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## Temporary Associations of Undertakings in Agrivoltaic Projects in Italy: Structural, Authorisation, and Contractual Profiles

**Abstract.** This article examines the use of temporary associations of undertakings (*associazioni temporanee di imprese*, ‘ATI’) in Italian agrivoltaic projects, a contractual architecture increasingly adopted to integrate energy generation with continued agricultural activity under the PNRR incentive scheme. The study reconstructs the private-law structure of the ATI and tests its operational resilience against the MiTE Guidelines of 27 June 2022 and the binding framework introduced by Ministerial Decree of 22 December 2023, No 436, as implemented through the GSE Operational Rules. Methodologically, the analysis combines doctrinal and systematic interpretation of the Italian Civil Code’s agency/representation tools with a regulatory reading of the incentive requirements and their documentary conditionality. The article shows that agrivoltaic ATIs cannot be meaningfully framed through the ‘horizontal/vertical’ categories of public procurement, because energy and agriculture are interdependent and equally necessary components of project qualification. It concludes that bankability and compliance depend on drafting an ‘Agency Arrangement’, internal governance rules, technical annexes and an agricultural management plan capable of ensuring continuity of farming, traceability, and allocative clarity of responsibilities, including for changes in participating entities. Finally, it identifies minimum contractual safeguards to align permitting titles with incentive entitlement and to manage ATI–SPV transitions without jeopardising eligibility.

**Keywords:** agrivoltaics; temporary associations of undertakings (ATI); permitting and authorisation procedures; PNRR incentives; GSE Operational Rules; contractual drafting and governance

**JEL Classification:** K12; K23; Q15; Q42; Q48; L94

### Introduction

This study examines the legal and operational use of temporary associations of undertakings (*associazioni temporanee di imprese*, ‘ATI’) in Italian agrivoltaic projects. The purpose is to clarify how an ATI can be contractually structured to coordinate the energy and agricultural components while maintaining regulatory compliance under the PNRR incentive scheme and the GSE Operational Rules.

In the Italian agrivoltaic market, the ATI has become relevant not merely as a legal technique of cooperation, but as a practical governance tool for combining two business sectors that are structurally distinct yet legally interdependent: electricity generation and agricultural production. This relevance is explained by the regulatory architecture of agrivoltaic incentives, which requires both the technical development of an energy installation and the demonstrable continuity of agricultural activity on the same land. More broadly, agrivoltaics has been described in recent literature as a multifunctional land-use system aimed at combining photovoltaic generation and agricultural production within a single integrated spatial and operational framework (Maity et al, 2025). In practice, many projects are promoted by energy developers that need to combine their technical and financial

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capacities with the land availability, agricultural status, and operational know-how of farmers or agricultural undertakings. The ATI has therefore emerged in Italy as a flexible intermediate structure capable of concentrating external representation, coordinating documentary compliance, and preserving the separate legal identities of the participating operators during the development and permitting phase. For this reason, the ATI is increasingly discussed not only in legal scholarship, but also in professional and transactional practice, where it is used as a bridge between early-stage project development and the later incorporation of a project company.

The specific objectives are fourfold: (i) to reconstruct the private-law architecture of the ATI outside public procurement, focusing on agency, representation and internal governance; (ii) to analyse how the MiTE/MASE Guidelines and the Agrivoltaic Decree frame the 'subjective' qualification of agrivoltaic projects; (iii) to identify the contractual safeguards required to ensure documentary traceability, continuity of the agricultural component and stability of incentive entitlement throughout the project lifecycle; and (iv) to assess the ATI–SPV transition as a critical moment for permitting, incentives and bankability.

Against this background, the article addresses the following research problem: whether and under what conditions the temporary association of undertakings (ATI) constitutes a legally coherent and functionally efficient organisational model for the development, authorisation, and initial structuring of agrivoltaic projects within the Italian regulatory framework.

More specifically, the paper investigates whether the ATI is capable of ensuring continuity of the agricultural function, stability of the authorisation pathway, and compliance with the requirements of the incentive system, and how this model interacts with alternative forms of cooperation and with the subsequent transition to a project company (SPV).

The research gap addressed by the article lies in the limited legal literature on ATI structures tailored to agrivoltaics, where energy generation and agricultural activity are interdependent and equally necessary conditions for qualification. Existing contributions typically discuss ATIs either within public procurement or in general private-law terms, without translating those categories into the compliance and bankability constraints imposed by the PNRR/GSE framework.

The article's novel contribution is to propose a 'functional' model of agrivoltaic ATI and to derive a set of replicable drafting coordinates – governance, land title design, documentary flows, and contingency mechanisms – capable of reducing misalignment risks between permits and incentive status.

## **Literature Review & Research Data and Methods**

The research adopts a doctrinal and analytical legal methodology, based on the systematic interpretation of statutory provisions, administrative practice, and the regulatory framework governing agrivoltaic projects in Italy. This approach is complemented by a practice-oriented analysis of contractual structures and recurrent project configurations emerging in the agrivoltaic sector, with particular attention to the interaction between private law arrangements, authorisation procedures, and incentive schemes.

The combination of normative analysis and practice-based reconstruction allows the paper to assess the functional suitability of the ATI in comparison with alternative forms of

cooperation and to identify the contractual and organisational conditions required to ensure legal robustness, regulatory compliance, and project bankability.

### ***ATI and Other Legal Forms of Cooperation in Italian Agrivoltaics***

The role of the ATI in agrivoltaic projects can be more accurately understood when placed within the broader spectrum of legal forms of cooperation available in the Italian agricultural sector.

