

PNRR 3 Decree

(Law Decree no. 13 of February 24, 2023)

Law Decree no. 13 of February 24, 2023, entered into force on February 25, 2023, (hereinafter also referred to as the “**Decree PNRR 3**”) adopted “*Urgent provisions for the implementation of the National Recovery and Resilience Plan (NRP) and the National Plan for Complementary Investments to the NRP (NCIP), as well as for the implementation of cohesion policies and the common agricultural policy*”.

The Decree PNRR 3 introduced some innovations with regard to:

- 1) *Steering Committee (“Conferenza di servizi”)*
- 2) *installation of FER Plants on state-owned assets;*
- 3) *operation of the EIA and SEA Technical Commission for EIA and the PNRR-PNIEC Technical Commission, as well as EIA;*
- 4) *provisions on EIA procedure;*
- 5) *measures on renewable green hydrogen;*
- 6) *suitable areas for renewables energy plants (“**FER plants**”);*
- 7) *simplified authorization procedure;*
- 8) *provisions on energy communities (“**CERs**”).*

1. Steering Committee (“Conferenza di servizi”)

(art. 14 par. 8 PNRR 3 Decree)

With regard to the acceleration of the procedure of the Steering Committee (“*Conferenza di servizi*”), **until 30 June 2023**, in all cases in which a decisional Steering Committee (“*Conferenza di servizi*”) must be convened according to art. 14, par. 2 of Law 241/1990¹, the proceeding Administrations must adopt (therefore, there is no more a faculty) the simplified Steering Committee (“*Conferenza di servizi*”) pursuant to art.14-bis of the Law 241/1990. In particular, all the Administrations involved shall issue the relevant determinations within the deadline of 30 days (no

¹ In this regard, pursuant to article 14, par. 2 of Law 241/1990, a decisional Steering Committee (“*Conferenza di servizi*”) is always convened by the proceeding Administration when the successful conclusion of the proceeding is subject to the acquisition of several opinions, understandings, concerts, clearances or other acts of consent by different administrations.

longer 60 days). Only in case of Administrations in charge of environmental, landscape-territorial, cultural heritage or health protection, the above-mentioned deadline is 45 days (without prejudice to longer terms provided for by the provisions of EU law).

2. Installation of FER Plants on state-owned assets

(art. 16 PNRR 3 Decree)

The State Property Agency (“*Agenzia del demanio*”) identifies the state-owned assets where FER plants can be located. Such assets are included in the so called “suitable areas” for FER plants pursuant to art. 20, par. 8 of Legislative Decree no. 199 of November 8, 2021, therefore they are subject to the simplified authorization procedures referred to in art. 22 of the Legislative Decree 199/2021, in particular

- (i) the authority responsible for the landscape (also in case of EIA procedure) shall issue a non-binding mandatory opinion. Once the related deadline has expired without the issuing of such opinion, the competent Administration shall, in any case, decide on the application for authorization;
- (ii) the deadline provided for the authorization procedures, in case of FER plants located on suitable areas, are reduced by one third.

3. Technical Commission for EIA procedure and the PNRR-PNIEC

Technical Commission

(art. 19 par. 1 PNRR 3 Decree)

At the request of the applicant, the Screening procedure (“**screening**”), the Environmental impact assessment procedure (“**EIA**”), the Single environmental measure (“*Provvedimento unico in materia ambientale*”, “**PUA**”) and the Sole Regional Permit (“*Provvedimento Autorizzatorio Unico Regionale*”, “**PAUR**”) are coordinated through a special mixed composition inquiry group².

The application to initiate the above-mentioned integrated EIA and Integrated

² This group consists of four members of the Commission referred to in art. 8, par. 2, of Legislative Decree 152/2006 or the Commission referred to in par. 2-bis, of the same art. 8 of Legislative Decree 152/2006 and four members of the Commission referred to in art. 8-bis of Legislative Decree 152/2006, designated by their respective Presidents.

Environmental Authorization (“*Autorizzazione Integrata Ambientale*”, “**AIA**”) procedures is unique and meets the procedural and substantive requirements of each procedure.

4. Provisions on EIA procedure

(art. 19 par. 2 PNRR 3 Decree)

The adoption of EIA is not subordinated anymore to the conclusion of the activities of prior verification of archaeological interest (“*Verifica preventiva dell'interesse archeologico*”) (art. 25, par. 2-*sexies* of Legislative Decree no. 50 of 18 April 2016) or to the performance of preventive archaeological tests (“*saggi archeologici preventivi*”) according to Legislative Decree no. 42 of 22 January 2004.

