

Italian previously agreed solar energy incentives now definitively changed

The Italian Parliament definitively converted into law the much-discussed provisions of Law Decree No. 91 of 24 June 2014, affecting the solar energy incentives already granted to photovoltaic plants and providing a new option for renewable energy producers to assign part of their incentive receivables.

The Italian Parliament approved Law No. 116 of 11 August 2014, which came into force on 21 August 2014, converting Law Decree No. 91 of 24 June 2014 into law with amendments (the decree, as converted into law, the "**Decree**"). Notwithstanding heavy criticism by operators, investors and Italian solar energy industry trade associations, the Decree confirms the provisions that reduce the incentives already approved under the various Conto Energia programmes.

Pursuant to the Decree, owners of photovoltaic plants with a capacity in excess of 200kWp must agree to one of the following options by 30 November 2014: (i) extension of the length of the incentive period, (ii) partially deferred payment of the incentive, retaining the previously agreed 20-year span, and (iii) reduction of the incentives to be paid, retaining the previously agreed 20-year span, with this third option becoming the default option for operators who fail to make a choice by the deadline.

In addition, the Decree allows energy producers from any renewable source that receive incentives to assign to a selected financial operator a portion of their incentive receivables. The effectiveness of this provision, however, is conditional upon further evaluation by the Ministry of the Economy in terms of financial sustainability and the actual terms and scope of application will only be confirmed by the implementing regulations, which are to be enacted by the Italian Authority for Electricity Gas and Water ("**AEEGESI**") within 90 days from the enactment of the conversion law (i.e., by 21 November 2014).

Finally, the Decree includes provisions, which were not amended upon conversion, affecting the terms for the payment by the GSE of the incentives granted to photovoltaic plants and requiring energy producers to pay new contributions to the GSE to cover the administrative costs of the incentive programmes (see our briefing note of July 2014). The reduction of the periodic incentive payments may have an impact for energy producers who are borrowers under financing agreements, both in terms of compliance with the existing covenants and of funds available for periodic repayment, which were agreed taking into account the higher incentive payments. The effects on these agreements will have to be analysed on a case by case basis to determine whether refinancing may be a suitable option.

Key issues

- Solar plants will see a reduction in their already agreed incentives
- Operators to select their preferred option by 30 November 2014
- Potential opportunity for producers of renewable energy to assign part of their incentive receivables

The three options available for producers of solar energy

The Decree provides that starting from 1 January 2015 the incentive payments to photovoltaic plants with capacity in excess of 200kW that have been granted under the various Conto Energia programmes will be changed, in accordance with one of the following options to be selected by plants operators and notified to the GSE by 30 November 2014.

➤ **1st option: Extension of the length of the incentive period**

Incentives to photovoltaic plants operators who select this first option will be payable over a 24-year span, rather than the previously agreed 20-year span. This means that the amount of the incentives payable monthly will be reduced by a percentage ranging from 25% to 17%, depending on the date of expiry of the original incentive period, as shown in the table below.

Years before expiry of the incentive period	Percentage of reduction of the incentives
12	25%
13	24%
14	22%
15	21%
16	20%
17	19%
18	18%
Over 19	17%

The Decree requires that the Regions and other local authorities extend the validity period of the authorisations that allow operations of photovoltaic plants that select this option, to allow for continuation of operations through the extended 24-year incentive period.

➤ **2nd option: Reshape of the incentives without affecting the previously agreed 20-year span**

This second option allows photovoltaic plants operators to choose not to extend the originally agreed incentive period but rather to opt for deferred payment of the incentive within the original incentive period: initially, the incentive to be paid will be reduced by a pre-defined percentage, while towards the end of the incentive period the incentive to be paid will be increased by that same percentage. The applicable percentage will be set by the Ministry of the Economy with a decree that is to be published by 1 October 2014. Considering that the Decree provides that this option should allow savings of at least Euro 600 million per year for the period 2015-2019, the percentage of reduction will likely range around 15-17%.

➤ **3st option: Reduction of the incentives without affecting the previously agreed 20-year span**

The third option also retains the originally agreed 20-year incentive period, requiring however photovoltaic plants operators to agree to a reduction of the incentives for the remainder of the incentive period. The incentives will be reduced by the following percentages, depending on the installed capacity of the photovoltaic plant:

- 6% for plants with capacity in excess of 200kW and up to 500 kW;
- 7% for plants with capacity in excess of 500kW and up to 900 kW; and
- 8% for plants with capacity in excess of 900kW.

This is also the option that will be automatically applicable to an operator who fails to notify the GSE of its selection on or before 30 November 2014.

To limit the financial impact of the reduction, the Decree provides that affected operators will be eligible to seek financing, at terms and conditions pursuant to banking system agreements yet to be entered into, either with the assistance of, or guaranteed by, Cassa Depositi e Prestiti S.p.A., for a maximum amount equal to the difference between the incentives they were due to receive for the year ending on 31 December 2014, and the incentives they will receive under the new programme starting from 1 January 2015. This provision, however, will not be effective unless and until the above banking system agreements are entered into and the Ministry of Finance has set the terms for Cassa Depositi e Prestiti's exposure.

Potential opportunity for producers of renewable energy to assign part of their incentive

The Decree provides for producers of any type of renewable energy who have been granted any type of long-term incentive to be able to assign up to 80% of their incentive receivables. The assignee for these receivables will be one chosen among leading European financial operators, who will – following each assignment - become the beneficiary of the assigned incentives in the eyes of the GSE. The AEEGESI will retain the right, however, to purchase such incentives from the assignee at a pre-defined price, to be calculated taking into account the price paid by the assignee, as well as amortisation costs and interest (the "**Variable Component**").

Within 90 days from the enactment of the conversion law (i.e., by 21 November 2014), the AEEGESI will issue implementing regulations to govern all mechanisms of the above process, including:

- (a) The terms and conditions for the process to select the assignee by means of a competitive process, where the assignee should be chosen on the basis of the main criterion of which candidate offers to accept the lower Variable Component;
- (b) The minimum amount, not to be less than Euro 30 billion, that the assignee will make available to finance the assignments from the operators;

- (c) The criteria and the procedures to determine the percentage of incentives that each operator may assign, taking into account the type and location of the power plant involved;
- (d) The terms, conditions and procedures for the assignment of the incentive receivables to the assignee, through a competitive auction, based on the lower assignment discount offered by each assignor operator, where the assignment discount cannot be lower than the Variable Component;
- (e) The terms and conditions for participation in each auction, the minimum assignment discount and the maximum amount to be spent to purchase the incentives.

Upon assignment, the assigned incentive receivables will be exempted, as from the date of the assignment, from the reductions or deferrals, as the case may be depending on which of the above three options was chosen.

The Decree provides that the Government will procure that all measures necessary to ensure the full implementation of the Decree are implemented, such as without limitation ensuring that the banking system creates opportunities for the partial or total termination of facility agreements entered into by energy producers that benefit from long-term incentives.

The effectiveness of these provisions of the Decree on assignment, however, is conditional on the timely enactment of all necessary implementing regulations, and therefore the ensuing potential effects on, and opportunities for, operators that receive incentives cannot yet be measured or evaluated in absence of implementing regulations.

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