METODO GIURIDICO — IUS ET RATIO
ISSN 3103-7305
Italian Journal of Law & Case Law • International English Edition (Rome, Italy)
DIAMOND OPEN ACCESS • ENGLISH EDITION

SEC. II • CASE NOTE & OBSERVATORY • ENVIRONMENTAL & ENERGY LAW
Vol. 1, Issue 3 (2026) • Art. 7305 • pp. 1–8 • §§ 1–29

Solar Plants under PAS: Preliminary Sale Contracts and Grid Connection Works

Original Italian Title: Fotovoltaico in PAS, preliminare e opere di connessione elettrica

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Published: November 23, 2026 • Collegial Review & Primary-Source Audit (Sec. II) • Full Text: pp. 1–8 (§§ 1–29)

ABSTRACT
Council of State judgment no. 7126/2026 clarifies standing requirements in the simplified enabling procedure (PAS) for photovoltaic plants and grid connection works. The administrative court adopts a functional notion of site availability: a preliminary sale contract coupled with a third-party nomination under art. 1401 of the Italian Civil Code and specific performance remedies under art. 2932 proves standing for a PAS filing, provided it grants immediate powers for technical surveys and permitting applications. Conditions precedent governing the final conveyance do not impair such immediate powers. Nevertheless, the Council of State reverses the first-instance ruling and dismisses the developer's claim because the applicant failed to prove legal title over a 400-meter third-party strip required for the grid connection cable. Since site availability for connection works constitutes a mandatory statutory prerequisite already encompassed by the municipal refusal, raising this defect in court does not breach the ban on ex post administrative reasoning.

HOW TO CITE THIS PAPER (OSCOLA 4TH ED. / THE BLUEBOOK 21ST ED.)
OSCOLA: Bruno Taverniti, 'Solar Plants under PAS: Preliminary Sale Contracts and Grid Connection Works' (English edn, 2026) 1(3) Metodo Giuridico (ISSN 3103-7305) Art 7305, 1–8 <https://www.metodogiuridico.it/2026/11/23/fotovoltaico-pas-contratto-preliminare-opere-connessione-consiglio-stato-7126-2026/en/> DOI: 10.5281/zenodo.24465860 accessed 23 November 2026.

Bluebook: Bruno Taverniti, Solar Plants under PAS: Preliminary Sale Contracts and Grid Connection Works, 1 Metodo Giuridico, no. 3, Nov. 23, 2026, art. 7305, at 1 (Eng. ed.), https://www.metodogiuridico.it/2026/11/23/fotovoltaico-pas-contratto-preliminare-opere-connessione-consiglio-stato-7126-2026/en/ (https://doi.org/10.5281/zenodo.24465860).

Persistent DOI:	**10.5281/zenodo.24465860 (https://doi.org/10.5281/zenodo.24465860) — CERN DataCite / Zenodo**
Canonical URL:	https://www.metodogiuridico.it/2026/11/23/fotovoltaico-pas-contratto-preliminare-opere-connessione-consiglio-stato-7126-2026/en/
Italian Original:	https://www.metodogiuridico.it/2026/11/23/fotovoltaico-pas-contratto-preliminare-opere-connessione-consiglio-stato-7126-2026/
AEA JEL Codes:	K32 (Energy, Environmental, Health, and Safety Law); K23 (Regulated Industries and Administrative Law)
EU EuroVoc:	MT 5206 environmental policy • administrative law [517]; environmental law [535]; energy law [534]
Key Case Law ECLI:	**ECLI:IT:CDS:2026:7126SENT • ECLI:IT:CDS:2023:130SENT • ECLI:IT:CDS:2024:3990SENT**

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Metodo Giuridico
Ius et Ratio • ISSN 3103-7305

CASE NOTE • ADMINISTRATIVE LAW & ENVIRONMENT & ENERGY

ISSN 3103-7305 • 23 NOVEMBER 2026

Solar Plants under PAS: Preliminary Sale Contracts and Grid Connection Works

The Italian Council of State (Judgment no. 7126/2026) admits preliminary contracts with immediate survey powers for PAS filings, but upholds refusal where legal title over grid connection land is lacking.

