

# The Law of Renewable Energies in Italy

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## *A. Energy transition in Italy: concept, objectives, tools and challenges*

The expansion of renewable energy is a crucial component of environmental regulation in Italy,<sup>1</sup> relating to plans, programs, and simplified procedures. In particular, the National Recovery and Resilient Plan (NRRP)<sup>2</sup> and the Plan for the Ecological Transition (PET)<sup>3</sup> include measures for the gradual transition from the current state of energy production sources, mainly based on the use of fossil fuels, to a more efficient and less polluting combination of renewable energies.

The NRRP contains an ambitious reform project that the Italian government intends to implement as part of the European economic recovery programme (Next Generation EU) and which includes a “green revolution and ecological transition”. The PET aims to implement the objectives of the UN 2030 Agenda for Sustainable Development<sup>4</sup> and European and national policies for the ecological transition. One of the objectives is related to the promotion of renewable energy.

According to the plans, the promotion of renewable energy sources requires collaboration between the public administration, businesses, and citizens, each with distinct but essential roles. Moreover, it can provide

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- 1 The role of planning in the energy sector in Italy is investigated in Monica Cocconi, ‘Planning and regulating the renewable electric energy’ (2013) 1 *Rivista quadrimestrale di Diritto dell’Ambiente* 67.
  - 2 National recovery and resilience plan, definitively approved with Council Implementing Decision on July 6, 2021 (OR. en) 10160/21, 44. The NRRP, which represents the most important and innovative of the tools contained in the Next Generation EU, is governed by EU Reg. 2021/241 of the European Parliament and of the Council of February 12, 2021 establishing the Recovery and Resilience Facility [2021] OJ L 57/17.
  - 3 Governo Italiano, ‘Plan for the Ecological Transition’ (2022) approved by the Inter-ministerial Committee for the Ecological Transition (CITE) according to art. 57 bis, paragraph 3, of legislative decree No.152/2006.
  - 4 Transforming our world: the 2030 Agenda for Sustainable Development, Resolution adopted by the General Assembly on 25 September 2015, goal 7: “Ensure access to affordable, reliable, sustainable and modern energy for all”.

economic development for private operators and benefits to the social community.<sup>5</sup>

In addition to the plans, recent legislative reforms have simplified authorization procedures for the expansion of renewable energies.<sup>6</sup> One need only consider the simplification and simplification *bis* decrees<sup>7</sup> that have taken place in the energy sector; the legislative decree No. 199/2021, which transposed Directive 2018/2001/EU on the promotion of the use of energy from renewable sources; the law decree No. 13/2023<sup>8</sup> for the implementation of the National Recovery and Resilience Plan; and lastly the legislative decree n. 190/2024 (Consolidated Law on Renewable Energy). These continual reforms have helped to improve the energy sector's efficiency.

To understand the relevance of plans and reforms, it is important to take into consideration some significant data related to the actual situation in Italy and future goals. In 2020, renewable energy plants generated 41.7 % of the country's gross production; renewable energy covered over 38 % of total electricity consumption. In particular, the renewable energy produced is divided into hydroelectric (40 %), solar (20 %), wind energy (16 %), and others.<sup>9</sup> The data shows that renewable sources represent a significant part of the energy produced and consumed, and, for this reason, ways to increase their use must be identified.

In this regard, it is interesting to evaluate future objectives for the expansion of renewable energies, based on national plans and regulations and identified by the Plan for the Ecological Transition referred to above. Regarding future goals, the contribution of renewable energies to electricity generation must reach at least 72 % by 2030 and by 2050, cover close to 100 % of the overall primary energy mix.<sup>10</sup> These are ambitious, but necessary goals for the Italian energy transition.

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5 The Plan explains that the prerequisites for the ecological transition include “the public commitment, of individual citizens, of businesses” (10), and notes the need to “help (the) companies [...] by creating attractive financial and investment conditions” for energy transition, 25.

6 Federica Daniele/Stefano Clò/Enza Maltese/Alessandra Pasquini, ‘Unburdening Regulation: the impact of regulatory simplification on photovoltaic adoption in Italy’ (University of Florence, working papers, 2022).

