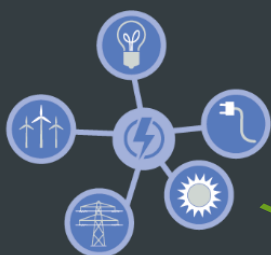


# Bird & Bird

## Alert - FER1 Decree



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# Alert - FER1 Decree

*On the 9<sup>th</sup> August 2019 the Official Gazette published the FER1 Decree. This was followed shortly by the Capacity Market Decree and the first GSE Operating Regulations. The Decree confirms access to incentives through registration and auction schemes. It also introduces bonuses for hydroelectric energy and provisions on refurbishments and on long-term electric power sale agreements.*

## The FER Decree - Ministerial Decree 4 July 2019

On 9 August 2019 the Official Gazette published the Ministry of Economic Development's Decree of 4 July 2019 ("MD FER1"). This **entered into force the following day -on 10 August 2019-** and is set to regulate **renewable energy incentives for the next three years.**

The decree is aimed at supporting the production of electric power from renewable energy sources through creating incentives and schemes for accessing incentives that promote the effectiveness, efficiency, and sustainability of incentive costs. The decree was issued following the National Energy Strategy (*Strategia Energetica Nazionale* or "SEN"), together with the recent Energy and Climate Integrated National Plan (*Piano Nazionale Integrato per l'Energia e il Clima* or "PNIEC"), and the "Capacity Market Decree" of 28 June 2019 and brings Italy in line with European 2020 and 2030 targets. The MD FER1 Decree is expected to provide for the construction of plants with a total capacity of 8,000 MW, increasing the production of energy from renewable sources by around 12 billion kWh, and bringing investment estimated to be in the region of 10 billion Euros.

On 23 August 2019, the *Gestore dei Servizi Energetici S.p.A.* ("GSE") published the operating regulations for enrolment in registers and auctions ("RegOp1"), established under Article 21 of MD FER1 and Article 7 of Decision No. 341/2019/r/EFR

issued by the Italian Regulatory Authority for Energy, Networks and Environment (*Autorità di Regolazione per Energia Reti e Ambiente* or "ARERA"). On 27 September 2019, the GSE followed up with the Operating Regulations for accessing incentives ("RegOp2", and together with RegOp1, the "Operating Regulations").

## Scope of Application

MD FER1 regulates incentives for the following types of plants:

- onshore wind;
- solar photovoltaic;
- hydroelectric; and
- sewage treatment gases.

Other renewable energy sources (off-shore wind, geothermal, ocean energy, solar thermodynamic, biogas and biomass power) will be regulated under a future decree.

## Procedures for Access to Incentives

Access to the new incentives shall be exclusively through auction and registration procedures, contrary to the direct access procedures laid down in previous decrees on incentives. **The first call for tenders and registers was published by GSE on 30 September 2019.**

Incentives may be accessed, after enrolment with the **register** and if within the specific power quotas (set down in RegOp1), by renewable energy source plants falling within the following categories:

- (a) newly built plants (or new plants), fully reconstructed and reactivated plants, with a capacity of less than 1MW. A 'new plant' means a plant built on a site on which, for at least 5 years prior to the start of the construction works, there were no other plants, nor the main components thereof, for the production of energy from the same renewable source. Photovoltaic plants may be built exclusively using new parts, meaning parts that were never used in other plants. New onshore wind and hydroelectric plants, and plants fuelled by sewage treatment gases may be constructed using new or regenerated components. The 5-year limit condition must be met on the start date of the plant's construction works, as confirmed in notification of commencement of construction works sent to the competent Authority;
- (b) plants undergoing repowering operations where the difference between the power generated before and after the operation is less than 1MW; and
- (c) refurbished plants with power capacity below 1MW.

The owners of plants, with a capacity of 1MW or greater may have access to incentive mechanisms only after taking part in **reverse auction procedures**, subject to power quota ceilings.

Submissions for taking part in these register/auction procedures will be accepted until the earlier of the following dates:

- (a) the date of closing of the last procedure set out under Article 4 of MD FER1; or
- (b) thirty days after reaching the indicative average annual cost of incentives of 5.8 billion Euros per year, calculated using the methods provided in the Ministerial Decree issued by the Ministry of Economic Development on 23 June 2016 ("**MD FER 2016**" – Article 27, paragraph 2, establishes that GSE shall update monthly the calculation of the average cost of incentives for the following three-year period and publish the updates on its website). The costs for the energy generated by photovoltaic

plants benefiting from incentives under the new MD FER1 shall be included within said ceiling. Where the 30-day period should expire prior to the conclusion of the procedures set out under MD FER1, the procedures set to take place after such date shall not be carried out, and on-going procedures shall be closed on said date.