The functional relevance of the ATI becomes clearer when it is compared with other legal forms of cooperation available in the Italian agricultural sector, each of which reflects a different degree of organisational integration and temporal stability. Agricultural cooperatives, governed by Articles 2511–2548 of the Italian Civil Code, represent a paradigmatic model of institutionalised cooperation based on the principle of mutuality, aimed at satisfying the economic and social needs of members through the collective management of agricultural activities and resources. In the Italian system, cooperatives constitute a structural pillar of the agri-food economy, combining entrepreneurial strategies with solidarity-based governance and long-term organisational stability. Their function is not limited to project-specific coordination, but extends to market integration, value-chain organisation, and the collective valorisation of agricultural production. (Tedioli, 2025a)

Against this background, the ATI operates on a structurally different plane. Unlike cooperatives, which presuppose a stable organisational framework and a long-term integration of members' activities, the ATI is conceived as a project-specific and functionally temporary coordination mechanism, lacking both legal personality and a segregated patrimony. Its purpose is not to integrate production and market activities in a stable organisational form, but to coordinate heterogeneous operators – typically energy developers and agricultural undertakings – within a defined transactional framework aimed at obtaining authorisations and accessing incentive schemes. In this sense, while cooperatives embody a model of institutional cooperation, the ATI reflects a model of transactional cooperation, oriented towards the implementation of a specific project rather than the long-term organisation of economic activity.

A further alternative is represented by the agricultural network contract, which enables multiple undertakings to cooperate on the basis of a common programme while preserving their legal and operational autonomy. This instrument is characterised by a high degree of contractual flexibility and may also take a 'subjective' form with limited legal autonomy. However, its primary function lies in enhancing innovation capacity and market competitiveness through shared activities, rather than in concentrating representation and ensuring a unified interface with public authorities and incentive operators. As a result, while network contracts are particularly effective for horizontal cooperation among agricultural enterprises, they are less suited to contexts – such as agrivoltaics – where regulatory compliance, documentary traceability, and the centralisation of external relations play a decisive role.

From a functional perspective, therefore, the choice among these legal forms depends on the phase and objectives of the agrivoltaic initiative. Cooperative and corporate structures are better suited to long-term operation, collective management, and value-chain integration, especially where agricultural producers aim to retain stable control over the project. By contrast, the ATI proves particularly effective in the development and authorisation phase, where the need to combine land availability, agricultural qualification, technical expertise, and regulatory compliance requires a flexible yet coordinated structure. It follows that, in the

current Italian framework, the ATI should be regarded not as a substitute for other forms of cooperation, but as a complementary instrument, positioned upstream of more stable organisational models such as cooperatives or project companies.

***Functional Efficiency of Cooperation Models in Italian Agrivoltaics***

From a functional perspective, the legal structuring of agrivoltaic initiatives in Italy cannot be reduced to the identification of a single optimal organisational model. Different forms of cooperation display different degrees of efficiency depending on the specific phase of the project and on the balance sought between agricultural control, technical specialisation, and financial sustainability. In this respect, a meaningful comparison may be conducted across three dimensions: financing, implementation, and operation.

As regards the development and authorisation phase, the ATI appears particularly effective. Its contractual nature allows the aggregation of heterogeneous actors – typically agricultural undertakings and energy operators – without requiring immediate incorporation into a single legal entity. This flexibility is especially relevant where the project must combine land availability, agricultural continuity, technical design, and compliance with the incentive framework. In addition, the concentration of representative powers in the mandatory undertaking facilitates the management of relations with public authorities and with the GSE, thereby making the ATI especially suitable for the initial phase of project structuring.

Other forms of cooperation may perform different functions. Agricultural cooperatives are potentially effective where agricultural producers intend to retain a strong and stable role in the management of the farming activity and in the economic valorisation of the project. However, they do not necessarily offer the same degree of flexibility in combining agricultural and energy-sector operators, nor do they always ensure the technical and financial specialisation required by more complex agrivoltaic initiatives. Purely contractual arrangements, based for example on land titles and service agreements, may regulate specific relationships, but they tend to provide a lower level of organisational integration and are therefore less suitable where the regulatory framework requires a stable and verifiable coordination between the agricultural and the energy components.

From the standpoint of long-term financial sustainability and operational stability, more structured corporate solutions may prove more efficient than the ATI alone. Yet this does not diminish the role of the ATI within the Italian agrivoltaic sector. Rather, it confirms that the ATI is best understood as a functionally selective instrument: particularly efficient in the development and authorisation phase, but not necessarily exhaustive of the project's entire legal organisation. Its distinctive advantage lies in enabling the coordinated participation of different operators at the stage where regulatory compliance, documentary traceability, and the integration of agricultural and energy functions are most critical.

Accordingly, the most effective model for agricultural producers in Italian agrivoltaics cannot be identified in abstract terms. Where the priority is to preserve stable farmer control over the initiative, cooperative or other stable associative structures may be preferable. Where, by contrast, the project requires the coordinated participation of agricultural and energy operators for the purposes of permitting, incentive access, and initial implementation, the ATI appears to be the most efficient organisational solution. Its practical relevance therefore lies not in its universal superiority, but in its specific aptitude for governing the phase in which agrivoltaic projects are legally and administratively formed.

### ***The Temporary Association of Undertakings: Legal Framework of the Institution***

The temporary association of undertakings (*associazione temporanea di imprese*, ‘ATI’) is a contractual cooperation arrangement among economic operators in Italy, structured for the implementation of a specific transaction, without the incorporation of a new legal entity and without the constitution of a segregated patrimony (Mazzone, 2012; Durante, 2017; Corapi 1983). From a structural standpoint, an ATI is typically articulated into (a) the Agency Arrangement, which grants the lead undertaking (*mandataria*) authority to represent the participants and serves as the single point of contact for relations with third parties, and (b) an internal agreement/regulation intended to specify the object of the initiative, the allocation of activities, decision-making rules, information flows, and internal remedies and security arrangements. In systematic terms, the ATI functions as an internal ‘organisational scheme’: external representation tends to be concentrated in the *mandataria*, while the participating undertakings (*mandanti*) retain their separate legal and asset autonomy, remaining responsible for the performance of the tasks assigned to them under the agreed allocation.

Outside the perimeter of public procurement, however, the ATI is not a legislatively regulated institution in the strict sense (Galgano, 1994; Tedeschi et al., 1993): legal scholarship (Di Sabatino, 2006) has underscored the difficulty of subsuming the aggregation within a single category [unrecognised association, tertium genus, atypical associative contract (Corte di Cassazione, 1975, Decision No 681)], to the point of emphasising the characterisation of the private-law ATI as a multilateral contract and, at the same time, a normative (framework) contract, designed to coordinate and regulate the cooperation. From this perspective, the internal agreement is not a mere ‘formal shell’, but the source of each participant’s obligation to align future conduct and external contracts with the common programme [*pactum de modo contrahendi*, Di Sabatino, 2006; Messineo 1962, Guglielmetti, 1969)], with the consequent implications in terms of contractual liability and internal remedies.

