Metodo Giuridico
Ius et Ratio • ISSN 3103-7305

ITALIAN JOURNAL OF LAW & CASE LAW • ISSN 3103-7305
CASE NOTE • ADMINISTRATIVE LAW & ENVIRONMENT & ENERGY • 13 NOVEMBER 2026

# Administrative Inaction in Environmental Impact Assessment for Renewable Energy

*The Council of State (Judgment no. 1615/2026) reaffirms the mandatory nature of Single Environmental Measure time limits, establishes the minimum two-fifths quota for non-priority projects, and upholds horizontal silence-as-assent vis-à-vis the Ministry of Culture*

PV Paola De Virgiliis Administrative Law & Environment & Energy 13 November 2026

Reading time 10 min

**Current Legal Framework as of 10 November 2026:** The Council of State (*Consiglio di Stato*) consolidates the system of judicial remedies against ministerial inaction in Environmental Impact Assessment (EIA) proceedings for renewable energy power plants, clarifying the interplay between mandatory statutory time limits, priority scheduling quotas under the Integrated National Energy and Climate Plan (PNIEC) introduced by Law Decree no. 153/2024, and the operation of horizontal silence-as-assent in inter-ministerial co-decision procedures.

## ABSTRACT

This article examines the judgment of the Council of State (*Consiglio di Stato*, Judgment no. 1615/2026) addressing the unlawful administrative inaction of the Ministry of the Environment and Energy Security within the framework of the **Single Environmental Measure (PUA)** procedure for a 19.42 MW agrivoltaic power plant. The ruling reaffirms that the mandatory nature of procedural time limits under Article 25(7) of Legislative Decree no. 152/2006 constitutes a **non-derogable legal duty** that survives the PNIEC acceleration reforms by virtue of the express non-regression and safeguard clause enshrined in Article 3-bis of the Italian Environmental Code. The judicial order to issue an express determination is tailored to operate within the **statutory quota reserved for non-priority projects** (no less than two-fifths of total files examined), whereas the failure of the Ministry of Culture to issue a timely opinion is overcome through the **horizontal silence-as-assent mechanism** governed by Article 17-bis of Law no. 241/1990.

## Key Takeaways

- **Functional mandatory character of procedural deadlines:** Article 25(7) of Legislative Decree no. 152/2006 classifies all EIA time limits as mandatory; although their expiry does not entail the statutory forfeiture (*decadenza*) of administrative power, it establishes unlawful administrative inaction (*silenzio-inadempimento*) actionable under Article 31 of the Code of Administrative Judicial Procedure.
- **Prohibition against implied repeal:** Pursuant to Article 3-bis(3) of the Italian Environmental Code, the PNIEC and NRRP priority criteria introduced by Law Decree no. 153/2024 can neither suspend nor tacitly repeal the binding obligation to conclude proceedings within statutory deadlines for smaller-scale projects.
- **Minimum two-fifths quota:** The statutory cap reserving no more than three-fifths of scheduling slots to priority projects guarantees that at least two-fifths of administrative reviews must be allocated to non-priority applications, thereby shaping the scope of the administrative court's remedial order.
- **Horizontal silence-as-assent in inter-ministerial co-decision:** Inaction on the part of the Ministry of Culture does not bar the issuance of the single environmental measure, as the statutory presumption of assent under Article 17-bis of Law no. 241/1990 applies in coordination with the autonomous decision-making duty of the Ministry of the Environment under Article 25(1) of the Environmental Code.

**CASE DOSSIER**

JURISDICTION
**Italy (Civil Law)**

SUBJECT AREA
**Administrative Law & Environment & Energy**

LEADING DECISION
Council of State ( Consiglio di Stato ), Judgment of 12 February 2026, no. 1615 — Outcome: ministries' appeal dismissed. Para.: m

## Legal Principle / Editorial Headnote

*The mandatory nature of Environmental Impact Assessment time limits requires the competent administration to issue an express decision within the statutory quota reserved for non-priority projects, while horizontal silence-as-assent governs inter-ministerial co-decision whenever a timely express opinion is lacking.*

## 01. FACTUAL BACKGROUND AND THE DISPUTE OVER THE AGRIVOLTAIC PLANT

The wording of Article 27(6) of Legislative Decree no. 152 of 3 April 2006, in delineating the timeframe of the inter-agency steering conference (*conferenza di servizi*) for the Single Environmental Measure (*Provvedimento Unico in materia Ambientale* — PUA), subjects the competent authority to a **strict mandatory time limit**, the breach of which converts functional delay into an unlawful act. Whenever **administrative inaction in an Environmental Impact Assessment (EIA) procedure** materialises, administrative law confronts the paralysis of private entrepreneurial initiative — particularly in the renewable energy sector, where the **timeliness of the administrative investigation** directly governs the **economic viability** of infrastructure investments. The dispute brought before the Council of State (*Consiglio di Stato*) originated from an application filed on 1 April 2022 by an energy company seeking the issuance of a Single Environmental Measure for the construction and operation of an **agrivoltaic power plant** with a **nominal capacity of 19.42 MW** in the Municipality of Santeramo in Colle, in the Province of Bari, together with the associated grid connection infrastructure.

