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Legislative changes

Suitable areas and Transition 5.0: legislative Decree 175/2025 converted into law, with amendments

By Law no. 4 of 15 January 2026, published in the Official Gazette of the Italian Republic (GURI) no. 15 of 20 January 2026, Decree-Law no. 175 of 21 November 2025, containing urgent measures on the Transition Plan 5.0 and the production of energy from renewable sources, was converted into law, with amendments.

The decree (now law) has, among other things, repealed the regulation of suitable areas *ope legis* provided for in Article 20, paragraph 8, of Legislative Decree no. 199/2021 by transferring it, with additions and amendments, within Legislative Decree no. 190/2024 ("TU FER") to articles 11-bis and following of the same consolidated text.

The new provisions for the renewable energy sector are set out in Article 2 of Decree-Law No. 175/2025, entitled "*Urgent provisions for the identification of areas suitable for hosting renewable energy plants and for the achievement of the objectives of the National Recovery and Resilience Plan.*"

The main changes introduced during the conversion into law are summarised below.

Suitable areas on land: Photovoltaic system

The conversion law of Decree-Law No. 175/2025, through Article 2, letter b-bis), amends the definition of "competent authority" set out in Article 4 of Legislative Decree No. 190/2024, extending its subjective scope.

In particular, in addition to the territorially competent Municipality responsible for the simplified authorisation procedure pursuant to Article 8, the Ministry of the Environment and Energy Security, the competent Region or delegated Province responsible for the single authorisation procedure pursuant to Article 9, the **Special Commissioner** responsible for the management of authorisation procedures relating to interventions aimed at the installation of the relevant plants is now also expressly included.

For more information

- Decree-Law no. 175 of 21 November 2025
- Legislative Decree no. 199/2021
- Decree no. 190/2024

For more information

- Decree-Law No. 175/2025
- Legislative Decree No. 190/2024
- Decree-Law No. 17 of 1 March 2022
- Law No. 34 of 27 April 2022

This Commissioner was established pursuant to Article 20(3-bis) of Decree-Law No. 17 of 1 March 2022, converted into Law No. 34 of 27 April 2022.

Article 5 of the Consolidated Text on Renewable Energy Sources (TU FER) has been supplemented by paragraph 5-bis, which provides that, for the management of authorisation procedures relating to the installation of the plants referred to in Article 20 of Decree-Law No. 17/2022, the Special Commissioner referred to in paragraph 3-bis of the same article shall act as the competent authority through the **SUER** platform (*Sportello Unico per le Energie Rinnovabili* – One-Stop Shop for Renewable Energy).

It is also provided that, limited to the interventions referred to in Article 20 of Decree-Law No. 17/2022, ministerial decrees adopted pursuant to Article 4(3) shall be issued after consultation with the Ministry of Defence.

Within the definition of “areas within industrial plants and facilities”, set out in Article 11-bis, letter l), No. 1, the conversion law introduced a clarification whereby such sites must not be intended for livestock production (in addition to agricultural production already provided for by the decree) nor for the production of energy from renewable sources. The amendment therefore clarifies that suitability *ex lege* applies exclusively to areas within industrial plants that are unrelated to both the agro-livestock sector and the renewable energy sector.

The amendment is clearly intended to prevent the so-called “*loop effect*”, namely the risk that a renewable energy plant, merely by virtue of having been constructed, could itself constitute a basis for the automatic qualification of surrounding areas as “suitable”, thereby giving rise to an expansive and recursive mechanism capable of progressively extending the perimeter of eligible areas.

At the same time, the provision that limited the applicability of this case exclusively to areas within industrial plants or facilities subject to Integrated Environmental Authorisation (*Autorizzazione Integrata Ambientale* – AIA) has been removed.

Suitable areas on land: Agrivoltaic system

The conversion law also introduced clarifications affecting the authorisation phase of agrivoltaic plants.

In particular, for the installation of an agrivoltaic plant, the project proponent

is required to obtain a **certified declaration** — to be attached to the project submitted pursuant to Article 9 and, in any event, to be made available to the competent authority within the framework of supervisory activities — issued by a qualified professional certifying that the plant is capable of preserving at least 80% of gross saleable production.

The territorially competent Municipality is granted supervisory powers, for a period of five years following the construction of the plant, aimed at verifying the continued suitability of the installation site for agro-pastoral use.

