
Legal Report



The impact of the Covid-19 emergency on the electricity (including renewables) market in Italy

10 April 2020



Legal Report: Covid-19 and the energy market

1. Background

The Covid-19 crisis led the Italian Government to the adoption of a series of urgent measures which, amongst other things, have introduced certain restrictions to the national manufacturing and industrial production. Only 'essential' businesses have been allowed operations during the lockdown (the lockdown is mainly governed by the Prime Minister decree dated 22 March 2020 (the "Decree").

Most recently, as a result of a new decree adopted on 1 April 2020, the term of the Decree, which was originally due to lapse on 3 April 2020, has been extended until 13 April 2020.

2. The production and supply of electricity

Among the business activities that have not been suspended, the list attached to the Decree includes the "*supply of electricity, gas, steam and electricity*". As a consequence, all businesses active in the energy supply chain are eligible to the exception provided by the Decree and can continue their activity (subject only to the obligation to give prior notice to the *Prefetto*)¹.

The exception applies also to companies engaged for the provision of maintenance services to renewable energy plant. We therefore do not expect any issue with business continuity in this area.

However, it should be noted that owners of the plants do not have the right to force all their suppliers to apply for the exception mentioned above. The decision on whether the exception should be activated is a business decision, to be taken by the relevant supplier. In case you have any issue with the supply chain, please get in touch with our experts.

3. Plants currently in the development, authorisation and construction phases

As to renewable plants under development or under construction, owners and sponsors may face different issues as a consequence of the lockdown.

Any authorisation process before any Italian public body is not affected by the lockdown, but these processes may be delayed especially where steering committee meetings between public administrations (through which the authorisation of all medium / large projects necessarily passes) cannot be carried out remotely using electronic means².

Where all authorisations have been obtained, sponsors should consider that some legal terms applicable to possible challenges to the validity of the authorisations are currently on hold. This may have an impact on the timing of the project and our public law team would be happy to address any specific issue you may have.

As to construction, the building activity is subject to restrictions and in our experience there are very limited examples of building companies having applied for the 'supply chain' exception. Delays may therefore occur and an analysis of any 'force majeure' provision in the applicable contracts may be useful to understand which party shall bear the economic consequences of such delays. Our energy team would be happy to go through existing contracts and provide an opinion as to the current status of the same.

Given the existence of many other restrictions applicable to the free movement of goods among countries, the supplies necessary to build and operate the plants may also be affected. Once again, our team would be happy to review existing supply contracts and find the right strategy to handle any issue you may have.

4. The sale of energy

Beside the restrictive effects that the current emergency will create for the entire chain of operators in the sector, the operators most affected in the short term are those whose business is focused on the sale of energy.

¹ On 26 March 2020 the Italian Regulatory Authority for Energy, Networks and Environment (ARERA) issued a new circular to grid operators in the electricity and gas sectors, containing further indications in the light of the new DPCM adopted and restated the functional activities considered as having an absolute priority by the trade associations of grid operators (the circular is available at <https://www.arera.it/it/comunicati/20/200326dieu.htm>)

² Firstly, a delay caused by the restrictions imposed by the virus containment measures might affect the preliminary phases of the development of new projects, such as the identification and acquisition of sites suitable for the construction of new plants.

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The recent emergency measures issued by the competent authorities have imposed:

- i) the suspension of payments of electricity bills for the 11 municipalities within the first 'red zone' (Annex 1 Decree dated 23 February 2020) until 30 April 2020, pursuant to ARERA Resolution 75/2020/R/com;
- ii) the suspension of the possibility to cut off supplies in case of failure to pay electricity bills, until 13 April throughout Italy, for all low voltage customers (domestic and other uses) or customers for gas (domestic and other uses) with an annual consumption of up to 200,000 m³, pursuant to ARERA Resolution 60/2020/R/com and 117/2020/R/com;
- iii) the closure of non-essential economic activities until (at least) 13 April 2020.

In this scenario, there are two main critical factors: reduced consumption deriving from the interruption of manufacturing activities and increase in payments in arrears on the part of the end users.

The interruption of manufacturing in the steel, metalworking and mining sectors, for example, has resulted in a notable reduction in the demand of electricity recorded on the national electric grid, which is consequently affecting the price of energy bought and sold on the national electricity market, which has shown a reduction of approximately 20%.

This certainly represents a critical issue for all operators in the energy market who have bought energy at pre-emergency prices and who now find themselves having to sell it on at lower prices than those at which they bought it, and, in the worst case scenario, unable to sell all of that as a result of the considerable drop in demand.

The problem of the increase in defaults in payment by the customers adds to this.

The trade associations have noted, on the basis of information received from their members, an increase in payments in arrears of between 20% and 40%, which is not limited to domestic customers but which also relates to industrial customers.

The current crisis probably reflects also on the execution of the power purchase agreements (PPAs) actually in force. In this respect, again, the interpretation of any 'force majeure' provision should be relevant to manage the consequent decrease of cash flow and to eventually renegotiate the main economic terms of the agreement.

Moreover, the future PPAs shall need to provide specific provisions to regulate in details any consequence related to the Covid-19 crisis and, more in general, to regulate any other similar event that should happen in the future (especially in case of medium and long term PPAs).

Our energy team would be happy to provide specific assistance also in respect of any PPA issues you may have.

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