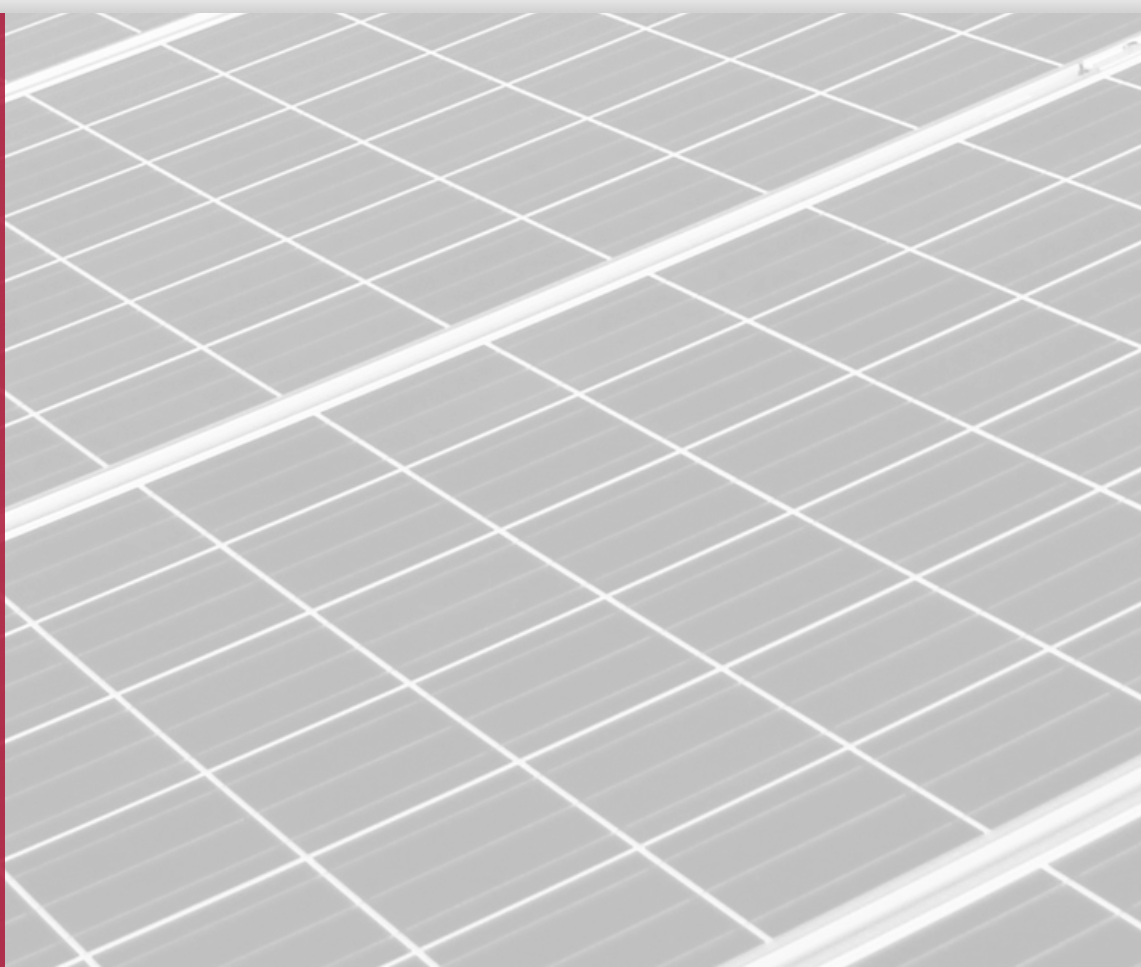




ENERGY LAW ITALY OUTLOOK

October 2026



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1. Virtual Saturation: the New Open Season Model and Its Impact on M&A Transactions in the Renewable Energy Sector

Pursuant to Article 7 of Law Decree No. 21/2026 (the “**Bollette Decree**”) and Article 10-bis of Legislative Decree No. 190/2024, on 8 September 2026 the Ministry of the Environment and Energy Security (MASE) signed Decree No. 291 (the “**MASE Decree**”), which substantially redesigned the regulatory framework governing the allocation of grid capacity for renewable energy and storage facilities.