The sanctioning system set out in the TU FER has also been amended, through modification of Article 11(8) of Legislative Decree No. 190/2024, extending its scope of application to agrivoltaic plants.

Specifically, without prejudice to the obligation to restore the site to its original condition, an administrative fine ranging from EUR 1,000 to EUR 100,000 is provided for in cases where agrivoltaic systems are installed in a manner that does not ensure the continuity of agricultural and pastoral activities at the installation site. For this purpose, the territorially competent Municipality shall verify the continued suitability of the installation site for agro-pastoral use.

Role of the Regions

The conversion law also amends the regulation governing the **percentage thresholds of agricultural areas that may be classified as suitable**, clarifying both the calculation mechanism and territorial modulation.

In particular, it is clarified that, for the purpose of calculating the share between 0.8% and 3% of the utilised agricultural area (*Superficie Agricola Utilizzata – SAU*), areas already occupied by agrivoltaic plants must also be taken into account.

It is also expressly provided that Regions and Autonomous Provinces may establish that suitable areas identified *ex lege* pursuant to paragraph 1 — where located within agricultural zones — contribute to the calculation of the aforementioned percentage. Furthermore, without prejudice to the above-mentioned percentage framework, the adoption of a different maximum limit on a municipal basis is permitted.

Transitional provisions

A transitional regime was introduced during the conversion phase for the purpose of determining the applicability of the new provisions.

The provisions concerning suitable areas and simplified procedures (Articles 11-bis(1) and 11-quater of Legislative Decree No. 190/2024) do not apply to procedures already pending on the date of entry into force of the decree, which therefore continue to be governed by the previous regulatory framework.

For the purposes of this provision, “*pending procedures*” means enabling or authorisation procedures — including environmental assessments — for which, as of the same date, the environmental verification of the completeness of the project documentation has already been completed.

Without prejudice, in cases involving areas characterised by **high agricultural value**, the competent Region or Autonomous Province retains the right to activate the opposition mechanism pursuant to Article 14-quinquies of Law No. 241/1990.

The news of the Bills Decree

On 18 February 2026, the Council of Ministers approved Decree-Law no. 21 of 20 February 2026, the so-called “Bills Decree” (Official Gazette no. 42 of 20 February 2026), containing “Urgent measures to reduce electricity costs and enhance business competitiveness, support industrial decarbonisation, address virtual saturation of electricity grids and integrate data processing centres into the electricity system”.

The decree, inter alia, introduces significant amendments to the photovoltaic incentive schemes under the Conto Energia, with the stated objective of ensuring greater sustainability of support policies for renewable energy sources while contributing to the reduction of the ASOS component of electricity bills.

In particular, pursuant to Article 2, operators of photovoltaic plants with an incentivised nominal capacity exceeding 20 kW, benefiting from fixed premiums under the First, Second, Third and Fourth Conto Energia schemes, expiring from 1 January 2029 and not linked to market prices, may voluntarily opt to adhere to two alternative schemes.

The first scheme, governed by paragraph 1, allows eligible operators to opt for:

- i. a premium tariff equal to 85% of the amount due for the period between the second half of 2026 and 31 December 2027; or
- ii. a premium tariff equal to 70% of the amount due for the same period.

Operators opting for one of the two alternatives are granted an **extension of**

the incentive agreements relating to the relevant plants, equal to:

- i. **3 months**, in the case of reduction to 85%;
- ii. **6 months**, in the case of reduction to 70%.

For the extension period, the GSE applies a tariff equal to the average of the reduced premium tariffs.

Participation in the scheme referred to in paragraph 1 must be communicated to the GSE by **31 May 2026**.

Paragraph 4 regulates the second scheme, under which operators of photovoltaic plants with a capacity exceeding 20 kW, benefiting from fixed premiums under the aforementioned *Conto Energia* schemes, may opt — by **30 September 2026** — to withdraw from the relevant incentive schemes, subject to compliance with the conditions set out in letters a), b), c), d) and e).

Withdrawal from the incentive schemes is permitted from **1 January 2028**, for plants whose aggregate capacity does not exceed 10 GW.

Any residual available capacity within the quota shall be allocated through a competitive procedure managed by the GSE, to be completed by **30 June 2027**, among plants that have not adhered to the first reduction scheme described above.

Plants admitted to exit the incentive system currently in place will receive — starting from 2028 — payments in equal instalments over a ten-year period, adjusted at an interest rate determined by the GSE, based on the average cost of capital applicable to investments in photovoltaic plants subject to the procedure, and in any case not exceeding 6%, subject to additional conditions depending on the specific plant category.