Based on the data reported on GSE's website, the indicative average annual cost of incentives - updated on 31 May 2019 - is around 4.855 billion Euros.

MD FER 2016 shall continue to apply to eligible plants. These plants are set out in the list drawn up following the auction and enrolment procedures carried out pursuant to the same Decree.

## Incentives Access Requirements

For all types of plants, the following are required:

- building permits;
- concessions (where applicable);
- grid connection solutions, (accepted on a permanent basis); and
- registration of the plant on the Gaudì system validated by the grid provider.

The RegOp1 further establishes that, in case of transfer of ownership of a plant before it is enrolled in the register or listed for auction, upon registration the following must be transferred to the party applying for registration: (i) authorisation/building permit and concession (in case of hydroelectric plant); and (ii) grid connection solution.

**Photovoltaic plants**, in addition to the general requirements applicable to all types of plants, must:

- **be newly built** and created using newly manufactured components; and
- **not benefit from state incentives** for plants with ground-mounted modules on agricultural land.

**Hydroelectric plants**, with the exception of plants undergoing refurbishing works not entailing an increase in their average concession power, may access incentives when **one** of the following conditions applies<sup>1</sup>:

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<sup>1</sup> For further details, please see RegOp1.

– there is present at least one of the building characteristics provided for under Article 4(3)(b)(i-iv), of MD FER 2016 (below). This is applicable to plants of up to 250 kW. If not expressly stated in the concession or the relative specifications, applicants must provide evidence that one of the characteristics below is met by holding a certificate issued by the body responsible for granting concessions to divert water flows;

- i. created on existing pipes or artificial canals, without any increase in intake from the natural body of water, or in the intake period;
  - ii. using recirculated water or wastewater from existing users without modifying the point of recirculation or wastewater outlet point;
  - iii. using existing weirs or flumes without diverting flow from the natural watercourse or subtracting resources;
  - iv. using part of the minimum vital water flow, net of the quota destined for upstream migration fish ladders, without subtracting flow from the natural watercourse”;
- the concession to divert water flows is compliant with the guidelines for environmental assessments before the water is diverted as provided for in Directorial Decree No.29/STA of 13 February 2019, and in line with the guidelines for updating the methods for determining minimum vital water flow, as provided for in Directorial Decree No. 30/STA of 13 February 2017. The concession holder must attach the above verification of compliance to the documentation transmitted to GSE for participation in the auction and Register procedures. The costs of verification of compliance conducted by the National Agency for the Protection of the Environment (*Sistema Nazionale per la Protezione dell’Ambiente* or SNPA), shall be borne by the applicant.

**The Decree confirms that applicants are alternatively eligible to access incentives, simplified purchase and resale agreements or net metering.**

Furthermore:

- Aggregations of several plants owned by the same group, with power capacity over 20 kW - provided the overall power capacity of all the aggregated

plants is less than 1MW - are eligible to participate in register access procedures.

- Aggregations of several plants owned by the same group, with power capacity over 20 kW but not exceeding 500 kW - provided the overall power capacity of all the aggregated plants is equivalent to or over 1MW - are also eligible to participate in auction procedures.

For the purpose of ranking register and auction applicants, the following **priority** criteria shall be used, according to groups of plants: These criteria apply hierarchically to registers - where the offering of lower tariffs is merely optional - and only in case of matching reduced tariffs offered in case of auctions (where the offer of lower tariffs is mandatory):

- (auctions) the entity in charge must have a “legality rating” of at least two stars;
- (auctions/registers) plants built on **closed landfills, dismissed quarries** that have previously been restored, and on “**Sites of National Interest**” for which a certification of completed reclamation has been issued;
- (registers) photovoltaic plants built on **schools, hospitals, and other public buildings**, where modules are installed to replace building roofs, and on rural buildings from which any asbestos or eternit has been removed in full;
- (auctions/registers) **hydroelectric** plants that are compliant with MD FER 2016 building characteristics, plants fuelled by **sewage gas** or entailing the use of **digestate storage tanks**;
- (auctions/registers) all plants **connected “in parallel”** with the electric grid and recharging stations for electric vehicles (on condition that the recharging capacity is not below 15% of the capacity of the plant, and that each recharging station has a capacity of at least 15 kW);
- (registers) aggregated plants;
- (registers) larger percentage decrease from the base tariff;
- (registers) lower overall value of the tariff offered keeping into account the decrease percentage;
- (auctions/registers) earliest date of completion of application to take part in the auction procedure.