Consistently with this reading, the applicable discipline tends to be reconstructed ‘by way of cross-references’: (i) to agency agreement/relationship (Article 1703 of the Italian Civil Code) as the cornerstone of external representation and of the *mandataria/mandanti* relationship; (ii) to the contract (or contracts) which, on a case-by-case basis, constitutes the economic operation carried out through the ATI (in the classical experience, the works contract: Article 1655 of the Italian Civil Code), without prejudice to the fact that, on the internal plane, the general rules on multilateral contracts (Articles 1420, 1446, 1459, and 1466 of the Italian Civil Code) also become relevant when the performance of one participant becomes essential or non-fungible vis-à-vis the common purpose.

A methodological corollary follows, which in the agrivoltaic sector becomes immediately operational: the ‘ordinary private-law’ ATI must be made contractually self-sufficient, precisely because the public-law ‘crutches’ typical of groupings in public procurement are absent (*lex specialis*, statutory rules on changes in membership, and a legal framework of liabilities). In public procurement, indeed, the temporary grouping is a legislatively regulated institution governed by special rules (today: Legislative Decree of 31 March 2023, No 36, Article 68), whereas outside that domain, the practical viability of the ATI rests on private autonomy and on the ability of the internal regulation to govern liabilities, powers, and remedies.

Within this framework, alongside the ATI, a competing model of inter-firm cooperation – particularly relevant in agriculture – is the network contract [*contratto di rete* (Tedioli, 2025b and 2026a)], which allows forms of productive coordination and functional integration without necessarily creating a new legal entity. In the agrivoltaic perimeter, however, the regulatory choice has favoured the ATI scheme: it makes it possible to integrate different value chains (energy and agriculture) while keeping the participating undertakings separate; it concentrates representation and compliance duties in a single mandatary; and it thereby stabilises the interface with the incentive system – so much so that Ministerial Decree of 22 December 2023, No 436 expressly includes it among the subjects relevant for the PNRR measure. This design choice also aligns with governance patterns typical of EU-funded instruments, where concentrating accountability on a single interlocutor facilitates auditability, traceability, and the ex-post verification of conditionality. The implications of this choice in terms of compliance and bankability are addressed in the following sections.

***The MiTE Guidelines of 27 June 2022: Subjective Qualification of Agrivoltaic Projects Between Agricultural Undertakings under Article 2135 of the Italian Civil Code and an ATI***

The MiTE Guidelines of 27 June 2022 (Ministry for the Ecological Transition, 2022), prepared within the Ministry with technical support from CREA and GSE, are not a binding legal source in the strict sense; rather, they constitute a technical guidance instrument (soft law) describing the minimum features expected for a project to qualify as agrivoltaic and, at an applicative level, orienting the construction of technical-agronomic requirements and monitoring safeguards. The framework has, however, evolved: the notion of an ‘agrivoltaic installation’ is now also anchored to a primary statutory definition, introduced by Article 4(f-bis), of Legislative Decree of 25 November 2024, No 190 [Testo Unico FER (Tedioli, 2026b)], as amended by Law of 15 January 2026, No 4, and centred on preserving the continuity of crop-growing and pastoral activities at the installation site. The Guidelines remain relevant as a technical-interpretative benchmark and, above all, as an applicative reference for ‘advanced’ qualification and for administrative practice in the assessment phase, thereby making the linkage with support mechanisms predictable. In the event of a misalignment, the subsequent positive law prevails; the Guidelines retain, at most, an interpretative and supplementary role to the extent compatible with implementing sources and with the Operator’s regulatory framework (Tedioli, 2025c).

From the subjective standpoint, the document adopts a binary classification, with immediate effects on the structuring of the transaction. On the one hand, an agricultural undertaking (whether individual or associated) within the meaning of Article 2135 of the Italian Civil Code; on the other, a ‘mixed’ ATI between energy operators and one or more agricultural undertakings, required (on the basis of a specific agreement) to ensure the availability of the land and the continuity of agricultural activity. The distinction is not merely descriptive: within the Guidelines’ model, the ATI is treated as an organisational architecture capable of making the co-existence between electricity generation and agricultural activity ‘structural’, and thus of supporting – also from an evidentiary perspective – the qualification of the intervention.

The reference to an ATI, however, raises a problem of classification. The category is developed in public procurement contracting and presupposes a tender, a contracting authority, and a single unitary bid. None of these elements is present in the agrivoltaic context, where the ATI is not the instrument for submitting an offer in a competitive

procedure, but rather the contractual mechanism through which two value chains are coordinated in managing the authorisation pathway and in accessing the incentive scheme.

For this reason, the function of the typical instruments also changes: the Agency Arrangement serves to stabilise the interface with the Operator; the internal regulation must allocate the powers, obligations, and liabilities necessary to render the agricultural component verifiable throughout the entire lifecycle of the incentive. It follows that the ‘horizontal/vertical’ categories have, here, only a descriptive value: energy and agriculture are both conditions for the project’s qualification, and it is not useful to reconstruct them according to a ‘principal/accessory’ hierarchy. On this assumption rests the discussion that follows.

***PNRR Incentives and Positive Law: Ministerial Decree of 22 December 2023, No 436, and the Operational Perimeter of ATIs***

Ministerial Decree of 22 December 2023, No 436 (the ‘Agrivoltaic Decree’) constitutes the main binding regulatory framework governing access to Italy’s PNRR incentives (Investment 1.1) and, from a subjective standpoint, expressly includes ATIs among the eligible beneficiaries (Ministry of the Environment and Energy Security, 2023). Article 4 encompasses, alongside agricultural undertakings within the meaning of Article 2135 of the Italian Civil Code (letter a), ‘mixed’ ATIs that include at least one agricultural participant (letter b). This choice also affects bankability, since – where an ATI is involved – economic and financial requirements may be evidenced through a bank statement relating to only one of the participants (Article 5(3)). The incentive scheme is further structured as a combination of a capital grant and a tariff applied to the energy produced, in accordance with the architecture set out in the Decree (Articles 1 and 10).