CASE DOSSIER

COURT
Council of State (Consiglio di Stato)

DECISION
Judgment no. 7126/2026 decided on 17 September 2026

KEY PROVISIONS
Legislative Decree no. 28 of 3 March 2011, Article 6 • Italian Civil Code, Articles 1401 and 2932 • Legislative Decree no. 104 of 2 July 2010 (c.p.a.), Articles 44, 119, and 136

HOLDING
upheld appeal as reasoned and dismissed first-instance action, costs compensated

JEL: K32, K23 • EuroVoc: 517, 535 • Reading 10 min

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ISSN 3103-7305

LEGAL PRINCIPLE / EDITORIAL HEADNOTE

In photovoltaic PAS proceedings, a preliminary sale contract granting immediate investigative powers proves site availability, but standing fails if legal title over the land required for grid connection works is missing.

KEY TAKEAWAYS

01 Contractual availability under PAS
A preliminary contract with a nomination clause under Article 1401 c.c. establishes standing for PAS if it grants immediate procedural powers and ensures specific performance under Article 2932 c.c.

02 Conditions precedent and possession
Conditions precedent attached to the final deed do not deprive the developer of the procedural availability required during the permitting stage.

03 Grid connection works on third-party land
Standing for PAS extends to all land crossed by the grid connection route, failing which the project must be rejected.

04 Reasoning in court
Missing title over connection land concerns an objective mandatory requirement already covered by the refusal and may be specified in court without breaching the ban on ex post reasoning.

ABSTRACT

Council of State (*Consiglio di Stato*) Judgment no. 7126/2026 clarifies standing boundaries in the simplified enabling procedure (PAS) for **photovoltaic plants and grid connection works**. The administrative court adopts a functional notion of site availability: a **preliminary sale contract** backed by a third-party nomination under Article 1401 of the Italian Civil Code and specific performance under Article 2932 establishes standing for PAS, provided it grants immediate powers for technical surveys and administrative filings. Conditions precedent governing the final conveyance and seller preservation covenants do not defeat those powers. The first-instance action is nevertheless dismissed on a separate ground: lack of legal title over third-party land crossed by the grid connection cable. The Panel rejects any breach of the ban on **ex post reasoning**, treating coverage of the cable route as a mandatory statutory prerequisite already encompassed by the municipal refusal. The article compares this outcome with conflicting first-instance and appellate case law.

COMPARATIVE & EUROPEAN LEGAL FRAMING

Institutional & EU Nexus: The Council of State (*Consiglio di Stato*) construes Article 6 of Legislative Decree no. 28/2011 within the EU renewable-energy simplification framework, balancing rapid permitting for solar plants against strict statutory standing over both generation sites and grid-connection corridors. **Comparative Common Law Lens:** Whereas Common Law planning systems generally decouple land-use permission from private-law proprietary title until compulsory-purchase or wayleave acquisition, Italian administrative law requires upfront legal availability (*disponibilità giuridica*) of both plant plots and connection routes as a condition of admissibility for simplified declarations (*PAS / SCIA*), while recognizing an enforceable preliminary sale agreement backed by specific performance (Article 2932 c.c.) as sufficient for the plant site.

01. INTRODUCTION: COUNCIL OF STATE JUDGMENT NO. 7126/2026

By Judgment no. 7126/2026, the Council of State (*Consiglio di Stato*)[1] draws a sharp line between the plant site and the land required for **electrical infrastructure**. In simplified enabling proceedings for **photovoltaic plants and grid connection works**, contractual title over the generation plot follows a functional test, whereas the cable route across third-party land demands strict proof.