7 Law decree July 16, 2020, no. 76, converted into law September 11, 2020, n. 120; law decree May 31, 2021, n. 77, converted into law July 29, 2021, no. 108.

8 Converted into law April 21, 2023, no. 41.

9 Gestore dei Servizi Energetici, ‘Energy report from renewable sources’ (2020), 16.

10 Plan for the Ecological Transition (n 3), 39.

In this context, this article aims to identify the critical issues in the application of Italian legislation on renewable energy and the legal instruments used to promote the energy transition according to the aforementioned national plans and programs. For this reason, it is essential to investigate three main aspects seen as “challenges” for the development of renewable energy in Italy: the simplification of procedures, the relevance of private activities, the social consensus on projects and its role in avoiding disputes.

### *B. Authorization procedures: rules and problems in a public multilevel administration*

Italian legislation prescribes that energy activities must be authorized before they can start. To produce energy, different types of permits are required based on the power of the plants, including a single authorization and a simplified procedure. As a result, the analysis of the expansion of renewable energies in Italy must start with the “essential features” of the authorization procedures.<sup>11</sup>

In the first type of permission, the competent authority, through a single process that requires the involvement of all administrative authorities concerned, provides a single authorization for renewable energy projects. This meeting of all the authorities concerned (called “conferenza di servizi”) allows the simultaneous representation of all public interests involved in the authorization process.

The regulation is specified in the legislative decree No190/2024<sup>12</sup>. According to Article -9, the construction, modification, and operation of electricity production plants that use renewable sources require a single authorization from the competent authority. The Region, the provinces delegated, or the Ministry of Environment and Energy Security (in the case of plants with installed thermal power equal to or greater than 300 MW) are responsible for granting this authorization. The authorization is issued

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- 11 See Giovanna Pizzanelli, ‘Buona amministrazione e regime delle energie rinnovabili’ (Pisa University Press 2023).
  - 12 Legislative Decree No. 190/2024 (Consolidated Law on Renewable Energy) has repealed the previous provisions contained in Legislative Decrees No. 287/2003 and No. 28/2011.

after a meeting of all the public administrations involved, in which the proposer can participate to provide information.<sup>13</sup>

The article specifies the terms of the conclusions of the procedures (120 days) and coordination with the environmental impact assessment that is considered “part” of the authorization. The purpose of this permit is to facilitate the advancement of renewable energy by unifying all essential authorizations for the installation, such as environmental, spatial, and building permits. With this unified permit, it is possible to obtain all the necessary authorizations for the plant's construction and operation.

For smaller plants, a more simplified procedure is applied (the so-called PAS). According to Article 8 of legislative decree No. 190/2024, the property owner must submit a declaration to the local municipality and provide a detailed report before beginning construction of the plant. This declaration is meant to confirm that the project is in compliance with approved urban planning guidelines and adheres to safety and sanitation standards. Once this declaration is submitted, the proposer can communicate with the public administration without the need for any additional authorizations.<sup>14</sup> Depending on the size of the plant, simplified procedures may be used which involve the exercise of the activity without the need for specific authorization procedures or the use of the legal instrument known as “conferenza di servizi”<sup>15</sup>.

The brief analysis of the legislation shows that the authorization procedures are simplified – from a formal point of view – for several reasons: the ordinary authorization is a single or built-in permission; the legislation provides pre-established terms for the conclusion of the procedure; and the proceedings take place in the so-called “conferenza di servizi”. In this regulatory framework, the simplification of procedures is the most important issue for the expansion of renewable energy. One need only consider that this energy permit legislation is subject to constant change due to the

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13 Eugenio Picozza/Sergio Massimiliano Sambri (eds), *Il diritto dell'energia* (Padova, CEDAM, 2015) 574 ff.

Art. 9, legislative decree No. 190/2024.

14 In the absence of legal conditions, the municipality notifies the order not to carry out the intervention within 30 days. Furthermore, when the consent of other administrations is required, “conferenza di servizi” is applied.

15 Art. 7, legislative decree No. 190/2024 (the so-called “free” activity).

continuous adoption of different and new regulations to promote the best form of simplification.<sup>16</sup>

At this point, it is necessary to evaluate whether the establishment of a simplified procedure in Italian legislation is in itself a guarantee for the expansion of renewable energy production.