The subjective composition conditions the access channel to the measure and, with it, the configuration of the transaction. The registers (300 MW quota) are reserved for installations up to 1 MW held by the ‘agricultural’ subjects referred to in Article 4(1)(a); the auction procedures (740 MW quota), by contrast, are open to installations of any capacity held either by agricultural subjects or by the ‘mixed’ ATIs referred to in letter (b) (Article 5).

This imposes a structural constraint on the transaction: the choice of the subjective arrangement and of the ATI’s composition determines the procedural trajectory (register/auction) and conditions sizing, bankability, and the internal allocation of functions.

From the objective standpoint, the Decree presupposes an agrivoltaic system integrating energy infrastructure with continuity of agricultural activity (Article 2, definitions). This requirement must now be read in coordination with the primary statutory definition of ‘agrivoltaic installation’ introduced by Article 4(f-bis), of Legislative Decree No 190/2024, as amended by Law No 4/2026, which anchors the qualification of the intervention to the effective and verifiable preservation of crop-growing and pastoral continuity, elevating it to a sanction-triggering parameter pursuant to Article 11(8) of the same legislative decree.

On the implementing side, the GSE Operational Rules allocate unified external responsibility by concentrating on the mandatary the PNRR obligations of a documentary nature, and in particular the reporting of expenditure. The point is decisive from a contractual perspective: traceability, monitoring activities, and documentary flows cannot remain in the background, but must be regulated as essential internal obligations. In this perspective, the statement attested by a qualified professional introduced by Law No 4/2026 – confirming the installation’s suitability to preserve at least 80% of the gross saleable production (*produzione lorda vendibile*, ‘PLV’) – is integrated into the documentary system that the mandatary is

required to manage and report to the GSE: any deficiency or inconsistency in its preparation or updating may affect the entire relationship with the Operator, impacting the disbursement of the incentive. Similarly, the five-year municipal post-installation check introduced by the same law extends documentary risk beyond the authorisation phase, requiring that the ATI regulations include traceability safeguards for the agricultural component that are functional also at the operational stage.

More generally, such ex-post verification mechanisms mirror accountability patterns commonly associated with EU-funded measures, where continued eligibility is conditioned on the ongoing, documentable fulfilment of project-specific commitments.

Finally, the incentive tariff operates through a differential mechanism reflected in the standard-form contract, with potential balancing payments depending on the trend of the market price vis-à-vis the tariff. Although this is an economic rule, the legal implication is immediate: the ATI regulations must expressly govern (i) the allocation of balancing amounts and (ii) transparent management of the related financial and informational flows.

## Research Methodology

### *Configuring the ATI in the Agrivoltaic Context: The ‘Functional’ Model and Liability Vis-à-Vis Third Parties*

The Guidelines’ reference to the ATI scheme of public-procurement origin raises a qualification issue that is not merely taxonomical: in the agrivoltaic sector, questioning whether the ATI is ‘horizontal’ or ‘vertical’ serves above all to clarify which elements of the ATI scheme can be adapted to the ordinary private-law context (agency, representation, internal allocation, recourse) and how this affects the construction of the external title and, consequently, the regime of liability towards third parties.

A horizontal ATI presupposes homogeneous competences and performances belonging to the same functional category; in the energy–agriculture grouping, participants contribute heterogeneous and non-interchangeable competences. A vertical ATI aggregates differentiated competences but presupposes a hierarchy between a main performance and severable ancillary performances: in agrivoltaics, such a hierarchy is not workable, because energy production and agricultural activity operate as interdependent and equally necessary conditions for qualifying the intervention. The outcome is a ‘functional’ or ‘integrated’ model, not fully overlapping with the categories of the Public Contracts Code.

The immediate consequence concerns liability vis-à-vis third parties. In an ordinary private-law ATI, the external regime is not laid down by statute and depends on how the relationship is structured. The *mandanti* qualify as co-obligors only if the external contract contemplates them as parties, or if the Agency Arrangement confers on the *mandataria* authority capable of producing direct legal effects in their legal sphere: only in that case do the participants assume the status of co-obligors of the same obligation and, absent a different express arrangement accepted by the third party, the presumption of joint and several liability under Article 1294 of the Italian Civil Code applies, with internal allocation clauses remaining irrelevant as against third parties.

The operational point, therefore, is not to choose between horizontal and vertical, but to design: (i) the structure of the external title – determining who is a party, for which obligations, and with what effects on the *mandanti*’s legal sphere – and (ii) the internal

safeguards of recourse and indemnity, as well as the mandatary's effective powers, bearing in mind that limitations agreed internally are not opposable to third parties who have not expressly accepted them. To these two profiles, in post-Law No 4/2026 agrivoltaics, a third axis of design must be added: (iii) the internal regulation of agricultural sanctioning risk, with an express allocation of responsibility for any failure to maintain crop-growing continuity and for the documentary safeguards required to support both the PLV statement attested by a qualified professional and the five-year municipal check. This internal allocation also serves an external-facing function of risk governance, in line with the compliance architecture typically expected for projects supported through EU-derived funding streams, where ongoing eligibility is tied to continuous, documentable performance.

***Contractual Architecture of the Agrivoltaic ATI: Grouping Agreement, Agency Arrangement, and Land Title***

Once the classificatory issue is set aside, the robustness of the agrivoltaic ATI depends on the quality of its internal contractual arrangement. Because the ATI does not constitute an autonomous centre of legal attribution and has no segregated assets, the internal cooperation (grouping) agreement performs a function that is constitutive in substance: it defines the object and operational perimeter of the initiative, governance, the allocation of activities, and the coordination rules between the energy component and the agricultural component, as well as the safeguards that make the grouping 'performable' and verifiable in dealings with counterparties and public authorities.

Within the PNRR framework, this function is further intensified by the concentration on the ATI (and, in practical terms, on the mandatary) of the duties of interface and compliance vis-à-vis the GSE, including those triggered by reorganisations of the grouping during the incentive period.