§ 2 The ruling reverses the first-instance judgment and dismisses the developers' action despite rejecting the main ground on the preliminary contract. The appellate court upholds the sufficiency of a **preliminary sale contract with a nomination clause** and immediate investigative powers, yet penalises the lack of **real or personal rights** over the initial segment of the cable line.

§ 3 This decision directly affects the evidentiary soundness of simplified permitting filings and the scope of administrative defences in court. Assessing **procedural standing** requires separating **preparatory powers** from documentary proof of **external crossing rights**.

02. BACKGROUND, APPEAL, AND PRELIMINARY ISSUES

2.1 — The PAS Filing, Municipal Refusal, and Reversal of the Brescia Regional Administrative Court

§ 4 On 10 March 2025, Solare Verolanuova S.r.l. filed a **simplified enabling procedure (PAS)** application with the Municipality of Verolanuova under Article 6 of Legislative Decree no. 28/2011 for a photovoltaic plant of roughly 5,000 kWp[1]. To prove site availability, the applicant submitted the preliminary contract signed on 11 August 2023 by GPN Renewable S.r.l. and the **nomination declaration** transcribed on 26 February 2025.

§ 5 After two requests for supplemental filings on 19 and 26 March 2025 answered by the company, the Municipality convened the **services conference** on 16 April 2025 and sought further clarifications on 9 June. By a **preliminary notice of refusal** of 13 June 2025 and negative determination prot. no. 10134 of 30 June 2025, the authority rejected the filing because the preliminary contract did not transfer **early possession** and conditioned completion on **conditions precedent** covering pre-emption rights and permits.

§ 6 Both companies challenged the refusal before the Regional Administrative Court (*TAR*) of Lombardy, Brescia branch. The court annulled the municipal acts and declared the plant buildable due to the **expiry of the statutory period**. The Municipality appealed on two grounds, alleging failure to prove availability of the plant land and of the electrical connection route.

§ 7 In summer 2026 briefs, the respondents objected that the appeal was scanned and signed with CAdES, while requesting an expedited ruling under Article 119(5) c.p.c./c.p.a. before the **contractual deadline** of 4 December 2026. The authority replied that the two-kilometre cable crossed **third-party private land** for its first 400 metres, whereas the companies classified Via Finiletto as a **public-use vicinal road**.

2.2 — CAdES Signature, Exemption under Article 136 c.p.a., and Joinder of Authorities

§ 8 Procedurally, the Panel rejects the inadmissibility objection tied to the **paper scan** and **CAdES digital signature** of the appeal. Article 136(2) and (2-bis) c.p.a. mandates electronic filing and digital signa-

ture, yet a technical irregularity does not void the pleading where authorship and defence rights remain intact. Rather than ordering **renewal of the pleading** under Article 44(2) c.p.a. – under which "If the application contains irregularities, the panel may order it to be renewed within a fixed time limit" – the judges grant a **reasoned exemption at the hearing**. Article 136(2) c.p.a. allows the court to "grant, by reasoned order, an exemption from the signature and filing rules" in exceptional circumstances.

§ 9 The exemption rests on three concrete facts: the appeal was duly served, the respondents filed full defences, and setting a formal cure period would have delayed judgment past the 4 December 2026 land-purchase deadline. The principle of **instrumentality of procedural forms** thus prevents **technical specifications** of electronic litigation from becoming standalone traps once **adversarial process** is fully achieved.

§ 10 Conversely, the Council of State denies the **dismissal from proceedings** sought by the State Attorney's Office for the Brescia Fire Brigade, the Heritage Superintendency, and the Ministry of Enterprises and Made in Italy. Those State bodies had been formally invited to the decision-making services conference under Article 14(2) of Law no. 241/1990. They are therefore not extraneous to the suit, notwithstanding the 2021 transfer of energy powers to the Environment Ministry. A clerical slip appears in the opinion: the Superintendency's note on **archaeological surveys** is dated 16 April 2026, one year later than the 16 April 2025 convocation.

