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FER1 Decree 2019:
Incentives Regime for Renewable Energy Plants



On July 8, 2019, the Italian Government signed a Ministerial Decree that will grant new incentives to renewable energy sources (so-called "FER1 Decree"). Six years after the expiry of the fifth Conto Energia, also photovoltaic plants can now again benefit from new incentives. Other sources benefitting from the scheme include onshore wind, hydroelectric and sewage gases. The scheme will apply until the end of 2021 and will provide new incentives of about Euro 1 billion per year. The Government expects that it will allow for the construction of new plants with a total capacity of about 8,000 MW and with investments estimated to be in the region of 10 billion euros.

Italy: New Incentives Regime for Renewable Energy Plants

SUMMARY

Under the FER1 Decree, renewable energy source ("RES") plants with a nominal capacity exceeding 20 KW are admitted to the new incentive mechanism.

Projects below 1 MW will be selected based on a combination of environmental and economic priority criteria. For larger projects, the incentive will be set through a competitive bidding process open to all types of installations, irrespective of the renewable technology used.

Successful projects will receive support in the form of a premium on top of the market price. This premium cannot be higher than the difference between the average production cost for each renewable technology and the market price.

The FER1 Decree includes a clawback mechanism to ensure that the governmental support is limited to the minimum necessary: if, in the future, the market price were to move above the average production cost for each renewable technology, the selected installations not only would no longer receive a premium but they would instead have to give back to the Italian authorities the additional revenue.

In awarding incentives, the FER1 Decree gives priority to:

- plants built on closed landfills and on sites of national interest for the purpose of reclamation;
- integrated photovoltaic systems built on schools, hospitals and other public buildings or on rural buildings with removal of asbestos; those plants will be entitled to an additional premium of 12 €/MWh;
- hydroelectric plants complying with the criteria set by the previous Ministerial Decree of 23 June 2016,
- plants fueled by sewage gas or processing fermentation residues;
- plants connected in "parallel" with the electricity grid and with recharging stations for electric vehicles (provided that the recharging power is not less than 15% of the plant's power and that each station has a power of at least 15 kW).



ELIGIBLE PROJECTS

The FER1 Decree applies to RES plants which are not already incentivized under previous feed-in tariffs schemes, nor under the Ministerial Decree of 23 June 2016. Ministerial Decree of 23 June 2016 (and thus not the FER1 Decree) continues to apply to RES plants enrolled in the registers and reverse auctions provided thereunder.

Eligible projects must have a nominal capacity in excess of 20 kWp, as smaller plants can already benefit of tax bonuses.

Eligible technologies under the FER1 Decree are:

- Wind (onshore only);
- PV Solar;
- Hydro (running water and reservoir/ basin); and
- Sewage gases.

Notably, plants located in other EU Member States (or in a third neighboring State having a free trade agreement with the EU) which physically export electricity to Italy can also apply for incentives under the FER1 Decree, however they cannot have access to the incentives through registers, but can only participate to the reverse auction system described below.

INCENTIVE SCHEMES

Depending on the technology and on the nominal capacity of the plant, different criteria for the calculation of the incentives apply.

RES plants up to 250 kW are entitled to receive an overall feed in tariff, which includes the sales price for the electricity, which will be withdrawn by the GSE (the state-owned company paying the incentives – Gestore dei Servizi Energetici S.p.A.). The feed-in tariff is granted for the entire duration of the pre-defined life-cycle of the plant, which varies depending on the source:

Source	Type	Power (kW)	Plant average lifecycle (years)	Overall Feed-in Tariff (Euro/ MWh)
PV Solar[1]		20<P≤100	20	105
		100<P≤1000	20	90
		P>1000	20	70
Wind[2]	Onshore	1<P≤100	20	150
		100<P≤1000	20	90
		P>1000	20	70
Hydro	Flowing water	1<P≤400	20	155
		400<P≤1000	25	110
		P>1000	30	80
	Basin water	1<P≤1000	25	90
		P>1000	30	80
Sewage treatment plant gas		1<P≤100	20	110
		100<P≤1000	20	100
		100<P≤1000	20	80

1. PV plants replacing asbestos coverings or rooftops are entitled to an increase of € 12/MWh

2. In case the wind plants qualified with the registers mechanism and using regenerated components, the incentive is reduced by 10%.

RES plants with a nominal capacity above 250 kW but below 1 MW are entitled to an incentive equal to the difference between the above indicated Overall Feed-in Tariff and the hourly zonal electricity price.

RES plants with a nominal capacity above 1 MW are entitled to an incentive equal to the difference between the above indicated Overall Feed-in Tariff, as reduced by the percentage indicated in the bid for the auction, and the hourly zonal electricity price.

Both the plants under the registers and those under the auctions have to sell the generated electricity privately or through the electricity market.

In case of a negative difference between the above indicated Overall Feed-in Tariff and the zonal hourly price, i.e. in case of the zonal hourly price exceeding the guaranteed tariff, the GSE either offsets the payment or requests the producer to pay the difference to the GSE. In case of hourly zonal prices equal to zero or negative for more than 6 consecutive hours, the incentives are suspended; the duration of the incentives is hence extended by the duration of such suspensions.