Additional benefits are also provided for operators that have already adhered to the first reduction scheme, including — for example — the possibility of participating in the competitive procedure even where withdrawal requests exceed the overall capacity cap of 10 GW.

Article 4 of the decree aims to strengthen long-term contracting for electricity from renewable sources by companies, with particular focus on SMEs, primarily through amendments to Article 28 of Legislative Decree No. 199/2021.

The provision enhances the GSE trading platform, introducing dedicated sections for contracts with a minimum duration of three years and promoting

aggregation mechanisms based on geographical location or consumption profiles.

Contracts remain concluded directly between the parties but must be registered on the platform. Upon request, the GSE may act as a guarantor of last resort, within the limits of available resources, with the support of SACE for risk coverage.

An additional incentive — financed through general system charges — is also introduced for renewable plants with a capacity exceeding 20 kW that, upon expiry of their incentives, are selected within the aggregation service framework.

Amendments to Legislative Decree No.190/2024

Through the decree, the legislator also introduces further amendments to the Consolidated Text on Renewable Energy Sources (Legislative Decree No. 190 of 25 November 2024), introducing a coordinated set of provisions aimed at aligning authorisation and procedural rules with the new framework governing electricity grid connections and the refurbishment of photovoltaic plants.

In particular, Article 2(5) of the decree expressly includes among the permitted cases the full refurbishment of existing photovoltaic plants located within industrial areas, regardless of the resulting capacity, provided that the plant remains entirely located within the same industrial area.

Article 7(3) introduces several amendments to Article 4(1) of the Consolidated Text. In particular, letter a) introduces an express exclusion relating to the development and upgrading of the national transmission grid connected to renewable energy plants governed by the new Article 10-bis(8) and (10).

The most significant amendment consists in the introduction of new Article 10-bis, which establishes a **comprehensive regulatory framework governing grid connection solution for renewable energy plants and energy storage systems** (excluding offshore plants).

The provision requires ARERA, within 180 days, to update the technical and economic conditions and procedural rules governing grid connections, introducing a system based on increased flexibility and competitiveness.

In particular, the national transmission system operator and distribution system operators may issue connection solutions even in excess of the maximum capacity available at a single connection point. Available capacity shall be allocated through transparent procedures and definitively assigned only to

projects that have obtained the relevant enabling title or single authorisation. Paragraph 2 of new Article 10-bis allows, pending the adoption of ARERA measures, the issuance of connection solutions even in excess of available capacity.

Paragraph 3 further provides that, following the adoption of the new regulatory framework, previously issued connection solutions relating to renewable energy or storage projects that have not yet obtained the required enabling title or authorisation shall lose their effectiveness, without automatic cancellation of the related applications.

The national transmission system operator shall notify the concerned parties of the loss of effectiveness of the connection solutions, while ARERA shall establish the procedures governing reimbursement or rescheduling of connection fees already paid.

Paragraph 4 provides that, in its territorial planning and capacity allocation activities, the electricity grid operator shall take into account connection solutions relating to renewable energy or storage projects which, at the date of publication of ARERA's measures, **have already obtained an exemption from Environmental Impact Assessment (EIA), a favourable Environmental Impact Assessment decision or a positive environmental compatibility opinion.**

A deadline of 90 days from acceptance of the connection solution is also introduced for submission of the application for PAS or Single Authorisation, failing which the connection solution shall lapse.

Finally, new Article 10-bis regulates the authorisation procedures applicable to the development and upgrading of the national transmission grid connected to renewable or storage plants, distinguishing between interventions subject to the ordinary regime under Article 1-sexies of Decree-Law No. 239/2003 and interventions classified as minor-impact upgrades, for which simplified procedures apply.

Decreto Milleproroghe 2026

Obligation to integrate thermal energy from renewable energy sources

Bill A.S. No. 1812, entitled "*Conversion into law, with amendments, of Decree-Law No. 200 of 31 December 2025, laying down urgent provisions on regulatory deadlines*" (the so-called "*Milleproroghe*"), was approved by the

For more details

- Decree-Law No. 21 of 20 February 2026
- Decree-Law No. 181 of 9 December 2026
- Decree-Law No. 199 of 8 November 2021
- Decree-Law No. 190 of 25 November 2024

Chamber of Deputies on 23 February 2026 and transmitted to the Senate on 24 February 2026.