From a documentary standpoint, the minimum structure tends to consist of two coordinated instruments: (i) a special-purpose Agency Arrangement in favour of the *mandataria*, serving as the pivot of external representation and the unitary management of relationships with third parties and (ii) an internal regulation (grouping agreement) setting out in analytical terms the relationships among participants, the allocation of activities, information flows, decision-making mechanisms, controls, and remedies. Agrivoltaic practice, for reasons of verifiability and bankability, often adopts a 'package' structure: alongside the two core documents, (iii) technical annexes (plant configuration, agronomic lay-out, management and maintenance plan, timetable) and (iv) a deed or annex specifically devoted to agricultural management (cropping plan/agricultural management plan and related obligations), in order to avoid relegating the agricultural component to generic clauses.

This documentary articulation is consistent with the broader understanding of agrivoltaics as a socio-technical system whose feasibility and long-term performance depend not only on engineering and agronomic parameters, but also on the legal and policy frameworks governing project design and implementation (Jamil et al., 2026). In Italian transactional practice, this interdependence is reflected in a number of recurring ATI configurations. A first model involves an energy developer and an agricultural undertaking, where the former manages technical design, authorisation strategy, and relations with suppliers, while the latter ensures land availability and the continuity of agricultural activity. A second model involves a developer, an EPC-oriented industrial operator, and an agricultural undertaking, with a more explicit internal allocation between development, construction, and farming functions. A third model, less frequent but increasingly relevant,

involves several agricultural operators acting jointly in order to preserve direct control over the agricultural dimension while relying on specialised technical partners for the energy component. These recurring patterns confirm that the ATI is used in practice not as a generic associative form, but as a project-specific governance arrangement intended to allocate functions, documentary responsibilities, and risk in a manner compatible with the incentive framework.

Upstream, a declaration of commitment to constitute an ATI (*ATI costituenda*) is not infrequently used: it identifies the lead undertaking as the ‘producer’, grants representative powers to the future *mandataria*, and formalises the joint signature of the application, thereby ensuring a single interface with the GSE already at the filing stage.

Consistently with the Operational Rules, the constitutive deed and the internal regulation must also be drafted to be producible to the GSE as ‘enabling’ documentation, especially where changes in the participating entities occur, while ensuring internally the prompt availability and verifiability of the documentary evidence that the mandataria is required to transmit and report.

The internal regulation must define the object of the common initiative with precision, avoiding elastic formulations incapable of sustaining either the allocation of tasks or the remedial framework. It is advisable to distinguish, already at the contractual level, between a development phase (design, due diligence, preparation of documentation and technical-administrative interactions), a construction phase (procurement/EPC and management of performance), and an operational phase (O&M, agricultural management, and coordination of interferences). Phase-based sequencing allows the construction of verifiable objectives and intermediate deliverables (also in PNRR terms), the allocation of operational responsibilities, and the effective activation of contractual remedies, by anchoring information and reporting duties to clearly defined and measurable deliverables rather than to generic duties of cooperation.

Governance is the second turning point. In agrivoltaics, the principal risk is not mere decisional inefficiency, but misalignment between the energy component and the agricultural component, with external spillovers (authorisations, incentives, controls). It follows that the agreement should provide for a coordination body and for rules on ‘reserved matters’, i.e. decisions that affect the interdependence and equal necessity of the two components (plant lay-out, choice of compatible crops, scheduling of farming operations and maintenance, access management, technical changes impacting cultivation), including those choices capable of affecting the monitoring and reporting obligations under the implementing framework. The most efficient technique is to separate external signature power (entrusted to the *mandataria*, to preserve a single interface) from internal rules requiring prior authorisation for ‘sensitive’ acts, with decision traceability, specific information duties, and audit/document-verification powers over agricultural performances, functional to supporting externally the ongoing fulfilment of requirements.

The third profile, specific to the energy–agriculture ATI, concerns the legal basis for land availability. Law of 15 January 2026, No 4, converting Decree-Law No 175/2025, by amending Legislative Decree of 25 November 2024, No 190 (Testo Unico FER), has strengthened crop continuity as a definitional and sanction-relevant requirement for agrivoltaics, making the choice of the land title even more significant from a compliance perspective. The Operational Rules require the agricultural undertaking to secure the availability of the area through a specific agreement, without prescribing any particular legal instrument. The choice is not neutral: each title entails different implications in terms of

duration, enforceability against third parties, transferability, the regime governing works and improvements, and compatibility with the continued performance of agricultural activity – a requirement now also protected through sanctioning mechanisms under Article 11(8) of Legislative Decree No 190/2024.

The right of superficies (Article 952 of the Italian Civil Code) is the most widespread instrument in energy practice, as it allows the separation of ownership of the installation from ownership of the land and is enforceable against third parties upon registration. However, if not adequately tailored, the right of superficies confers on the superfiary an exclusive power incompatible with continuous agricultural activity and may result in a significant deprivation of land enjoyment for the grantor or the agricultural tenant, sitting uneasily with the crop-continuity obligation imposed by Ministerial Decree No 436/2023 (Tedioli, 2025d). It follows that, if used in its traditional form, the right of superficies must be recalibrated through clauses that confine its physical extension to the areas actually occupied by plant structures, delimit its content by excluding exclusive use of the soil and imposing non-interference obligations vis-à-vis agricultural activity, and modulate its duration by providing for withdrawal or renewal conditional upon periodic verification of agronomic requirements (Busani, 2024).

An agricultural lease (*affitto di fondo rustico*) under Law of 3 May 1982, No 203 ensures crop continuity and preserves the functional link between the agricultural undertaking and the land, consistent with the substantive approach of agrivoltaics. However, the special regime introduces significant constraints: a minimum fifteen-year term (Article 1), tacit renewal absent notice, a pre-emption right of the tenant (Article 4-bis), and a prohibition on subleasing without the lessor's consent (Article 21). These elements reduce flexibility and may complicate the ATI–SPV transition, since assignment of the relationship requires the lessor's consent and, absent such consent, may be qualified as an unlawful sublease or sub-concession.