To answer this question, it is important to consider the critical issues in the concrete application of procedures. The initial problem is the identification by the proposer of which procedure to request (ordinary or simplified). Indeed, the assumptions of the procedures are not always clear, and for this reason, the choice is complex and delegated to the estimation of the proposer. One need only consider the tendency – not admitted in jurisprudence and law – to divide the plants into different parts to be able to request the PAS instead of the ordinary authorization.<sup>17</sup>

A different issue concerns the reduction of necessary steps in the procedure, like the participation of citizens, because the single authorization and the simplified permits do not provide for it in any case.<sup>18</sup> In effect, the participation of citizens is admitted only in the environmental assessment procedures that can be considered, according to the recent legislation, as a part of the single authorization, and does not always occur. Only specific projects indicated by legislation are subject to this assessment,<sup>19</sup> and, consequently, effective participation takes place only in those cases. This lack of a specific moment of general participation can lead to protests from citizens who show interest outside of the administrative procedures and after the authorization is granted. In other words, legislation does not always provide for a dialogue between the social community and the administration to obtain social consensus.

Furthermore, there are no significant consequences for not meeting deadlines because the public administration can decide after the expiration of the terms. Therefore, the specification of the term generally constitutes only an indication without actual consequences.<sup>20</sup> For this reason, proceed-

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16 Marco Calabrò, 'Semplificazione procedimentale e esigenze di tutela dell'ambiente: l'autorizzazione integrata ambientale' (2010) 5 *Rivista giuridica dell'edilizia* 239.

17 Consiglio di Stato, sez. IV, June 12, 2020, No. 3433; Consiglio di Stato, sez. IV, September 1, 2016, No. 3783. See also art. 6, legislative decree No. 190/2024.

18 Unlike other authorizations that allow the intervention of interested parties in the initial phase of the procedure, such as the integrated environmental authorization.

19 Environmental Code, legislative decree No. 152/2006, art. 4 ff.

20 Chiara Mari, *Iniziativa privata e interessi pubblici nei procedimenti di autorizzazione per la transizione ecologica* (Editoriale scientifica 2023).

ings may also exceed the indicated deadlines and fail to comply with the simplification and acceleration requirements.

Finally, the continuous reforms of the discipline aimed at simplifying it can create uncertainty for operators and difficulties in application. Such consecutive reforms can, in effect, complicate the regulatory framework and make it fragmented.

These critical issues – related to the procedures – can frustrate the purposes of simplification of the legislation if they are not considered by the public decision-maker. To answer the previous question, it is also interesting to consider two more problems outside the procedures: multilevel governance and access to justice. Starting with the first problem, decision-making in the renewable energy sector is influenced at different levels: national, regional, and local. Indeed, the main rules are established at the national level, but renewable energy projects greatly impact local interests. For this reason, there is a need for more coordination between state, regional, and local authorities. In particular, the Region and municipality have different roles. The Region is responsible for planning and issuing authorizations, and it looks after the interests of a vast territory. Instead, the municipality is directly affected by the decision to build the plant and takes care of the interests of a limited territory.<sup>21</sup>

In this context, the difficulties in coordination are based on two aspects. First, the lack of decision-making power of the municipalities is evident because during the procedures, at the “conferenza di servizi”, the negative opinion of the municipality can be overruled.<sup>22</sup> Secondly, there is the problem of political conditioning, because Regions and municipalities do not always share the same political ideas on the construction of renewable energy plants. Considering these issues, simplification requires the harmonization of the different levels of government.<sup>23</sup>

To further answer the previous question, we must also consider the problem of access to justice. Indeed, it is insufficient to focus merely on the