## Regulation for enrolling in Auctions and Registers / RegOp1

After offering an overview of MD FER1, RepOp1 goes on to provide a detailed description of the methods for participating in registers and auctions, and their respective rules. The main aspects are:

- Applications for enrolment in registers or auctions must be transmitted, on penalty of exclusion, only by submission on-line, and must be made through the FER-E Portal.
- Applications must be uploaded during the period in which the procedures are open, as per the relative calls for tender.
- To submit applications for enrolment in the Registers or **auctions for aggregated plants**, applicants must indicate one single party known as the “**Aggregator**”. The designated Aggregator, who is formally authorised to act as representative, is not necessarily one of the Responsible Entities for the plants within the aggregation.
- The Portal enables users to submit three different types of application:
  - registration of one single plant (in case the Responsible Entity does not wish to use the priority criterion under Article 9, paragraph 2, of MD FER1 for aggregated plants);
  - registration of one group of aggregated plants (where, under the priority criterion under Article 9, paragraph 2 of MD FER1, an operator should act as Aggregator);
  - adding one plant to a group of aggregated plants (where the Responsible Entity, using the priority criterion under Article 9, paragraph 2, of MD FER1 wishes to submit an application to join a group of aggregated plants);
- Whilst the application for enrolment in the registers and auctions is submitted by the Aggregator (acting as authorised representative), if the aggregated plants are ranked as eligible for enrolment, after the start of operations each “aggregated”, Responsible Entity must submit a separate application for each plant in order to obtain access to the

incentives. The tariff to which each plant is entitled is detailed in Table 1.1 of Annex 1 to MD FER1. This is based on the source of each plant and the overall capacity of the aggregate (please see RegOp1 for further details).

- After an application has been submitted, if, representations made in the application become untrue, or where the Responsible Entity and/or Aggregator agree that they have submitted incorrect or incomplete data, they shall void their application for enrolment in the Register or Auctions, and submit a new amended application. This must be done during the period in which the Registers or the Auctions are open.
- In the verification phase, if GSE find that the priority criteria and/or requirements represented in the application are missing or lack sufficient evidence, the application will be excluded from the rank order list.
- For aggregated plants if one plant within the whole cluster of aggregated plants is susceptible to be excluded, the whole cluster will be excluded.
- A 50% reduction of the tariff offered shall apply where **one of the plants** enrolled in the Register or in the Auctions is transferred to a third party or to other companies, including when such companies are within the same corporate group. This includes mergers, demergers, assignments, or transfers of a company or company branch which changes the ownership of the plant **before** the plant enters into operation and before the agreement with GSE is signed. **A transfer to third parties, in whole or in part, of the share capital of the company under whose name the enrolment application is submitted shall not fall under the scope of the above prohibition.**

The Regulation is complemented by a series of annexes, containing:

- definitions for the purposes of MD 4 July 2019 (Annex A);
- charts outlining the process for assessing applications for enrolment in the Registers or the Auctions (Annex B);
- specifications to the priority criteria provided (Annex C);

- a detailed list of the documentation to attach to the application (Annex D); and
- the forms for submitting declarations in lieu of affidavit, which can be downloaded from the Portal dedicated to electric FERs, and must be sent via the same Portal when submitting the application for enrolment in the registers and auctions (Annex D).

## Time-frames

GSE shall publish calls for tender regarding auction and register procedures on the following dates:

Procedure No.	Call for Tender 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

The period for submission of applications shall be **thirty days**, starting from the date on which the call for tender is published.

The rank order list shall be drawn-up and published on GSE's website within ninety days of the day of closing of each call for tender.

## How to Participate

Applications for participating in the procedures to access incentives must be sent to GSE through the website [www.gse.it](http://www.gse.it), by filling out the forms prepared by GSE, which include the documentation needed to verify whether the requirements for participation in the procedures and the priority criteria for accessing incentives are met.

**During this phase the documentation demonstrating that the essential requirements and priority requirements are met must be sent to GSE.** The full list of the digital documentation that needs to be sent according to each case is –is set forth in the Operating Regulations.