The adoption of combined structures is increasingly frequent: a right of superficies for the plant component and an agricultural contract (lease or loan for use / *comodato*) for the management of cultivable surfaces. This solution requires careful coordination between titles: delineation of areas, regulation of interferences, harmonisation of durations, and governance of the consequences of termination of one relationship on the other. Within this framework sits Article 5(2-bis) of Decree-Law No 63/2024, which provides for a minimum six-year term, with automatic renewal for a further six years, for agreements granting a right of superficies relating to renewable-energy installations in suitable areas, introducing an additional coordination parameter with the incentive duration and with crop-continuity obligations.

Operationally, the choice of land title is not a marginal implementation detail: it shapes the agency arrangement and allocation of authority, the transaction's bankability, and the stability of incentive entitlement throughout the project life cycle. For this reason, in an agrivoltaic ATI the land arrangement should be integrated into the internal regulation, defining at least: (a) a title and duration coherent with the project lifecycle and with the horizon of external obligations (including the incentive period), or in any event a continuity regime in the event of early termination; (b) rules for co-existence and for managing access, interferences, and functional areas; (c) allocation of custody and maintenance duties, distinguishing between energy infrastructure and cultivated surfaces; (d) management of layout changes and agronomic needs through an agreed update procedure (a formalised, documentable, traceable change order), consistent with monitoring and reporting obligations.

A recurrent practical variant should nonetheless be noted: participation of the agricultural undertaking in the ATI with a predominantly ‘passive’ role, limited to making land available and preserving the subjective requirement. From a civil-law standpoint, the status under Article 2135 of the Italian Civil Code remains anchored to the effective exercise of agricultural activity; from an incentive standpoint, a merely formal contribution exposes the project to the risk of an agricultural component that is not adequately demonstrable. The risk has increased following the introduction, by Law No 4/2026, of the obligation to attach to the project a statement attested by a qualified professional confirming the installation’s suitability to preserve at least 80% of gross saleable production (PLV), as a minimum quantitative parameter of productive continuity that is also verifiable in subsequent controls.

The Operational Rules, in fact, require that the correlation between electricity production and agricultural activity be evidenced through an agronomic report attested by a qualified professional and, already at the participation stage, require the indication of the ATECO code for the agricultural activities that will be carried out within the system. It follows that the ATI regulation and the land agreement must avoid configuring the agricultural undertaking as a mere ‘grantor’, providing instead for agricultural management/conduct obligations (directly, or possibly through outsourcing to third parties under the responsibility of the agricultural undertaking), a cropping plan with verifiable yield indicators consistent with the 80% PLV threshold, traceability and periodic reporting, and continuity remedies (step-in/operational substitution) consistent with external verifiability of requirements. Contractual discipline must also take account of the five-year municipal post-installation check introduced by Law No 4/2026, which requires traceable and documentable management of the agricultural component throughout the operational period, transforming crop continuity from an initial authorisation requirement into a permanent management constraint.

A further node, often decisive for bankability, is internal economic discipline: allocation of costs (development, authorisations, construction, management), allocation of revenues and incentives (including possible mechanisms compensating the agricultural component), and allocation of economic risks connected to the tariff, including balancing payments under the ‘two-way’ mechanism, with allocation criteria and internal funding mechanisms in favour of the mandatory/producer, which remains the interface with the GSE

Finally, the agrivoltaic ATI requires a contingency and remedial framework consistent with the temporary nature of the arrangement and with the project’s sensitivity to changes in the participating entities and to procedural outcomes. Withdrawal, substitution of participants, transfers of position, entry of new operators, and qualified breaches must be regulated from the outset, through graduated remedies and continuity clauses, in particular with respect to the agricultural component and land availability. It is also advisable to treat ‘procedural outcomes’ as contractually relevant events (failure to access the incentive, the need to re-modulate the project, transfers of titles and documentary updates), and to provide for dissolution/restructuring mechanisms and a reallocation of development costs that avoid ad hoc renegotiations.

From a contractual standardisation perspective, this arrangement should be accompanied by a minimum set of clauses and annexes capable of making demonstrable: (i) land availability and co-existence rules; (ii) agricultural obligations (management plan/cropping plan) and related KPIs/monitoring, with verifiable yield indicators consistent with the 80% PLV threshold and suitable to support the statement attested by a qualified professional required by Law No 4/2026; (iii) documentary flows and the mandatory’s audit

powers for PNRR/GSE purposes; (iv) governance and reserved matters; (v) technical/locational change control; (vi) discipline of changes in the participating entities (change of control, entry/exit, substitution), with documentary cooperation duties and continuity remedies (cure period/step-in) functional to project stability. To these should be added (vii) the discipline of agricultural continuity during the operational phase, including response modalities to the five-year municipal check and the documentary safeguards necessary to prevent productive deviations – even if attributable to exogenous factors – from translating into challenges to the agrivoltaic qualification of the intervention. The minimum content outlined above delineates a contractual arrangement to be constructed coherently with authorisation titles and PNRR/GSE obligations, because only on that basis does the grouping become effectively governable and financeable.

***Authorisation Title, Incentive Pathway, and Relations with the GSE: Allocation of Responsibility and Coordination within the ATI***

The issue is not whether an ATI may access incentives – a profile already encompassed by Ministerial Decree of 22 December 2023, No 436 – but how the subjective allocation vis-à-vis the GSE is built and kept stable throughout the entire project lifecycle.

The Operational Rules identify the ‘applicant’ (*soggetto richiedente*) as (a) an agricultural operator or (b) an ATI including at least one agricultural operator; in the case of an ATI, the applicant is represented by the mandatary in dealings with the GSE and, in such cases, the mandatary coincides with the ‘producer’ (*soggetto produttore*) (Appendix A, Chapter 20). From this follows the main drafting constraint: the formal concentration of powers in the mandatary cannot remain merely nominal, but must be supported by effective internal powers (document requests, audit, binding instructions on fulfilments and deadlines, operational substitution/step-in) and by a system of indemnities and reimbursements, because the obligation ‘towards the GSE’ is unitary, whereas the material performance of activities and the production of evidence are, in fact, distributed among the *mandanti*. In this perspective, the agronomic documentation required under the post-Law No 4/2026 framework – namely the PLV statement attested by a qualified professional and its updates – forms part of the evidence that the mandatary must manage vis-à-vis the Operator, with the consequent need to attribute to it, in the internal regulation, verification and follow-up powers suitable to ensure timely production. The same logic applies to ATIs to be formed (*ATI costituende*): all future participants must sign the application and designate the mandatary under an arrangement consistent with unitary representation vis-à-vis the Operator.