The proposed facility contributed to implementing the **Integrated National Energy and Climate Plan (PNIEC)** and consolidated, alongside the state-level **environmental assessment**, both the **landscape authorisation** and the cultural heritage clearance governed by Articles 21 and 146 of the Cultural Heritage and Landscape Code. Nevertheless, following the formal **declaration of admissibility and completeness** communicated by the competent Directorate-General of the Ministry of the Environment and Energy Security (*Ministero dell'Ambiente e della Sicurezza Energetica* — MASE) in March 2023, the **decision-making inter-agency conference** — formally convened in October of that same year — failed to conclude its proceedings by the **non-derogable deadline** of 16 May 2024, calculated in accordance with the **special 210-day statutory period**.

Faced with protracted non-compliance and after repeated formal notices to act remained unanswered, the project developer brought the **special judicial action against administrative inaction** provided by Article 31 of the Code of Administrative Judicial Procedure before the Regional Administrative Court (*TAR*) for Apulia. The court of first instance upheld the claim seeking a **declaratory judgment of unlawful administrative inaction**, dismissing the **plea of supervening inadmissibility** raised by State Counsel: the transmission of a favourable technical report to the Ministry of Culture for co-decision purposes constituted a **purely preparatory intra-procedural act**, incapable either of terminating administrative inertia or of substituting for an express final measure. Unlike other branches of administrative law where official inaction results in regularisation or tacit authorisation of private activity — a dynamic observable in the case-law evolution concerning building permits and the formation of silence-as-assent —, within environmental law Article 20(4) of Law no. 241 of 7 August 1990 **precludes implied assent** in vertical relations between public authorities and private applicants, making it mandatory to classify the omission as **unlawful administrative inaction** (*silenzio-inadempimento*).

The joint appeal lodged by the Ministry of the Environment and Energy Security and the Ministry of Culture reopened the debate over the boundaries of judicial review, contending that recent statutory reforms governing **priority scheduling** for PNIEC applications had introduced an **implied suspension of procedural deadlines** for power plants below 50 MW. Dismissing the ministries' appeal, the Council of State (*Consiglio di Stato*)[1] clarified the architecture of procedural safeguards, confirming that the fruitless expiry of the statutory timetable constitutes an **actionable breach of the duty to decide** regardless of the **installed capacity** of the proposed facility.

## 02. MANDATORY PROCEDURAL DEADLINES AND ADMINISTRATIVE INACTION IN EIA PROCEEDINGS

The unambiguous wording of **Article 25(7)** of Legislative Decree no. 152/2006, which provides that all time limits within the EIA procedure are deemed **mandatory** (*perentori*) within the meaning and for the purposes of Articles 2 and 2-bis of Law no. 241/1990, establishes a binding rule governing the timeliness of administrative action. That statutory command cannot be reduced to a mere stylistic formula or an aspirational guideline devoid of binding force; rather, it represents an **indispensable statutory safeguard** designed to guarantee **temporal certainty** in the examination of permitting applications.

### 2.1 — Regulatory Nature of Deadlines and the Prohibition Against Implied Repeal

A systematic analysis of the statutory regime reveals a **functional mandatory character** that administrative case law describes as distinctive. In environmental impact and ecological compatibility assessments, the expiry of the statutory period neither triggers the **statutory forfeiture (*decadenza*) of administrative decision-making power** nor generates silence-as-assent between private applicants and the proceeding authority, owing to the express exemption laid down in Article 20(4) of the general administrative procedure statute. The defaulting administration does not lose its substantive

competence to decide, yet the lapse of the mandatory deadline exhausts the lawful period of administrative deliberation and crystallises **unlawful administrative inaction** (*silenzio-inadempimento*), entitling the developer immediately to bring a **judicial action** against **administrative inaction in the EIA procedure** under Article 31 of the Code of Administrative Judicial Procedure, as well as to seek **compensatory damages for delay** under Article 2-bis of Law no. 241/1990.