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- 21 Marta De Giorgi, ‘La semplificazione amministrativa tra esigenze di uniformità ed effettività delle politiche. Alla ricerca di un coordinamento stabile tra Stato e Regioni’ (2011) 3 *Istituzioni del federalismo* 501; Francesco de Leonardis, ‘Politiche e poteri dei governi locali nella tutela dell’ambiente’ (2012) 4 *Diritto amministrativo* 779.
  - 22 Consiglio di Stato, sez. IV, June 28, 2022, No. 5376. The municipality may eventually use the “remedy in opposition” according to art. 9 of Legislative Decree no. 190/2024.
  - 23 Barbara Pozzo/Stefano Fanetti, ‘Subnational resistance against renewable energy: the case of Italy’ in: Marjan Peeters/Thomas Schomerus (eds), *Renewable Energy Law in the EU, Legal Perspectives on Bottom-Up Approaches* (Edward Elgar 2014) 165–186.

administrative decision-making process without considering the efficiency of court procedures. If the administrative procedures are simplified, but the court procedures are not efficient, the aim of promoting renewable energy can be hindered. Consequently, we can deduce that the expansion of renewable energy requires easy access to simple procedures for the settlement of disputes concerning the permit-granting process and the operation of renewable energy plants, as well as, where applicable, alternative dispute resolution mechanisms.<sup>24</sup> The primary issue in Italy is the absence of clear and simplified procedures for conflict resolution, leading to excessive delays in judicial proceedings that can take up to multiple years to conclude. In fact, the Code of Administrative Court Procedures does not establish a specific and simplified procedure for disputes relating to authorizations for renewable energies.<sup>25</sup> Therefore, it would be useful to introduce tools to speed up the adoption of the judge's decision.

Furthermore, alternative dispute resolution mechanisms are not always utilized because environmental interests require an effective balance by public authorities and cannot be the subject of agreements between administrations and private operators, especially in the case of larger plants. In other words, renewable energy permit disputes are too complex to be resolved with alternative dispute resolution mechanisms in every case.

In this context, we can conclude this part by saying that simplification in the field of renewable energy means not only faster procedures or fewer procedural phases, but also the application of adequate measures to achieve effective environmental conservation, like the exact identification of the conditions for applying the various authorizations, coordination between different levels of government, and efficient court procedures.<sup>26</sup>

### *C. The relevance of private activity*

After examining the role of public administration, we can investigate the involvement of private actors, starting with economic operators. In effect, the

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24 Luigi Maria Pepe, 'Exploring the Possibility of Energy Justice in Italy' (2022) 1 *The Italian Law Journal* 187.

25 Legislative decree July 2, 2010, No. 104. An accelerated procedure is envisaged only for energy infrastructures.

26 Marjan Peeters/Thomas Schomerus, 'Modifying Our Society with Law: The Case of EU Renewable Energy Law' (2014) 4 *Climate Law* 131.

plants are mostly managed by private entities because there is significant private investment.

Despite this, the participation of the private individual in the procedures and the “conferenza di servizi” is for the sole purpose of providing information. The private individual has no power to influence the decision. This can lead to a limitation of private initiative relating to projects since the private proposer cannot actively intervene and deal with the public decision-maker. Indeed, a dialogue between the private proposer and the administration appears relevant since the projects serve private interests but benefit the social community. From another point of view, the private can play a significant role outside of the procedures. In particular, the private individual can also act in conditions of “monopoly” if only one operator occupies the plants in the same territory. An example is the case in which the same operator manages most of the plants in a specific Region.<sup>27</sup> This allows it to influence the energy needs of the social community. For this reason, the manager must be assessed and monitored for compliance with environmental and service standards.

Italian legislation identifies forms of control over authorized activities that are based on cooperation between the private operator and the public administration.<sup>28</sup> After the assessment, the administration can caution the private operator and require the adoption of measures focused on environmental standards.<sup>29</sup> In this context, the public-private collaborative perspective is important for the expansion of renewable energy because it allows private individuals to collaborate in the adoption of the public authorization decision.

The role of the private individual does not end once authorization has been obtained. The authorization may be subject to subjective (transfer) or objective (remodulation of projects; renewals) modifications. However, the Italian regulation in this regard is generic. In particular, the legislature does not provide clear procedures for transferring authorization, although jurisprudence allows it. This causes uncertainty and difficulties for operators in subjective modifications of the authorization.

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27 An example is given by the numerous wind parks realized in Puglia, a southern Italian Region.