On the authorisation side, subjective alignment is continuously safeguarded: at the participation date, at the commercial operation date, and throughout the entire incentive period, the authorisation/enabling title must be registered in the name of the applicant; in the case of an ATI, registration must be in the name of the subject within the grouping that meets the definition of producer. Any arrangement in which the authorisation title and the ‘producer’ structurally diverge constitutes a critical issue to be neutralised before access; in the event of transfers/substitutions, evidence must be provided of the completed change or of procedural outcomes suitable to demonstrate its perfection. To this profile must be added the need to coordinate subjective alignment with the five-year municipal check introduced by Law No 4/2026: the mandatary must be able to produce, at any time during the operational period, updated agronomic documentation attesting the maintenance of the requirements declared at the authorisation stage.

As regards the incentive relationship, the Operational Rules clarify that the ‘beneficiary’ (*soggetto beneficiario*) enters into the incentive contract and must promptly communicate any variation relating to the installation or to the beneficiary; in the case of an ATI, that subject is the mandatary. The constitutive deed, the Agency Arrangement, and the internal regulation must align powers, flows, and responsibilities with exclusive representation and with the documentary-management obligations assumed vis-à-vis the Operator. The GSE verifies requirements at multiple stages (participation, post-commercial operation review, ongoing maintenance), and the applicant submits self-declarations under Presidential Decree No 445/2000. Any relevant change in the participating entities must be communicated promptly, together with the updated documentation required. For ATIs, the Operational Rules expressly include, among the minimum contents of the constitutive deed, that expenditure reporting and monitoring of progress are entrusted to the mandatary: this requires the internal regulation to govern information flows, the *mandanti*’s documentary obligations, and indemnities/reimbursements for breaches capable of jeopardising the entire incentive, including agricultural sanctioning risk under Article 11(8) of Legislative Decree No 190/2024, with identification of the subject responsible externally and of internal recourse obligations. This allocation of internal responsibility is also functional to ensuring continued auditability and traceability, which are structurally central in EU-derived funding and conditionality frameworks.

***The ATI and the Project Company (SPV): Pre-Corporate Function and Managing the Transition***

From a company-law perspective, the project company used in Italian agrivoltaic practice will normally take the form of a limited-liability vehicle, typically an S.r.l. and, in larger transactions, an S.p.A. This preference is explained not merely by organisational convenience, but by the need for asset segregation, clearer governance, and a structure more compatible with external financing, risk allocation, and the concentration of project rights and obligations in a single operating entity.

In Italian agrivoltaic practice, the ATI performs an eminently pre-corporate function: it coordinates land availability, techno-agronomic design, the authorisation pathway, and the initial interactions with the incentive system, while deferring incorporation of the SPV until the project has reached the degree of legal, technical, and financial maturity required for financial close. From this perspective, the ATI–SPV transition is not a mere ‘change of container’, but an ordered sequence of acts that must preserve four continuities: (i) the title ensuring land availability and the co-existence rules; (ii) the registration/transfer of authorisation/enabling titles in the name of the subject intended to operate the installation; (iii) the incentive position (GSE contract, PNRR reporting, fulfilments and controls); (iv) the agrivoltaic qualification of the intervention, which presupposes the effective and documentable maintenance of the agricultural component also after the SPV steps in, failing which the project is exposed to the sanctioning regime under Article 11(8) of Legislative Decree No 190/2024.

As regards the first profile, land availability must be structured from the outset to be transferable or replicable in favour of the SPV, avoiding rights of use that are ‘closed’ on the grouping or clauses requiring discretionary consent at the time of substitution. The most efficient technique is to provide, in the ATI regulation and the land agreements, conditional step-in mechanisms – such as assignment of the contractual position, options, or beneficiary-substitution clauses – subject to objectively verifiable prerequisites (granting of the

authorisation title; admission/placement on the ranking list; execution of the contract; financial close). Absent such mechanisms, land availability becomes the principal bottleneck of the transition, with the risk of renegotiation at the moment of maximum financial exposure.

In this framework, the minimum six-year term with automatic renewal provided by Article 5(2-bis) of Decree-Law No 63/2024 for superficies agreements relating to renewable-energy installations in suitable areas is also relevant: the SPV's substitution must be planned consistently with that constraint, avoiding discontinuities in the land title that are relevant for agrivoltaic qualification.

As regards the second profile, the SPV's substitution must be planned in accordance with the rules of the authorisation procedure, in a manner coordinated with updating the position vis-à-vis the GSE. The incorporation of the project company (SPV) cannot be treated as a merely contingent event: if the industrial model envisages an SPV, the ATI must incorporate, *ab origine*, procedural cooperation duties and documentary-production obligations, so as to render the substitution administratively manageable and temporally synchronisable. It remains understood that the ATI-SPV sequence may entail indirect-tax issues and VAT/registration implications, to be assessed in parallel with authorisation and incentive planning.

As regards the third profile, the incentive position requires a design choice already at the drafting stage. The first alternative is to maintain the ATI as the beneficiary throughout the entire incentive period, configuring the SPV as an operational vehicle (EPC/O&M or contractual manager) without transferring incentive entitlement: this solution reduces frictions vis-à-vis the GSE, but requires a particularly robust ATI regulation as to the mandatary's powers, information flows, and internal responsibilities. The second alternative is to provide for the SPV's substitution as holder of incentive entitlement: a solution often preferred for bankability reasons, but to be managed as a relevant event vis-à-vis the GSE and with a contractual 'package' already prepared to transfer in an orderly manner the relationships from the development phase to the vehicle, avoiding improper novations and authorisation standstills. Under both alternatives, the transition must expressly contemplate the transfer – or continuity – of obligations safeguarding the agricultural component: the PLV statement attested by a qualified professional, the cropping plan, and agronomic documentation cannot remain with the ATI if the SPV becomes the subject responsible vis-à-vis the GSE and vis-à-vis the Municipality for the five-year check.