## Tariffs

**MD FER1** lays down three ways to determine tariffs:

- the **Base Tariff** shall be determined in accordance with the renewable energy source and the type of plant and power capacity, by applying:
  - **tariffs and tariff reductions, where applicable, under MD FER1** (for non-photovoltaic plants ranked as eligible in the registers, scheduled to start operations within one year of the coming into force of **MD FER1** and which have not benefited from any specific priority criteria set out in said Decree);
  - **the tariffs detailed in Annex 1** to MD FER1 for all the other types of plants (see the table reported at the end of this document);
- the **Tariff Offered** shall be calculated by applying the base-tariff reductions requested by the Responsible Entity during the Register or Auction enrolment phase,;
- the **Tariff Applicable** shall be calculated by applying the additional reductions set out under **MD FER1** (for the plants ranking as eligible in the Register and Auction rank lists) to the Tariff Offered

There are two incentive mechanisms, in accordance with the plant's power capacity:

- **Feed-In Tariff (FIT)** is one single tariff, equivalent to the Tariff Applicable, which also covers the electric power purchased by GSE;
- an **Incentive (I)**, calculated as the difference between the Tariff Applicable and the power's hourly price per zone, as the power generated continues to be available to the operator.

**For plants with power capacity of up to 250 kW**, one of two modes can be selected; the option to shift between the two modes can be exercised no more than twice over the course of the entire incentive period.

**Plants with power capacity over 250 kW** may access the Incentive option only.

For all-inclusive Feed-in Tariffs, the compensation includes payment for the power generated and fed into the grid, which is purchased by GSE; for Incentives, such power remains at the disposal of the power-generating entity.

All-inclusive Feed-In Tariff and Incentives shall be paid by the GSE starting on the commercial operation date, for a period varying according to each type of plant and equivalent to the useful life of the plant (see the table reported at the end of this document). The commercial operation date may be selected by the operator, provided it is within a period of 18 months after the date on which the plant starts operations.

## Procedures for Enrolment in the Register

Calls for tender shall be organised into **four groups**:

### Group A:

- i. Wind plants
- ii. Photovoltaic plants

### Group A-2:

- i. Photovoltaic plants on which modules are installed to replace building roofs, and on rural buildings from which any asbestos or eternit has been removed in full

### Group B:

- i. Hydroelectric plants
- ii. Sewage treatment gases fuelled plants

### Group C:

- i. Plants being refurbished, in full or in part, of the type specified in Group A (i), and Group B.

The **power** made available for each call for tender shall be as follows:

Procedure No.	Group A (MW)	Group A-2 (MW)	Group B (MW)	Group C (MW)
1	45	100	10	10
2	45	100	10	10
3	100	100	10	10
4	100	100	10	10
5	120	100	10	20
6	120	100	10	20
7	240	200	20	40
<b>Total</b>	<b>770</b>	<b>800</b>	<b>80</b>	<b>120</b>

Plants ranked as eligible in the ranking list must start operations within the following deadlines:

Technology	Months
Onshore wind	24
Hydroelectric	31
Solar photovoltaic	19
All other types of plants	31

The ranking order published shall not be subject to any changes. Failure to comply with the time-frames provided in the table shall result in the application of a 0.5% reduction of the tariff offered for each month of delay, for no longer than 6 months of delay. After such 6-month period, the plant shall lose the right to access the benefits. Said time-frames are intended net of any periods in which the construction of the plant or the works connected thereto is halted on account of natural disasters as confirmed by the competent authority, and when due to other events of force majeure acknowledged by GSE.

## Auction Procedures

Calls for tender shall be organised into **three groups**:

### Group A:

- i. Wind plants
- ii. Photovoltaic plants

### Group B:

- i. Hydroelectric plants
- ii. Sewage treatment gases fuelled plants

### Group C:

- i. Plants being refurbished, in full or in part, of the type specified in Group A (i) and Group B.

The **power** made available for each call for tender shall be as follows:

Procedure No.	Group A (MW)	Group B (MW)	Group C (MW)
1	500	5	60
2	500	5	60
3	700	10	60
4	700	15	60
5	700	15	80
6	800	20	100



7	1600	40	200
<b>Total</b>	<b>5500</b>	<b>110</b>	<b>620</b>

Plants included in the auction procedures' ranking lists must enter into operation within the following deadlines, starting from the date in which the auction award is communicated:

Technology	Months
Onshore wind	31
Solar photovoltaic	24
All other types of plants	51

The reverse **auction** process shall be through bids offering percentage reductions from the base tariff. Any bids offering reductions below 2% and above 70% from the base tariff shall be excluded from the evaluation procedure.

The lowest tariff offered and awarded (within the established quota limits) shall be equivalent to the highest percentage reduction from the auction base-rate, on condition that the requirements for participation in the procedures, established under **MD FER1** are met. The ranking order published shall not be subject to any changes.