Against the ministries' arguments claiming that **PNIEC priority criteria** had weakened the binding nature of procedural deadlines for non-priority facilities, the legal framework interposes the non-derogable principle set out in **Article 3-bis(3)** of the Environmental Code. Under that provision, environmental legislation may be derogated from, amended, or repealed solely by **express statutory declaration** enacted by subsequent laws of the Republic, thereby **excluding implied repeal by incompatibility** under Article 15 of the Preliminary Provisions to the Civil Code. This **interpretive canon** — previously reaffirmed by the Council of State (*Consiglio di Stato*) when rejecting the contention that mandatory EIA deadlines yield before PNIEC priority rules[2] — bars courts and authorities alike from inferring generalised exemptions or tacit suspensions that Parliament chose not to enact in express terms.

### 2.2 — Scope of Application and Distinguishing Remedial Regimes

Within this framework lies the necessary **distinguishing** analysis vis-à-vis **administrative penalty proceedings** or non-discretionary licensing regimes. Unlike sanctioning proceedings — where the fruitless expiry of a mandatory time limit permanently extinguishes the public authority's punitive power —, in EIA procedures the lapse of time does not exhaust ministerial technical jurisdiction; on the contrary, the mandatory rule in Article 25 shapes the **legal duty to rule** and grounds the developer's legitimate interest (*interesse legittimo*) in obtaining an **express administrative determination**. The defensive theory advanced by the state ministries — according to which priority ranking tied to higher plant capacity introduced an **automatic *ex lege* suspension** of deadlines for projects falling below **capacity thresholds** — has no basis in positive law and has likewise been dismissed as unfounded in recent rulings of the Council of State (*Consiglio di Stato*)[3], since the mandatory duty of public authorities to act cannot be subordinated to an implied moratorium devoid of statutory foundation.

> Mandatory environmental time limits do not extinguish administrative decision-making power; rather, they bind public authorities to effective judicial enforcement against bureaucratic inaction.

In litigation, the **burden of proof** resting on counsel for the applicant company centres on demonstrating the timely filing of the application, the formal **declaration of admissibility**, and the expiry of the time limits for concluding the inter-agency conference under Article 27 of the Environmental Code. Counsel is under no obligation to prove the absence of an **administrative backlog** before the Technical Commission, since it rests upon the public authority to organise its decision-making workflows in compliance with statutory deadlines. Furthermore, from the standpoint of energy planning, mandatory federal-level procedural timelines operate in harmony with the principles governing the allocation of competences between the State and the Regions over suitable renewable energy areas, presupposing **loyal and timely institutional cooperation** across all administrative tiers involved.

## 03. PNIEC PRIORITY QUOTAS AND INTER-MINISTERIAL CO-DECISION

The text of **Article 8(1-ter)** of Legislative Decree no. 152/2006 — inserted by Article 1(1)(a)(2) of **Law Decree no. 153 of 17 October 2024**, converted with amendments into Law no. 191 of 13 December 2024 — governs the **scheduling of environmental applications** through a strict **proportional allocation rule**. That provision determines the order in which projects are examined by assigning specific review quotas to the Technical Commission, thereby structuring the lawful exercise of administrative discretion.

### 3.1 — The Minimum Two-Fifths Reserve for Non-Priority Projects

Close examination of the statutory text reveals that priority projects are allocated a **quota not exceeding three-fifths** of overall administrative reviews. By establishing an explicit, insurmountable upper ceiling, the legislature logically and systematically mandated that the remaining share of **at least two-fifths** must be devoted to processing **projects other than priority ones** — a category encompassing photovoltaic and agrivoltaic installations with an installed capacity below 50 MW. Accordingly, the 2024 reform did not enact an absolute preference in favour of large-scale energy infrastructure, but rather instituted a **pre-calibrated statutory balance** aimed at safeguarding the viability of medium-sized renewable investments.

Administrative case law has made clear that this statutory framework in no way entitles the competent ministry to defer ordinary proceedings indefinitely. As clarified by the Council of State (*Consiglio di Stato*)[4], applications concerning non-priority PNIEC projects must be scheduled in **strict chronological order** within the quota of at least two-fifths reserved to them, without any influx of strategic applications being allowed to paralyse the completion of smaller files. Far from encroaching upon administrative discretion or subverting statutory priorities, the **judicial tailoring of the order to decide** requires the Ministry of the Environment to examine the project within that reserved contingent — including, where necessary, by convening **extraordinary sessions** of the EIA-SEA Technical Commission — so as to prevent **administrative inaction in the EIA procedure** from resulting in an irreversible breach of **equal treatment** among market operators.