The Bollette Decree requires Terna to publish on the TERRA portal the additional grid capacity that can be accommodated and entrusts ARERA with updating the TICA.

Among the key changes, grid capacity is to be definitively allocated only to applicants that have obtained the relevant authorization, while connection solutions that have not been validated by the grid operator and relate to unauthorized projects will cease to have effect.

Against this background, the MASE Decree regulates the micro-zones of the National Transmission Grid (RTN), assigning Terna the task of identifying, for each micro-zone, the connection points and a capacity equal to at least 150% of the 2030 targets.

Before each Open Season, which must be held at least quarterly, Terna will publish the “Offer” comprising the available solutions, from which the operator will select its preferred solution.

The certificate issued at the end of the Open Season allows the authorization procedure to be initiated but does not definitively allocate the relevant capacity; indeed, the certificates may exceed the available capacity (regulated overbooking).

In short, capacity becomes “reserved” only when the operator notifies Terna that it has obtained the relevant authorization: the system therefore shifts from first come, first served to first authorized, first reserved.

The topic was examined in greater detail in an article published on Energy Law Italy ([link](#)), to which reference is made for further details.

2. Approval of the Enabling Law on Sustainable Nuclear Energy

On 23 September 2026, the Senate definitively approved the enabling law on sustainable nuclear energy.

The Government will be required to adopt, within 12 months, one or more legislative decrees, upon a proposal by MASE, following an agreement within the Unified Conference and after obtaining the opinions of the Council of State and the competent Parliamentary Committees. Within the following two years, supplementary and corrective legislative decrees may be adopted.

As regards its substantive content, the enabling law provides for the adoption of a National Programme for Sustainable Nuclear Energy and Fusion, aimed at decarbonising the energy system, ensuring energy security and independence, and containing costs.

The regulatory framework will cover the entire life cycle of nuclear facilities – siting, construction, operation, decommissioning, and the management of fuel and radioactive waste – and, in line with the principle of technological neutrality, will also encompass modular and advanced technologies (SMRs, AMRs and micro-reactors).

According to the PNIEC scenario, the first plants are expected from 2035, with a significant contribution to the electricity mix from 2040 and a potential share of approximately 11% of electricity demand by 2050.

The topic will be examined in greater detail in an upcoming article on Energy Law Italy

3. Definitive FER-X Scheme: Preliminary Qualification as a New Gateway to Competitive Procedures

MASE Decree of 18 June 2026 and the subsequent GSE Operational Rules introduced the preliminary qualification stage (i.e. a new autonomous and mandatory phase for participation in the competitive procedures under the Definitive FER-X Scheme for plants with a capacity exceeding 1 MW).

At this stage, GSE carries out an advance verification of a significant part of the requirements necessary to qualify for incentives, including, in particular:

- the availability of a valid and effective authorisation; for photovoltaic plants, the mere favourable completion of the environmental assessment procedure is not sufficient;
- the availability of an accepted connection estimate and, for photovoltaic plants, validation of the plant on the GAUDÌ system;
- the existence of any priority and award criteria relevant to the subsequent competitive procedure.

Of particular importance is the “crystallisation” of project data: the information provided in the qualification application may not subsequently be amended in the expression of interest or in the tender procedure.

For further details, reference is made to the contribution recently published on Energy Law Italy ([link for further details](#)).

