GOVERNING PHOTOVOLTAIC DEVELOPMENT IN ITALY WITHIN THE MULTILEVEL COMPLEXITY OF THE ENERGY TRANSITION

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Abstract: The article provides a comprehensive analysis of the current Italian legal and case-law framework governing photovoltaic installations, with particular attention to the most recent developments following Legislative Decree No. 190/2024 and Ministerial Decree of 21 June 2024 concerning suitable areas. The study offers a systematic examination of the main regulatory issues, including the building and permitting regimes applicable to photovoltaic plants, their interaction with landscape protection rules, the role of heritage authorities (Soprintendenze), and the recent evolution of administrative litigation. The paper also addresses specific legal issues arising in condominium and agricultural contexts, highlighting the persisting tensions between the need to accelerate the energy transition and the constitutional duty to safeguard the landscape and cultural heritage. Drawing on the latest rulings of the Italian Council of State (in particular decisions No. 4128/2025, No. 1341/2025, and No. 466/2025), the article offers an updated and verified reconstruction of the multilayered governance applicable to the development of photovoltaic energy in the Italian legal system.

Introduction

The energy transition stands as one of the foremost normative and institutional challenges within contemporary administrative law[1]. The urgency of accelerating decarbonization,

[1] The academic literature on this topic has become extensive. Without purporting to be exhaustive, one may refer to the works of A. saporito, Il governo dell'energia. Cooperazione e divergenze tra gli attori della regolazione, Giappichelli, 2025; G. Befani, Poteri pubblici e sicurezza energetica, Giappichelli, 2024; E. Bruti Liberati Eugenio,M. De Focatiis, A. Travi, Il futuro dei mercati dell'energia in italia tra emergenze e riforme, Wolters Kluwer, 2024; E. Bruti Liberati, M. De Focatiis, A. Travi, Le procedure di autorizzazione per le fonti rinnovabili di energia in italia e in Francia, Wolters Kluwer, 2024;A. Antoniazzi, L'idrogeno come vettore energetico e la sua

enshrined at the European level through increasingly ambitious binding targets, has profoundly impacted the domestic legal systems of Member States, compelling lawmakers to develop regulatory instruments capable of balancing efficiency, simplification, and the safeguarding of constitutional values.

In this context, the photovoltaic sector holds a pivotal position, not only due to the growing role of solar energy in the national and European energy mix, but also because of the significant legal complexities surrounding the authorisation regimes governing the installation of such systems — particularly when urban planning constraints, landscape protections, agricultural contexts, or condominium regulations are implicated.

The regulatory evolution of the Italian legal framework over the past two decades — from Legislative Decree No. 387 of 2003 to the most recent Legislative Decree No. 190 of 2024 — clearly reflects repeated attempts by the legislature to strike a calibrated balance between liberalisation, procedural streamlining, and the preservation of constitutionally guaranteed cultural and landscape heritage (Article 9 of the Constitution, as recently amended).

The adoption of Ministerial Decree of 21 June 2024 on "suitable areas" constitutes an additional piece of this still-developing multilevel governance mosaic, where State-Regional relations, administrative discretion, and administrative case law play decisive roles in determining the effective implementation of the energy transition.

The following analysis seeks to systematically reconstruct the current regulatory and case law framework applicable to photovoltaic installations in Italy, with particular attention to building law profiles, landscape constraints, the role of administrative authorities, and the specific legal issues arising in condominium and agricultural contexts. Special focus is placed on the recent jurisprudence of the Italian Council of State (particularly judgments No. 4128/2025, No.

disciplina emergente, in Giornale di Diritto Amministrativo, n. 4/2024; B. Caravita, Taking Constitution seriously. La Costituzione verde, 2022; C. Comporti, Giustizia climatica e perequazione costituzionale, 2024; D. Dell'Anno, Principi costituzionali e diritto dell'ambiente, 2023; D.G. Di Stefano, F. Breda, L. Olini, Diritto dell'energia, 2023; R. Miccù, Lineamenti di diritto europeo dell'energia. Nuovi paradigmi di regolazione e governo multilivello, Giappichelli, 2020; R.J. Heffron, Energy Law: An Introduction, Springer, 2021; E. Picozza (a cura di), Il diritto dell'energia, Cedam, 2015; F. Pepe, Il diritto dell'energia fondato su principi. La transizione ecologica come giustizia energetica, in Rivista Giuridica di Diritto Pubblico, 2023; F. Vetrò, Il ruolo del GSE nella transizione energetica, 2020; Vetrò, Evoluzioni del diritto europeo dell'energia: transizione energetica e sistema istituzionale, 2019; G. Capitani, La disciplina costituzionale delle energie rinnovabili, Tesi di laurea, 2023; Istituto Bruno Leoni (IBL), Guida al mercato libero dell'energia, 2024; Istituto Bruno Leoni (IBL), Energia: la lezione della maggior tutela, 2024; Istituto Bruno Leoni (IBL), Energia e concorrenza, 2024; L. Pellizzer, F. Caruso, Tutela della cultura e transizione ecologica nel vincolo culturale indiretto, in Aedon, n. 2/2023; L. Sanchini, Diritto dell'energia e giustizia ambientale, 2024; M. Comporti, Giustizia climatica e perequazione costituzionale, 2023 (presente due volte per aggiornamenti, manteniamo l'ultima versione 2024); M. Persico, La Costituzione ecologica come progetto di giustizia climatica, 2024; M. Sandulli, Energia, in Enciclopedia del Diritto, Giuffrè, 2015; R. Raganelli, Incentivi alle energie rinnovabili dopo le nuove normative, in Rivista Giuridica di Diritto Pubblico, 2024; T. Tigor, V. Foschini, Profili costituzionali e regolatori dell'energia, 2023.

1341/2025, and No. 466/2025), which have contributed to shaping key principles concerning the division of competences and the balancing of competing public interests.
The legal analysis thus offered aims to provide both scholars and practitioners with an updated and verified framework, equally useful for systematic understanding and practical application in one of the most dynamic sectors of contemporary administrative law.