Pursuant to Article 13(2) of the Decree-Law, the legislator has once again intervened in the regulation governing the **obligation to integrate thermal energy from renewable sources**, setting 1 January 2026 as the **new effective date**.

The provision amends Article 27(1) of Legislative Decree No. 199/2021, postponing the entry into force of the obligation applicable to companies engaged in the sale of thermal energy in the form of heat for heating and cooling to third parties in quantities exceeding 500 tonnes of oil equivalent (TOE) per year.

The primary legislation requires such operators to ensure that a portion of the thermal energy sold originates from renewable sources. However, the detailed implementation framework — including annual increase trajectories, compliance verification mechanisms, and the regulation governing the compensatory contribution and the related fund established with the Energy and Environmental Services Fund (CSEA) — is deferred to a decree of the Minister for the Environment and Energy Security.

A further element cited by the Government in support of postponing the effective date is the need to await publication of the European Commission's guidelines on the definition of waste heat and waste cold, as provided for under Directive (EU) 2018/2001.

These guidelines were published only on 2 September 2024, highlighting the opportunity to postpone the obligation pending alignment with the updated European framework introduced by Directive (EU) 2023/2413 (RED III).

The provision also forms part of the broader context of updating European and national renewable energy targets in the thermal sector.

The explanatory report notes that the targets established under Article 3 of Legislative Decree No. 199/2021 must now be interpreted in light of RED III and the PNIEC 2024, which identify significantly higher renewable energy targets for the heating and cooling sector by 2030, explicitly recognising the contribution of waste heat recovery and the renewable share of electricity used for thermal purposes.

Authorization procedures for photovoltaic systems at tourist or spa facilities

Pursuant to Article 16(1) of the so-called Milleproroghe 2026 Decree-Law, the legislator has once again intervened in the regulation governing authorisation procedures applicable to photovoltaic plants installed at tourist or spa facilities, extending until **31 December 2026** the duration of the simplification measure introduced under Article 6(2-septies) of Decree-Law No. 50/2022.

The provision therefore extends the deadline within which **photovoltaic plants with a capacity of up to 1 MW, located in areas available to tourist or spa facilities**, may be constructed on the basis of a Sworn Notice of Commencement of Works (Dichiarazione di Inizio Lavori Asseverata – DILA). This measure forms part of a regulatory framework already characterised by repeated postponements.

The original deadline — 16 July 2024, corresponding to twenty-four months from the entry into force of Conversion Law No. 91/2022 — had already been extended first to 31 December 2024 and subsequently to 31 December 2025. Through the Milleproroghe 2026, the legislator has therefore granted an additional year of applicability to the simplified regime based on the DILA procedure.

The special regime applicable to plants located within historic centres or in areas subject to landscape protection remains unchanged.

In such cases, the DILA must be accompanied by a declaration in lieu of an affidavit issued by the qualified designer, certifying that the plant is not visible from adjacent public outdoor spaces and the roofing materials are not made using products reproducing the appearance of traditional local materials.

The extension assumes particular relevance when considered in light of the recent evolution of the regulatory framework governing administrative regimes applicable to renewable energy plants.

Indeed, from 30 December 2024, Legislative Decree No. 190/2024 — as subsequently amended by Legislative Decree No. 178/2025 — introduced a comprehensive reorganisation of the regulatory framework, expressly repealing the DILA regime.

Under the new framework, photovoltaic plants located in areas available to tourist or spa facilities and primarily intended to meet the energy needs of such facilities are subject to the free activity regime, within certain capacity thresholds and depending on installation methods.

For more information

- Decree-Law No.199 of 8 November 2021
- Directive - 2018/2001
- Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001
- Decree-Law No.50 of 17 May 2022
- Law No.91 of 15 July 2022
- Decree-Law No.190 of 25 November 2024
- Decree-Law No.178 of 26 November 2025

In particular, the following installations fall within the scope of free activity:

- i. plants with a capacity of less than 10 MW, when installed on existing buildings or structures, on their appurtenant areas, or on above-ground structures other than buildings;
- ii. plants with a capacity of up to 1 MW, when ground-mounted in areas adjacent to existing buildings to which they are functionally connected.

Agrisolar Park Facility

The decree of the Ministry of Agriculture, Food Sovereignty and Forestry dated 17 December 2025 was published in Official Gazette No. 29 of 5 February, entitled “Measures for the construction of photovoltaic systems to be installed on buildings used for productive purposes in the agricultural, livestock and agro-industrial sectors, to be financed under the NRRP, Mission 2, Component 1, Investment 4 ‘Agrisolar Park Facility’.”