In addition to the above, RegOp1 clarifies that, with a few exceptions, under MD FER1 enrolment to the Registers and the Auctions shall not be open to:

- (a) plants other than photovoltaic plants subject to disqualification from incentives as laid down under Law-Decree 145/2013, in coordination with Law 9/2014 and Ministerial Decree of 6 November 2014 (known as "*Spalma incentivi*");
- (b) projects and plants for which GSE has provided or is in the process of providing support activities under ARERA Decision No. 341/2019/R/EFR;
- (c) plants ranked as eligible in one of the ranking orders under MD FER 2016 or under an earlier procedure, when the deadlines for entering into operation have not yet expired or when participation has not been withdrawn. To this end, please note by enrolling in a new procedure, the previously obtained ranking shall be deemed as forfeited.

## Additional Requirements for Enrolment in Auctions

Applications to enrol in auctions may be submitted when, in addition to general requirements, the following are verified:

- financial and economic soundness of the applicant, demonstrated through one of the following: (a) declaration by a banking institution certifying the applicant's financial and economic standing; (b) capitalization in accordance with the percentages specified according to the value of the investment;
- provisional bond (bank guarantee) (see the following paragraph).

As to "refurbishments", please see the additional requirements provided for in RegOp1.

## Bond

Plants enrolled in **the register** with power capacity above 100kW are under an obligation to pay provisional and final bonds, equivalent to 2% of the budgeted investment cost for the construction of the plant, set at 90% of the costs detailed in table I of Annex 2 to MD FER 2016 and in Article 12, paragraph of **MD FER1** for photovoltaic plants.

When submitting an application to access an **auction**, applicants must provide:

- (a) a provisional bond of 50% of the final security deposit, expiring no earlier than one-hundred and twenty days after the date in which the auction process result was communicated, as guarantee of the project's quality;
- (b) commitment to give a final bond (of 10% of the investment cost) to guarantee the construction of the plant, provided no later than 90 days after publication of the ranking order with positive results. Within ninety days of the communication of the auction procedure results, the awarded entity shall be under an obligation to issue a final bond in favour of GSE. Within fifteen days of receipt of the final bond, GSE shall return the provisional bond. Where the final bond is not issued within said deadline, GSE shall enforce the provisional bond, and the awarded project forfeits the right to access incentives.

Based on the provisions of **MD FER1**, the following shall be the **essential elements of the bond**:

- it must be provided in the form of a bank guarantee issued by a banking institution, of a value of 10% of the investment cost (conventionally set as 90% of the costs detailed in Table I of Annex 2 to MD FER 2016);
- it must be of an year-long duration, renew automatically, and be issued in favour of GSE by way of penalty in case of failure to comply with the deadlines for the plant’s start of operations;
- it must be an unconditional payable on first-demand;
- it must expressly contain the beneficiary's waiver to the main debtor’s right of prior discussion, and stipulate payment within thirty days on simple demand by GSE;
- it must be drawn up according to the format reported in Annex E.16 to RegOp1.

The **final bond** will be released on the date on which the private agreement with GSE is entered into pursuant to Article 24(2)(d) of Legislative Decree No. 28 of 2011 (“**Decree 28/2011**”).

GSE will have the right to enforce the final bond within the limits provided for in RegOp1.

## Periods of Entitlement to Incentive Mechanisms

The period of entitlement to the incentive mechanisms shall be equivalent to the standard average useful life as reported in Table I under this Alert.

## Evaluation of the Application for Enrolment in the Register or for Participation in Auctions

Evaluation of an application to enrol in the register or the auction shall begin with GSE’s verification of the information represented by the operator. Simultaneously, a technical and administrative examination will be undertaken of the documentation sent through the FER-E Portal, for the purpose of verifying whether all the requirements for enrolment are in place and whether the priority criteria for the drawing up of ranking orders are met. Failure to provide evidence of the essential requirements for enrolment shall be deemed a failure to meet such requirements. The

applicant will then be excluded from the ranking order.

After the application is submitted, the documentation transmitted cannot be supplemented, and during the applications’ evaluation phase there cannot be any interaction between GSE and the Responsible Entities.

## Refurbishment

GSE shall send auction and register procedures specifically for plants undergoing refurbishment works. This will be done within the same time-frames set for other kinds of operations. The procedure shall be open only to the plants complying with the following requirements:

- they have been in operation for a period of at least **two thirds** of the standard useful life of the plant;
- on the date of the procedure, they do not benefit from incentives on the production of energy being awarded under state laws; and
- they comply with the requirements set out in Decree 6 November 2014.

