

## Italian Constitutional Court

### Legal summary

Judgment No 184/2025

ECLI:IT:COST:2025:184

### **SARDINIA MAY NOT IMPOSE BLANKET BANS ON RENEWABLE POWER PLANTS**

In Judgment No 184/2025, the **Constitutional Court partly upheld the Government’s challenge to Sardinia Regional Law No 20/2024, which restricted the installation and modification of renewable power plants** through rules on areas classified as unsuitable. The provisions allegedly violated included Articles 3, 41, 97, 117(1), 117(2)(m), 117(2)(s) and 117(3) of the Constitution, as well as Articles 3 and 4(e) of the Sardinia Special Statute. The Government also relied on connected State and EU rules, including the EU renewable power framework, Legislative Decree No 199/2021, Ministerial Decree of 21 June 2024, Law No 241/1990, and the Cultural Heritage and Landscape Code.

The Court held that Sardinia could participate in identifying suitable and unsuitable areas for renewable power plants but could not convert that planning function into a system of automatic prohibitions. An “unsuitable” area may justify stricter scrutiny or the exclusion of simplified procedures, but not a blanket ban or the nullification of authorisations already granted. The Court also found that Sardinia had exceeded its powers by imposing autonomous limits on revamping and repowering, regulating offshore plants, and creating a procedure that interfered with State landscape authorisation rules. Some complaints were declared inadmissible or rejected, but the core outcome was clear: regional planning powers must operate within the national and EU framework, favouring the deployment of renewable energy, legal certainty and State protection of the landscape.

### **Main proceedings**

In 2024, the Sardinia Region adopted Regional Law No 5/2024 (the “**challenged measure**”)<sup>1</sup> concerning suitable and unsuitable areas for renewable power plants and the simplification of related authorisation procedures. The Government brought before the Constitutional Court (the “**Court**”) direct constitutional proceedings to question the legitimacy of this law under the Italian Constitution (IC).<sup>2</sup>

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<sup>1</sup> Regional Law No 20/2024 on urgent measures identifying suitable and unsuitable areas for the installation and promotion of renewable power plants, and simplifying authorisation procedures.

<sup>2</sup> These proceedings were initiated by direct application pursuant to Article 127 of the Constitution: “The Government may question the constitutional legitimacy of a regional law before the Constitutional Court within sixty days from its publication, when it deems that the regional law exceeds the competence of the Region”.

The Government challenged several aspects of the authorisation procedure, arguing that it was unduly restrictive and created unequal treatment compared with the rules applicable in the rest of Italy.

## Complaints

The Government challenged several provisions of Sardinia Regional Law No 5/2024 on multiple constitutional grounds. In general, it complained that the new rules were too restrictive of renewable power installations; in one instance, the objection was that the rules unduly disregarded the law on landscape authorisation.

The Government objected to Article 1(2) of the challenged measure because the regional prohibition of new installation applied not only to pending applications, but also to projects already authorised, unless they had already caused an irreversible alteration of the site. The standards of review invoked were **Article 3 IC (Principles of equality and non-discrimination)**, in particular the protection of legitimate expectations, and **Article 41 IC (Freedom of private economic enterprise)**. The Government also invoked **Article 117(1) IC (Compliance with international commitments)**, in relation to **EU principles favouring the broad deployment of renewable energy**, and Articles 3 and 4(e) of the Sardinia Special Statute. Separately, the Government challenged the second, third and fourth sentences of Article 1(5), which extended the ban to pending authorisation and environmental-assessment procedures and deprived already issued authorisations of effect. The constitutional standards invoked were the same.

Another challenge was brought against Article 1(5), first sentence of the challenged measure, which imposed an absolute ban on renewable power plants in areas classified as unsuitable. The standards invoked were **Article 117(1) IC, in relation with the Renewable Energy Directive 2023/2413/EU<sup>3</sup>** as an interposed standard, and **Article 117(3) IC (Concurrent legislative competence between the Regions and the EU)**, in relation to the State framework on energy, especially Articles 20, 22 and 23 of Legislative Decree No 199/2021,<sup>4</sup> and Articles 1(2), 2 and 7 of Ministerial Decree of 21 June 2024.<sup>5</sup> The Government also relied on Articles 3 and 4(e) of the Sardinia Special Statute.<sup>6</sup>

Furthermore, a challenge was brought against Article 1(7) of the challenged measure. Under this provision, where a project falls partly in suitable areas and partly in unsuitable areas, the criterion of unsuitability prevails. The standard invoked was **Article 117(1) IC, in relation to the EU principle that renewable-energy projects serve an overriding public interest.**

The Government also objected to Article 1(8) of the challenged measure, which restricted revamping and repowering of existing installations in unsuitable areas, for example by limiting increases in

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<sup>3</sup> Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652.