Chapter 1 – The European and National Framework for the Energy Transition

1.1. The Energy Transition and the Role of Photovoltaics in the Italian and European Context

The energy transition represents one of the most strategic public policy priorities at both supranational and national levels. The ambition to achieve climate neutrality by 2050 — firmly established by the European Commission's 2019 Green Deal and subsequently incorporated into instruments such as the *Fit for 55 Package* — requires a structural transformation of energy production and consumption models, whereby renewable sources are to become predominant within the Member States' energy mixes.
Among renewables, solar energy — and photovoltaics in particular — has assumed a leading role. This is due to several factors: substantial technological cost reductions, installation simplicity, versatility of deployment (on buildings, land, agricultural structures, parking areas, etc.), and scalability both for small-scale and large-scale plants. Furthermore, photovoltaics contribute simultaneously to national energy security and to the reduction of greenhouse gas emissions, in line with the European Union's commitments under the Paris Agreement and the United Nations Sustainable Development Goals (notably SDGs 7, 11, and 13).
From a regulatory perspective, the European framework has been profoundly reshaped by Directive (EU) 2018/2001 (*RED II*), transposed in Italy through Legislative Decree No. 199 of 8 November 2021. This directive laid the foundations for integrated energy planning, establishing binding targets for renewable energy shares by 2030, liberalising renewable energy communities, and, critically, simplifying authorisation procedures. The subsequent Directive (EU) 2023/2413 (*RED III*), effective since November 2023, further requires Member States to identify, by 2025, "suitable" and "non-suitable" areas for renewable energy installations, setting strict deadlines of 6–12 months for permit issuance within suitable areas and recognising that "the installation of plants in suitable areas shall be considered to be of overriding public interest" (Article 15 RED III).
Italy has sought to transpose this European momentum through a complex, and at times fragmented and inconsistent, legislative path. Starting with Legislative Decree No. 199/2021,

followed by Decree-Law No. 17/2022 (the so-called *Energy Decree*), and culminating with Legislative Decree No. 190/2024 (adopted pursuant to Law No. 34/2022), the legislature has progressively moved toward authorisation streamlining and the reduction of regulatory constraints. Particularly noteworthy measures include:

- The introduction of Article 22-bis of Legislative Decree No. 199/2021, equating photovoltaic installations on buildings and industrial areas to ordinary maintenance works, thereby exempting them from landscape authorisation and building permits;
- The classification of advanced agrivoltaic systems as works of public utility, urgency, and non-deferrability (Article 7 of Legislative Decree No. 190/2024), with accelerated authorisation timelines;
- The establishment, under the Ministerial Decree of 21 June 2024 ("Decreto Aree Idonee"), of criteria for identifying areas deemed favourable, excluded, or subject to stricter assessment.

  Despite these advances, significant critical issues persist, particularly concerning the interaction between State and Regional legislation. As clarified by increasingly consolidated Council of State case law (see judgments No. 4128/2025, No. 4129/2025, No. 466/2025), Italian Regions are precluded from introducing additional constraints beyond those established by national legislation and EU law. Specifically, Regions cannot subject applications to autonomous criteria (such as “photovoltaic potential” indexes) or impose supplementary agreements absent the ministerial decrees referred to in Article 20(1)(c) of Legislative Decree No. 199/2021. Regional regulations are permissible solely as implementing—not substitutive—acts of national law.

This principle was emphatically reaffirmed in Council of State, Fourth Section, judgment of 23 January 2025, No. 466, which states that "the expiry of the deadline for adopting implementing ministerial decrees does not entitle the Regions to unilaterally introduce substitute regulations, under penalty of violating the constitutional allocation of powers and obligations deriving from EU law."

Moreover, urban planning and landscape constraints continue to represent one of the most critical nodes. Judgments such as Council of State, Fourth Section, No. 1341/2025 (the *Amalfitano* case) demonstrate that installing panels in protected areas must comply with specific technical conditions (roof integration, invisibility from public spaces, use of materials compatible with local traditions) that may legitimately justify maintaining the requirement for landscape authorisation.

In conclusion, photovoltaics today constitute a strategic junction for energy, economic, and environmental policy, yet require a coherent, predictable, and coordinated legal framework across governance levels. The challenge for both jurists and legislators is to successfully reconcile environmental sustainability objectives with legal certainty, procedural legality, and the balanced protection of competing public interests.

1.2 Decarbonisation Goals and Sustainable Development

Decarbonisation lies at the core of the climate and energy policies of both the European Union and its Member States. The declared objective of achieving climate neutrality by 2050, introduced by Regulation (EU) 2021/1119 (commonly referred to as the "European Climate Law"), is not merely a long-term political aspiration but rather a binding trajectory for public action. As a result, energy law has evolved into a functional and purpose-oriented branch, in which normative sources must be interpreted in light of the strategic goals of emissions reduction, energy efficiency, and the expansion of renewable energy sources.

To this end, Directive (EU) 2018/2001 (RED II), and more recently Directive (EU) 2023/2413 (RED III), have established binding targets for the contribution of renewables to the European energy mix. In particular, RED III raised the mandatory minimum share of renewable energy in the gross final energy consumption to 42.5% (with an indicative target of 45%) by 2030, thereby imposing an acceleration of the authorisation process and a substantial simplification of administrative procedures, especially with respect to so-called “go-to areas”.

Italy's implementation of these objectives has developed through multiple legislative instruments, initially via Legislative Decree No. 199/2021, followed by Decree-Law No. 17/2022, and more recently Legislative Decree No. 190/2024, which has introduced extensive amendments to the existing framework. In particular:

- Article 3 of Legislative Decree No. 190/2024 introduces a general principle of overriding public interest for renewable energy installations, explicitly referring to Article 16 of RED III, thereby orienting administrative action towards a generally favourable assessment of projects contributing to climate objectives.
- Article 7 qualifies advanced agrivoltaic installations as works of “public utility, urgency, and non-deferrable nature”, with significant implications in terms of expropriation, urban planning, and procedural simplification.
- Article 10 provides that permits for installations located in go-to areas must be issued within six months, extendable to nine months only in the presence of landscape or environmental constraints, and introduces the mechanism of tacit consent.

In addition to the energy regulations, reference must also be made to the objectives set forth in the United Nations 2030 Agenda for Sustainable Development. Goal 7, which aims to ensure universal access to clean and sustainable energy, and Goal 13, focusing on combating climate change, intersect with the constitutional responsibilities of the Italian Republic in environmental and landscape protection, responsibilities that have been further reinforced following the 2022 constitutional reform of Articles 9 and 41 of the Constitution.

