

ENERGY LAW UPDATE

3rd August 2012

MINISTERIAL DECREE OF 6TH JULY 2012 REGULATING THE NEW INCENTIVE SCHEME FOR RENEWABLE SOURCES (OTHER THAN THE PHOTOVOLTAIC SOURCE): MAIN NEWS FOR WIND PLANTS

After almost one year of delay, on 6th July 2012, it was issued the Ministerial Decree regulating the new incentive scheme to be applied in Italy for the power production from renewable sources (except for the PV source). The Decree has been published on the Official Gazette no. 159 of 10th July 2012 and is in force from the day after its publication.

A. Introduction

This note summarises the main provisions to be applied to new onshore wind plants. This note does not take into consideration specific provisions laid down for other sources (such as biomass or biogas) or to existing plants to be rebuilt or repowered.

In general terms, the Decree establishes the incentives which will be granted to renewable plants which will enter into operation from 1st January 2013. The Decree also contains certain interim provisions to be applied to the plants which will enter into operation until 31st December 2012 or (upon certain conditions) to the plants which will enter into operation until 30th April 2013. These interim provisions mainly refer to the transition period from the current incentive scheme (green certificates) to the new one.

An annual budgetary cap is provided for all renewable sources (except for PV source) of 5.8 billion of euro.

B. Procedures for granting incentives

The Decree provides for different procedures for granting incentives, taking into account the size of the new plant and the type of renewable source, and, for this reason, it has been provided a producing capacity threshold of 5MW. In particular,

- up to 5MW, the incentives will be granted after the registration of the plant at a specific register within the allowed power producing cap (please see Section D below); and
- above 5MW, the incentives will be granted only after the positive participation to a downgrading auction ("*asta al ribasso*") managed by GSE and they will be calculated on the basis of the results of such auction (please see Section E below).

The above procedures will not apply to micro-wind plants up to 60kW (and plants of other kind of sources below certain thresholds), which will benefit directly of the incentives.

The new incentives will be granted for a period of 20 years starting from the commercial entry into operation of onshore wind plants.

C. Base value of the new incentive

Except for the plants which will enter into operation within 30th April 2013 and which may still benefit of the current incentive scheme (please see Section F below), Annex 1 to the Decree establishes different values of incentive to be granted to new renewable plants which will enter into operation starting from 2013, taking into account the size of the plant and the type of renewable source.

For new onshore wind plants above 5MW (subject to the auction) which will enter into operation in 2013, the incentive is equal to Euro 127/MWh. For the sake of completeness, please find below a table summarizing the base value of the incentive provided for onshore wind plants of different size:

Size (kW)	Term (years)	Base value (€/MWh)
1<P≤20	20	291
20<P≤200	20	268
200<P≤1000	20	149
1000<P≤5000	20	135
P>5000	20	127

Please note that the above incentive value will be paid by GSE net of the revenues received from the sale of the power produced.

Certain deductions to the incentive (of about 2% per year) are generally provided for the plants which will enter into operation after 2013. Such deduction will not apply for renewable sources for which, in the previous year, the total power producing capacity actually allocated in that year is 80% below of the relevant power producing cap.

It is worth to consider that the values of incentives mentioned above may be adjourned by subsequent ministerial decrees. Until such occurrence, the incentives under the Decree will continue to be applied.

For new plants up to 1MW, the GSE, if requested, will collect the net power produced and put into the national electrical grid by a plant and will pay to the producer an omni-comprehensive incentive calculated on the basis of the criteria and values indicated above. Such omni-comprehensive incentive will include also any revenues from the sale of the power produced.

For new plants above 1MW (even subject to the auction), the GSE will pay, with reference to the net power produced and put into the national electrical grid by a plant, the relevant incentive (as indicated in Annex 1 or as resulting after the participation to the auction) net of the revenues from the sale of the power produced. The power produced will in fact remain in the availability of the producer.

The incentive will be granted from the entry into commercial operation of the plant and the level of the incentive granted shall be the one in force at the time of connection.

D. Registration procedure

The responsible of a new wind plant below the 5MW capacity threshold, in order to benefit of the

incentive under the Decree, must send to GSE an application for the registration of said plant into a specific electronic register held by GSE. In order to do so, the applicant should have obtained the permit to build the plant and the estimate for the connection of the plant to the national grid, issued by the grid manager and duly accepted by the applicant.