03. PRELIMINARY CONTRACTS IN PHOTOVOLTAIC PAS AND GRID CONNECTION WORKS

3.1 — Preliminary Sale Contract, Nomination Clause, and Article 2932 c.c.

§ 11 The Municipality's first ground challenges the suitability of a preliminary contract to prove land availability under Article 6(2) of Legislative Decree no. 28/2011[1]. According to the municipal argument, the statute requires **holding a real right** or full current possession of the asset. The authority dismisses Legislative Decree no. 190/2024 as irrelevant and cites Article 5(2-bis), referred to in the pleadings with the misprint Legislative Decree no. 63/2004. The Council of State rejects the ground and sharply separates **availability** from **ownership**.

§ 12 The law confers standing for PAS on both the owner and anyone holding availability over the property affected by the plant and connected works. Solare Verolanuova had stepped into the original buyer's position via a transcribed declaration under Article 1401 of the Civil Code. That provision grants a party "the power to appoint subsequently the person who must acquire the rights and assume the obligations arising from the contract itself". This is therefore no mere factual expectancy. Breach by the seller is remedied through **specific performance** under Article 2932 of the Civil Code, by obtaining "a judgment producing the effects of the unexecuted contract".

§ 13 As already observed by the present author when examining termination remedies in preliminary contracts[D1] (Risoluzione del preliminare e caparra confirmatoria: recesso e danno), the preparatory agreement creates an **immediate binding obligation** directed toward final transfer. From an administrative standpoint, the appellate court requires that the contract grant the applicant immediate practical powers for technical investigation: site access, **subsoil surveys**, and authority to deal with public bodies.

Full **operational possession** to erect the solar modules becomes necessary only when construction begins.

§ 14 Neither the covenant binding the seller not to alter the site's condition nor the conditions precedent agreed by the parties undermine this result. The owner's **preservation and non-interference duties** strengthen the buyer's operational position during administrative review. As noted by Federico Palumbo in his study on conditional pathologies[D2] (Contratto preliminare e condizione risolutiva negativa), a conditioning event may govern final conveyance while leaving **instrumental clauses** immediately effective. Here, the suspensive term on the final deed did not bar technical access or the PAS filing.

§ 15 The Council of State's reading marks a clear departure from the restrictive stance taken by part of the first-instance administrative courts. The Regional Administrative Court of Lazio – Rome, in Judgment no. 1963/2025[2], denies that a preliminary contract proves site availability under PAS. That agreement creates only a **personal credit right** to execute the final deed, rather than a real or personal right of enjoyment. Moreover, the Roman court expressly censures the lack of **anticipatory effects** and the presence of a condition precedent. Along the same strict line, the Regional Administrative Court of Puglia – Bari no. 349/2025[3] requires upfront a **title suited to real rights** over the site and denies any duty to decide absent ownership.

3.2 — Grid Connection Works, Non-Discretionary Acts, and Limits on Ex Post Reasoning

§ 16 While the preliminary contract passes scrutiny for the solar field, the second ground of appeal overturns the first-instance ruling on the cable route. The project included a **connection line** of about two kilometres to the new substation, with the first 400 metres crossing third-party land. On that initial stretch, the companies had proved no **rights of way**, easements, or expropriation filings. That gap defeats the entire procedure for photovoltaic plants and grid connection works.

§ 17 Article 6(2) of Legislative Decree no. 28/2011 requires the applicant to hold availability over both the plant properties and connected works. The provision mirrors the **correspondence between title and project** laid down in Article 11 of Presidential Decree no. 380/2001. This consolidates the line set by Council of State Judgment no. 130/2023[4], whereby **prior availability** of connection works must pre-exist the PAS and cannot be deferred to future expropriation.