However, the process remains far from linear. Italian administrative law, and the case law interpreting it, must constantly navigate the delicate balance between competing public interests: on the one hand, the protection of landscape and cultural heritage; on the other, the public interest in decarbonisation and energy autonomy. As noted by the Council of State in Judgment No. 4128/2025, “the energy transition, albeit a matter of overriding public interest, cannot serve as a pretext for undermining the protective function of the landscape, which the Constitution assigns, with equal dignity, to public institutions.”

In this regard, the applicable regulations must today be interpreted in accordance with the principle of the "effectiveness of the ecological transition", which requires not only the pursuit of formal objectives but also procedural simplification, predictability of timeframes, proportionality of restrictions, and foreseeability of decisions. The challenge for administrative law and public authorities is to ensure the concrete implementation of the complex European and national normative framework, avoiding both regulatory excesses and bureaucratic inertia that may hinder the realisation of technically compatible and territorially sustainable renewable energy projects.

1.3 The Development of the National Legal Framework from 2001 to 2025

The development of Italy's legal framework governing photovoltaic installations has followed a regulatory trajectory that, beginning in the early 2000s, has both accompanied and, in part, driven the implementation of European objectives for the promotion of renewable energy sources. The first fundamental milestone was Legislative Decree No. 387 of 29 December 2003, which transposed Directive 2001/77/EC into domestic law and established a comprehensive framework for the incentivisation and procedural simplification of renewables. Among other provisions, it introduced the principle of primary access to the grid and established differentiated authorisation mechanisms based on plant capacity and location.

In subsequent years, the matter has been significantly shaped by sectoral legislation addressing the authorisation regimes and zoning classification for photovoltaic installations. Presidential Decree No. 380/2001 (Consolidated Building Act) has been amended multiple times to include

photovoltaic installations among the interventions subject to simplified declarations (CIL, CILA), certified start of activity declarations (SCIA), or full building permits, with distinctions made between integrated and non-integrated systems, as well as between installations visible or non-visible from public vantage points.

The strengthening of climate policies at the European level further prompted the national legislator to adopt additional transposing measures, notably Legislative Decree No. 28 of 3 March 2011, implementing Directive 2009/28/EC. This decree introduced Article 7-bis, a key provision on the simplification of solar and photovoltaic installations on existing buildings. The original and subsequently amended versions of this provision marked a significant step toward qualifying such works as ordinary maintenance, at least where they do not affect listed buildings or areas of particular landscape sensitivity.

A further impetus arrived with Legislative Decree No. 199 of 8 November 2021, transposing Directive (EU) 2018/2001 (RED II). This decree introduced fast-track criteria for identifying suitable areas and, in Article 22-bis, broadly liberalised the installation of photovoltaic systems in industrial zones, classifying such works as ordinary maintenance not requiring permits or authorisations.

To address the delays in the implementation of Legislative Decree No. 199/2021, the Ministerial Decree of 21 June 2024 — the so-called "Suitable Areas Decree" — was adopted, setting out rules for the identification of surfaces and areas suitable for the installation of renewable energy plants. The decree assigned to the Regions the responsibility of classifying, within 180 days, the areas of their respective territories based on nationally defined technical criteria.

The most recent development is represented by Legislative Decree No. 190 of 9 December 2024, which introduced significant amendments to both the Cultural Heritage Code (Legislative Decree No. 42/2004) and Legislative Decree No. 28/2011. In particular, the new provisions clarified the regime applicable to installations in protected landscape areas, reaffirming that landscape authorisation is not required for integrated, non-visible systems installed on buildings not listed under Article 136, paragraph 1, letters b) and c), and simplifying the coordination between urban planning and environmental protection requirements.

Thus, the national legal evolution between 2001 and 2025 is characterised by a progressive—though not always linear—reduction of authorisation burdens and the consolidation of the principle whereby the interest in the ecological transition—consistent with the amended Article 9 of the Constitution—should prevail over unjustified administrative obstacles. Nonetheless,

regional heterogeneity and ongoing tensions between liberalisation and landscape protection persist, leading to an increasingly sophisticated body of administrative litigation.

1.4 The Role of the Regions and Multi-Level Governance

The regulation of photovoltaic installations in Italy lies at the intersection of concurrent legislative competences and shared administrative functions, resulting in a multi-level governance system in which the State, Regions, and local authorities play complementary — and sometimes conflicting — roles. The constitutional framework is outlined in Article 117 of the Italian Constitution, which assigns exclusive competence to the State in matters of environmental protection, ecosystems, and cultural heritage, while recognising concurrent competences for the Regions in the areas of land-use planning, energy, and the enhancement of cultural and environmental assets.

Within this framework, the national legislator has laid down the fundamental principles of energy and environmental law — through Legislative Decrees No. 387/2003, No. 28/2011, and No. 199/2021 — while the Regions are tasked with implementing these principles through regional spatial and energy planning. This division of powers has led to the emergence of highly diversified regional regulations, particularly concerning the definition of suitable and unsuitable areas, the regulation of authorisation procedures, buffer distances, and capacity thresholds, thereby generating considerable legal heterogeneity at the national level.

The Regions play a crucial role in siting decisions, the design of simplified authorisation procedures (such as PAS or single authorisations), and the regulation of landscape and agricultural integration. Some Regions — including Tuscany, Piedmont, and Apulia — have adopted specific regulations governing agrivoltaic installations, while others — such as Lombardy — have introduced incentives for fully integrated or visually minimised photovoltaic systems. The recent Ministerial Decree of 21 June 2024, issued pursuant to Article 20 of Legislative Decree No. 199/2021, requires the Regions to identify suitable areas for renewable energy development within six months, following uniform technical criteria. However, both the timeline for implementation and the coordination between urban and energy planning remain critical issues.

The Constitutional Court has repeatedly reaffirmed that, while the Regions enjoy autonomy, they cannot impose arbitrary limits or blanket prohibitions on renewable energy development. For example, Judgment No. 69/2018 declared unconstitutional certain Abruzzo regional laws that indiscriminately prohibited photovoltaic installations in agricultural zones. Similarly,

Judgment No. 116/2023 clarified that national rules ensuring the proper balance between energy production and landscape protection take precedence over incompatible regional provisions.

Against this backdrop, an increasing need for inter-institutional coordination has emerged. Instruments such as joint conferences, single authorisation procedures (pursuant to Article 12 of Legislative Decree No. 387/2003), and the establishment of one-stop shops for renewable energy (SUER), alongside the roles of ANAC (National Anti-Corruption Authority) and GSE (Energy Services Operator), contribute to the construction of a multi-level governance architecture. Although still fragmented, this system seeks to reconcile competing demands for energy transition, landscape sustainability, territorial competences, and legal certainty for operators.