The decree governs the implementation of NRRP Measure M2C1 – Investment 4 “Agrisolar Park Facility”, introduced by the Government with the aim of enabling the use of resources from the National Recovery and Resilience Plan **beyond the deadline of 30 June 2026**.

The total financial allocation amounts to **€789 million**, of which up to €16 million is earmarked to cover management costs. The resources will be used to grant **non-repayable contributions for new projects**, which will be identified through one or more public calls issued by MASAF and implemented by GSE.

Projects receiving funding must be completed within 18 months from the date of adoption of the funding award decision.

The maximum eligible expenditure cap remains set at €1,500/kWp for the installation of photovoltaic modules.



**For more
details**

Gazette no. 29 of 5 February
2026

Tax news

2026 Budget Law: increase in depreciation for investments in capital goods

The 2026 Budget Law, Article 1, paragraphs 427 to 436, introduces a tax incentive aimed at supporting the digital transition of businesses and encouraging investments in new capital goods intended for production facilities located within the national territory.

The incentive consists of **an increase in the acquisition cost of the assets**, applicable for the purposes of determining tax-deductible depreciation allowances (for IRES and IRPEF) and lease payments, up to a maximum of 180%.

Eligible investments must be carried out **from 1 January 2026 to 30 September 2028**. Access to the incentive is subject to the submission of specific communications and certifications through the portal of the Energy Services Manager (GSE). A subsequent Ministerial Decree (to be adopted by 31 January 2026) will define the implementing provisions, with particular regard to the procedures for accessing the benefit and to the content and methods for submitting the relevant communications.

Beneficiaries are taxpayers carrying on business activities who comply with workplace safety regulations and properly fulfil their social security and welfare contribution obligations in respect of employees.

Companies in voluntary liquidation, bankruptcy, compulsory administrative liquidation, composition with creditors without business continuity, or subject to other insolvency proceedings, as well as companies subject to disqualifying sanctions, are **excluded from the benefit**.

Both investments in owned assets and investments made through financial leasing agreements may qualify for the incentive, including:

- capital goods included in the lists set out in Annexes IV (**tangible assets**) and V (**intangible assets**) to the Budget Law – which update the lists of tangible and intangible assets previously provided for in Annexes A and B to Law No. 232/2016;
- **assets intended for the self-generation and self-consumption of energy from renewable sources**, including remote self-consumption systems, as well as energy storage systems. Photovoltaic systems are eligible provided that the modules are manufactured in Europe and have a minimum cell efficiency of 23.5% (pursuant to Article 12, paragraph 1, letters b) and c), of Decree-Law No. 181/2023).

A Made in EU requirement has been introduced: in order to benefit from the incentive, the eligible assets must be manufactured in one of the Member States of the European Union or in States that are parties to the Agreement on the European Economic Area. The eligible assets must also be interconnected with the company's production management system or supply network.

Subject to compliance with the above requirements, the intensity of the incentive varies depending on the amount of eligible investments:

Investment amount	Increase in acquisition costs
up to € 2.5 million	180%
over €2.5 and up to €10 million	100%
over € 10 and up to € 20 million	50%

To access the benefit, the company must submit — electronically, through an IT platform developed by GSE and based on standardized templates — specific communications and certifications relating to the eligible investments.

The incentive **may be combined** with other incentives financed through national or European resources, **in compliance with the prohibition of double financing** and provided that the total support does not **exceed the actual cost incurred**. The calculation basis is determined net of other grants or contributions received in relation to the same eligible costs.

The incentive cannot be combined with the tax credit for investments in new capital goods 4.0 made from 1 January 2025 to 31 December 2025 (or until 30 June 2026 for “reserved” investments), provided for under Article 1, paragraph 446, of Law No. 207 of 30 December 2024.

The **incentive is forfeited** if, during the period of use:

- the asset is disposed of for consideration;
- the asset is transferred to production facilities located abroad, even if belonging to the same entity.

However, if during the period of use the asset is disposed of for consideration or transferred to production facilities located abroad, entitlement to the remaining benefit is preserved provided that, within the same tax period, the company replaces the original asset with a new capital asset having **similar or superior technological characteristics**.