Furthermore, the act of the competent Superintendent of the Ministry of Culture relating to the prior verification of archaeological interest (“*Verifica preventiva dell'interesse archeologico*”) is not listed anymore among the documents to be attached to the EIA application.

5. Measures on renewable green hydrogen

(art. 41 PNRR 3 Decree)

Within the EIA procedure, priority is given not only to projects implementing the integrated national plan for energy and climate (“**PNIEC**”)(as better identified in Annex I-bis to the second part of Legislative Decree 152/2006), but also to projects concerning green or renewable hydrogen plants, as per point 6-bis) of Annex II to the second part of Legislative Decree 152/2006 and the related FER plants where envisaged.

In addition, the above mentioned point 6-bis of Annex II to the second part of Legislative Decree 152/2006 now provides that also ‘*integrated chemical plants for the production of green or renewable hydrogen, i.e. plants for the production on an industrial scale, by means of chemical transformation processes, of green or renewable hydrogen, in which several production units are functionally connected to each other*’ are subject to the national.

6. Suitable areas for renewables energy plants (“FER plants”)

(art. 47 par. 1 PNRR 3 Decree)

With regard to suitable areas, the PNRR Decree 3 amended art. 20, par. 8 of Legislative Decree 199/2021 as follows:

- lett. c-bis 1) now provides that "*sites and facilities in the availability of airport management companies within airport grounds, including those within the perimeter of relevance of airports on minor islands*" are considered suitable areas;
- lett. c-quater now states that the buffer zones from the protected areas according to Legislative decree 42/2004 are reduced to 3 km in the case of wind farms (no longer 7 km) and to 500 metres in the case of PV plants (no longer 1 km).

However, the Ministry of Culture remains competent to issue its opinion with regard to projects located in protected areas.

7. Simplified authorization procedures

(artt. 47 par. 1 – 49 PNRR 3 Decree)

(i) Art. 22 bis Legislative Decree 199/2021 - free installation of PV plants in industrial/commercial/landfill

New Art. 22-bis of Legislative Decree 199/2021 provides that the installation of PV Plants (along with the related connected works and necessary infrastructures) in areas for industrial, artisan and commercial use, as well as in landfills or closed and restored landfill lots or quarries or quarry lots or portions that cannot be further exploited, is considered ordinary maintenance activity and is therefore not subject to the acquisition of permits, authorizations or acts of consent, however denominated.

In case the above mentioned PV plants fall within an area subject to landscape constraints, the relevant project must be communicated in advance to the competent Superintendence, which, after having ascertained the lack of the compatibility requirements, must adopt, within 30 days from receipt of the communication, a reasoned decision refusing the construction of such plants.

(ii) Art. 12 Legislative Decree no. 387/2003 - hydroelectric storage plants and timing for the issuance of the Single Authorization ("AU")

Art. 12 of Legislative Decree 387 of December 29, 2003 is amended as follows:

- par. 3: the authorization of hydroelectric storage plants through pure pumping is issued by the Ministry of Ecological Transition (now MASE), after consultation with the Ministry of Sustainable Infrastructure and Mobility and in agreement with the region concerned, as part of the measure adopted following the procedure of AU referred to in the following par. 4, including the issuance of the concession for the purposes of water use;
- par. 4: the granting of the AU includes the EIA measure if it is provided for, and the procedure for granting the AU may also be commenced pending the deadline for concluding the EIA procedure. The deadline for closing the AU is 150 days (including the EIA).

(iii) Legislative Decree no. 28 of March 11, 2011-publication of PAS and other provisions referred to wind plants.

- New art. 6, par. 7-bis of Legislative Decree 28/2011 provides that, after the expiration of 30 days from the date of declaration's transmission within which the Municipality may object to the execution of the intervention, the interested party shall transmit the copy of the above mentioned declaration to the Region on whose territory the intervention is located for the publication in the Regional Official Bulletin. The Region shall do so within the following 10 days. From the day of publication, the deadline for appeals runs.
- Article 7-bis, par. 5 of Legislative Decree 28/2011 now provides that for PV and thermal plants on buildings or building structures, the landscape authorization shall be issued within 45 days from the date of receipt of the application, after which, if the reasons preventing the acceptance of the application (pursuant to art. 10-bis of Law 241/1990) have not been communicated, the authorization shall be deemed to be issued and immediately effective. Such deadline may be suspended once only and for a maximum of 30 days if, within 15 days from the date of receipt of the application, the Superintendency represents, in a precise and motivated manner, the need to carry out in-depth investigations or to make changes to the installation project.
- New par. 5-bis provides that no permit is required for the installation of wind plants having a capacity up to 20 kW, not located on protected areas or on Natura 2000 Network areas ("*Rete Natura 2000*").

