

Subject: Notice of availability of state property areas within the Port of Taranto for the construction of solar energy production plants pursuant to Italian Legislative Decree 387/2003 and subsequent amendments - Clarifications

This Administration, with the aforementioned notice, intended only to announce the availability of state property areas to be allocated for the construction of onshore and offshore solar energy production plants. This by making explicit the energy needs of the Port Network Authority itself and indicating the elements of interest for the expression of the relevant opinion within the procedure pursuant to Article 12 of Italian Legislative Decree 387/2003 and subsequent amendments (see Article 4 of the “notice”).

For any technical evaluation useful to support the project design choices of the economic operators, the following additional elements are provided.

The new Port Master Plan of the Port of Taranto, amending the General Urban Development Plan (PRG) pursuant to Article 16 of Italian Regional Law 56/1980, was approved with Italian Decree No. 142 of 10/11/2021 by this Administration following the Regional approval with Resolution No. 1384 of the Italian Regional Council dated 23/07/2019.

For the approval of the amendment to the General Urban Development Plan (PRG), concerning the verification of urban standards pursuant to Article 5 of Italian Ministerial Decree 1448/1968, the Local Authority had to identify 45.35 hectares of public green areas and/or parking areas within a B2.10 homogeneous territorial zone (ZTO) (area for public interest services with port designation) with the following distribution:

<i>Destinazione di PRP</i>	<i>Destinazione di PRG corrispondente</i>	<i>quantità</i>
<i>CTE</i>	<i>Verde interno B2.10</i>	<i>9.71 Ha</i>
<i>INT – 2 residuo</i>	<i>Verde interno B2.10</i>	<i>2.61 Ha</i>
<i>Rotonde all'interno delle strade</i>	<i>Verde interno B2.10</i>	<i>1.50 Ha</i>
<i>IND-PRO-TRA (solo colmata verde)</i>	<i>Verde interno B2.10</i>	<i>35.00 Ha</i>
<i>Tot.</i>		<i>48.82 Ha</i>
<i>Ase-2</i>	<i>Parcheggio interno B2.10</i>	<i>11.39 Ha</i>
<i>VDO-3</i>	<i>Parcheggio interno B2.10</i>	<i>3.16 Ha</i>
<i>A-14 residuo</i>	<i>Parcheggio interno B2.10</i>	<i>0.25 Ha</i>
<i>Tot.</i>		<i>14.80 Ha</i>
		<i>63.62 Ha > 45.35 Ha</i>

In this regard, it is communicated that in the area identified as IND-PRO-TRA (limited to the reclamation basin only), there is an obligation to comply with urban standards pursuant to Italian Ministerial Decree 1444/1968, to be evaluated within the framework of drafting the technical proposal to be presented in addition to what is prescribed by the Port Master Plan.

With reference to the questions received regarding the “Notice” in question, it should be clarified that the procedure for obtaining the single authorisation pursuant to Article 12, paragraph 3 of Italian Legislative Decree 387/2003, falls under the competence of the Ministry of the Environment and Energy Security (MASE) and that therefore any more specific requests for information can be addressed to the aforementioned Ministry. Given this, in the spirit of collaboration, the following responses are provided.

QUESTION NO. 1

1. The communication in question repeatedly mentions that the single authorisation for the construction of the plants in question, pursuant to Article 12 of Italian Legislative Decree No. 387/2003, will be issued by the Ministry of the Environment and Energy Security (MASE).

However, upon closer inspection, the MASE is the competent authority for issuing the aforementioned single authorisation only for the part of the plant to be built offshore. This does not

seem to apply to the remaining part to be built onshore, which, according to the current regulations in the Apulia Region, falls under the competence of the Province of Taranto.

Therefore, it is requested to clarify whether:

- if an operator wishes to build a plant only *onshore*, the competent authority is the Province of Taranto (or another authority different from MASE);
- if an operator wishes to build a plant both *onshore* and *offshore*, how should the authorisation process be managed in your opinion.

ANSWER

As reiterated in point 2 of the notice: *“The request may concern either the entire available area or a portion of it, depending on the solution identified by the applicant, which must still meet the specific needs of the Port Network Authority of the Ionian Sea and take into account the cold ironing plants being constructed in public areas (San Cataldo Pier) and the requirements of the port companies”.*

The onshore area alone does not seem sufficient to meet the required energy demand, unless the applicant provides specific and detailed evaluations of the technology of the plants they intend to build.