Lastly, the National Recovery and Resilience Plan (PNRR) has played an accelerating role, prompting the Regions to update their planning instruments, including revisions to regional energy plans (PER) and the creation of fast-track zones for photovoltaic installations. However, delays in implementation and the absence of uniform monitoring mechanisms still represent significant obstacles to achieving climate and energy targets.

Chapter 2 – The Building and Permitting Framework for Photovoltaic Installations

2.1 The Building Regulation Regime for Photovoltaic Installations: Definitions, Classifications, and Permits

The growing centrality of renewable energy sources in both national and European decarbonisation strategies has for over a decade made it necessary to establish a clear legal framework governing the development of photovoltaic installations. This framework must balance administrative simplification with the protection of landscape and historical-architectural heritage. The Italian legislator has progressively expanded the scope of activities subject to simplified or deregulated authorisation regimes, through layered legislative interventions that have significantly affected the legal classification of photovoltaic systems from a building law perspective.

The legal framework necessarily begins with the technical definition of "photovoltaic system", which is provided by Legislative Decree No. 28/2011, Article 2(1)(a), as "an electricity generation system that uses photovoltaic modules to convert solar energy directly into electricity." At the building law level, the 2016 Model Building Code (Annex A) defines photovoltaic panels as "technological components" suitable for capturing and converting solar energy. These definitions are decisive for determining whether a project qualifies as free

building activity or whether it requires simplified procedures (CILA, PAS) or a single authorisation.

The central provision is Article 7-bis of Legislative Decree No. 28/2011, as subsequently amended, most recently by Legislative Decree No. 190/2024. Paragraph 5 establishes the general rule that "the installation, by any means, even in the A-zones of municipal urban planning instruments," of photovoltaic systems on buildings or above-ground structures constitutes "ordinary maintenance" and is not subject to any permits, authorisations, or consents, including those required by the Code of Cultural Heritage and Landscape. This principle allows photovoltaic systems to be installed as free building works under certain conditions.

However, the same provision identifies precise exceptions to this general liberalisation. Specifically, the exemption does not apply to buildings or areas subject to landscape restrictions pursuant to Article 136(1)(b) and (c) of Legislative Decree No. 42/2004 (Code of Cultural Heritage and Landscape), where installations remain subject to landscape authorisation. An additional exception applies to roof coverings made of traditional local materials, for which even non-visible integrated installations do not qualify as free building works. Case law has developed stringent interpretative criteria in this regard.

In particular, Consiglio di Stato, Fourth Division, Judgment No. 4128/2025 clarified that the exemption from landscape authorisation for integrated, non-visible installations applies only where two cumulative conditions are met: first, the panels must be fully "integrated", meaning flush-mounted with no physical separation from the roof surface; second, they must not be visible from public spaces or panoramic viewpoints. The mere placement of panels atop the roof, even with minimal protrusion, negates the "integrated" character, thereby subjecting the project to ordinary authorisation requirements. The same principle was reaffirmed in Consiglio di Stato, Fourth Division, Judgment No. 1341/2025 concerning a project in the Municipality of Ravello, an area subject to mixed landscape restrictions under Article 136.

From a practical perspective, three distinct regulatory regimes emerge:

- *Free building works*: where no restrictions apply and the panels are installed on existing buildings, fully integrated into the roof, and not visible;
- *CILA (Certified Notice of Commencement of Works):* for minor modifications not qualifying as ordinary maintenance but without structural relevance;
- *Simplified authorisation procedure (PAS):* under Article 6 of Legislative Decree No. 28/2011, especially for installations in agricultural areas or outside urban centres;

- *Single authorisation:* under Article 12 of Legislative Decree No. 387/2003, for larger-scale installations or those located in restricted areas.

Legislative Decree No. 190/2024 further advanced the simplification logic by intervening on multiple fronts. Key measures include: expanding the scope of free building works; promoting interoperability between municipal and regional databases; digitalising procedures; and introducing tacit consent mechanisms for certain overlapping competences. The decree also reaffirmed the sharp distinction between rooftop installations (generally more facilitated) and ground-mounted systems, particularly in agricultural areas, which remain subject to stricter restrictions for landscape and productive compatibility.

Finally, the courts have played a pivotal role in balancing the right to energy transition with the protection of cultural and landscape heritage. Recent judgments, while confirming the general tendency toward simplification, firmly reject any automatic application of derogations, requiring a case-by-case assessment that emphasises "architectural integration" as the decisive legal standard.

Although the current legal framework tends to favour liberalisation, it remains fragmented and subject to divergent interpretations, which at times slow the development of strategically important energy projects. The forthcoming challenge is to reconcile regulatory clarity, procedural certainty, and the protection of competing public interests, ultimately shaping an increasingly harmonised legal framework for energy-related building law.

2.2 The Relationship with Landscape Regulation: Derogations, Restrictions, and Case Law

Within the Italian legal system, landscape regulation serves as a fundamental counterbalance to the simplification measures introduced to facilitate the development of photovoltaic installations. The delicate balancing of landscape protection and the promotion of renewable energy hinges in particular on the scope and conditions of the derogations provided under Article 7-bis, paragraph 5, of Legislative Decree No. 28/2011, whose text has been significantly amended over time, most recently by Legislative Decree No. 190/2024.

Under its current formulation, the general rule is that the installation of photovoltaic systems on buildings constitutes an act of ordinary maintenance, not subject to any authorisations, including landscape authorisations, except where the intervention affects properties or areas subject to landscape restrictions pursuant to Article 136(1)(b) and (c) of the Code of Cultural Heritage and Landscape. As a consequence, the mere existence of a landscape restriction under

letter (d) — referring to scenic viewpoints regarded as "natural frames" — does not, in itself, reinstate the authorisation requirement.

However, practical application proves far more complex. Firstly, many areas — especially historical and coastal zones — are simultaneously subject to multiple restrictions combining letters (b), (c), and (d), making it difficult to isolate a single prevailing legal classification. Secondly, the derogation for restrictions under letter (c) (concerning "complexes of real estate that together constitute a characteristic feature of aesthetic and traditional value") is itself conditional on two cumulative requirements: that the panels are "integrated into the roof coverings" (i.e., flush-mounted, with no protrusion and compatible with traditional local materials), and that they are not visible from public spaces or panoramic viewpoints.