### 3.2 — Overcoming Inaction by the Ministry of Culture: Horizontal Silence-as-Assent and Remedies

The issue surrounding the non-completion of the **co-decision (*concerto*) with the Ministry of Culture** directly engages the mechanics of **inter-ministerial coordination** within the Single Environmental Measure. State Counsel argued that the fruitless expiry of the deadline for issuing the ministerial co-decision under Article 25(2-bis) of Legislative Decree no. 152/2006 could not trigger the **horizontal silence-as-assent** governed by **Article 17-bis of Law no. 241/1990**, contending that paragraph 2-quater of that same Article 25 establishes an exclusive mechanism for activating **substitutive powers** via **devolutive referral**, allegedly incompatible with the formation of tacit inter-agency assent.

The Council of State (*Consiglio di Stato*)[1] rejected that restrictive interpretation, affirming the full compatibility and **operational complementarity** between Article 17-bis of the general administrative procedure statute and Article 25(2-quater) of the Environmental Code. Article 17-bis(3) expressly extends intra-procedural silence-as-assent to authorities entrusted with **landscape and cultural heritage protection**, whilst Article 25(1) stipulates that, where opinions or expressions of dissent are not issued within the prescribed period, the proceeding authority **shall nonetheless proceed with the assessment**. Consequently, a **belated opinion from the Superintendency (*Soprintendenza*)** neither prevents horizontal silence-as-assent from crystallising nor constitutes a lawful impediment to concluding the procedure. With respect to **judicial remedies**, where **administrative inaction in the EIA procedure** persists, the administrative

court orders the conclusion of the proceedings within a **mandatory deadline** — appropriately set at ninety days — while simultaneously providing for the **appointment of a special commissioner (*commissario ad acta*)** upon the applicant's request to step in and cure ministerial inertia.

## 04. CONCLUSIONS

The interpretive settlement consolidated by the Council of State (*Consiglio di Stato*) establishes an essential equilibrium in the delicate tension between accelerating the **ecological transition** and upholding the **principle of procedural legality**. Establishing fast-track lanes for strategic energy infrastructure cannot be permitted to nullify guarantees of temporal certainty for medium- and smaller-scale installations, which contribute in equal measure to achieving statutory **decarbonisation targets**.

Classifying **mandatory environmental deadlines** as a non-derogable functional duty, alongside the rigorous enforcement of horizontal silence-as-assent between public administrations, preserves the **effectiveness of judicial protection**, confirming that administrative courts possess adequate remedial powers to overcome bureaucratic inertia without altering the **statutory allocation of administrative competences**.

### References & Authorities Cited

#### Statutory Provisions

- Articles 8, 25 and 27 of Legislative Decree no. 152 of 3 April 2006 — Italian Environmental Code: priority scheduling criteria for application review, mandatory nature of Environmental Impact Assessment procedural deadlines, and rules governing the Single Environmental Measure (PUA).
- Articles 2, 2-bis and 17-bis of Law no. 241 of 7 August 1990 — General Administrative Procedure Act: timeliness of administrative action, liability for damages arising from administrative delay, and horizontal silence-as-assent between public authorities.
- Articles 31 and 117 of Legislative Decree no. 104 of 2 July 2010 — Code of Administrative Judicial Procedure: judicial action against unlawful administrative inaction and the corresponding special fast-track procedure.

#### Case Law Cited

1. **Council of State (*Consiglio di Stato*), Judgment of 12 February 2026, no. 1615** — Outcome: ministries' appeal dismissed. Para.: mandatory EIA deadlines require the administration to issue an express decision within the statutory quota reserved for non-priority projects, while horizontal silence-as-assent applies to inter-ministerial co-decision.

2. **Council of State (*Consiglio di Stato*), Judgment of 22 April 2025, no. 3465** — Outcome: applicant company's appeal upheld. Para.: priority criteria governing the order of examination of environmental applications neither derogate from the mandatory character of EIA completion deadlines nor introduce generalised statutory suspensions.

3. **Council of State (*Consiglio di Stato*), Judgment of 23 July 2025, no. 6616** — Outcome: applicant company's appeal upheld. Para.: prohibition of implied repeal under Article 3-bis of the Environmental Code and exclusion of any automatic statutory suspension of procedural deadlines for photovoltaic plants with a capacity below 70 MW.

4. **Council of State (*Consiglio di Stato*), Judgment of 22 July 2025, no. 6503** — Outcome: ministries' appeal dismissed. Para.: characterisation of the *sui generis* mandatory nature of EIA time limits and statutory reservation of a minimum two-fifths scheduling quota for non-priority PNIEC projects.

PV

**Paola De Virgiliis**

AUTHOR • METODO GIURIDICO

Focuses on public procurement and public contracts. For Metodo Giuridico she curates the analysis of public procurement legislation and related administrative case law.