(iv) Law Decree February 7, 2002, no. 7 converted, with amendments, into Law April 9, 2002, No. 55 - electrochemical storage plants to be operated in conjunction with FER plants

Article 1, par. 2-quater, letter c) of Law Decree February 7, 2002, no. 7 introduces the possibility of applying PAS if the FER plant is in operation or authorized but not yet in operation.

(v) Energy decree – PV plants in agricultura areas

New art. 11, par. 1-bis of Energy Decree provides that (subject to the definition of the suitable areas referred to in art. 20, par. 1, of Legislative Decree 199/2021) PV plants complying with all of the following conditions are considered instrumental to agricultural activity and can be installed on agricultural areas if:

- they are not located on protected areas or areas belonging to the Natura 2000 Network;
- they are located in areas subject to direct or indirect landscape constraints, but they respect the applicable prescriptions;
- they are built directly by agricultural entrepreneurs or by joint ventures with electricity producers, to which the company or branch of company is conferred by the same agricultural entrepreneurs to whom the entrepreneurial management activity is reserved, except for the technical aspects of plant operation and energy transfer;
- solar panels are placed on top of plantations at a height of two metres or more above the ground, without concrete foundations or difficult to remove;
- the construction methods envisage their effective compatibility and integration with agricultural activities as a support for the plants or for parcelled irrigation systems and partial or mobile protection or shading of the crops underneath for the purposes of the simultaneous implementation of monitoring systems, to be implemented on the basis of guidelines adopted by the Council for Research and Agriculture and the GSE.

In any case, the installation is subject to the prior consent of the owner and the farmer of the fund, against the payment.

8. Provisions on energy communities ("CERs")

(art. 47 par. 4, 5, 10 e 11 PNRR 3 Decree)

- **concession of public areas for CERs:** until December 31, 2025, by way of derogation from the provisions of art. 12, par. 2, of Legislative Decree 28/2011, the local authorities -in whose territories the FER plants financed through the resources of Mission 2, Component 2, Investment 1.2 "*Missione 2, Componente 2, Investimento 1.2*") of the NRP are located- may grant in concession (in compliance with the principles of competition, transparency, proportionality, publicity, equal treatment and non-discrimination) areas or surfaces in their possession for the construction of plants to meet the energy needs of the CERs.

In this regard, the local authorities, also on the basis of appropriate notices or model notices adopted by the National Anti-Corruption Authority ("ANAC"), provide for the publication of notices containing the indication of the areas and the surfaces that can be used for the installation of the plants, of the minimum and maximum duration of the concession and of the amount of the concession fee requested, in any case not less than the market value of the area or of the surface.

In case many CERs apply for the concession of the same area or surface, the number of participants in each CERs and the amount of the concession fee offered shall be taken into account.

- **Public Incentives:** CERs whose powers of control are exercised exclusively by small and medium-sized agricultural enterprises (in individual or corporate form) - also through their trade organisations, agricultural cooperatives carrying out activities (pursuant to art. 2135 of the Civil Code), cooperatives or consortia thereof pursuant to art. 1, par. 2, of Legislative Decree no. 228 of May 18, 2001 (on the agricultural sector) - may access the incentives pursuant to art. 8 of Legislative Decree 199/2021 in relation to FER plants, (including agro-voltaic plants), also in case of capacity exceeding 1 MW and, without prejudice to the payment of grid charges, for the portion of energy shared by plants and consumers not connected under the same primary cabin. The

electricity produced and fed into the grid by the plants included in the aforementioned CERs remains at their disposal.

These provisions also apply to other configurations of diffuse self-consumption from renewable sources referred to in art. 30 of Legislative Decree 199/2021 if carried out by

- (a) agricultural entrepreneurs;
- (b) agro-industrial enterprises operating in the food industry (Ateco code 10), the beverage industry (Ateco code 11) and the cork processing sector;
- (c) agricultural cooperatives carrying out activities referred to in art. 2135 of the Civil Code and cooperatives or consortia referred to in art. 1, par. 2 of Legislative Decree No 228 of 18 May 2001, independently of their members.

Please note that the effectiveness of the provisions of the PNRR3 Decree is subject to its conversion into law, which must necessarily take place within 60 days of its entry into force.

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