These dual conditions have been interpreted with particular rigour by the courts. In particular, the Consiglio di Stato, Fourth Division, in Judgment No. 1341/2025 rejected a challenge against a denial of authorisation in the Municipality of Ravello, clarifying that "integration" requires full physical coplanarity between the panels and the roof covering. Merely placing panels on top of tiles, even if partially flush, does not satisfy the legal definition of "integration". The absence of either requirement prevents the application of the derogation.

A similarly strict approach was reaffirmed in Judgment No. 4128/2025, where the Consiglio di Stato comprehensively examined the legislative development concerning landscape authorisations and reiterated the substantive limits of the derogation, emphasising that restrictions under letter (c) cannot be circumvented by invoking the broader scenic protections under letter (d). The Court further underscored the role of public declarations of interest made by the Ministry of Culture during landscape planning, confirming that derogations must be interpreted narrowly to preserve the underlying purpose of the restrictions.

Administrative practice follows the same restrictive approach. Regional guidelines and ministerial circulars stress the need to prevent energy transition incentives from systematically eroding the visual and cultural integrity of the landscape, particularly in areas of significant cultural value. Several Regions — including Tuscany, Umbria, and Campania — have adopted planning instruments or interpretive acts that prohibit installations on buildings with traditional roofing materials (such as clay tiles), even if not directly visible, as these constitute part of the local architectural heritage.

In this regulatory context, Legislative Decree No. 190/2024 reaffirmed the necessity of complying with formally established landscape restrictions pursuant to Articles 138 et seq. of the Code. At the same time, it encouraged the identification of "suitable areas" for renewable energy installations within territorial and landscape planning instruments. This approach

suggests a tendency toward integrating protection and sustainable development through planning instruments rather than through interpretive mechanisms.

Ultimately, landscape regulation continues to operate as a safeguard clause within the broader framework promoting renewables. The installation of photovoltaic panels in protected contexts remains subject not only to formal restrictions but also to substantive evaluations of visual and morphological compatibility with the built environment. The current framework, though oriented toward simplification, requires an integrated interpretation of building, landscape, and urban planning law, with case law consistently insisting — despite the imperative of environmental sustainability — on substantial legality in protecting collective heritage.

2.3 The Implications of Legislative Decree No. 190/2024: Simplifications, Accelerations, and Suitable Areas

Legislative Decree No. 190 of 8 November 2024 represents one of the most significant innovations in the legal framework governing renewable energy installations, particularly regarding the construction, authorisation, and urban planning classification of photovoltaic systems. The decree fits within the broader process of transposing European directives on accelerating the energy transition, addressing certain regulatory gaps and strengthening the principle of the overriding public interest in decarbonisation.

A key pillar of the decree is the redefinition of "suitable areas," a concept previously introduced by Legislative Decree No. 28/2011 but thus far ineffective in practical implementation. Under Legislative Decree No. 190/2024, suitable areas are to be more precisely identified by the Regions and Autonomous Provinces, in accordance with the criteria established by the Ministry of Environment and Energy Security (MASE), while also taking into account existing environmental and landscape restrictions. This new normative framework seeks to provide locational certainty, promoting the siting of installations in areas naturally suited for such development, such as decommissioned quarries, industrial zones, or infrastructure buffer zones.

At the same time, the decree reinforces the principle that installing photovoltaic systems on buildings — provided that no specific landscape restrictions apply — constitutes ordinary maintenance not subject to any authorisation, thus confirming the rule already set out in Article 7-bis, paragraph 5, of Legislative Decree No. 28/2011, but integrating it into a more coherent and systematic regulatory architecture. As a result, the scope of "free building activity" (edilizia libera) is consolidated, particularly for installations on flat roofs, rooftops not visible from public spaces, or buildings located in non-restricted areas.

Another key development is the introduction of a dedicated framework for agrivoltaic systems. Legislative Decree No. 190/2024 explicitly distinguishes between "advanced agrivoltaic" systems — equipped with integrated monitoring technology and compatible with ongoing agricultural activities — and conventional ground-mounted photovoltaic installations. It sets forth specific landscape compatibility criteria and simplified authorisation procedures for the former, in view of their dual energy and agricultural benefit.

The decree also clarifies certain procedural aspects concerning inter-agency conferences (conferenze di servizi), mandatory deadlines for concluding authorisation processes, and the substitution powers of the State in cases of regional inertia. In doing so, it reinforces multilevel governance, overcoming the frequent jurisdictional conflicts between State and Regions that have historically hindered the nationwide development of photovoltaic installations.

Of particular importance is the formal recognition that the European decarbonisation targets constitute an "overriding public interest." This principle has systemic interpretive consequences: in balancing competing public interests — such as landscape protection or public health — the energy transition is assigned a normative priority, albeit subject to principles of proportionality and adequacy.

Finally, Legislative Decree No. 190/2024 promotes the digitalisation of authorisation procedures and the standardisation of application forms for photovoltaic installations, while also addressing access to credit and grid connection conditions. These provisions aim to reduce the administrative burden on private operators and encourage the development of small-scale distributed generation systems, including in urban contexts.

Taken as a whole, the decree represents a turning point in national energy policy, laying the groundwork for greater legal certainty and a more sophisticated balancing of environmental sustainability, territorial planning, and citizens' rights. Nevertheless, the decree’s effectiveness will depend, as always, on its practical implementation by Regions, Municipalities, and the Superintendencies, as well as on the judicial system's ability to ensure a consistent application of the simplification principles without compromising the guarantees afforded to landscape and environmental protection.

Chapter 3 – The Relationship with Landscape and Cultural Heritage Regulations

3.1 Landscape Regulation and the Limits to Liberalisation of Photovoltaic Installations

The objective of the energy transition and the promotion of renewable energy sources today represent both a legislative and programmatic priority at European and national levels. Nevertheless, the concrete implementation of these goals encounters a series of systemic and

substantive constraints, among which the protection of the landscape assumes particular importance. While the installation of photovoltaic systems is generally deemed to be in the public interest by law, it may significantly affect the visual, historical, and cultural integrity of territories, especially in historic centers and protected landscape areas. It is in this context that the complex balancing act emerges between environmental sustainability needs and the safeguarding of cultural and identity values, as recognized and protected under Article 9 of the Italian Constitution.

