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PHOTOVOLTAIC PLANTS: THE “QUINTO CONTO ENERGIA” HAS BEEN PUBLISHED IN THE OFFICIAL GAZETTE AND WILL BE APPLICABLE AS OF 27 AGOSTO 2012.

After many delays, Ministerial Decree 5 July 2012 – pertaining to the new regulations for the Feed-In Tariff (FiT) system for photovoltaic (PV) plants (the so-called “quinto Conto Energia”) - was published in the Official Gazette no. 159 of 10 July 2012.

The new decree will apply 45 days after the publication - by the Italian Authority for Energy and Gas (AEEG) - of the notice that the annual aggregate value of FiT payments for PV plants has reached the 6 billion euros threshold. With regards to the above, it is worth noting that such threshold has already been exceeded on 12 July 2012, and therefore the new regulations will apply from 27 August 2012.

Moreover, according to the provisions of the Decree, the quinto Conto Energia will expire (hopefully, having - by then - a new incentive tool in place) once the overall annual expense cap of €6.7 billion for incentive payments payable to PV installations has been reached.

Apart from the obvious limitations in the availability of funds (some argue that the threshold of 6.7 billion could be reached even before the 27 August, with the result that after thirty days from that date the new regulations will not be applicable), the new decree represents, from several points of view, an element of discontinuity with the previous incentive schemes (so-called quarto Conto Energia).

The most relevant new features of the Decree concern the very nature of the tariff and the non-cumulation of the incentives with other forms of facilitation.

In fact, it is provided that - for plants with a nominal electric power output of up to 1 MW - the G.S.E. (Gestore Servizi Energetici) will allocate, with reference to the net electricity production injected into the national grid, an all-inclusive FiT, which will be determined on the basis of power output and type of plant. For these plants, therefore, the tariff will be the only revenue, apart from the savings achieved through self-consumption (which is encouraged through an additional bonus tariff).

On the contrary, with regards to plants with a nominal electric power output above 1 MW, it is established that the G.S.E. will allocate – still with reference to the net electricity production injected into the grid - the difference between the all-inclusive FiT and the hourly zonal price. For this type of plants, however, the power producer maintains the availability of energy produced.

As mentioned above, with regards to the on-site consumption of a share of the net electricity production, all types of plants are given a bonus tariff (hence, the obvious choice to encourage or otherwise facilitate self - consumption).

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It will, however, no longer be possible to combine the incentives earned through the mechanism of net metering ("scambio sul posto") or the so-called "simplified purchase and resale arrangement" ("ritiro dedicato") - as allowed by the "quarto Conto Energia" (and in general from all previous incentive schemes) – now expressly prohibited by the new Decree (according to which such terms are "an alternative to the Conto Energia"; cf. Art. 19).

It is also worth noting the cut of about 30% of the value of the incentive rates compared to previous legislations.



Several changes were also made to the system of registration of PV plants. In particular, power plants under 12 kW or between 12 kW and 20 kW can directly benefit from the incentives without having to register; for the latter, this is conditional to the request of curtailment by 20% of FiTs.

Exemption from registration is also permitted for rooftop PV plants of up to 50 kWp installed in combination with the removal of Eternit and asbestos, building-integrated PV plants with innovative features (up to the accrual of an indicative yearly cost of incentives of 50 million euros), concentrated PV plants (the 50 million euros ceiling still applying) and plants built on government land or buildings (if built following a public tender and again with a threshold of 50 million euros).

Another novelty is the allocation of a bonus for plants built to replace asbestos roofings and for those using a preponderance of European made components: i) for plants under 20 kW built to replace asbestos, 30 euros / MWh until the end of 2013, 20 euros up to the end of 2014 and 10 euros / MWh from 2015 onwards; ii) for "made in Europe" plants and those above 20 kW replacing asbestos roofings, the bonus is 20 euros / MWh throughout 2013, 10 euros up to the end of 2014 and 5 euros / MWh from 2015.

An important change is the introduction of the obligation from power plant operators, to correspond to the G.S.E., when submitting the application for the incentives, a fee – the so-called "spesa di istruttoria" - of 3 euros for each kW installed up to 20 kW and 2 euros per installed kW in excess of 20 kW. It is also stated that such payments must be made upon submission of the request for incentives for plants without obligation to register, or together with the registration application for plants that are not exempted. However, from 1 January 2013, those who have access to the incentive rates will be required to pay the G.S.E. 0.05 euro cents per kWh of electricity benefitting from FiTs.

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Todarello & Partners provides legal assistance on all issues relating to topics covered in this article. The lawyers of the Firm have significant experience in the related field, regularly assisting some of the major market players and representing them in legal proceedings before all competent courts.

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