28 Chiara Mari, ‘Il ruolo del privato nei procedimenti per le energie rinnovabili: uno strumento per lo sviluppo sostenibile?’ (2019) 16 *Federalismi.it*.

29 This is particularly evident for environmental authorizations governed by the Environmental Code, legislative decree No. 152/2006.



In terms of modifications, the variations considered substantial, and which require a new authorization, are not indicated in detail in Italian legislation. The regulations indicate only cases of no substantial variation,<sup>30</sup> without giving a complete and general definition of “relevant modification”.<sup>31</sup> This lack of legislation can lead to uncertainty for plant managers because it is not clear when a new authorization is needed after the changes. Considering the analysis carried out, it is possible to indicate the solutions for the expansion of renewable energy in Italy through the role of the private operator. First, guidelines and soft law instruments can be used to guide project implementation and address regulatory uncertainty. Soft law provides a flexible tool that can adapt to the needs of economic operators and interested parties in a specific territory, without requiring changes to legislation.

It is also important to reduce the information asymmetries between the public administration and private individuals; the exchange of information allows for public-private collaboration. These instruments will be analyzed in the following section.

#### *D. The use of guidelines, soft law, and the reduction of information asymmetries*

The previous analysis emphasizes the use of soft law and the reduction of information asymmetries to promote renewable energies.

Starting with the soft law, guidelines, and operating manuals can be useful for effective cooperation between the public and private sectors in the energy area. These tools have many advantages. First, they can guide and help the proposer when the discipline is not clear, e.g., in the case of choosing the correct authorization or in the subjective modifications and transfer of the permit. Before requesting permission, they can assist the proposer in selecting the appropriate procedures from those established in the legislation. During the procedures, they can guide the proposer regarding their obligations towards the public administration. After the authorization has been granted, they can provide information on the transfer and any subsequent modifications.

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<sup>30</sup> See legislative decree No. 190/2024.

<sup>31</sup> Alberto Muratori, *La “modifica sostanziale” di impianti e progetti tra definizioni normative, giurisprudenza e ricadute pratiche* (2012) 2 *Ambiente e sviluppo* 147.

Secondly, the guidelines are written in a discursive form that is easy to understand for non- technical operators. This facilitates its application by economic operators, even if they do not have specific technical skills in the energy sector. The discursive form can guarantee greater clarity and comprehensibility of the rules to be followed within the ambit of the specific procedures.

Thirdly, the soft law is flexible and can be adapted to the specific situation according to the type and size of the plant and the impact on the area involved. Indeed, strict regulation makes applying to all renewable energy projects of different sizes, complexity, and territories difficult.

Lastly, the guidelines are an expression of best practices. Therefore, they guarantee the private operator to act in the quickest and most simplified way in the procedure and in the event of modifications to the authorization.<sup>32</sup>

In Italy, there are specific guidelines for renewable energy that are considered binding and adopted by ministerial decree.<sup>33</sup> Even if they are binding, they constitute a flexible tool because they explain the rules to be followed in a detailed and discursive way. This decree can be applied in connection with different kinds of manuals or operating guides that express a soft law that can be useful to accompany the proposer in the administrative procedure. In effect, the Directive on Renewable Energy 2018/2001/EU states that it is important to use manuals and guides to help private proposers and economic operators in the authorization request procedure and the following phases.<sup>34</sup> Manuals and guides can also be made available online to facilitate consultation by economic operators.

Furthermore, the Regions have adopted specific guidelines to encourage the expansion of renewable energies in their territories. The regional guidelines specify the procedures for obtaining authorization and dealing with the location of the plants. The regional guidelines are adopted to implement the rules established by the national guidelines and, therefore, cannot deviate from the provisions of the ministerial decree.<sup>35</sup> The presence

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32 Fabrizio Fracchia/Pasquale Pantalone, 'La fisionomia delle linee guida: abbozzo di una traiettoria evolutiva con specifico riferimento al settore dei contratti pubblici' (2021) *I Il diritto dell'economia* 11.

33 Governo Italiano, Ministerial decree, 'Guidelines for the authorization of plants by renewable energy' (2010), compliant with legislative decree No. 190/2024 according to art. 14.