The Ministry competent for issuing the single authorisation pursuant to Article 12, paragraph 3 of Italian Legislative Decree 387/2003, within the framework of the services conference, will involve all interested Authorities in the areas of competence, including the Region and/or Province, as well as the Port Network Authority of the Ionian Sea/Harbour Master’s Office for aspects related to the issuance of the state concession.

QUESTION NO. 2

2. Article 1, paragraph 2, of Italian Law Decree No. 153/2024 provides that *“for renewable energy production projects, the applicant shall attach to the application for the environmental impact assessment (EIA) pursuant to Article 23 of Italian Legislative Decree No. 152 of 2006, a declaration attesting to the legitimate availability, on any basis, of the land area and, if necessary, the resources required for the implementation of the projects”.*

It is therefore requested to clarify whether, for the purposes of initiating the environmental impact assessment procedure in relation to the project – regardless of whether it involves only the offshore part, the onshore part, or both – the applicant is required to submit an application to this Authority for the issuance of the maritime state concession, pursuant to Articles 5 and following of the Regulation for the implementation of the Navigation Code.

ANSWER

As is known, renewable energy production plants with a capacity of more than 10 MW can be built – pursuant to Article 4 of Italian Legislative Decree No. 28 of 3 March 2011, as amended – through a single authorisation procedure pursuant to Article 12 of Italian Legislative Decree No. 387/2003, and subsequent amendments, together with the associated works and the infrastructure necessary for the construction and operation of the plants themselves.

Pursuant to Article 12, paragraph 3 of the aforementioned Decree, within thirty days of receiving the authorisation application, the competent authority convenes the services conference, involving all interested authorities. The issuance of the authorisation constitutes a title to build and operate the plant in accordance with the approved project.

In light of the above, also considering the complex and constantly updated regulatory framework, the Port Network Authority of the Ionian Sea suggests that the economic operator formulate a specific question to

the competent Authority on the possibility of submitting the environmental impact assessment application simultaneously with the aforementioned single authorisation application.

QUESTION NO. 3

3. In the case of an affirmative response to the request under point 2), please indicate the level of detail of the design to be attached to the application for the issuance of the maritime state concession.

ANSWER

The level of detail of the technical documentation to be produced within the framework of the procedure for obtaining the single authorisation is sufficient for the Port Network Authority to carry out the evaluations concerning the issuance of the state concession within the framework of the aforementioned procedure under the competence of the Ministry of the Environment and Energy Security (MASE).

QUESTION NO.4

4. A notice regarding the same topics (and the same areas) had already been published by the Port Network Authority of the Ionian Sea at the beginning of 2023, in which the Port of Taranto invited applicants to submit any expressions of interest by 08/06/2023 (exploratory public notice attached).

However, the same offshore area was already the subject of a floating solar initiative by Severini, through the company Nicetechnology Srl, a project that had completed its scoping phase in January 2023.

Nicetechnology had therefore challenged the initiative; the Regional Administrative Court (TAR) on 23/06/2023 ruled in favour of Nicetechnology, cancelling the exploratory public notice (attached judgement). What changes have occurred in the meantime?

ANSWER

With an appeal notified on 21/04/2023, the company Nicetechnology challenged before the Regional Administrative Court (TAR) of Apulia, Lecce Division, requesting the annulment of the *“Exploratory Public Notice for the submission of expressions of interest for the identification of a promoter of a public-private partnership, pursuant to Article 183, paragraphs 15 and 16 of Italian Legislative Decree 50/2016, aimed at awarding a concession for the design, construction, management and maintenance of renewable energy production plants on state property land”*. This appeal was upheld by the first instance judge with brief judgement No. 811, dated 23/06/2023, which, therefore, annulled the published notice. The Port Network Authority of the Ionian Sea promptly filed an appeal with the Council of State seeking the overturning of the first instance judgement. The Council of State, definitively ruling, with judgement No. 5026, published on 05/06/2024, upheld the appeal of the Port Network Authority of the Ionian Sea and, consequently, in overturning the judgement of the Regional Administrative Court (TAR) of Lecce, rejected the first instance appeal. In particular, the Supreme Administrative Court, upholding the arguments of the Port Network Authority of the Ionian Sea and considering its actions legitimate, stated that *“...The challenged public notice falls fully within the competence of the Port Network Authority, as the purpose of the same is the identification of a partner with whom to initiate a process aimed at obtaining the single authorisation. No part of the notice challenged at first instance contains any rule in contrast with the distribution of competences established by Italian Legislative Decree 387 of 2003...”*.

Link to the mentioned sentence of the Council of State: https://portali.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza/?nodeRef=&schema=cds&nrg=202306655&nomeFile=202405026_11.html&subDir=Provvedimenti