The GSE will publish the regulation for the registration procedure 30 days before the period of 60 days established for the submission of registration applications.

The regulation concerning the first registration procedure, for the 2013 production capacity cap, will be published within 15 days from the issuing of the GSE operating guidelines which, on their turn, will be issued within 45 days from the entry into force of the Decree (i.e. 11 July 2012).

For the subsequent years (starting from 2013), the above operating guidelines will be published within 31st March of each year.

For 2013-2015 year-period, the annual production capacity threshold for onshore wind plants are established as follows (in MW):

Source	2013	2014	2015
Wind (onshore)	60	60	60

On the basis of applications of registration submitted, the GSE will draw up a ranking list based on certain criteria and the incentive will be granted to the plants ranked within the production capacity threshold.

The registration into the specific register can be transferred to third party only after the entry into operation of the plant concerned.

The plant ranked in the ranking list above must be enter into operation within specific deadlines provided for by the Decree, i.e. within 16 months for the onshore wind plants starting from the notification of the positive registration. The non-fulfillment of such deadlines will cause the application of a 0,5% deduction of each month of delay up to a maximum delay of 12 months. Should such 12-month term have also elapsed, the applicant will forfeit the right to benefit of the incentives and the GSE will cancel the plant at issue from the ranking list.

In the event that a new subsequent application is submitted for the same plant (which failed to be entered into operation within the above deadline), a 15% deduction will be applied to the incentive value in force at the time of the entry into operation of said plant.

E. Auction procedure

E.1 Timing for the auction and annual production capacity threshold

The responsible of a new wind plant above the 5MW production capacity threshold, to benefit of the incentive under the Decree, must participate, also by electronic means, to a downgrading auction ("*asta al ribasso*") managed by GSE within the annual production capacity cap (in MW) established by the Decree and indicated as follows:

Source	2013	2014	2015
Wind (onshore)	500	500	500

The incentives will be calculated on the basis of the results of such auction. A percentage of reduction from 2% to 30% (as the maximum) to the incentive under the downgrading auction is provided.

As to the timing, the GSE will publish the regulation for the auction procedure 30 days before the period of 60 days established for the submission of the applications for the participation to the auction.

The regulation concerning the first auction, for the 2013 production capacity threshold, will be published within 15 days from the issuing of the GSE operating guidelines, which shall be issued within 45 days from the entry into force of the Decree (i.e. 11th July 2012).

From a quick and rough calculation, the applications for the first auction should be submitted in the period mid-October-December, taking into consideration that:

- (i) the Decree entered into force on 11th July 2012;
- (ii) GSE has 45 days – starting from 11th July 2012 – to issue the operating guidelines;
- (iii) then GSE has 15 days – starting from the issue of the operating guidelines above – to issue the regulation for the first auction;
- (iv) the regulation under point (iii) above shall be issued 30 days before the period (of 60 days) established by the Decree for the submission of auction applications.

For the subsequent years (starting from 2013), said operating guidelines will be published within 31st March of each year.

With specific regard to onshore wind source, should the not allocated production capacity be 20% higher than the established production capacity cap under auction, a new regulation for a second auction will be published six months later the previous one.

E.2 Provisions for the participation to the auction

Specific requirements are established for the participation to the auction. In particular:

- Requirements for the plant: (i) permit to build; (ii) connection estimate made by the grid manager and duly accepted by the applicant.
- Requirements for the applicant: appropriate economic and financial capabilities. This can be proved by way of:
 - (i) a comfort letter issued by a bank (or duly authorized financial intermediary) attesting the availability of adequate funds taking into consideration the investment costs and the financial and economic capabilities of the belonging group, or (as an alternative) the undertaking of said bank (or authorised financial intermediary) to finance the investment; or
 - (ii) capitalization of the applicant equal to (at least) 10% of the investment. Annex 2 to the Decree provides for different values of the investment costs, taking into account the size of the plant and the type of renewable source. For new onshore wind plants above 5MW, the investment costs are equal to euro 1,225/kW.