Article 7-bis, paragraph 5, of Legislative Decree No. 28 of 3 March 2011, as subsequently amended first by Decree-Law No. 17 of 1 March 2022 (converted into Law No. 34 of 27 April 2022), and then by Legislative Decree No. 190/2024, introduced a special regulatory regime for the installation of solar photovoltaic and thermal systems. In general, these systems are now classified as ordinary maintenance works and are exempt from permit or authorisation requirements, including landscape authorisation, when installed on existing buildings or structures, even within the so-called “Zone A” of municipal zoning plans.

However, this liberalisation is not absolute: it is subject to significant exceptions precisely defined within paragraph 5 of Article 7-bis. In particular, it excludes from liberalisation installations located on buildings or within areas subject to landscape restrictions under Article 136, paragraph 1, letters b and c, of the Cultural Heritage Code (Legislative Decree No. 42/2004), provided such restrictions have been formally imposed through administrative orders. More specifically, letters b and c refer respectively to sites of particular natural beauty and to "complexes of immovable property that form a characteristic aspect of aesthetic or traditional value."

Therefore, landscape authorisation remains necessary in all cases where the installation is visible from public spaces and falls within protected areas unless two cumulative conditions are met: the panels must be integrated into the roof structures (meaning flush-mounted, without visible elevation and designed with materials compatible with local architectural traditions), and they must not be visible from public spaces or panoramic viewpoints. The absence of either condition renders the exemption inapplicable.

On this point, administrative case law has adopted a strict position. In judgment No. 4128/2025, the Council of State conducted a detailed analysis of the legal meaning of "architectural integration" and "visibility", ruling that panels simply "placed" on tiles but physically separated from them (as evidenced by photographic documentation produced by the Municipality of Ravello) cannot be considered integrated and therefore cannot benefit from liberalisation. The

court reiterated that the absence of integration excludes the application of the exemption, regardless of visibility, since both requirements must be simultaneously satisfied.

This principle was reaffirmed in judgment No. 1341/2025, where the Council of State rejected the argument that the area in question (within the Municipality of Ravello) should fall exclusively under the panoramic protection category (letter d), finding instead — in light of ministerial decrees — that a direct landscape restriction existed pursuant to letter c. Consequently, the court confirmed that the installation of photovoltaic panels required landscape authorisation, as the invoked exemption was inapplicable.

The fundamental principle emerging from these rulings is that photovoltaic installations do not automatically escape landscape regulations, even where statutes declare them to be in the public interest and classify them as ordinary maintenance. The technical discretion of the Superintendencies remains intact and demands a thorough evaluation, grounded in documentation and context-specific analysis, thereby excluding the automatic application of simplification measures.

Another limit to liberalisation arises from the requirement that panels not significantly alter the visual perception of the landscape or historical-architectural assets, even where direct restrictions are absent. The concept of "landscape compatibility" is thus understood not only in technical terms but also from an aesthetic and cultural perspective, requiring an integrated assessment that involves both landscape planning and the provisions of regional and municipal landscape plans (e.g. Regional Landscape Plans and PUTs).

Finally, it should be noted that Legislative Decree No. 190/2024, while encouraging renewable energy installations by introducing simplified authorisation procedures for agrivoltaic and ground-mounted photovoltaic systems, did not directly modify the landscape regulation applicable to installations on existing buildings located within protected areas. This leaves a highly articulated administrative framework in place, one still in need of greater interpretive certainty.

3.2 Recent Administrative Case Law

In recent years, administrative case law has played a central role in delineating the operative boundaries of the legal framework governing the installation of photovoltaic systems, particularly with regard to landscape restrictions and the question of whether specific authorisations are required. The complex stratification of legislation — including Legislative Decree No. 42/2004 (Cultural Heritage and Landscape Code), Legislative Decree No. 28/2011, Decree-Law No. 17/2022 (converted into Law No. 34/2022), and most recently Legislative

Decree No. 190/2024 — has necessitated significant interpretive efforts by administrative courts to balance the protection of the environment and landscape with the legislative favour toward renewable energy development.

A first key decision is the Council of State, Fourth Chamber, judgment No. 1341 of 18 February 2025, which reaffirmed the full applicability of the exception to liberalisation provided by Article 7-bis, paragraph 5, of Legislative Decree No. 28/2011 for properties subject to landscape restrictions pursuant to letters b) and c) of Article 136 of Legislative Decree No. 42/2004. In particular, the ruling clarified that the exemption from landscape authorisation depends on evidence of both physical and visual integration of the panels into the roof structure, as well as their invisibility from external public spaces or panoramic viewpoints. In the absence of both conditions, authorisation remains required, notwithstanding the classification of the work as ordinary maintenance.

This principle was further confirmed and elaborated in a related decision, Council of State, Fourth Chamber, judgment No. 4128/2025, which provided a restrictive interpretation of the notion of "architectural integration", rejecting its applicability in the case of panels simply superimposed upon the roof covering. The court emphasised that compliance with technical requirements cannot be assessed abstractly but must be verified on a case-by-case basis, including through visual inspections and with reference to the compatibility of the materials used with local architectural traditions.

At first-instance level, similar reasoning has been adopted. For instance, the Regional Administrative Court (TAR) of Campania, Salerno, Second Chamber, in judgment No. 2398/2023, upheld the legality of a municipal order prohibiting the installation of photovoltaic panels in a protected area, citing not only the existence of landscape restrictions but also technical inadequacies in the positioning of the panels. The judges found that the roof covering had not been integrated in the legally required technical sense, based in part on photographic evidence submitted during proceedings.

Additional rulings have confirmed that the concept of "liberalisation" of installations cannot translate into an automatic exemption from all controls. The courts have repeatedly invoked the principle of proportionality to ensure that the objective of energy production does not absolutely prevail over other constitutionally protected values, such as landscape preservation and the historical identity of places.

In this perspective, the jurisprudence has reaffirmed the importance of landscape authorisation as an indispensable procedural safeguard whenever installations fail to fully comply with the technical and visual criteria set out by law. The purpose is not to obstruct the expansion of

photovoltaic energy but rather to condition its development upon consistency with the morphological and identity characteristics of the sites involved. The approach does not subordinate the landscape to energy production but instead seeks an orderly accommodation of the competing public interests.