The ranking lists shall be drawn up based on the largest percentage reduction of the offer from the base tariff. The incentive shall be calculated, with respect to the tariff awarded, in the manners detailed under Article 7.

The application and the documents submitted cannot be supplemented after the register and auction procedures are closed. When two applications offer the same reduction, the priority criteria under Article 17, paragraph 3 of MD FER1 shall apply. Such plants must enter into operation by the dates reported in the table below:

Technology	Months
Onshore wind	16
Hydroelectric	36
Sewage treatment gases	24

The ranking order published shall not be subject to any changes. Failure to comply with the time-frames provided in the table shall result in application of a 0.5% reduction of the tariff offered for each month of delay, for no longer than 6 months of delay. After the above 6-month period,

the plant shall lose the right to access the benefits. Said time-frames are intended net of any periods in which the construction of the plant or the works connected thereto is halted on account of natural disasters as confirmed by the competent authority, and when due to other events of force majeure acknowledged by GSE.

## ARERA Decision 341/2019/R/EFR

With decision No. 341/2019/R/EFR of 30 July 2019, ARERA set out the manners in which *Gestore dei Servizi Energetici S.p.A.* can purchase the electric power fed into the grid by the plants with access to the incentives through the Feed-In Tariffs (FITs) provided for under MD FER1. Annex A to the Decision stipulates:

- the methods used by GSE to purchase and sell electric power in the market shall be **similar to those currently established** under Decision 404/2016/R/EFR, given that the currently applicable fixed feed-in tariff purchase and resale agreement is very similar to the scheme provided for under MD FER1;
- **compensation for imbalances** suffered by GSE with respect to the electricity generated by renewable energy source plants receiving all-inclusive fixed feed-in tariffs shall be borne by the producers who have access to the same feed-in tariffs with the **same methods used for simplified purchase and resale agreements**.

## Capacity Market Decree

With the favourable opinion of ARERA, on 28 June 2019, the Ministry of Economic Development (*Ministero dello Sviluppo Economico* or “MISE”) approved the regulations governing the system for compensating the availability of electric energy production capacity. This is an “indispensable” instrument for phasing-out coal.

The above regulations primarily regulate two things. First, the supplementary payments made to large electric power production plants on account of their capacity to produce energy in case of security structural issues. Second the incentives to be awarded to demand management operators on account of their capacity to reduce their own consumption. The new mechanism is based on centralised auctions, through which system operators will cover future capacity demand

through reliability option contracts. These are later settled at the short-term market price where the capacity is accepted for sale. The maximum values set for the premium and the exercise price will aim to reduce system costs and the financial burdens placed on consumers, with verification of the effects produced.

Consultations are set to be held in the near future, which will lead to the adoption of measures required to steer the system from 2024 onward. Therefore, this mechanism shall be in force for 2022 and 2023, in agreement with the national distribution network provider and with ARERA.

## Changes and Comments

As compared to MD FER1, the Decree presents the following changes:

- **Inclusion of Photovoltaic Energy.** While plants located in agricultural areas continue to be ineligible to access incentives, MD FER1 opens access to incentives for photovoltaic plants, now eligible to participate in Auctions and Registers with the other renewable energy sources in the list.
- **Competition between Several Renewable Energy Sources for Access.** MD FER1 divides calls for tender into Groups in which plants - irrespective of the renewable energy source used - will compete for access to incentives for both Registers and Auctions (solar and wind power in the first Group, the rest in the second). This approach may potentially be detrimental to photovoltaic plants and mini-wind farms, which are set to compete against onshore wind farms.
- **Small Plants.** Absence of direct access for small plants, thus opening competition (with the exception of plants below 250 kW, which are allowed to opt for the Feed-In Tariff), but allowing the aggregation plants with a capacity of 20kW for the register (as long as their overall capacity is below 1 MW), and between plants from 20 kW to 500 kW for auctions (provided their overall capacity is equivalent to or above 1 MW).
- **New Capacity Threshold for Access.** The capacity threshold for accessing the Registers has been reduced, now accepting plants below 1 MW (MD FER 2016 the threshold was below 5 MW). The threshold for accessing Auctions has also been reduced, now accepting plants with a capacity of 1 MW (the threshold in MD FER 2016 was 5 MW).