§ 18 The Brescia Regional Administrative Court had rejected the municipal defence as **inadmissible ex post reasoning** under the SCIA framework of Article 19 of Law no. 241/1990. Within the **statutory forfeiture period**, the authority "adopts reasoned orders prohibiting continuation of the activity and removing any harmful effects thereof", as reiterated by Council of State Judgment no. 3990/2024[5]. The appellate court reverses that view on two counts. First, the refusal of 30 June 2025 already named the connection works in its subject line and cited the contract clause on permitting. Second, route coverage is an **objective non-discretionary prerequisite** under Article 21-octies of Law no. 241/1990. In such cases, the authority may offer **judicial specification** of facts appearing in the record, as held in Council of State Judgment no. 2151/2025[6].

§ 19 Comparison with Council of State Judgment no. 5785/2026[7] shows how fine the line on ex post reasoning is. In that dispute over a photovoltaic PAS with an **underground cable** along a provincial road, the authority failed to contest land availability in the challenged refusal. Its later court objection

was therefore barred as untimely. Simultaneously, silence in the simplified services conference under Article 14-bis of Law no. 241/1990 triggered **implied consent**, whereby omitted determinations "are equivalent to unconditional assent". In Verolanuova, by contrast, mentioning connection works in the June 2025 act saved the Municipality's defence.

JUDGMENT / AUTHORITY	STANCE	PRINCIPLE IN SUMMARY
Council of State, no. 7126/2026	Commented	A preliminary contract with immediate survey powers proves plant site availability, but lack of title over third-party connection land justifies refusal.
Council of State, no. 5785/2026	Distinguishing	Where the refusal is silent on land availability, raising it in court is inadmissible ex post reasoning; implied consent operates under Art. 14-bis L. 241/1990.
Council of State, no. 3990/2024	Pro-SCIA model	PAS follows the SCIA model under Art. 19 L. 241/1990; once the 30-day review window expires, only atypical self-annulment remains.
Council of State, no. 130/2023	Restrictive	Prior availability covers both plant and connection works and cannot be replaced by future expropriation or an expired preliminary contract.
TAR Lazio – Rome, no. 1963/2025	Dissenting	A preliminary contract confers only a credit right to execute the final deed and is unsuitable for PAS, especially without anticipatory effects.
TAR Marche – Ancona, no. 156/2025	Dual-track	On suitable areas under Leg. Dec. 199/2021, simplified plant permitting may run separately from regional expropriation authorization for the external line.

§ 20 On the evidentiary plane, the respondents' arguments classifying Via Finiletto as a public-use vicinal road failed to fill the documentary gap. The opinion stresses that no **decisive evidentiary proof** was offered regarding legal availability of the first 400 metres of connection. The Panel nonetheless leaves open the option to **restart the procedure** once missing titles are secured.

> ***The preparatory contract supports the plant's permitting stage only if the entire grid connection route is legally secured from the outset.***

3.3 — How to Prove Availability of Connection Land in PAS

§ 21 To prove availability of connection land in PAS, the developer must file a valid **private or public-law title** covering the entire cable route with the initial declaration. **Easements of passage**, public-road concessions, and preliminary contracts with investigative powers must also cover third-party parcels.

§ 22 Comparison with Regional Administrative Court of Marche – Ancona Judgment no. 156/2025[8] shows when site and grid permits may be split. For plants sited in **suitable areas** under Articles 20(8) and 22-bis of Legislative Decree no. 199/2021, such as a disused quarry, the **free-building regime** allows a **dual permitting track**. A separate regional application under Article 12 of Legislative Decree no. 387/2003 thus remains viable to expropriate external line land. Outside that favoured regime, ordinary PAS retains the duty of **full coverage** from day one.

