

LEGAL ISSUES ON RENEWABLE ENERGIES IN ITALY

First AIEE ENERGY SYMPOSIUM

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Studio Legale Agnoli e Giuggioli

ABOUT US

Agnoli e Giuggioli has always had a strong involvement in commercial law, assisting its clients in all the aspects related to the management of all types of commercial relationships and also providing advice in relation to all aspects of corporate law. In this context, Agnoli e Giuggioli has matured over the years a specific expertise on corporate governance issues, assisting both institutional investors and investment funds operating in the Italian market

- CORPORATE
- M&A
- BANKRUPTCY
- RESTRUCTURING
- REAL ESTATE
- ADMINISTRATIVE LAW

THE ENERGY DEPARTMENT

Provides advice and assistance in the renewable and conventional energy sector following financing operations, acquisition and development of projects and joint ventures on behalf of national and international clients



LEGAL FRAMEWORK

- LAW no. 239/2004
- LAW no. 99/2009
- LEGISLATIVE DECREE no. 387/2003 (*di recepimento* 2001/77CE)
- LEGISLATIVE DECREE no. 28/2011 (*di recepimento* 2009/28 CE)
- LEGISLATIVE DECREE no. 192/2005 (*di recepimento* 2010/31/UE) *modified by Law Decree June 4, 2013 no.63 converted in Law 90/2013*
- LEGISLATIVE DECREE JULY 4, 2014 no. 104 (*di recepimento* 2012/27/UE)

In addition the copious national legislation and regulation on subsidies and feed-in tariffs for renewable and the regional provisions, very important since, under Article 117, in the Italian Constitution, the competence in the energy field is shared (*concurrent*) between State and Regions

FEED IN TARIFF PV

Feed-In Tariff Scheme (“Conto Energia”) regulates the mechanism of incentives granted by Gestore Servizi Energetici (**GSE**) in connection with the energy produced by the Plants.

- *Ministerial Decree July 28, 2005* I Conto Energia
- *Ministerial Decree February 19, 2007* II Conto Energia
- *Ministerial Decree August 6, 2010* III Conto Energia
- *Ministerial Decree May 5, 2011* IV Conto Energia
- *Ministerial Decree July 5, 2012* V Conto Energia

The V Conto Energia has ceased to be applied on July 6, 2013

GESTORE SERVIZI ENERGETICI (GSE)

- Is the entity controlled by the Ministry of Finance and Economy whose activity consists in promoting and managing the use of renewable sources and their incentive regime
- Is the Italian Authority which grants FITs
- Is also the Authority with powers of inspection and verification

THE MAIN IMPACT IN PV MARKET

- From 2010 onwards, the incentives set out in RES sectors, and relevant support schemes have been reduced through several government decrees
- Legislative Decree no. 28/2011
- The Robin Tax (*art. 81 Law Decree no.112/2008*)
- The LAW no. 116/2014
- Ministerial Decree June 23 published in the Italian Official Gazette no.150 on June 29, 2016

Pursuant to article 26(3) of the Law August 11, 2014 no. 116, published in the Italian Official Gazette no.192/2014 on August 20, 2014 from January 1st 2015, the incentive rate for the electricity generated by PV Plants with a power capacity higher than 200 Kwp is reformulated, at the operator's choice, among one of the following options to be communicated to the GSE within November 30, 2014

EXTENSION OF THE DURATION OF FITs PERIOD

This extension will entail a re-calculation of the amount of the awarded tariff, which will vary depending on the remaining incentive period, as per the table

Remaining years of subsidizing	Percentage of reduction
12	25%
13	24%
14	22%
15	21%
16	20%
17	19%
18	18%
More than 19	17%

FITs REMODULATION

The FITs, which will be maintained for the original 20 year period of duration, will be re-modulated providing for a first period during which the FITs will be reduced in respect to the current awarded tariff and a second period in which the tariff will be increased in a measure equal to the previous reduction. The percentage of the reduction will be set by means of a Ministerial Decree to be issued by 1 October 2014. The percentages of FITs payment remodelling were established, in accordance with AEEGSI, by the Ministerial Decree dated 17th October 2014

FITs CUT

a reduction of the FIT over the unchanged period of 20 years with a cut-off depending on the power capacity of the PV Plants, as follows:

- A reduction by 6% for PV Plants with a power capacity between 200 kWp and 500 kWp;
- A reduction by 7% for PV Plants with a power capacity between 500 kWp and 900 kWp;
- A reduction by 8% for PV Plants with a power capacity over 900 kWp.

The producer must opt for one of the 3 options above and communicate its choice to the GSE by and no later than 30 November 2014. Should the GSE not receive any communication from the producer by such date, the FITs cut option as per 5.1 (3) above will be applied

THE IMPACT AND THE EFFECTS

The reduction pursuant to art. 26 (3) of the Law 116/2014 is a reduction of the FITs level guaranteed to PV Plants already connected to the national grid and that were subject to agreements between photovoltaic electricity producers and GSE. In this sense the measures contained in the Law are retroactive in nature

What does the reduction pursuant to article 26 (3) of the Law 116/2014 has produced in the market?

- REDUCTION TARIFF OBTAINED
- INCREASE OF COSTS
- STRATEGIES TO BE REVISED.