- **Application of the “Two Way” Mechanism.** With the exception of plants choosing to use Feed-In Tariffs, tariffs shall be of a «two way» type. This means that producers will be paid the difference between the tariff applicable, as determined under MD FER1, and the hourly price for electricity per zone (where said difference is positive). If this difference is negative, the producer shall be required to return the difference. **Please note that as of today producers expect an auction tariff lower than the one they may presumably obtain by negotiating bilateral PPAs, and potentially even lower in a strictly merchant scenario.**
- **Feed-In Tariff.** For plants with capacity not exceeding 250 kW and to which the MD FER1 applies, GSE shall, where requested by the producer, purchase the electric energy. GSE will pay producers the set all-inclusive feed-in tariff on the net production fed into the grid. The owners of said plants, who chose to keep surplus energy at their disposal, may in any case ask GSE to have their incentive changed, opting for said Feed-In Tariff instead.
- **Tariff Premiums.** Photovoltaic plants in Group A-2 as per Article 8 are entitled, in addition to incentives for electric energy, to a premium of 12 €/MWh, paid on all the energy produced. For plants with capacity of up to 100 kW installed on buildings, the net production consumed on site is subject to a premium of 10 €/MWh, and can be cumulated with the premium under paragraph 10. The premium is paid *‘a posteriori’*, on the condition that self-consumption of energy on a yearly basis is over 40% of net production.
- **Reduction of the Tariff.** A transfer to a third party of a plant enrolled in the registers prior to the plant entering into operation and prior to signing the agreement with GSE (under Article 24(2)(d) of Decree No. 28/2011) entails a 50% reduction of the tariff offered. The tariff may also be reduced in the following cases:
  - (a) 1% per year until the date on which the plant enters into operation, applicable from the date 15 months after the date of communication of positive results in the auction and register procedures;
  - (b) 0.5% for every month of delay, on account of failure to comply with the final deadlines for entry into operation as per Article 10(2), and Article 17(7), of MD FER1 (between 16 and 51 months starting on the date on which the ranking order is published, with a maximum delay of 6 to 8 months);
  - (c) in case of capital grants, in accordance with the procedures detailed in Annex 1 to MD FER1;
  - (d) 20% in case of use of refurbished components as per paragraph 11, in the measure set forth in the same paragraph 11 of MD FER1;
  - (e) 5% of the tariff applicable on the date on which the plants enter into operation, for plants which, on account of a failure to comply with final deadline for entering into operation as per Article 10(3), of MD FER1, are no longer entitled to receive benefits and are subsequently re-admitted through a different procedure to incentive mechanisms.
- **Mechanism for Changes in Ranking Order.** While up until MD FER 2016 changes in the ranking order were permitted, this is no longer the case.
- **Mechanisms for Reallocation of Capacity.** Within the scope of the auction and register procedures, GSE shall apply the following mechanisms for reallocation of capacity: a) for “plants in the Register”, where valid requests of one of the A and B groups are below quota, and, at the same time, valid requests for enrolment of a different group are above quota, the unused capacity of the first group is transferred to the second group’s quota so that the latter’s position in the ranking order may change; b) for “plants accessing auctions” of groups A and B, starting from the third procedure, GSE shall verify whether or not the following conditions apply:
  - i. the total capacity of the plants deemed eligible for each group is above 130% of the capacity made available;
  - ii. the total capacity of the eligible plants is constituted, within each group, by over 70% of plants fuelled by the same source. There must be a surplus capacity offered by the minority source, equivalent to at least 20% of the capacity made available;
  - iii. the average value of the reductions offered by the plants fuelled by the minority source is equivalent to at least half of the average value of the reduction offers submitted by the plants fuelled by the source under the point above.

Where the above three requirements are met, GSE shall draw two separate ranking orders. These will guarantee a sufficient quota to accept the excluded power generated by the minority source up to 30% of the quota, and allocate the remaining power to a different source. Ranking orders are formed separately for each source, applying to each the selection methods and criteria under Article 14 of MD FER1.