4. Zero-Emission Ports: MIT Sets the Rules for Cold-Ironing Concessions

In 2026, the regulatory framework governing so-called cold ironing (the electrification of port quays) was supplemented by two complementary measures: the Decree of the Minister of Infrastructure and Transport of 22 January 2026, No. 10 (the “**MIT Decree**”), which lays down definitions, award procedures and requirements for the operator, and the Guidelines of 16 July 2026 issued by the Directorate-General for Ports, which translate the MIT Decree into operational guidance for the preparation of tender documents by the Port System Authorities (“**AdSPs**”).

Pursuant to Article 34-bis(1) of Law Decree No. 162/2019, the service is classified as a “service of general economic interest” and is therefore awarded in accordance with the principles set out in Legislative Decree No. 36/2023 (the “Public Procurement Code”), with the possible use of public-private partnerships, project financing and mixed concession contracts.

The AdSPs may organise the procedure by lots or individual ports and are required to consult in advance with the Maritime Authority, electricity-sector operators, port users and terminal operators already holding concessions over the same areas.

Particular attention is paid to the coexistence of multiple concessions over the same state-owned maritime area: in the event of economic imbalances, the Guidelines provide, as remedies, for a reduction of the fixed component of the concession fee or the economic rebalancing of the pre-existing concession. From an operational standpoint, the concessionaire must ensure ordinary and extraordinary maintenance, an operational continuity plan providing for maximum restoration times and emergency procedures, as well as insurance coverage proportionate to the value of the award.

The tariff is divided into three components (connection/disconnection, energy – including through PPAs – and contracted capacity) and must be transparent, non-discriminatory and consistent with the costs and quality of the service. The tender documents must be accompanied by a three-year information set on traffic and consumption, identifying the Ebase (MWh/year) and Nconn (events/year) parameters relevant to triggering the rebalancing mechanisms. The economic and financial plan (PEF) is central to bankability and the allocation of operational risk, with possible periodic review and renegotiation clauses pursuant to Article 9(4) of the Public Procurement Code.

The term of the award, pursuant to Article 178 of the Public Procurement Code, is calibrated to the time required to recover the investments and, according to the outcome of the stakeholder consultation, is indicatively expected to range from 5 to 10 years. During the performance of the concession, the AdSPs oversee the award through at least biennial checks on service quality, tariff consistency and economic and financial balance, supported by accounting separation obligations and technical, operational and economic-financial monitoring systems.

Certain implementation issues remain unresolved, as highlighted by the shipping community – in particular, the risk of a fragmented model and the actual economic attractiveness of the service – in response to which the Guidelines contemplate potential synergies with Renewable Energy Communities, collective self-consumption arrangements and storage systems.

5. Voluntary Withdrawal from the Conto Energia Incentive Scheme under MASE Decree No. 262/2026

On 28 September 2026, MASE published on its institutional website Decree of 10 August 2026, No. 262 (the “**Decree 262**”), laying down the rules governing the exercise of the option for early voluntary withdrawal from the Conto Energia incentive mechanisms for photovoltaic plants with an incentivised nominal capacity exceeding 20 kW, admitted under the First, Second, Third and Fourth Conto Energia schemes and benefiting from fixed tariffs or premiums not linked to market price developments.

Voluntary withdrawal is permitted as from 1 January 2028 for a number of plants whose aggregate capacity does not exceed 10 GW.

Following the requests to extend the Conto Energia agreements submitted by 31 May 2026, MASE has acknowledged that such requests do not exceed the 10 GW cap and has therefore regulated both direct access and access through a competitive procedure in respect of the residual quota.

Participating parties will be required to carry out the complete refurbishment of the plants between 1 January 2028 and 31 December 2030, with an increase in output of at least 30% for non-ground-mounted modules or ground-mounted modules located in agricultural areas and twice that amount in all other cases, using modules listed in the register established under Article 12 of Law Decree No. 181/2023 and entering into forward contracts for the electricity generated by the residual capacity for ten years from the plant’s commissioning.

GSE will publish the Operational Rules within 30 days of the entry into force of Decree 262 and, within the following ten days, the notice inviting expressions of interest, which must be submitted within the subsequent 30 days (from the date on which the Operational Rules are published).