34 Art. 16, Directive 2018/2001/EU.

35 Consiglio di Stato Sez. IV, November 6, 2017, No. 5122.

of guidelines drawn up at a neighboring level of government can constitute adequate support for economic operators who are “guided” in the procedure according to the reference territory.

Moving to the reduction of information asymmetries, the effective exchange of data between the public administration and private operators to promote renewable energy is crucial. From a private point of view, the information helps citizens understand the relevance of the project and brings them to social acceptance; moreover, the same information can help proposers in the realization of the project because they can afford investments knowing the relative risks and benefits. From a public point of view, the information is useful for the administration, promoting decisions which take into consideration the interests of different parties, with particular attention to the needs of private operators and the social community. The exchange of information is based on the principle of transparency governed by legislative decree No. 33/2013 and can be carried out by implementing the publication of information on institutional websites. To this end, the information must be clear and understandable for the private individuals concerned. Otherwise, the simplification objectives are completely frustrated.<sup>36</sup>

Moreover, the exchange of information is relevant even if it takes place between private operators. Even horizontal cooperation between different operators contributes to the correct application of procedural steps, especially if the discipline is complex. In the case of subjective modifications, an exchange of information between the subjects involved makes it possible to transfer the authorization efficiently, immediately identifying the effective moment in which the authorization is transferred. Even when several applications for authorization are presented for plants in the same territory, a collaboration between proposers, in compliance with the competition rules, can avoid conflicts that stop the proceedings and the realization of the projects.

In this context, soft law instruments and the exchange of information can be jointly used for the expansion of renewable energy in Italy. The joint use of these tools can contribute to solving the critical issues analyzed above relating to the lack of clarity in the legislation and the difficulties of coordination between the public and private subjects involved.

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36 Stefano Grassi, ‘Tutela dell’Ambiente’ (Dir. amm.), *Enciclopedia del diritto* (Annali I, Giuffrè Milano 2007) 1135 f.

*E. The social consensus on projects and the deflation of litigation*

Moving to the last point, it is crucial to consider the role of citizens in the transition to renewable energy and the relevance of participation. The reason is that the participation of local citizens and stakeholders can provide feedback on renewable energy projects, leading to the adoption of an appropriate public decision and promoting social acceptance. If the social community takes part in the decision, it is less inclined to oppose it with protests or appeals to the judge.

Participation may not always be guaranteed due to potential negative effects on simplification such as lengthening procedures and making decisions difficult to adopt. In other words, there is a problem of simplification versus participation. To solve the problem, it is necessary to analyze the reasons for the disagreement and the possible solutions. First, disagreements may derive from *NIMBY* (not in my backyard) *syndrome*, prejudicial resistance to projects.<sup>37</sup> Indeed, the social community believes that the plants have an excessive impact on their territory. The wind turbines that affect the landscape are an example. Disagreements also derive from a lack of knowledge of the projects by the citizens. The lack of clear and adequate information leads the social community not to approve projects deemed to be prejudicial. Finally, disagreements can be based on genuine criticism of projects. In some cases, projects affect territory already burdened by other systems or are “sensitive” from an environmental and landscape point of view.<sup>38</sup>

In this context, a possible solution for the social acceptance of projects consists of strengthening participation, allowing the social community to take an active part in realizing projects.

Participation can be promoted through tools such as inquiry or public debate. In Italy, a public debate is expected for major projects with an impact on the environment. Only a committee or association can participate in the debate, which is based on written observations and must be carried out within a predefined period.<sup>39</sup> The first applications demonstrate

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37 David Foster/Joseph Warren, ‘The nimby problem’ (2021) 34/1 Journal of Theoretical Politics 145.

38 Rolf Wustenhagen/Maarten Wolsink/Mary Jean Burer, ‘Social acceptance of renewable energy innovation: an introduction to the concept’ (2007) 35 Energy Policy 2683.