Where the acquisition cost of the replacement investment is lower than that of the replaced asset, the benefit continues to apply to the remaining instalments up to the value of the new investment.

The new enhanced depreciation does not apply to investments benefiting from the 4.0 tax credit relating to investments made in 2025 or within the extended

deadline of 30 June 2026, pursuant to Article 1, paragraph 446, of Law No. 207/2024. Therefore, the new incentive should apply to **investments with purchase orders placed before 1 January 2026 and completed after 1 January 2026**, provided that **no 4.0 tax credit has been claimed in respect of the same investment**.

Furthermore, in this context, it should be noted that Article 1, paragraph 770, of the 2026 Budget Law provides for the establishment of a Fund within the budget of the Ministry of Economy and Finance (MEF), amounting to €1,300 million, aimed at increasing the resources available for the 4.0 investment tax credit, which had previously been exhausted.

Energy excise duties on restyling: the effects for operators and professionals

With **Legislative Decree No. 192/2025**, the legislator intervenes in the **system of energy excise duties** through a reform which, while leaving tax rates unchanged, significantly affects application mechanisms and compliance requirements. The measure forms part of the broader **process of revising energy taxation** and serves as a transitional step towards the framework that will become fully operational from 2026.

Firstly, the **system of guarantees** — traditionally based on an automatically applied security requirement — has been revised. The new approach introduces a criterion more closely aligned with the role performed by the liable party, moving beyond a purely formal logic. Consistent with this approach, the exemption from the guarantee requirement has been extended to the Italian Central Stockholding Organisation (OCSIT), in view of its public-law nature and its national energy security functions. This results in a reduction of non-essential costs without compromising the need to safeguard public revenues.

At the same time, the decree revises the **treatment of packaged natural gas**, eliminating the distinction based on the origin of the supply. By clarifying that excise duty is also payable where gas is purchased from domestic suppliers for own use, the legislator restores the levy to its substantive rationale — namely final consumption — and strengthens the principle of neutrality, thereby removing misalignments that had generated interpretative uncertainty.

With a view to streamlining compliance obligations, **a simplification measure has also been introduced for operators of national gas pipeline networks**, allowing them, upon request, to make payment of semi-annual advance instalments in a single instalment. While the provision does not affect

the overall tax burden, it facilitates more efficient management of financial flows and administrative obligations.

With regard to electricity generated from biomass, the legislative intervention performs a clarifying and delimiting function. The exemption from excise duty is restricted to cases of self-consumption only, excluding situations in which the energy is used, even partially, by third parties. This strengthens the distinction between production for internal needs and activities with economic relevance, reducing the scope for expansive interpretations.

Finally, the **reformulation of Annex I to the Consolidated Environmental Act** — introducing the distinction between domestic and non-domestic uses in place of the traditional distinction between civil and industrial uses — completes the reform framework. Although this amendment does not immediately affect tax rates, it has systemic significance, anticipating a classification model more consistent with the evolution of the energy market and EU law.

Overall, the corrective decree goes beyond mere formal alignment measures and contributes to strengthening the internal coherence of the excise duty system. For companies and sector operators, this entails the need to verify the adequacy of compliance processes and tax controls; for professionals, it marks the beginning of a phase in which interpretative analysis and strategic advisory services become central to managing the transition towards the new regulatory framework.

 **For more
details**

Legislative Decree no.
192/2025

Case Law

Curbing inframarginal extra profits and EU law: the Court of Justice's judgment C-423/23

In proceedings brought by an **operator in the hydropower sector** against the Regulatory Authority for Energy, Networks and Environment (**ARERA**) and Gestore dei Servizi Energetici (**GSE**) S.p.A., concerning a request for a preliminary ruling submitted by the **Regional Administrative Court (TAR) of Lombardy** by order of 7 July 2023, the Court of Justice of the European Union was asked to clarify the scope of Article 5 of Directive 2019/944 and Articles 6, 7 and 8 of Regulation 2022/1854.

In its judgment of 22 January 2026, Case C-423/23, the Court of Justice of the European Union ruled, by way of preliminary ruling, on the compatibility with EU law of the legislation introduced by the Italian legislator which, in the context

of the 2022–2023 energy crisis, introduced a cap on the market revenues of electricity producers.

During 2022, following the rise in energy prices linked to the war in Ukraine and the reduction in gas supply, the European Union adopted Regulation 2022/1854, which introduced — for the period from 1 December 2022 to 30 June 2023 — a mandatory cap on market revenues (€180/MWh) for certain inframarginal technologies, including run-of-river hydropower.