6. New EU Sustainability Label for Data Centres and Consumption Assessment

On 22 September 2026, the European Commission adopted Delegated Regulation (EU) 2026/7000, introducing a European sustainability label for data centres, consisting of two separate ratings (classes A to G) for energy efficiency (PUE) and water consumption (WUE), accompanied by a set of mandatory descriptive information, including the composition of the energy mix.

The scope of application mirrors that of the reporting obligation already in force since 2024 and covers data centres with installed IT power of 500 kW or more.

Of particular interest is the distinction, for the purposes of calculating the energy mix, between energy generated on-site, purchased under PPAs or covered by Guarantees of Origin, with the share of PPAs and Guarantees of Origin attributable to new renewable capacity disclosed separately.

For a PPA to be taken into account for the purposes of establishing new renewable capacity, the energy must originate from plants that entered into operation (or underwent substantial refurbishment) within the previous ten years; for Guarantees of Origin, additional temporal matching between generation and consumption and location within the same market zone or Member State are required.

It remains to be seen whether, and to what extent, the Regulation will have concrete implications for initiatives currently under development or assessment

7. REMIT Sanctions: European Commission Report of 18 September 2026

On 18 September 2026, the European Commission published the report provided for by Article 21-bis(2) of REMIT, concerning the effectiveness of criminal sanctions introduced by the Member States for intentional and serious cases of market abuse in the Union wholesale energy markets.

The report shows that the REMIT sanctions framework remains significantly fragmented, as its operational implementation is entrusted to the competence of each Member State.

Enforcement practice indicates greater practical effectiveness of the administrative route than the criminal route, the latter being characterised by lengthy and complex proceedings and few positive outcomes.

On the basis that the majority of Member States consider the measures currently in force to be sufficiently deterrent, the Commission does not, at this stage, propose any legislative amendments.

The operational priority identified is the full implementation of REMIT as amended by Regulation (EU) 2024/1106, which strengthens the investigative and enforcement powers of national authorities and introduces a minimum harmonisation of the maximum administrative fines applicable to the principal infringements.

By 8 May 2027, and every three years thereafter, the Commission will submit a new report to the European Parliament and the Council; the possibility of reconsidering the need for further EU-level harmonisation, including offences and sanctions for intentional and serious cases, is expressly reserved.

8. On the Obligation to Repay Incentives by the Party that Actually Received the Sums

In judgment No. 6267 of 3 August 2026, the Second Chamber of the Council of State upheld the appeal brought by the operator that had succeeded to ownership of a photovoltaic plant, revoking the GSE payment order seeking repayment of incentives paid to the transferor.

The Court held that the obligation to repay amounts arising from the ex tunc forfeiture of incentive tariffs falls within the legal framework of undue payment under Article 2033 of the Italian Civil Code and, as a matter of general principle, rests exclusively with the party that actually received the amounts without legal basis.

It is therefore not legally permissible to transfer to the assignee/successor an obligation to repay sums that the latter never received; the GSE's reliance on the assignment of the contract pursuant to Article 1409 of the Italian Civil Code in the context of title-transfer procedures is irrelevant for this purpose.

The judgment departs from the GSE's established practice and is of significant systemic importance, reshaping the risk allocation in M&A transactions and transfers of title to renewable energy plants already in operation.

The issue was analysed in an article published on Energy Law Italy ([link](#)), to which reference is made for further details.

9. Court of Justice of the European Union Judgment on Concessions for Small Hydropower Derivations

By its judgment of 3 September 2026 – delivered in Case C-653/24 – the Court of Justice of the European Union ruled on the request for a preliminary ruling made by the Italian Constitutional Court in the constitutional review proceedings concerning Emilia-Romagna Regional Law No. 17/2023, relating to small hydropower derivations, i.e. those supplying plants with an average annual nominal capacity of up to 3 MW.