To determine the nominal capacity of the plant, the anti-splitting rules contained in Ministerial Decree 23 June 2016 are applied: the GSE is entitled to evaluate any possible element of one plant being artificially split into multiple smaller ones. For example, the use of the same connection point to the electric grid by multiple plants belonging to the same owner would constitute evidence of artificial splitting.

ACCESS TO INCENTIVES

The FER1 Decree provides for two regimes to access incentives:

- plants with a capacity < 1 MWp have direct access through a ranking systems
- plants with a capacity > 1 MWp have to go through a reverse auction system

In either case, there will be seven rounds:

Round	Opening date
1	30 September 2019
2	31 January 2020
3	31 May 2020
4	30 September 2020
5	31 January 2021
6	31 May 2021
7	30 September 2021

It is possible for plants to participate to the registers or auctions as a cluster, provided however that the nominal power of each plant within the cluster exceeds 20 kWp; the nominal power of each plant constituting the cluster will be assumed as the overall nominal power of the cluster.

Upon the above indicated opening dates, the GSE will open:

- one ranking system and one reverse auction open only to PV and wind plants (Group A)
- one ranking system open only to PV plants installed to replace an asbestos rooftop or covering (Group A-2);
- one ranking system and one reverse auction open only to hydro, and sewage treatment gas (Group B)
- one ranking system for refurbished wind and one reverse auction open only to refurbished wind or hydro or sewage treatment gas plants (Group C)

All plants applying for the incentives shall already hold the building and operating permit and the acceptance of the grid connection solution (preventivo di connessione – STMG).

Within 30 days as of the start of the operation, the owner of the plant has to request to the GSE the applicable tariff; if such deadline is met, the GSE grants the incentives as of the date of commercial start of operation date. If the incentives request is submitted after the 30 days term, the tariffs are granted as of the date of submission of the relevant request and the relevant duration is therefore shorter (i.e. the plant is not entitled to receive the incentives for the production between the commercial start of operation date and the incentives request submission date).

Specific Requirements for PV Plants

PV plants will only have access to the incentives provided under the FER1 Decree if they are

- newly built PV plants;
- using newly manufactured components only; and
- not installed on agricultural land.

Premium of Asbestos Removal

PV plants installed on rooftops to replace asbestos coverages are particularly favoured by the FER1 Decree: in each round of registers there is a specific group reserved to them; and a Euro 12/MWh premium is granted in addition to the base incentive. Such premium is paid on the produced electricity, irrespective of whether it is fed in the grid or self-consumed.

Ranking System

Plants below 1 MWp must be enrolled in a register to be open by the GSE accordingly with the above calendar, provided that the maximum power thresholds (in MWp) below are not exceeded.

Round	Group A (PV and Wind)	Group A-2 (PV Replacing asbestos)	Group B (Hydro and Sewage Gases)	Group C (Refurbished Wind, Hydro and Sewage Gases)
1	45 MW	100 MW	10 MW	10 MW
2	45 MW	100 MW	10 MW	10 MW
3	100 MW	100 MW	10 MW	10 MW
4	100 MW	100 MW	10 MW	10 MW
5	120 MW	100 MW	10 MW	20 MW
6	120 MW	100 MW	10 MW	20 MW
7	240 MW	200 MW	20 MW	40 MW
Total	770 MW	800 MW	80 MW	120 MW

Within 30 days as of the closing of each register, the rankings are drawn up based on the following priority criteria:

Group A:

1. Installations on depleted landfills;
2. depleted quarries and mines;
3. areas of pertinence to landfills or contaminated sites.

Group A2:

Plants installed on:

1. Schools;
2. hospitals; and
3. other public buildings.

Group B:

- **Hydro plants:** plants that respect the constructive characteristics of:

1. Article 4(3)(b)(i)
2. Article 4(3)(b)(ii)
3. Article 4(3)(b)(iii); and
4. Article 4(3)(b)(iv)

of Ministerial Decree of 23 June 2016;

- **Sewage treatment plant gas:** plants which provide for the covering of the digestate tanks;

All Groups (the following criteria have ranking priority than the ones above):

1. plants connected in parallel with the electricity grid and with power supply columns charging of electric cars, provided that the total charging power is not less than 30% of the power of the system and that each column has a power exceeding 15 kW;
2. clusters of plants;
3. highest tariff reduction offered on the base incentives;
4. date of completion of the request to participate in the procedure.



Ranked plants must complete the construction works and start operations within the following deadlines, which start running as of the publication of the ranking:

Source	Months
Onshore wind	24
PV Solar	19[3]
Hydro[4]	31
Others	31

If the above deadlines are not met, a 0.5% reduction of the incentive applies per each month of delay, up to a maximum of 6 months. If the construction works are not even completed within this further 6 months period, the plant loses its right to the incentives.