Finally, although national guidelines and certain regional directives have attempted to promote a more expansive reading of the exemptions afforded under energy legislation, case law has demonstrated a preference for cautious, context-sensitive interpretations, rejecting purely efficiency-driven approaches and reaffirming the primacy of landscape and cultural heritage protection.

3.3 The Role of the Superintendencies and the Margin of Technical Discretion

In the context of photovoltaic systems subject to landscape restrictions, the Superintendencies (Soprintendenze) play a crucial role as the authorities responsible for safeguarding cultural and landscape assets, exercising landscape authorisation powers pursuant to the Cultural Heritage and Landscape Code (Legislative Decree No. 42/2004). Their activity sits at the intersection of the drive for innovation and the need for conservation, and is expressed through technically discretionary acts that require a delicate balancing of constitutionally protected values.

At the core of the Superintendencies' evaluative activity lies the assessment of the visual, material, and morphological integration of the installation within the landscape and architectural context. While anchored in statutory parameters, this assessment entails a broad margin of technical discretion, which may only be reviewed by administrative courts within the narrow confines of manifest illogicality, factual error, or evidentiary deficiency. In this regard, case law has consistently reaffirmed that courts may not substitute their own assessments for those of the administrative authority, except in instances of clearly unreasonable or unsubstantiated evaluations.

In particular, the recent Council of State judgment No. 4128/2025 underscored that the Superintendency’s technical discretion encompasses the assessment of the installation's visibility from external public spaces, the consistency of the materials used with local architectural traditions, and the integration of the proposed works within the urban or rural protected setting. In that decision, the Council upheld the legitimacy of a refusal grounded on the lack of integration of the panels into the roof structure and their visibility from significant panoramic viewpoints.

Equally significant is the binding nature of the Superintendency’s position where dissent is formally expressed within the simplified authorisation procedure provided under Article 146 of

Legislative Decree No. 42/2004, unless such dissent is overridden either during the decisive conference of services or through the substitutive powers of the Council of Ministers. This strengthens the weight of landscape assessments relative to urban planning or energy policy considerations, resulting in an often complex multilevel authorisation process.

Moreover, the Superintendency's technical evaluations are frequently linked to landscape planning instruments (such as Regional Landscape Plans or Regional Territorial Plans), which detail the specific conditions and limits applicable to permissible interventions. In such instances, the Superintendency's determinations are also directed toward ensuring compliance with the specific provisions of those plans, which may further restrict the scope of liberalised or simplified interventions.

Lastly, it should be noted that the most recent case law (Council of State, Fourth Chamber, judgment No. 1341/2025) has emphasised that the grounds for any negative authorisation decision may not rely upon formulaic or stereotypical reasoning but must explicitly set forth the reasons for refusal, based on the particular characteristics of the proposed installation and the surrounding environment, with reference to objective parameters. In the absence of such reasoning, the decision may be deemed vitiated due to insufficient motivation or inadequate investigation, despite the acknowledged technical discretion of the administrative body.

Chapter 4 – The Legal Framework for Photovoltaic Installations in Condominium and Agricultural Settings

4.1 Photovoltaic Installations in Condominium Settings: Civil and Building Law Aspects

The installation of photovoltaic systems by individual condominium owners on the common roof of a building has seen growing diffusion due to legislative support for renewable energy sources and public financial incentives, particularly under the so-called "Superbonus 110%" scheme. This situation has given rise—and continues to give rise—to delicate questions regarding compatibility with civil law provisions governing condominiums, as well as planning and landscape regulations, and the balance between the individual right to self-generate energy and the collective rights of co-owners.

Under civil law, Article 1122-bis of the Italian Civil Code allows each condominium owner to install renewable energy systems on the shared roof, provided that the installation does not compromise the building's stability, safety, or aesthetic integrity, and that equal use of the common parts by all co-owners is respected. However, the owner must give prior notice of the intended work to the building administrator, who is obliged to inform the condominium

assembly. The assembly may issue technical prescriptions but may not arbitrarily oppose the individual owner's initiative.

From a planning perspective, the applicable regulations vary depending on the type of installation. In general, integrated photovoltaic systems that are not visible from public streets are now classified as exempt from planning permission (*edilizia libera*) under Article 7-bis, paragraph 5, of Legislative Decree No. 28/2011, as amended by Law No. 34/2022. Nevertheless, where landscape restrictions apply, authorisation remains necessary if the panels are not fully integrated or are visible from public spaces. This interpretation was confirmed by the Council of State, Fourth Chamber, judgment No. 1341 of 18 February 2025, which upheld the lawfulness of a municipal refusal to authorise the installation of non-integrated, street-visible panels on a building located in a protected area pursuant to Article 136, paragraph 1, letters c) and d), of Legislative Decree No. 42/2004. In this decision, the Council of State further clarified that the exemption provided by Article 7-bis may only apply where two concurrent conditions are met: full architectural integration of the panels into the roof structure, and their complete invisibility from public viewpoints.

In condominium contexts, this implies that careful planning and landscape assessments are necessary even for interventions formally classified as "minor works," and that the absence of the required authorisation may lead to objections by administrative authorities and, in more serious cases, to orders for removal. In this respect, further legal evolution is desirable to ensure greater legal certainty and clearer harmonisation between environmental protection, landscape conservation, and the promotion of energy efficiency.

4.2 Photovoltaic Installations in Condominium Settings: Civil and Planning Law Profiles

The considerations outlined above apply equally to the regulatory framework governing photovoltaic installations in condominium contexts. Civil law and administrative law interact to provide a complex and articulated system aimed at balancing individual energy initiatives with collective ownership rights and public interests.

As previously noted, Article 1122-bis of the Civil Code permits individual condominium owners to proceed with the installation of renewable energy systems on the common parts of the building, provided certain safeguards are met. This provision reflects the legislator's desire to foster the spread of distributed generation systems, while preserving the structural and aesthetic integrity of the building and safeguarding the co-owners' equal usage rights.

From the urban planning perspective, the rules distinguishing between integrated and non-integrated systems remain decisive. Fully integrated systems that are invisible from public areas

fall within the scope of *edilizia libera* pursuant to Article 7-bis, paragraph 5, of Legislative Decree No. 28/2011, as amended by Law No. 34/2022. However, landscape authorisation remains mandatory where integration is absent or visibility exists. Once again, the Council of State's judgment No. 1341/2025 confirmed this approach, setting out strict criteria for both integration and visibility that must be simultaneously satisfied to benefit from exemption.