THE PAYMENT MECHANISM

The Law Decree June 24, 2014 no. 91, converted into Law August 11, 2014 no. 116 and the relevant implementation Decrees of the Ministry of Economic Development dated October 16, 2014 and October 17, 2014 (*published in Official Gazette on October 24, 2014 no. 248*) has significantly changed the mechanism of granting of the FITs already awarded to the existing and already subsidizing PV Plants with a nominal capacity exceeding 200 kW,

Starting from the second half of 2014, GSE pays incentives in monthly instalments, in an amount equal to 90 per cent of the PV Plant's estimated annual electricity production, based on GSE's historic records for the relevant plant. The remaining balance will be paid by the GSE on or before 30 June of the year following the year of production. The implementation modalities, defined by the GSE, were established by the decree of the Ministry of Economic Development of October 16, 2014.

CLAIMS

- With reference to the RES sector, the most important law case is the judgment of consultation of the constitutionality (*questione di legittimità costituzionale*) of the law 116/2014– which reduces the feed-in tariffs granted, before the date of entering into force of such Law, to photovoltaic plants already connected to the national grid and that were subject to agreements between photovoltaic electricity producers and the GSE– sent by the Administrative Court of Lazio to the Italian Constitutional Court (*Ordinanza TAR Lazio, Sezione Terza Ter, n. 8669/2015; udienza del 19 marzo 2015; deposito del 24 giugno 2015 - no. 15359/2014 Reg.Ric.*). Nevertheless, the proceeding is already pending and, therefore, no relevant decision of the Italian Constitutional Court has been dictated yet.

ARBITRATION ISDS

- In connection with the Energy Charter Treaty, under which investors have the opportunity to bring arbitration claims against states directly (ISDS, pursuant to Article 26 of such Treaty), rather than having to seek redress in domestic courts, please note that the Italian government has recently declared its withdrawal from such Treaty, through the law published in the Italian Official Gazette no. 190/2014 so called “*Legge di Stabilità*”, starting from January, 2016.
- In addition, according to the last data provided by the Energy Charter Secretariat, Italy was involved in its first known case in 2014 with respect to the notorious Act.(the decision taken by Italy to decrease incentives granted in the past to electricity production from PV plants Law 116/2014)

ARBITRATION ICSID

- the *International Centre for the Settlement of Investment Disputes*, is the organization referring to the World Bank with power of Arbitration in connection with disputes between State and Investors according to bilateral agreement (BIT) executed by the said States.
- Italy is one of the 154 parties of such agreement and some Investors are using this instrument in the Renewable sector

THE NEW MARKET

POSITIVE EFFECTS

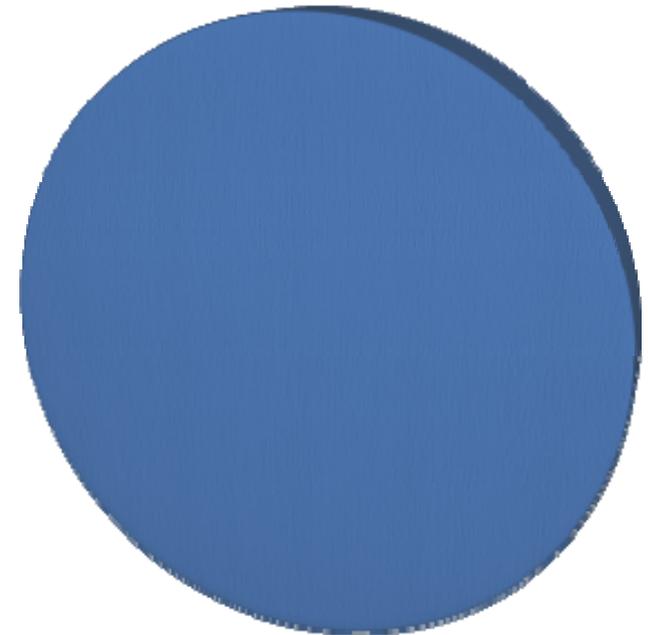
- QUALIFIED INVESTORS
- QUALIFIED EPC/O&M CONTRACTORS
- TRANSACTIONS IN THE SECONDARY MARKET
- RE- FINANCING TRANSACTIONS
- BALANCE IN THE DIFFERENT RENEVABLE ENERGIES

NEGATIVE EFFECTS

- LITTLE INDUSTRIES OUT OF THE MARKET
- DAMAGES DERIVING FROM PREVIOUS PROFITS EXPECTATIONS
- FOREIGN INVESTORS OUT OF ITALY
- INCREASE OF LITIGATION CASES

ACTORS IN THE MARKET

- FUNDS AND INVESTORS
- BANKS /LENDERS
- EPC CONTRACTORS
- O&M CONTRACTORS
- ASSET MANAGERS
- SUPPLIER
- OWNERS OF THE LAND
- PUBLIC ENTITIES



EXAMPLE OF CONTRACTS IN THE NEW MARKET

Nowadays, in the secondary market the legal activities are directed to support Funds and Investors in Refinancing Transactions and all the activities related to the sale and purchase of plants already built and connected to the National grid

- DUE DILIGENCE
- SALE AND PURCHASE AGREEMENT
- RE-FINANCING/FINANCING
- RE- NEGOTIATION O&M CONTRACTS
- RE- NEGOTIATION EPC CONTRACTS

THANK YOU!

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