3. Group A-2 PV plants have 24 months.

4. In case of geological works, the term is extended up to 39 months.

Reverse Auction

Plants from 1 MWp can access incentives through the reverse auction system, which is opened six times between September 2019 and 2021 for the MW budgets indicated in the table:

Round	Group A (PV and Wind)	Group B (Hydro and Sewage Gases)	Group C (Refurbished Wind, Hydro and Sewage Gases)
1	500 MW	5 MW	60 MW
2	500 MW	5 MW	60 MW
3	700 MW	10 MW	60 MW
4	700 MW	15 MW	60 MW
5	700 MW	15 MW	80 MW
6	800 MW	20 MW	100 MW
7	1600 MW	40 MW	200 MW
Total	5500 MW	110 MW	620 MW

In order to apply for the reverse auction system, the applicant shall submit: (i) a comfort letter issued by a financial institution attesting the economic and financial soundness of the responsible subject, or its undertaking to finance the project; (ii) an adequate capitalisation in relation to the project; and (iii) a provisional bank guarantee equal to 5% of the investment value.

The auction base price is equal to the Overall Feed-in Tariff indicated in the table above for the highest power threshold for each source. Offered reductions must be at least 2% and must not exceed 70%, otherwise they are excluded from the procedure. If, during one auction, there are two or more bids accepting a reduction of 70%, then in the next auction the reduction may be up to 80%; during such second auction, in case of two or more bids with reduction of 80%, in the next auction the reduction may be up to 90%.

The first priority criteria is the highest reduction bid on the base tariff; in case of equal reduction bids, the following priority criteria (in the following order) apply:

All Groups:

Possession of a legality rating, as defined in Article 5-ter of FER1 Decree-Law No 1 of 2012, converted by Law No. 27 of 2012, equal to at least two "stars".

Group A:

Plants installed on

1. depleted landfills;
2. depleted quarries and mines;
3. areas of pertinence to landfills or contaminated sites;

Group B:

- **Hydro plants:** plants that respect the constructive characteristics of:

1. Article 4(3)(b)(i)
2. Article 4(3)(b)(ii)
3. Article 4(3)(b)(iii); and
4. Article 4(3)(b)(iv)

- **Sewage treatment plant gas: plants** where digestate tanks are covered.

All Groups:

Date of completion of the request to participate in the procedure.

After the publication of the final list of successful bidders, the GSE returns the bank guarantee to the unsuccessful bidders; within 90 days the winning bidders shall replace the provisional bank guarantee by a final bank guarantee over 10% of the investment value. In case a winning bidder does not timely issue the final bank guarantee, GSE will enforce the provisional guarantee.

Construction works for the awarded plants shall be completed within the following deadlines, lapsing from the communication, by the GSE, of the positive outcome of the auction.

Source	Months
Onshore wind	31
PV Solar	24
Others	51

In case the deadlines above are not met, the plant loses its right to the tariffs and the GSE enforces the final guarantee.

The GSE releases the final guarantee on the date of execution of the incentives agreement.

Refurbishment of Plants

Refurbishments of already operating plants can access to the incentives under the FER1 Decree, provided that the meet the certain requisites, and in particular:

- they have reached at least 2/3 of their life-cycle
- they do not benefit of state incentives on the electricity produced, as at the date of publication of the relevant procedure by the GSE
- provisions under Ministerial Decree 6 November 2014 are respected

The FER1 Decree sets forth limited thresholds for the three kinds of refurbishments (see above tables for the registers and auctions – Group C), and in case that the power requested with the applications exceeds the available power eligible for incentives, the GSE publishes a list of the awarded entities, formed on the basis of the below priority criteria:

1. earlier start of operations date;
2. longest operation period without incentives;
3. for wind plants: lower amount of energy not produced in the last year, due to despatching order of the transmission grid operator;
4. earlier date of completion of the request to participate to the register or auction.

Source	Completion Deadlines (Months), running from the notice of award
Onshore Wind	16
Hydro	36
Sewage Gases	24

Construction works for the chosen plants should be completed within the deadlines above, starting from the communication, by the GSE, of the positive outcome of the auction; a 0.5% cut is provided for each month of delay, up to a maximum of eight months, after which entitlement to tariffs is lost.

EXPIRY OF THE FER1 DECREE

The FER1 Decree ceases to apply on the first date between (i) 30 September 2021; and (ii) the date on which the "average annual indicative cost" for incentives, excluding those granted to photovoltaic plants under Conto Energia I – V, will reach Euro 5.8 billion.

At present (July 2019), the annual amount of such incentive payments has reached € 4.765 billion. However, due to the natural expiry of the incentive periods under past incentives schemes, more resources will be freed in the next months, so that September 2021 appears a realistic timeline.



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- Structuring and documenting energy project developments, including all aspects of permitting, grid access, incentives, tax benefits, and real estate rules.
- Advising on renewable energy projects, with a specific focus on solar PV and wind.
- Advising on the development of incentive-free business models and on the drafting and negotiation of PPA contracts and structures.
- Advising on energy efficiency projects.
- Developing investment structures and negotiating joint ventures and shareholder arrangements.
- Advising on regulatory matters affecting energy and infrastructure businesses.
- Advising in relation to legal disputes.

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