39 Public debate is governed by the Public Procurement Code, legislative decree March 31, 2023, No. 36, art. 40.

that the debate must be carried out with small groups of well-informed citizens. Indeed, the participation of large numbers of citizens divided into several associations or committees makes it difficult for the real needs of the population to emerge. To encourage participation, the administration must provide clear and comprehensible information about the projects.<sup>40</sup>

Another instrument is “financial participation”; a developing tool that allows citizens to participate financially in projects (for example, with crowdfunding, bonds, and shares).<sup>41</sup> This approach ensures that the social community is actively involved in the project, even if not all citizens have the necessary financial resources. This could potentially exclude a portion of the population. However, this form of participation can be useful if combined with other methods as a complementary means of facilitating the intervention of private individuals. The economic aspect can also be considered through a possible reduction in taxes for citizens who live in territories affected by the plants. In this case, it is not the citizens who invest in the projects but the public sector that reduces the economic burden. These tools are not usually applied in the Italian legal system but, according to the regulatory framework, could be used in addition to the ordinary forms of procedural participation. Additionally, modern digital technologies can be useful in promoting participation by allowing interested parties to intervene remotely in the debate. In Italy, not all individuals possess the capability to utilize contemporary digital technologies and consequently, the public administration must facilitate their utilization through appropriate education and information. Even the plans referred to in the first section pay attention to the relevance of the digital transition, which is also useful for environmental sustainability.<sup>42</sup>

A final means of promoting participation consists of anticipating the moment of social community intervention. Individuals must be able to intervene “upstream” before applying for authorization. This will allow the social community to express its opinion on whether to carry out the project. Anticipated participation, which is found above all in the Aarhus

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40 Emiliano Frediani, ‘Le garanzie partecipative nella valutazione di impatto ambientale: strumenti tradizionali e dibattito pubblico in Istituzioni del Federalismo’ (2020) 3, 657.

41 “There is, moreover, a need to find complementary approaches that would reduce citizen resistance against renewable energy, for instance by means of financial-participation arrangements”. Marjan Peeters/Thomas Schomerus, ‘Modifying Our Society with Law’ (n 26) 139.

42 Luisa Torchia, *Lo Stato digitale. Una introduzione* (Il Mulino, Bologna 2023).

Convention,<sup>43</sup> does not find full application in Italian legislation because the intervention of the interested parties is only allowed in most cases after the submission of the authorization request. The anticipation of participation, even if not expressly provided for by national legislation, is usually used informally by proposers to get to know the opinions of the population before requesting authorization for projects.

In conclusion, such tools are useful because participation is aimed at avoiding disputes. If citizens participate in the procedure, they do not protest after the authorization has been issued, and they do not turn to the judge. Participation also increases social consensus and avoids dissent through protests or appeals to the judge. This is especially true when disagreements derive from prejudices or from scarce information that can be provided in the participatory forum. In other words, participation is essential to promoting social consensus and must be promoted with tools such as those outlined, keeping in mind the acceleration and simplification of procedures.

#### *F. Concluding remarks*

The efficient management of authorization procedures for the expansion of renewable energy in Italy requires the effective action of the public and private entities involved;<sup>44</sup> furthermore, a different practical and theoretical approach is needed.<sup>45</sup>

For public administration, it is crucial to organize adequate forms of control over the managers. Such a control ensures that the economic operator acts in compliance with environmental standards. In the event of a violation of the environmental rules, the administration communicates with the manager to modify the incorrect behavior.

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43 Art. 6 of the Aarhus Convention states: "Each party shall provide for early public participation, when all options are open and effective public participation can take place".

44 In fact, "the inclusion of a plurality of stakeholders in program design and implementation as global cooperation between state and non-state, public and private, political and financial actors is essential to make (energy) projects effective". Laura Ammannati, 'Governing the Energy market between universal access to Energy and sustainable development' (2016) 14 *Federalismi.it*.

45 Giulio Napolitano, *Pubblico e privato nel diritto amministrativo* (Giuffr , Milano 2003); V. Cerulli Irelli, *Amministrazione pubblica e diritto privato* (Giappichelli, Torino 2011); Franco Mastragostino (ed), *La collaborazione pubblico e privato e l'ordinamento amministrativo* (Giappichelli, Torino 2011).

