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Data Centres: Italy's "Energy Decree" Marks Progress, but Key Issues Remain

The conversion into law of Italy's so-called "Energy Decree" (Decree-Law No. 21 of 20 February 2026) confirms the introduction of a streamlined permitting procedure for the construction, expansion and operation of data centres. However, several critical issues remain unresolved, including the identification of the competent authority, the relationship with building permits and the scope of application of the new regime. The draft enabling law No. 1821, already approved by the Chamber of Deputies, will be required to address these gaps.

On 10 April 2026, Law No. 49 was published, converting into law, with amendments, Decree-Law No. 21 of 20 February 2026, commonly referred to as the 'Energy Decree". Among its various provisions, particular attention should be given to Article 8, which introduces a long-awaited reform in the data centre sector, namely the establishment of a **single permitting procedure** aimed at resolving the complex overlap of multiple authorisations – environmental, building and sector-specific – which, until now, have operated in an uncoordinated and mutually conditional manner, effectively slowing down investments in the sector amounting to tens of billions of euros.

The timing of this intervention is not incidental. For the period 2026–2028, 83 new infrastructure projects have been announced by 30 companies – 19 of which are new market entrants – for a total potential value of € 25.4 billion, 72% of which is attributable to international operators. Nevertheless, the gap between planned and actually implemented investments in the 2023-2025 period was estimated at approximately 32%, highlighting the systemic cost of regulatory inefficiencies.

This development takes place within a broader context of increasing attention to the sector, particularly in light of the role data centres now play as enabling infrastructures of the digital economy. Services such as cloud computing, digital platforms and complex information systems rely on physical facilities characterised by high technological and energy intensity, whose diffusion is expected to increase significantly in the coming years, also as a result of the expansion of artificial intelligence.

The Structure of the New Procedure

Until the adoption of the so-called Energy Decree, the development of a data centre required the initiation of multiple administrative procedures and the involvement of various authorities (including Ministries, Regions, Municipalities and technical bodies), without any structured coordination.

Under the new framework, the single authorisation is now issued by the **same authority competent to grant the Integrated Environmental Authorisation** (i.e., *Autorizzazione Integrata Ambientale* - **AIA**) pursuant to the Environmental Code: the Ministry of the Environment for larger installations and the Regions for smaller-scale facilities. In order to ensure compliance with the principle of adequacy, this function may not be delegated to sub-provincial entities.

The applicant must submit, together with the application, all documentation relating to the required approvals, including AIA, Environmental Impact Assessment (i.e., *Valutazione di Impatto Ambientale* - **VIA**), landscape or cultural authorisations, water use permits and atmospheric emissions permits. Following the conversion into law, **verification of compliance with municipal urban planning instruments** has also been added to the documents to be submitted with the application (an element that, as will be seen, is not without systemic implications). The procedure is conducted through an asynchronous conference of authorities pursuant to Law No. 241/1990.

The maximum duration is set at **ten months** from the verification of completeness of the documentation, extendable by only three months in exceptional circumstances. Time limits for the VIA procedure are **halved** (from 150-180 days to 75-90 days). Where a project is classified by the Italian Council of Ministers as being of national strategic interest, competence is transferred to a Government Extraordinary Commissioner, with substitutive effects vis-à-vis all other permits and an implicit declaration of public utility, urgency and non-deferrability, thereby allowing the application of expropriation procedures.

The introduction of a single procedure, governed by **clear time limits** and concluded through a **conference of authorities**, is intended to streamline the administrative framework, improve predictability and facilitate a more orderly development of investment projects. However, not all of the uncertainties and issues that have emerged in recent years have been comprehensively addressed.

Outstanding Issues

Scope of application. The procedure applies only to data centres falling within the three categories defined by Commission Delegated Regulation (EU) 2024/1364: enterprise, colocation and co-hosting data centres. The applicability of the single permitting procedure to hyperscale public cloud facilities operated by large international players remains uncertain, as such structures may not fit neatly within these categories. This gap may paradoxically affect precisely those investors of greatest economic relevance.

Competent authority below AIA thresholds. The rule links competence to the authority responsible for granting the AIA, yet under environmental law the AIA is required only above certain capacity thresholds. Smaller data centres – which may nonetheless generate significant infrastructural impacts – risk falling within a procedural grey area: on the one hand, even though such authorisation is not formally required for this category of facilities, it may be argued that competence is, in any event, attracted to the regional authority, as the administration ordinarily responsible for granting AIAs for smaller-scale installations; on the other hand, it may be contended that, precisely because the thresholds set by environmental legislation are not exceeded, lower-capacity data centres fall outside the scope of application of the new single permitting procedure, with the result that the ordinary regime continues to apply.

