayan Energy was led by Partner Tiziana Manenti working closely with Counsel Giannalberto Mazzei and Senior Associate Arcangelo Pecchia.

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