- **Definition of “suspension of incentive period”.** The period for which applicants are entitled to the incentive mechanisms shall be calculated net of any shut-downs, ordered by the competent authorities on account of problems in connection to the safety of the electric network acknowledged by the network provider. This includes natural disasters acknowledged by the competent authorities, shut-downs due to performance of upgrades and repowering operations not subject to incentives, recognised as such by GSE (in this latter case, the extension may not exceed 12 months) and other events of force majeure observed by GSE. For plants subject to the obligation to renew their integrated environmental authorisation (*Autorizzazione Integrata Ambientale*) this will be calculated net of any periods of shut-down caused by a delay in the issuing of the above authorisation due to causes not ascribable to any conduct of the producer. Producers shall therefore be granted an extension of the initial period they are entitled to, such extension being equivalent to the total shut-down time.
- **Repowering Operations.** Repeated plant repowering operations on the same plant within the scope of register procedures under MD FER1 shall not be eligible to Register procedures if the last repowering operation causes the total capacity of the plant to increase by 1 MW or more. At least three years must lapse between the repeated sets of repowering operations. **Please note that the language of the Decree is not particularly clear, leaving some confusion as to whether - in case of several operations on the same plan - one would in any case need to wait three years, or whether this limit applies only where the threshold for accessing Auctions is reached or exceeded.**
- **PPAs.** In addition to the traditional incentive mechanisms, additional mechanisms will be promoted to favour the purchase and sale of green energy within the public administration

through “renewable energy long term agreements”: **PPAs (“Power Purchase Agreement”)**. Article 18 of MD FER1 establishes that «*within 180 days of the entry into force of this decree, the Italian Power Exchange (GME), based on the criteria under this Article, starts a public consultation for setting up a **market platform** for the long-term trading of renewable energy sources*». The characteristics of the projects shall be made available on GSE’s website, in order to promote a meeting between the parties which may be potentially interested in entering into trading agreements.

- **Green Procurement.** MD FER1 aims, furthermore, at promoting the application of PPAs for the procurement of renewable energy by the public administration, with *ad hoc* measures to be contained in an inter-ministerial decree to be issued in the future.
- **Confirmed application of “Decreto Controlli”.** The Decree issued by the Ministry of Economic Development, entered into force on 31 January 2014, known as “**Decreto Controlli**” shall continue to be applicable. The Decree lays down the **organisation and operative methods for checks**; the tasks assigned to the various parties involved; the plants’ aspects that need to be checked; and the list of the relevant violations under which GSE may order a suspension of or disqualification from the incentives, with full recovery of the sums already paid. The operating methods for GSE’s activities should be detailed in a circular to be published in the near future.
- **Impact on the Market.** The delay in the process of approval of MD FER1 has resulted in the following developments:
  - i. investments in the “grid parity” market have already been made, pushing a number of operators to opt for a bilateral contracting market for the sale of energy, thus becoming untied from the public system (see GSE regulation);
  - ii. the first auctions shall primarily be dominated in particular by onshore wind farms, by large operators who need to get to the construction of works that have long been authorised;
  - iii. the PPA market is lagging, and as of today most of the investors have yet to choose a real short/medium/long term strategy, whilst

waiting for clear bankability indications from the banking and financial sector;

- iv. the Corporate PPA market is still not mature, making the finance ability of grid-parity plants all the more difficult. There are great expectations by the main market operators, who still envision opportunities for long term investment, due to (a) the development of more small/medium/large size plants, which are likely to aggregate in the future, and (b) a search for a shared solution between all the stakeholders (developers, investors, banks, and asset managers) engaged in creating a platform to restart a market that, until less than a year ago, was struggling to take off in the midst of uncertainties.

**Table 1**

Renewable Energy Source	Type	Capacity	Useful Life of Plants	Tariff
		Kw	Years	Euro/Mwh
Wind	Onshore	1 KW– 100 KW	20	150
		100 KW– 1 MW	20	90
		Over 1 MW	20	70
Hydroelectricity	Run-of-the-river	1 KW– 400 KW	20	155
		400 KW– 1 MW	25	110
		Over 1 MW	30	80
	Reservoir or basin	1 KW– 1MW	25	90
		Over 1 MW	30	80
Sewage treatment gases		1 KW– 100 KW	20	110
		100 KW– 1 MW	20	100
		Over 1 MW	20	80
Solar photovoltaic		20 KW– 100 KW	20	105
		100 KW– 1000 KW	20	90
		Over 1 MW	20	70

# Contacts

Pierpaolo Mastromarini

Partner

pierpaolo.mastromarini  
@twobirds.com



Simone Cadeddu

Partner

simone.cadeddu  
@twobirds.com



Michele Arruzzolo

Senior Associate

michele.arruzzolo  
@twobirds.com



Enrico Maria Curti

Senior Associate

enrico.curti  
@twobirds.com



Daniele Pompei

Senior Associate

daniele.pompei  
@twobirds.com



Jacopo Nardelli

Senior Associate

jacopo.nardelli  
@twobirds.com



twobirds.com

Abu Dhabi & Amsterdam & Beijing & Berlin & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Dusseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Luxembourg & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & San Francisco & Shanghai & Singapore & Stockholm & Sydney & Warsaw

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