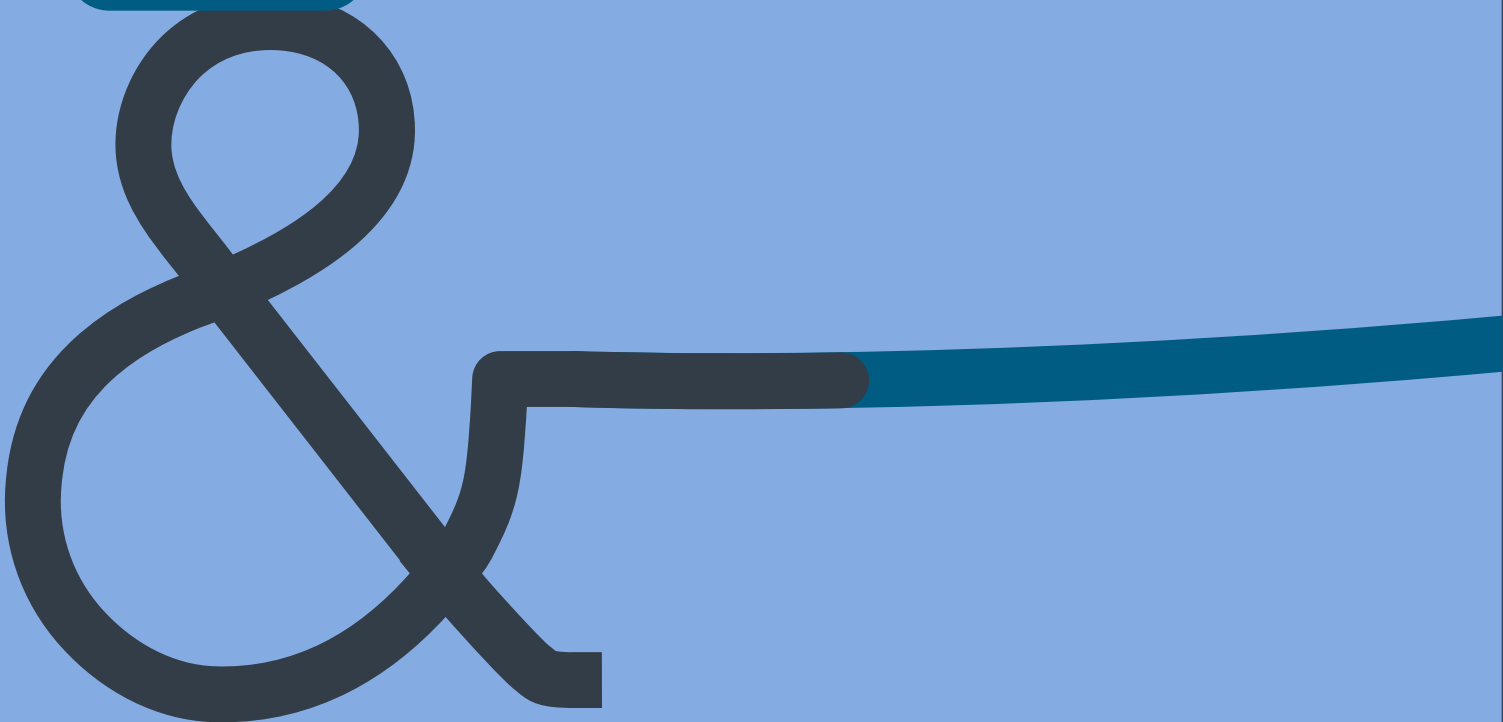


Bird & Bird

Data Centre &
Environmental Impact
Assessment procedures:
MASE guidelines and
Environmental Law
Decree no. 153/2024

October 2024



Data Centre & Environmental Impact Assessment procedures: *MASE* guidelines and Environmental Law Decree- no. 153/2024.

By Decree No. 257 of 02/08/2024 of the general management office for the environmental procedures, Ministry of Environment and Energy Security (“MASE”) adopts the “Guidelines for Data Centre environmental assessment procedures”.

The Guidelines, to be combined with the SNPA Guidelines 28/2020 concerning, in general, the environmental impact studies for all sectors under the Environmental Impact Assessment (EIA) procedure (*Valutazione di Impatto Ambientale* VIA) scope of application, aim to list the critical aspects related to the EIA and EIA Screening procedures for Data Centre projects. They describe the elements to be considered and the methodologies applicable in this specific sector to assess the environmental impacts of the infrastructure.

The Guidelines examine a list of design, environmental, health, socio-economic, ecological protection and biodiversity aspects, exogenous risks, abnormal or accidental risks, landscape and cultural heritage, the issue of cumulative impacts, mitigation and compensation measures, decommissioning and ecological restoration, and the environmental monitoring plan. For each aspect, the Guidelines clarify a set of elements that the applicant should include when preparing its EIA screening or EIA application.