The Court clarified that, for the purposes of applying Directive 2006/123 (the “Directive”), electricity constitutes a good rather than a service: the generation of electricity therefore does not constitute a service relevant for the purposes of Article 12 of the Directive, which, where natural resources are scarce, requires a competitive procedure for the granting of an authorisation and prohibits automatic renewals and advantages being granted to the outgoing concessionaire.

This represents a significant development for the sector, as it removes any automatic application of the Directive to small hydropower derivations and marks a clear shift from the latest judgments of the Higher Court for Public Waters and the opinions of the Italian Competition Authority (AGCM).

At the same time, the judgment should not be construed as a green light for automatic renewals, since the provisions of Royal Decree No. 1775/1933 remain applicable. Moreover, it should be noted that the CJEU judgment forms part of the proceedings still pending before the Italian Constitutional Court, which therefore remain unresolved.

10. On the Application of the principle “tempus regit actum”

With the judgment No. 7080 of 24 September 2026, the Council of State confirmed the case-law according to which *“the legality of an administrative measure must be assessed by reference to the factual and legal circumstances existing at the time of its adoption, in accordance with the tempus regit actum principle; accordingly, for the purposes of adopting the final measure, the public administration must take into account amendments in law and fact that occurred during the proceedings, rather than relying on those existing when the application was submitted”* (see Council of State, Section III, 13 January 2025, No. 212; Section IV, 2 October 2023, No. 8609).

As a result, the judges of Palazzo Spada held that Legislative Decree No. 190/2024 applies immediately also to applications submitted before 30 December 2024, where, as at that date, the documentary completeness check provided for by Article 15(2) of that decree had not yet been completed.

11. In relazione al rapporto tra siti Natura 2000 ed energia rinnovabile

With the judgment No. 7123 of 25 September 2026, the Council of State clarified that the classification of an area as a D1 productive zone does not exclude it from the conservation measures applicable to Natura 2000 sites: Article 22-bis of Legislative Decree No. 199/2021 (now repealed and replaced by Article 8(12) of Legislative Decree No. 190/2024) expressly preserves environmental assessments.

From the standpoint of balancing the interests at stake, the judgment reiterates that the principle of the maximum dissemination of renewable energy sources and the classification of renewable energy projects as projects of “*overriding public interest*” pursuant to Article 16-septies of Directive (EU) 2018/2001 (as amended by Directive (EU) 2023/2413 and implemented by Article 3 of Legislative Decree No. 190/2024) do not imply an automatic precedence of the energy interest: the provision operates subject to a negative environmental compatibility assessment or, for projects not subject to an EIA, where clear evidence exists of significant adverse effects on the environment, biodiversity, landscape, cultural heritage and the agricultural sector. An unfavourable Appropriate Assessment (VIncA), provided that it is adequately investigated and reasoned, is therefore fully capable of overriding that presumption.

The Council of State also reaffirmed that the VIncA constitutes an exercise of technical discretion, subject to judicial review only in cases of an inadequate or deficient investigation, and that it may legitimately result in a negative outcome where the Administration considers that no mitigation measure or alternative is capable of alleviating the identified critical issues, particularly where the project could be relocated to areas of lower environmental value.



Piero Viganò
Partner
piero.vigano@advant-nctm.com



Giovanni Battista De Luca
Partner
giovanni.deluca@advant-nctm.com



Lorenzo Piscitelli
Associate
lorenzo.piscitelli@advant-nctm.com



Ludovica Petrucci
Associate
ludovica.petrucci@advant-nctm.com



Stefano Biraghi
Associate
stefano.biraghi@advant-nctm.com



Elisa Tunno
Associate
elisa.tunno@advant-nctm.com



Michele Carli
Associate
michele.carli@advant-nctm.com



Maria Concetta Molica
Associate
mariaconcetta.molica@advant-nctm.com



Vittorio Bellandi
Praticante
vittorio.bellandi@advant-nctm.com

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