



Press release of 23 March 2021

WIND POWER: THE OLD AGREEMENTS MADE WITH MUNICIPALITIES MUST BE ADJUSTED TO THE 2010 GUIDELINES, BUT REMAIN IN EFFECT UNTIL END 2018

The provision of the 2018 Budget Law that prescribed the revision of old agreements – freely determined before 3 October 2010 by operators in the renewable energy sector, such as wind power, and local authorities – to adjust them to the Ministerial Guidelines of 10 September 2010, and that established the full effectiveness of these agreements until the entry into force of the said Law (1 January 2019), is constitutional.

This was established in [Judgment No. 46](#), filed today (Author of the Judgment: Giovanni Amoroso), in which the Constitutional Court rejected the question concerning the constitutionality of Article 1(953) of Law No. 145 of 2018. The challenges had been raised by the Council of State in the context of proceedings between renewable energy operators and a number of municipalities in Puglia, regarding the constitutionality of providing only for capital compensation measures, in the agreements between them.

The Constitutional Court deemed that the Legislator's overall decision was reasonable. On one hand, it protected the renewable energy market, realigning the operators' conditions; on the other, it promoted environmental and landscape protection by establishing that the compensation measures were to be at least partially specific (that is, aimed at effectively rebalancing the environment and the land) and not only "equivalent" (that is, merely monetary), and were in any event to be considered costs when determining the undertakings' revenue for fiscal purposes.

In the Court's view, the 2018 Budget Law also dispelled the uncertainty as to the interpretation of the scope of the 2010 Ministerial Guidelines and the previous legal framework, the latter of which formed the basis for the old agreements between the renewable energy operators and local authorities. These uncertainties had given

rise to litigation calling upon the municipalities to return the amounts that the operators had already paid under the old agreements, even though they had been freely determined.

With effect from 1 January 2019, the parties must review the old agreements in accordance with the Ministerial Guidelines. Therefore, compensation is due if it is aimed at environmental and land rebalancing, remains within certain percentage limits and is agreed upon in the context of the *Conferenza dei servizi* involving all interested parties, in anticipation of the Region's authorisation order – and is not established autonomously by the operators and the municipalities.

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