<sup>4</sup> Legislative Decree No 199/2001 on implementation of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, as amended by Directive (EU) 2023/2413.

<sup>5</sup> Ministry of Environment and Energy Security, decree of 21 June 2024 on rules for the identification of surfaces and areas suitable for the installation of renewable power plants.

<sup>6</sup> Constitutional Law No 3 of 26 February 1948, Sardinia Special Statute.

occupied surface area and wind-turbine height. The invoked standards were **Articles 3 and 41 IC**, in relation to vagueness, reasonableness, legal certainty, legitimate expectations and economic freedom; **Article 117(3) IC, in relation to the State principles governing production, transportation and national distribution of energy**; Article 20 of Legislative Decree No 199/2021; and Articles 3 and 4(e) of the Sardinia Special Statute.

Article 1(9) of the challenged measure was also challenged. This provision identified areas unsuitable for offshore renewable power plants. The challenge invoked **Article 117(3) IC**, in relation to Article 23 of Legislative Decree No 199/2021, and Articles 3 and 4(e) of the Sardinia Special Statute. The argument was that offshore siting falls within State procedures and does not leave room for unilateral regional regulation.

Finally, the Government objected to Article 3(1), (2), (4) and (5) of the challenged measure, which created a special procedure allowing projects in unsuitable areas to proceed through municipal initiative, public debate, consultation, regional agreement and then ordinary authorisation procedures. Two main standards were invoked. First, the Government relied on **Article 117(2)(m) IC**, concerning State exclusive competence over essential levels of services, in relation to Articles 14 to 14-*quinquies*, 17-*bis* and 29 of Law No 241/1990.<sup>7</sup> Second, it relied on **Article 117(2)(s) IC**, concerning State exclusive competence over the protection of the environment, ecosystems and cultural heritage, in relation to Articles 21 and 146 of Legislative Decree No 42/2004.<sup>8</sup> The Government also invoked Articles 3 and 4(e) of the Sardinia Special Statute.

## Decision of the Court

### The Court upheld most challenges:

- **Article 1(5) of the challenged measure was struck down, under Article 117(1) and (3) IC, in conjunction with the State and EU principles on energy;**
- **Article 1(2) – insofar as applicable to *projects already authorised* – and (5) were struck down, under Articles 3 and 41 IC;**
- **Article 1(8) and (9) were struck down, under Articles 117(1) and 117(3) IC, and under the rules of the Sardinia Statute;**
- **Article 3(1), (2), (4), (5) and (6) was struck down, under Article 117(2)(m) and (s) IC, and under the rules of the Sardinia Statute.**

The Court **rejected the challenge to Article 1(5)**, insofar as it applies to *applications still pending*. The Court also **provided a narrow interpretation for Article 1(7)**, thus avoided declaring it unconstitutional.

### Reasons for the decision

The IC set the legal background **by presenting renewable energy as a core element of EU environmental and economic policy**. The IC traced the EU framework from the early renewable energy directives and linked it to the European Green Deal and the European Climate Law, which

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<sup>7</sup> Law No 241/1991 on new rules on administrative procedure and the right of access to administrative documents.

<sup>8</sup> Legislative Decree No 42/2004 (Cultural Heritage and Landscape Code).

set the binding objective of EU climate neutrality by 2050 and a 2030 greenhouse-gas reduction target. It also noted the more recent Nature Restoration Regulation,<sup>9</sup> which confirms that renewable energy projects may be presumed to serve an overriding public interest while allowing Member States, in justified cases, to limit that presumption for certain territories, technologies or projects; this is the case for the challenged provision.

On the domestic side, the Court recalled the evolution from Legislative Decree No 387/2003,<sup>10</sup> which originally created a single authorisation procedure for renewable power plants, to later reforms introducing swifter and simplified mechanisms. The law provided for four authorisation routes for renewable-energy plants: communication of commencement of works (*comunicazione di inizio lavori*); sworn declaration of commencement of works (*dichiarazione di inizio lavori asseverata*); simplified authorisation procedure (*procedura abilitativa semplificata*); and single authorisation (*autorizzazione unica*).