Moreover, the public administration must favor forms of active participation by citizens aimed at overcoming social disagreements on renewable energy projects. To this end, both participation in the process and alternative tools, such as public debate, “financial participation”, and digital participation, can be used. In other words, the public administration has a fundamental role as a link between public purposes and the actions of economic operators and citizens. To this end, public officials must also be organized to manage the involvement of citizens through adequate preparation. The Italian Plan for the Ecological Transition expressly refers to the importance of preparing or educating public employees in the management of new forms of participation.<sup>46</sup>

From the side of the private operator, the attribution of a significant role to the private sector in the production of renewable energy cannot ignore its responsibility in carrying out the activity; this responsibility can also be achieved through adequate controls, in which the assumptions, objects, parameters, and consequent measures are clear. In other words, the private operator must be made responsible for acting in a sector that affects collective interests. Furthermore, effective dialogue between the private operator and the public administration, as well as between different private operators, is important to facilitate the carrying out of procedures and the realization of projects. The exchange of information is especially useful in the phases following the issuance of authorization, where the rules are not always clear.<sup>47</sup> Finally, citizens also play a decisive role because they can support or oppose projects. For this reason, it is important to create incisive forms of participation, which must necessarily be flexible and adapted to the realities of the individual territories involved in the construction of the plants. Participation is, in fact, fundamental to achieving social consensus on renewable energy projects, and, for this reason, it is important to jointly use different forms of participation to involve as many citizens as possible.

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46 Maarten Wolsink, ‘Wind power implementation: The nature of public attitudes: Equity and fairness instead of ‘backyard motives’ (2007) 11 *Renewable and Sustainable Energy Reviews* 1188.

47 Friedemann Polzin, ‘Mobilizing private finance for low-carbon innovation – A systematic review of barriers and solutions’ (2017) 77 *Renewable and Sustainable Energy Reviews* 525–535.

In other words, the participatory tool used must be adapted to individual local realities and the needs of the social community.<sup>48</sup>

In this context, the expansion of renewable energy in Italy is based on cooperation between the public administration, the private sector, and citizens. This cooperation is founded on Art. 1 Paragraph 2 bis of law No. 241/90, which provides for the possibility of collaboration between the public and private sectors.<sup>49</sup> The cooperation can be based on different instruments. The first one is the use of soft law, like guidelines, which can help the operators in the presentation of the authorization application and the subjective and objective modification of the plants. Another essential element is the reduction of information asymmetries between public administrations and private managers or between different private operators. The exchange of information helps the private sector manage the complexity of the authorization, which is not crystallized but is subject to continual change. Lastly, it is essential to modify the cultural approach through the education of citizens and public servants. For this reason, the Ecological Transition Plan stresses the importance of the “collective education” of private and public actors for the promotion of green energy.

Ultimately, cultural change allows for the active involvement of private entities, i.e. economic operators and citizens, and the presence of a public administration attentive to the energy transition.

The expansion of renewable energy is also strictly related to the simplification of procedures. Simplification is useful if it is based not only on the acceleration of processes and the reduction of phases but also on the management of the complexity of the energy sector.<sup>50</sup> Indeed, the development of renewable energies is characterized by an intrinsic complexity that cannot be eliminated and must therefore be managed with adequate measures.<sup>51</sup> Simplification is, therefore, necessarily related to the need for coordination between public administrations, the use of soft law instru-

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48 Veronica De Crescenzo/Francesca Simeoni, ‘The role of citizen-based support and finance mechanisms for strengthening and managing energy transition’ (Excellence in Services, 21st International Conference, Le Cnam Paris, 2018).

49 Art. 1 Paragraph 2 bis of law No. 241/90 states that: “Relations between the citizen and the public administration are based on the principles of collaboration and good faith”.

50 Maddalena Ippolito, ‘Environmental simplifications in digital transition’ (2021) 2 *Rivista giuridica Ambienteditto.it* 12–23.

51 Bernardo Giorgio Mattarella, ‘La semplificazione amministrativa come strumento di sviluppo economico’ (2019) 11 *Astrid* on line, *Rassegna* 7.



ments, the overcoming of information asymmetries, and the involvement of citizens to avoid protests.

In conclusion, the expansion of renewable energy in Italy requires a collaborative effort between the public administration, citizens, and private operators for an effective promotion of environmental sustainability, favored by the innovative legislative and administrative framework illustrated above.

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