It is important to bear in mind that MASE also specifies that EIA and EIA Screening procedures require, in all cases where this is possible, a prior, unitary, and contextual analysis of the works and all their effects on the environment, which cannot be evaded through the artificial splitting of projects. This is particularly important in the context of so-called Data Centre campuses, where several operators use the same infrastructures.

The Guidelines also emphasize that, in the event that the data centre project includes several categories of work subject to environmental assessment, all these must be assessed through a joint procedure.

Cumulative Impacts (including those merely potential) are applicable to both EIA Screening and EIA procedures.

The MASE guidelines also stress the need for cumulative impacts assessment, even if they are merely potential and related to the presence of other and different activities in the area where the project is located.

This assessment shall be carried out for atmospheric emissions, noise, ionizing radiation, electromagnetic fields, water balances, landscape and ecosystems, landscape views and cultural heritage, nature and biodiversity, health, and public safety, for the soil and subsoil, using data collected by public authorities.

In this respect, we can expect that, as occurred with the Guidelines adopted by the Lombardy Region, regions will adopt location criteria that will have to be taken into account in the context of the planning strategy (please refer to paragraph 5 “Addresses for the Location of Data Centres” of the Guidelines adopted by the Lombardy Region on 24 June 2024). Such criteria could presumably, as has happened for other types of infrastructures

(for example, waste management plants), define in advance the cumulative impacts with other and possibly different activities already existing in the territory.

EIA Screening

The purpose of the EIA Screening is to verify whether the project triggers potential environmental impacts and can be included or not within the EIA procedure scope of application. This procedure is required if the power of the emergency generators, considered as an aggregate, is between 50 and 150 thermal MW and if the verification of the potential significant impacts on the environment has a negative outcome. The procedure is completed by a final resolution excluding the need for an EIA procedure or confirming that an EIA procedure is required.

Law Decree no. 153/2024 providing “Urgent provisions for the environmental protection of the Country, the rationalisation of the environmental assessment and authorisation procedures, promotion of the circular economy, and implementation of measures concerning the reclamation of contaminated sites and hydrogeological disruption”, the EIA screening procedure was revised.

The new legislation included the following amendments in Article 19 of Legislative Decree No. 152/2006:

- The Public Authority is entitled within 15 days, starting from the expiry of the period granted to the public for comments, to require the applicant to provide clarifications and additions aimed at excluding the EIA procedure;
- In the event of the above-mentioned requests from the Public Authority, the applicant has a maximum of 30 days to reply; lack of or delayed reply will trigger the mandatory rejection of the environmental application;
- The EIA screening procedure shall be completed within 60 days after the expiry of the public consultation, or within 45 days if the above clarifications and additions have been requested;
- Assuming that the result of the EIA screening procedure confirms that the EIA procedure is not required - similarly to what is already provided for the EIA procedure - the final validity period of the final resolution is expressly listed in the same document, which, however, cannot be less than 5 years. Should the project not be implemented within the approved timing, the environmental procedure shall be refreshed (except for specific cases specified by the regulation).

EIA

The Environmental Impact Assessment is aimed at identifying, describing, and assessing the environmental impacts of the project if the installed capacity of the emergency generators, considered in aggregate, is greater than 150 thermal MW. The procedure also applies to projects with a lower threshold that have undergone an EIA screening concluded with the verification of the need to proceed with an EIA.

In particular, with reference to the “Landscape and Cultural Heritage” aspect, MASE specifies that a visual impact analysis with photo-simulations shall be developed to acknowledge the attention paid to the integration of the project with the naturalistic, physical, morphological, and infrastructural components of the landscape, favoring nature-based solutions and design solutions that can be an opportunity for perceptive and functional improvement, in addition to the need to verify the potential presence of archaeological findings.

Law Decree no. 153/2024 “Urgent provisions for the environmental protection of the Country, the rationalisation of the environmental assessment and authorisation procedures, the promotion of the circular economy, and the implementation of measures concerning the reclamation of contaminated sites and hydrogeological disruption”, the EIA procedure was revised.

As to the EIA procedure, the new legislation amended Article 25 of Legislative Decree No. 152/2006, including the following:

- in case of disagreement of the Ministry of Culture and assignment of the decision to the Council of Ministers pursuant to art. 5 paragraph 2 lett. c *bis* of law no. 400/1988 - with consequent overriding of the negative

opinion of the MIBAC - the resolution of the Council of Ministers replaces to all effects the favourable EIA resolution including the landscape authorisation;

- in any case of National EIA proceedings, the Council of Ministers resolution resolving the disagreement of the authorities involved in the project has the same effect and replace the EIA resolution.

For any clarification or further information, you may contact our experts of the Real Estate department avv. Antonella Ceschi, avv. Antonio Castorina and avv. Paola Bologna of the Regulatory & Administrative department.

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