Where the plant was subject to environmental impact assessment or screening procedures, the procedure for granting the single authorisation was suspended until those procedures were completed. Within this system, Legislative Decree No 199/2021 and Ministerial Decree of 21 June 2024 assigned the Regions a role in identifying suitable and unsuitable areas, but against a national framework designed to accelerate the deployment of renewable energy rather than to create blanket territorial prohibitions.

**The Government challenged the measure for overstepping those limits. The Court turned to the specific challenges.**

**The challenge to Article 1(2) was held partly unconstitutional, partly unfounded.** The Court upheld the challenge only **insofar as the provision applied the new regional regime to already authorised plants**. In that respect, the rule retroactively undermined existing authorisations without adequate technical or scientific justification, frustrating legal certainty, legitimate expectations and private economic initiative. By contrast, **the challenge was rejected as regards pending procedures**: in complex administrative procedures, each phase is governed by the law in force when that phase is carried out, so applicants have no protected expectation that the whole procedure will be completed under the law in force when the application was filed.

**Article 1(5), first sentence, was held unconstitutional. The provision imposed an absolute prohibition on renewable power plants in areas classified as unsuitable.** The Court held that regional identification of unsuitable areas is permissible, but unsuitability cannot equal an automatic ban. It may exclude access to simplified procedures and require full assessment, but the final decision must remain project-specific. The provision therefore conflicted with EU-derived principles of decarbonisation and maximum diffusion of renewable energy and exceeded Sardinia's statutory powers.

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<sup>9</sup> Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869.

<sup>10</sup> Legislative Decree No 387/2001 on implementation of Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market.

**Article 1(5), second and third sentences, were held unconstitutional too.** These sentences extended the ban to authorisation and environmental assessment procedures still pending, including applications filed before the regional law entered into force. The defect was not the application of new law to pending procedures as such; the defect was that **the new rule produced an automatic and aprioristic refusal** rather than merely affecting the procedural route or requiring ordinary assessment.

**Article 1(5), fourth sentence, was held unconstitutional.** This sentence deprived already issued authorisations and enabling titles of effect where the plants fell in unsuitable areas. **The Court held that this wiped out acquired legal titles without adequate justification**, disregarded costs already incurred by operators, and undermined both reliance interests and the common decarbonisation objectives pursued by EU and State law.

**The challenge to Article 1(7) was rejected** because the Court adopted narrowly the provision. It stated that, where a project falls partly in suitable areas and partly in unsuitable areas, the criterion of unsuitability prevails. The Court saved the provision by interpreting it narrowly: **prevalence of unsuitability does not mean that the project is automatically prohibited**; it only means that the project cannot use the simplified authorisation procedure and must undergo ordinary case-by-case assessment.

**Article 1(8) was held unconstitutional.** The provision restricted revamping and repowering of existing plants, including by reference to surface area and, in practice, the number or size of new wind turbines. The Court held that Sardinia had gone beyond identifying suitable and unsuitable areas: **it had introduced autonomous substantive limits, different from and contrary to the State framework**, thereby exceeding its competence and frustrating the EU-derived principle of maximum deployment of renewable power plants.

**Article 1(9) was held unconstitutional too.** The provision identified unsuitable areas for offshore renewable power plants. The Court held that regional powers in this field only concern onshore areas. **Offshore siting falls under State-level maritime spatial planning** and State authorisation procedures, including ministerial competence for the single authorisation.

**Article 3(1), (2), (4) and (5) was held unconstitutional.** These provisions created a special regional procedure for projects in unsuitable areas. The Court struck them down because the procedure was detached from the State regime on landscape authorisation and could allow projects to proceed irrespective of the authorisation required under Article 146 of the Cultural Heritage and Landscape Code. **State landscape authorisation rules are fundamental economic-social reform norms and bind even special statute regions.**

Type of proceedings	Constitutional review by direct application by the State
President of the Court	Giovanni Amoroso

Judge rapporteur	Angelo Buscema
Composition of the Court	Giovanni Amoroso (President), Francesco Viganò, Luca Antonini, Stefano Petitti, Angelo Buscema, Emanuela Navarretta, Maria Rosaria San Giorgio, Filippo Patroni Griffi, Marco D'Alberti, Giovanni Pitruzzella, Antonella Sciarrone Alibrandi, Massimo Luciani, Maria Alessandra Sandulli, Roberto Nicola Cassinelli, Francesco Saverio Marini
Delivery of the judgment	8 October 2025
Challenged provisions	Article 1, paragraphs 2, 5, 7, 8, 9; Article 3, paragraphs 2, 4, 5 of Sardinia Regional Law No 20 of 5 December 2024