At the same time, the Italian legislator had already introduced, through Decree-Law No. 4/2022, Article 15-bis — prior to the EU Regulation — a revenue containment mechanism applicable to certain renewable energy producers, later aligned with EU legislation for the overlapping period (December 2022 – June 2023).

The Italian administrative court referred preliminary questions asking, in essence, whether EU law precluded national legislation which:

1. did not guarantee producers the possibility of retaining 10% of revenues exceeding the cap;
2. established a cap below €180/MWh, determined on the basis of a historical price average (2010–2020), adjusted for inflation;
3. did not provide for a cap on electricity generated from hard coal;
4. did not introduce differentiated caps according to different renewable technologies.

Scope of Directive 2019/944

The Court held that Article 5(4) of Directive 2019/944 was not relevant to the case.

That provision governs public intervention in the determination of electricity supply prices for final customers, particularly vulnerable customers. It does not concern the limitation of producers' market revenues.

Accordingly, a national measure affecting producers' revenues — rather than sales prices to final customers — **falls outside the scope of that provision.**

Temporal scope (ratione temporis) of Regulation 2022/1854

The Court clarified that Articles 6, 7 and 8 of Regulation 2022/1854 apply exclusively to the period from 1 December 2022 to 30 June 2023.

For the earlier period (1 February – 30 November 2022), the Regulation cannot serve as a benchmark for assessing the legality of national legislation.

Article 6(1) sets a mandatory cap of €180/MWh. Article 7(5) allows Member States to apply this cap to 90% of market revenues, leaving the remaining 10% to producers.

The Court characterised this provision **as an option rather than an obligation**. Consequently, national legislation that does not allow producers to retain 10% of revenues exceeding the cap does not, in itself, infringe the Regulation.

Furthermore, under Article 8(1), Member States may, in situations of crisis, introduce or maintain measures that further limit revenues, provided that the conditions set out in paragraph 2 are satisfied, in particular ensuring that investments are not undermined and that operating costs remain covered.

The Court reiterated that the Regulation grants Member States discretion to introduce caps more restrictive than the EU threshold, provided that the substantive conditions of Article 8(2) are respected.

Compatibility must be assessed in practice in light of factors such as:

- the **use of objective criteria** to determine the cap, including verification that the cap level was based on average market conditions prevailing before the energy crisis over a sufficiently long period, taking inflation into account;
- the **exceptional nature of the measure and its limited temporal scope**, including consideration of the average operating lifespan of the installations concerned;
- the **structure of operating costs** and the levelised cost of energy (LCOE) for the relevant technology, to ensure that the cap does not prevent recovery of operating costs;
- the presence of **compensatory mechanisms**, such as legal obligations to provide compensation where market prices fall excessively;
- the **emergency nature** of the measure, aimed at protecting the public interest and limiting the impact of high prices on consumers.

Assessment of these conditions is entrusted to the national court.

Absence of a cap for hard coal

The Court noted that hard coal is not included among the sources listed in Article 7(1) of Regulation 2022/1854 to which the mandatory cap applies.

Article 8(1)(c) allows Member States to extend restrictions to other sources, including coal. However, this remains optional, and EU law does not require Member States to introduce a cap for coal-based generation. **No differentiation between renewable technologies**

Similarly, Article 8(1)(a) allows Member States to differentiate caps according to technology. Here too, the Court emphasised the optional nature of the provision.

Conclusion

In the operative part of the judgment, the Court held that EU law — in particular Directive 2019/944, Directive 2018/2001 and Regulation 2022/1854 — does not, in principle, preclude national legislation which, in the context of the energy crisis, introduced a cap on the market revenues of run-of-river hydropower producers for the period from 1 February 2022 to 30 June 2023.

In particular, the Court clarified that:

- Member States are not required to guarantee producers retention of 10% of revenues exceeding the cap;
- a cap determined on the basis of a historical price average, adjusted for inflation, is in principle compatible with EU law, provided that investments in renewable energy are not undermined — an assessment reserved to the national court;
- there is no obligation to extend the cap to revenues from coal-based generation, nor to differentiate the scheme according to production technology.

For more details

- [EUR-Lex of 22 January 2026](#)
- [Directive - 2019/944](#)
- [Regulation - 2022/1854](#)
- [Decree-Law No.4 of 27 January 2022](#)

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