As a result, in condominium scenarios, even small-scale installations require careful scrutiny to ensure compliance with both planning regulations and landscape protection rules. The absence of the necessary authorisations may expose property owners to administrative challenges or, where applicable, removal orders. Therefore, it is desirable for future legislative developments to promote greater legal certainty and a better balance between environmental protection, landscape preservation, and energy efficiency objectives.

4.3 Photovoltaic Installations in Agricultural Areas: Landscape Constraints, Land Use, and Agrivoltaics

In the context of the energy transition, installing photovoltaic systems on agricultural land presents a particularly complex regulatory challenge that requires balancing renewable energy development with landscape protection and the preservation of the agricultural vocation of land. This legal framework has undergone significant evolution through national, regional, and judicial interventions.

National legislation imposes limits and conditions on ground-mounted photovoltaic systems in agricultural areas, ensuring compatibility with farming and livestock activities as well as with environmental and landscape constraints. In particular, Article 65 of Legislative Decree No. 199/2021 provides that photovoltaic installations in agricultural areas must be compatible with agricultural use and maintain the continuity of farming activities. Furthermore, Article 20, paragraph 8, of the same decree requires Regions to identify—within 180 days of the entry into force of the Ministerial Decree of 21 June 2024 (governing "suitable areas")—the areas where such systems may or may not be authorised.

An essential contribution to this regulatory framework is provided by the concept of agrivoltaics, developed initially in Ministerial Decree of 22 December 2022 and subsequently elaborated in Article 14 of Legislative Decree No. 190/2024. These provisions define agrivoltaic systems as installations that integrate innovative technologies to combine energy production with agricultural activity. The legislator imposes strict qualitative and functional requirements, including crop rotation, soil fertility preservation, environmental monitoring, and the adoption of non-invasive structural solutions. When these conditions are met, installations

may benefit from simplified procedures (DIA or PAS) and are deemed compatible with agricultural use.

Nonetheless, landscape considerations continue to represent a significant hurdle. Article 142 of Legislative Decree No. 42/2004 requires compliance with landscape protection rules even where no specific protection orders apply, necessitating careful assessment of visual impact and landscape integration. The Council of State's judgment No. 1341/2025 (Amalfitano v. Municipality of Ravello) reaffirmed that landscape authorisation remains necessary even for rooftop installations if panels are not fully integrated or are visible from public areas, and this principle applies even more stringently in open rural environments.

Additionally, Council of State, Fourth Chamber, judgment No. 466 of 16 January 2025 (Chiron Energy SPV 15 S.r.l. v. Region of Umbria) censured regional regulations introducing more restrictive conditions than those provided under national legislation. The Council of State held that Regions may not unduly aggravate the authorisation process or impose additional conditions, as energy and environmental matters fall under exclusive national jurisdiction, subject also to binding European decarbonisation targets.

In light of this case law and legislative framework, regulation of photovoltaic installations on agricultural land remains highly multilayered and still marked by significant uncertainty. It is therefore essential that future regulatory reforms—whether at national or regional level—ensure clarity, proportionality, and consistency with both constitutional and European principles, so that the energy transition does not occur at the expense of legal certainty or the protection of rural landscapes.

Chapter 5 – Concluding Remarks and Prospective Developments

The analysis developed in the preceding chapters clearly demonstrates that the legal framework governing photovoltaic installations in Italy currently stands at the intersection of often difficult-to-reconcile demands: on the one hand, the need to simplify and accelerate authorisation procedures to meet the European decarbonisation and energy transition objectives; on the other, the obligation to safeguard constitutional values related to environmental protection, landscape conservation, cultural heritage preservation, and the rights of private individuals—particularly in condominium and agricultural contexts.

The recent legislative reforms—most notably Legislative Decree No. 199/2021, Legislative Decree No. 210/2023, and, more recently, Legislative Decree No. 190/2024—demonstrate a deliberate effort, at least at the national level, to rationalise and coordinate the system. These measures introduce differentiated authorisation regimes, define suitable areas for installations,

and, in some cases, provide for full liberalisation of certain interventions. However, the practical effectiveness of these simplifications is often hindered by the persistent heterogeneity of regional regulatory frameworks, divergent administrative practices, and local regulatory excesses that risk frustrating the efficacy of national reforms.

In recent years, the administrative courts—particularly the Council of State (see judgments Nos. 4128/2025 and 466/2025)—have played a crucial role in reaffirming certain fundamental legal principles:

- the prohibition against Regions introducing additional procedural burdens not contemplated by national law;
- the importance of proportionality and reasonableness in balancing landscape and environmental restrictions;
- and the duty of public authorities to comply with the public interest objectives defined by EU legislation and transposed into domestic law.

This body of case law has served to restore equilibrium between various levels of government and to contain local regulatory deviations incompatible with European objectives.

Looking ahead, a more organic reform of multilevel energy governance is needed—one that incorporates these judicial lessons and ensures uniform application of fundamental legal norms. In particular, the adoption of binding inter-institutional coordination mechanisms, such as framework agreements between the State and the Regions, appears necessary to guide the identification of suitable areas and the definition of siting criteria in accordance with the Ministerial Decree of 21 June 2024.

From a legislative perspective, the forthcoming revision of the PNIEC (Integrated National Energy and Climate Plan), expected by the end of 2025, along with the implementation of measures envisaged under the new European "Fit for 55" package, will play a decisive role. In this context, authorisation simplification must not result in uncritical deregulation, but should instead be supported by advanced environmental planning instruments, strategic assessment frameworks, and monitoring mechanisms, potentially integrating artificial intelligence and geo-referenced territorial modelling.

Particular attention must also be paid to the evolution of energy production and consumption models: renewable energy communities, collective self-consumption, agrivoltaic systems, and the integration of photovoltaics into condominium and urban settings represent the new frontier. These models require not only regulatory adaptations but also a cultural shift in how citizens perceive their role as *prosumers*—that is, as both producers and consumers of energy.

In conclusion, photovoltaics can no longer be regarded merely as a technological sector: it has become a systemic lever for transforming public policy, institutional dynamics, and legal relationships between public and private actors. Successfully governing its development means combining simplification with safeguards, efficiency with fairness, environmental sustainability with social cohesion. It is within this delicate but necessary synthesis that the credibility of Italy's energy transition will ultimately be measured.