04. CRITICAL REMARKS, DISTINGUISHING, AND PRACTICAL IMPACT

§ 23 A first critical remark concerns the classification of the municipal act of 30 June 2025 adopted by Verolanuova. The Council of State[1] frames the determination as a **final refusal** of a services conference rather than an untimely **atypical self-annulment**. This overturns the Brescia court's finding that the statutory window from the 10 March 2025 filing had lapsed. Yet the Panel's approach diverges from the SCIA model outlined in Council of State Judgment no. 3990/2024[5]. If the conference lets the authority challenge standing beyond thirty days without triggering Article 19(4) of Law no. 241/1990, certainty over **liberalization timelines** weakens.

§ 24 A second systemic tension emerges on the boundary of ex post reasoning compared with Judgment no. 5785/2026[7]. In the Melfi industrial-park case, the authority had omitted any title objection in its initial refusal and suffered **procedural preclusion**. In Verolanuova, merely mentioning connection works in the act's heading and in the **contractual clause** validated the Municipality's defence on the first 400 metres of cable. That solution stresses the mandatory nature of the standing prerequisite, but exposes developers to detailed objections raised only during litigation.

§ 25 On the contractual front, a crisp operational *distinguishing* consolidates. A preliminary contract supports PAS standing only when it grants immediate powers of entry, geological survey, and administrative action. Conversely, the agreement fails where it defers every effect to the final deed, as held by Regional Administrative Court of Lazio – Rome Judgment no. 1963/2025[2]. Proof likewise fails if the title has expired or is blocked by ongoing **agricultural leases**, as seen in Council of State Judgment no. 130/2023[4].

§ 26 For counsel and energy developers, the **evidentiary burden** splits from the moment the sworn declaration is filed. On the plant site, a preliminary contract with a nomination clause and early investigative powers suffices. Along the cable route, **enforceable titles** over third-party private land and road segments must be produced upfront to prevent non-discretionary objections under Article 21-octies of Law no. 241/1990 in court.

CONTRACTUAL AND EVIDENTIARY SAFEGUARDS IN PHOTOVOLTAIC PAS

A preliminary sale contract establishes PAS standing only if it pairs specific performance under Article 2932 c.c. with immediate powers of technical entry and permit filing. Equivalent documentary proof must cover every metre of the connection route across third-party land from the outset.

05. CONCLUSIONS

§ 27 Council of State Judgment no. 7126/2026[1] sets a **two-speed balance** for photovoltaic plants and grid connection works under PAS. On the generation plot, a preliminary contract backed by a nomination clause under Article 1401 c.c., specific performance under Article 2932 c.c., and **immediate investigative powers** establishes valid standing to initiate the simplified procedure. Along the grid connection route, however, lacking enforceable rights over third-party land leads to dismissal of the claim.

§ 28 The procedural holdings reflect this same dual balance. On one hand, the Panel favours **effective adversarial process** by exempting the authority from curing the CAdES signature under Article 136(2)

c.p.a. On the other hand, it classifies connection-land availability as a mandatory statutory prerequisite already covered by the refusal, allowing the authority to specify evidentiary gaps on appeal.

§ 29 The ruling expressly leaves open the option to file a fresh permitting application once missing titles are obtained. For sector practitioners, the operational lesson is clear: contractual flexibility on the plant site cannot offset missing **titles along the external cable route**.

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Table of Authorities & References Cited

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Legislative Decree no. 28 of 3 March 2011, Article 6 – Simplified enabling procedure (PAS) for renewable-energy plants.

Italian Civil Code, Articles 1401 and 2932 – Nomination clause and specific performance of the duty to contract.

Legislative Decree no. 104 of 2 July 2010 (c.p.a.), Articles 44, 119, and 136 – Cure of application defects, expedited procedure, and exemption from electronic filing rules.

Law no. 241 of 7 August 1990, Articles 14, 14-bis, 19, and 21-octies – Services conference, implied consent, SCIA, and non-discretionary acts.

Legislative Decree no. 387 of 29 December 2003, Article 12, and Legislative Decree no. 199 of 8 November 2021, Articles 20 and 22-bis – Single authorization, suitable areas, and free-building regime for solar plants.