In order to participate to the auction, the applicant must submit to GSE a participation application, providing all the documentation and information requested in this respect. The main documents to be delivered for the participation to the auction (in addition to the auction application) are:

- (i) a temporary guarantee, to be valid and in force until the notification of the positive admission to

- the auction, to secure the quality of the project, for an amount equal to 50% of the final guarantee to be issued before the construction of the plant;
- (ii) documentation proving the fulfilment of requirements for the participation to the auction, including that concerning the economic and financial capabilities of the applicant;
 - (iii) undertaking to issue a final guarantee to secure the construction of the plant in accordance with the necessary requirements and within the timelines established;
 - (iv) the percentage of reduction to the base value of the incentive.

On the basis of auction applications submitted, the GSE will draw up a ranking list based on certain criteria and the incentives will be granted to the plants ranked within the production capacity cap.

The ranking list will be prepared on the basis of the higher percentage of reduction to the incentive offered. If two or more applicants offer the same percentage of reduction, other priority criteria will be considered, such as the date of entry into operation of the plant, the date of obtaining of the permit to build, etc.

The GSE will draw up and publish the ranking list within 60 days from the expiry date for the submission of the auction applications.

Within 15 days from the notification of the positive admission to the auction procedure, the GSE will return the temporary guarantee to the applicants who have not been admitted.

For the admitted plants, the final guarantee - to secure the construction of the plant and its entry into operation within the timeline established in the Decree - shall be issued and submitted to GSE within 90 days from the above notification. Within 15 days from the receipt of the final guarantee, GSE shall return the relevant temporary guarantee previously received for the same plant.

Under the Decree, the final guarantee shall be issued:

- (i) as a *fideiussione* in favour of GSE;
- (ii) for an amount equal to 10% of the investment;
- (iii) by a bank or an insurance company or an authorised financial intermediary;
- (iv) for a 1 year term with automatic renewal;
- (v) as a penalty in the event of non-fulfilment of the timeline established for the entry into operation of the plant.

New onshore wind plants must in fact be built and enter into commercial operation within 28 months starting from the notification of positive admission to the auction procedure (i.e. from the notification to be included in the ranking list within the production budgetary cap).

In addition to the above period, a second 24 month period (at the maximum) is provided for delay in the construction and connection. In such a case, there will be a reduction to the incentive (in addition to the one offered during the auction), equal to 0.5% for each month of delay.

Should the plant enter into commercial operation within the above 28 + 24 month periods, the final guarantee will be returned to the applicant. On the contrary, GSE will finally hold the guarantee and cancel the plant from the ranking list, which will forfeit its right to benefit of the incentives.

F. Transition period from the current incentive scheme (green certificates) to the new one

F.1 Transition period for plants which will enter into operation within 31st December 2012

For plants which will enter into operation within 31st December 2012 which benefit of the right to receive green certificates, the Decree provides – for the remaining period of incentivisation after 2015 – an incentive on the net power produced (in addition to the revenues for the sale of the power produced) to be calculated in accordance with the following formula:

$$I (\text{incentive}) = k * (180 - Re) * 0.78$$

where

k is the parameter established by Article 2, par. 148, of Law n. 224 of 2007 (which is equal to 1 for wind plants above 200kW);

Re is the price for the sale of the power produced as established by the Energy Authority, registered in the previous year and notified by the Authority.

The plant up to 1 MW may choose the omni-comprehensive tariff.

The Decree provides for different timelines and specific procedures for the issue and collection of the green certificates for the production of power in the 2012-2015 period.

F.2 Transition period for plants which will enter into operation within 30th April 2013

In order to protect the investments for plants under completion and secure a progressive transition from the current incentive scheme to the new one, the Decree provides that the plants which will enter into operation within 30th April 2013 may still benefit of the current incentive scheme based on the issue of green certificates (or the omni-comprehensive tariff) in accordance with the value and parameters currently in force (with a 3% monthly deduction starting from January 2013).

For the plants subject to green certificates, the provisions under Section F.1 above will apply.

In order to benefit of the above scheme (as an alternative to the new incentive scheme introduced by the Decree), the applicant must have obtained the permit to build before the entry into force of the Decree.

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This memorandum has been prepared by BDA - Studio Legale and it provides a summary of legal issues but it is not intended to give specific legal advice.

Further information and details on the renewable energy legislation in Italy are available upon request at manager@bdalaw.it