

QUESTION OF CONSTITUTIONAL LEGITIMACY OF LAW DECREE NO. 91/14 CONVERTED INTO LAW BY LAW OF CONVERSION NO. 116/14



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This Briefing provides a summary of Law Decree No. 91 of June 24th, 2014 (hereinafter the "**DL 91/14**") converted into law by Law of Conversion No. 116 of August 11th, 2014 (hereinafter the "**LC 116/14**"), published in the Italian Official Gazette No. 192 on August 20th, 2014 (LC 116/14 came into force on August 21st, 2014) as well as the main aspects of the question of constitutional legitimacy of Article 26 of the DL 91/14.

SHOULD YOU LIKE TO DISCUSS ANY OF THE MATTERS RAISED IN THIS BRIEFING, PLEASE FEEL FREE TO CONTACT A PERSON OF OUR TEAM BELOW OR YOUR REGULAR CONTACT AT CM&P STUDIO *LEGALE ASSOCIATO*.



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**OPTIONS SET FORTH
UNDER LAW DECREE
NO. 91/2014**

On the basis of the DL 91/14, as converted into law by the LC 116/14, three options apply to photovoltaic plants with nominal capacity over 200 kW:

- (A) extension of the period of the FIT, as defined below, from 20 to 24 years;
 - (B) cut option; or
 - (C) redetermination of the applicable FIT and virtual set-off.
- (A) In accordance with the DL 91/14, as converted into law by the LC 116/14, if owners of photovoltaic plant chose option (A) mentioned above, an extension of the period of the applicable feed-in-tariffs (hereinafter “FIT”) from 20 to 24 years (starting from the date in which the relevant photovoltaic plant entered into operation) for photovoltaic plants with capacity over 200 kW applies as well as a reduction of the FIT amount on the basis of the following percentages:
1. 12 remaining years > 25% reduction of FIT;
 2. 13 remaining years > 24% reduction of FIT;
 3. 14 remaining years > 22% reduction of FIT;
 4. 15 remaining years > 21% reduction of FIT;
 5. 16 remaining years > 20% reduction of FIT;
 6. 17 remaining years > 19% reduction of FIT;
 7. 18 remaining years > 18% reduction of FIT;
 8. beyond 19 remaining years > 17% reduction of FIT.

THE LC 116/14 PROVIDES ALSO THAT OPTION (B) MENTIONED ABOVE APPLIED BY DEFAULT IF NO COMMUNICATION WAS SENT BY THE OPERATOR WITHIN NOVEMBER 30TH, 2014.

(B) Option (B) listed above does not affect the length of the incentive tariff period granted on photovoltaic plants on the entry into force of the DL 91/14; however, it provides for a cut of the amount of FIT and such a reduction depends on the nominal capacity of the relevant plants:

> 6% for plants with nominal capacity higher than 200 kW and up to 500 kW;

> 7% for plants with nominal capacity higher than 500 kW and up to 900 kW;

> 8% for plants with nominal capacity higher than 900 kW.

(C) In addition, in accordance with option (C) mentioned above the applicable FIT are restructured in a way that payments are reduced over an initial period and are, subsequently, increased by the same amount for a second period.

This option does not affect the FIT 20 year period and the overall FIT amount granted to the relevant photovoltaic plants should be unaffected over the original 20-year period.

The LC 116/14 provides also that option (B) mentioned above applied by default if no communication was sent by the operator within November 30th, 2014.

Eventually, Article 26 of the DL 91/14, as converted into law by the LC 116/14, provides that, starting from the second half of 2014, the “*Gestore Servizi Energetici S.p.A.*” (hereinafter “**GSE**”) pays FIT in monthly instalments, in an amount equal to 90% of the estimated annual average production of the relevant photovoltaic plant, while the balance of the production is paid on/or before June 30 of the following year.

**QUESTION OF
CONSTITUTIONAL
LEGITIMACY OF LAW
DECREE NO. 91/14
CONVERTED INTO LAW
BY LAW OF CONVERSION
NO. 116/14**

**THE REFERRAL TO THE
CONSTITUTIONAL
COURT SUSPENDED THE
PENDING APPEALS
BEFORE TAR LAZIO
UNTIL THE
CONSTITUTIONAL
COURT HAS RULED ON
THE QUESTION OF
CONSTITUTIONAL
LEGITIMACY OF ARTICLE
26 OF THE DL 91/14, AS
CONVERTED INTO LAW
BY THE LC 116/14. THE
JUDGEMENT OF THE
COURT IS EXPECTED IN
THE NEXT MONTHS.**

On June 23rd, 2015 the Regional Administrative Court of Lazio (hereinafter “**TAR Lazio**”) has finally rendered its decision to refer the question of constitutional legitimacy of Article 26 of the DL 91/14, as converted into law by the LC 116/14, to the Italian Constitutional Court.

The referral to the Constitutional Court suspended the pending appeals before TAR Lazio until the Constitutional Court has ruled on the question of constitutional legitimacy of Article 26 of the DL 91/14, as converted into law by the LC 116/14.

The hearing before the Constitutional Court is scheduled next December 6th, 2016 and the decision of the Court is expected in 2017.

The Court could judge grounded the question of constitutional legitimacy of Article 26 of the DL 91/14 or, otherwise, if the question of constitutional legitimacy is deemed groundless, reject the relevant appeals.

In both cases, after the decision of the Constitutional Court, TAR Lazio shall take up the pending cases and issue its final decisions.

On the basis of the above, local and international investors are interested on the judgement of the Constitutional Court which should re-establish certainty to the Italian renewable sector, which expects the judgement of the Court on the question of constitutional legitimacy of Article 26 of the DL 91/14, as converted into law by the LC 116/14, in the next months.