Building permits and single authorisation: dual track or absorption? This is perhaps the most delicate systemic issue. Neither the decree-law nor the conversion law expressly clarifies whether the building permit, governed by the Consolidated Building Act (i.e., *Testo Unico dell'Edilizia*), is absorbed into the single authorisation or remains a parallel procedure. The wording – which refers to construction, expansion and operation and now requires verification of planning compliance – suggests inclusion; however, in the absence of an explicit provision, the risk of a dual-track regime remains. In order to remove any interpretative uncertainty on a matter that is crucial for the siting of such infrastructure, explicit legislative clarification would be desirable, including through implementing decrees or administrative guidance.

Feasibility of reduced VIA timeframes. Halving procedural deadlines without allocating additional resources – given the financial neutrality of the measure – may result in only nominal acceleration, with the foreseeable consequence of practical delays, increased reliance on silence procedures and recourse to extraordinary commissioners.

An Evolving Regulatory Framework

At **EU level**, Commission Delegated Regulation (EU) 2024/1364 provided the first normative classification of data centres, while the NIS2 Directive and the CER Directive qualified them as critical infrastructures subject to stringent security obligations.

At **national level**, the so-called Energy Decree represents the first step towards the introduction of a national regulatory framework for data centres. Prior to its adoption, regulation had largely been entrusted to heterogeneous regional and local initiatives: the Lombardy guidelines (Regional Government Resolution No. XII/2629/2024), the Lombardy draft regional law currently under discussion, the Puglia guidelines (Regional

Government Resolution No. 1511/2025), and the amendment to STTM 3 adopted by the Metropolitan City of Milan. Each of these measures has addressed – through partially divergent approaches – issues such as urban classification (productive or tertiary use), procedural coordination, energy sustainability and urban regeneration.

What to Expect from the Draft Law No. 1821

The legislative process initiated by the so-called Energy Decree may be completed with the approval of **Draft Law No. 1821**, passed by the Chamber of Deputies on 24 February 2026 and currently under examination by the Senate. The draft delegates the Government to adopt, within six months of its entry into force, by means of one or more legislative decrees, a comprehensive regulatory framework that will: assign data centres to the **"productive" land-use category**; introduce a dedicated **ATECO classification code**; provide derogations from parking standards (which are not justified for facilities with minimal permanent staff and no user flows); qualify data centres as **works of public utility**; and strengthen the powers of the Italian Communications Authority (i.e., *AGCOM*).

However, certain **critical issues** remain outside the scope of the delegation, including the calculation of gross floor area and technical volumes (given that most space in a data centre is occupied by server racks, cooling units and backup systems, with no permanent human presence) and, above all, the relationship between the single authorisation and building permits.

In this context, it would be desirable for the **implementing legislative decrees**, *inter alia*, to: clarify the subjective scope of application of the single permitting procedure; specify the competent authority for different capacity thresholds; introduce peremptory deadlines for intermediate phases of the procedure; provide an exhaustive list of authorisations replaced by the single permit, expressly including the building permit; and exclude technical volumes dedicated to IT infrastructure from the calculation of gross floor area.

A Governance Framework Still to Be Built

The overall picture that emerges is that of a legal system still in transition, seeking – through emergency legislation, enabling laws and planning instruments – to set up, in real time, a governance framework for a sector that until recently was largely unregulated. The **speed** at which technology has transformed simple server rooms into strategic nodes of the global economy leaves little room for delay and sits uneasily with a fragmented and uncertain regulatory and institutional framework.

The inefficiency and unpredictability of permitting procedures carry a **tangible cost**, measurable in postponed investments and reduced competitiveness compared to countries such as France, Germany and the Netherlands, which already benefit from more stable and predictable regulatory frameworks.

The conversion into law of the so-called Energy Decree (together with the ongoing discussion of Draft Enabling Law No. 1821) represents a significant **political signal** and a **useful operational tool**, albeit not a definitive solution. First, because final approval of the enabling law – already passed by the Chamber of Deputies – still remains pending, and, above all, because the subsequent adoption of the implementing legislative decrees is yet to take place. Second, because the legislator's objective of making the digital infrastructure sector – and, indirectly, the national system as a whole – truly attractive and competitive at a global level requires clear and coherent responses across all areas of the legal framework that govern or impact data centres, including cybersecurity and critical infrastructure, energy law, competition law, national security (golden power) and taxation. Any hesitation or ambiguity may undermine these efforts, turning recent regulatory developments into a partially missed opportunity.

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