Presidential Decree no. 380 of 6 June 2001, Article 11 – Subjective standing for building permits.

II. CASE LAW CITED

[1] **Council of State (Consiglio di Stato), Judgment no. 7126/2026 decided on 17 September 2026** Admits preliminary contracts with nomination under Article 1401 c.c., specific performance under Article 2932 c.c., and immediate investigative powers for PAS, but upholds refusal for lack of title over 400 metres of third-party connection land. OUTCOME: upheld appeal as reasoned and dismissed first-instance action, costs compensated. PARA.: §§ 10–15.

[2] **Regional Administrative Court (TAR) Lazio** Rome, Judgment no. 1963/2025 decided on 15 January 2025 – Excludes that a preliminary contract proves land availability under PAS because it grants only a credit right to execute the final deed, stressing the lack of anticipatory effects and the condition precedent. OUTCOME: dismissed on the merits with costs. PARA.: §§ 4–5.1.

[3] **Regional Administrative Court (TAR) Puglia** Bari, Judgment no. 349/2025 decided on 27 November 2024 – Requires upfront ownership or a title suited to real rights over site and connected works as a statutory condition of PAS effectiveness, denying any duty to act absent standing. OUTCOME: declared inadmissible, costs compensated. PARA.: §§ 17–26.

[4] **Council of State (Consiglio di Stato), Judgment no. 130/2023 of 4 January 2023** Classifies PAS under the SCIA model of Article 19 of Law no. 241/1990 and requires prior availability of plant and connected works, excluding cure via subsequent expropriation or expired preliminary contract. OUTCOME: dismissed appeal and affirmed with modified reasoning, costs awarded. PARA.: §§ 6–12.

[5] **Council of State (Consiglio di Stato), Judgment no. 3990/2024 of 2 May 2024** Reiterates that PAS is a private act akin to SCIA requiring municipal verification within thirty days, leaving only atypical self-annulment thereafter. OUTCOME: dismissed appeal with costs. PARA.: facts and law, first ground of appeal.

[6] **Council of State (Consiglio di Stato), Judgment no. 2151/2025 decided on 6 March 2025** Relaxes the ban on ex post reasoning for non-discretionary acts under Article 21-octies of Law no. 241/1990 where the authority specifies known or accessible facts in court without harming defence rights. OUTCOME: dismissed appeal and affirmed, costs compensated. PARA.: law, first ground.

[7] **Council of State (Consiglio di Stato), Judgment no. 5785/2026 decided on 23 April 2026** Bars judicial objection to land availability when absent from the initial refusal and affirms implied consent under Article 14-bis of Law no. 241/1990 in a PAS services conference. OUTCOME: dismissed appeal, costs compensated. PARA.: §§ 14.1–16.1.

[8] **Regional Administrative Court (TAR) Marche** Ancona, Judgment no. 156/2025 decided on 26 February 2025 – Upholds a dual permitting track for photovoltaic plants in suitable areas under Articles 20(8) and 22-bis of Legislative Decree no. 199/2021, separating simplified site permitting from regional authorization for external connection works. OUTCOME: declared initial claim moot, upheld additional grounds and annulled challenged act with costs. PARA.: facts and law, second, third, and fourth additional grounds.

III. LEGAL SCHOLARSHIP CITED

[D1] Metodo Giuridico, Bruno Taverniti, Risoluzione del preliminare e caparra confirmatoria: recesso e danno [Termination of Preliminary Contracts and Earnest Deposit: Withdrawal and Damages]. Analysis of the binding obligation arising from a preliminary contract and remedies upon breach or termination.

[D2] Metodo Giuridico, Federico Palumbo, Contratto preliminare e condizione risolutiva negativa [Preliminary Contract and Negative Resolutive Condition]. Examination of the functional split between immediate preparatory effects and conditions attached to the final deed.

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