Designed in these terms, the ATI-SPV transition becomes a lever of legal efficiency: it reduces renegotiation costs, limits the risk of discontinuities in the holding of titles, and allows financiers to be presented with an arrangement consistent with PNRR/GSE obligations, including those relating to changes in the participating entities and to the traceability of fulfilments. The premise is that the ATI is constructed, from the development stage, as a structure 'transferable by design', rather than by subsequent renegotiation. Within the post-Law No 4/2026 framework, this also entails that the structure be 'agriculturally sustainable by design': crop continuity cannot be left to subsequent renegotiations between the ATI and the SPV, but must be secured through pre-constituted contractual obligations, transferable to the vehicle and externally verifiable throughout the entire operational period.

## Conclusions

### *Residual Critical Issues and Perspectives: From the ATI ‘Mentioned’ in the Guidelines to Contractual Standardisation of the Energy-Agriculture Model*

The analysis, however, shows that the decisive issue is not the abstract admissibility of the ATI, but the contract’s capacity to sustain – coherently and over time – the authorisation pathway, the PNRR/GSE incentive framework, and the increasingly restrictive discipline governing ground-mounted photovoltaic installations on agricultural land. Three residual frictions remain central to legal robustness and project bankability: (i) the stability of the agricultural component as a substantive requirement; (ii) the governance of changes in the participating entities; and (iii) alignment between the contractual arrangement, locational constraints, and the compliance obligations embedded in the incentive system.

First, the effective persistence of agriculture within the project’s ordinary functioning is no longer merely a contractual vulnerability. As shown in §§5 and 7, Law No 4/2026 has transformed the agricultural component into an explicit sanctioning risk: it is not a formal add-on, but a functional prerequisite of agrivoltaic qualification. Contractual practice must therefore move beyond generic cooperation clauses and incorporate qualified agricultural obligations (cropping plan or management plan, minimum standards, reporting, and dedicated remedies), coupled with a verification system enabling the *mandataria* to demonstrate continuity and coherence of agricultural activity throughout the incentive horizon and to respond to the five-year municipal check introduced by the same law. From a bankability perspective, the ‘agricultural’ obligation must be treated as an essential obligation and safeguarded through continuity tools (operational substitution/step-in) comparable, in intensity, to those ordinarily deployed for the plant’s O&M.

Second, changes in the participating entities – most notably the ATI–SPV transition, which is standard practice – must be governed as a structural feature of project design. Implementing rules require that such changes do not generate discontinuities (i) in the position vis-à-vis the GSE, (ii) in the registration and holding of authorisation titles, and (iii) in land availability and, as clarified in §9, in the agrivoltaic qualification of the intervention.

The resulting methodological rule is that the project must be ‘transferable’ by design, not by subsequent renegotiation, through conditional step-in/substitution clauses and procedural cooperation obligations (Colacicco, 2024; Consiglio di Stato, 2021; Consiglio di Stato, 2022; Consiglio di Stato, 2006). In bankability terms, the key question is not the theoretical permissibility of modifications, but whether the contractual arrangement can neutralise participant-default risk and prevent internal criticalities from translating into the loss or suspension of the incentive. The informational and documentary duties vis-à-vis the GSE, and the concentration of powers and responsibilities in the *mandataria*, have been addressed in §§7 and 8. Importantly, subjective alignment cannot be confined to the incentive relationship: for planning and landscape purposes, the permitting title (single authorisation/PAUR and related consents, including landscape ones) must, in any event, be held by an identified applicant/title-holder (as a rule, the *mandataria* or the SPV), and the ATI–SPV transition requires *ex ante* planning of transfers and substitutions in accordance with procedural rules that remain distinct from those governing the incentive contract.

Third, the locational constraint – often underestimated in sector-specific contracting – emerges as a structural risk factor. The repeal of Article 20(1-bis) of Legislative Decree No 199/2021 and its replacement by Article 11-bis of Legislative Decree No 190/2024 (Testo

Unico FER), as amended by Law No 4/2026, introduce a quota-based mechanism: between 0.8% and 3% of the regional utilised agricultural area (SAU) may qualify as suitable, and surfaces already affected by agrivoltaic installations are included in the computation. As a result, residual availability of suitable agricultural surfaces progressively shrinks as installations are developed, with immediate implications for *ex ante* verification and for the reallocation of development costs where the regional quota becomes saturated. This is compounded by territorially driven regulatory risk, namely the potential introduction of additional regional requirements for access to enabling titles, whose practical sustainability is not self-evident and must be integrated into change control. Contractually, project-modification governance cannot remain implicit: parties should distinguish between variants manageable within the same procedure/title and changes capable of triggering a *de novo* restart of proceedings or the need for new titles. Finally, transitional rules require particular care: for proceedings already initiated as of the entry into force of Decree-Law No 175/2025, where the completeness check of the application has already been performed, the previous regime continues to apply – making the correct qualification of procedural status a prerequisite for identifying the applicable legal framework

Against this background, the most concrete forward-looking perspective is contractual standardisation of the energy–agriculture model. Standardisation should not be understood as homogenising projects, but as constructing a replicable documentary and clause-based core capable of reducing transaction costs and, above all, the risk of misalignment between the private arrangement, authorisation titles, and incentive entitlement. Three channels appear convergent. The first is standardisation induced by the incentive system itself, through documentary checklists, templates, and minimum contents required by the Operational Rules and by the GSE’s assessment practices, complemented – within the post–Law No 4/2026 framework – by the PLV statement attested by a qualified professional as a structural element of the project file. The second is market-driven standardisation, shaped by financiers’ term sheets and bankability requirements (risk allocation, swift remedies, step-in, and traceability of flows and evidence), which tends to transform the ATI regulation and land agreements into a genuine covenant package. The third is professional standardisation, driven by notarial and contractual practice (especially regarding land availability and transferability/replicability in the transition towards an SPV) and, more broadly, by sectoral soft-law instruments (templates, model clauses, and guidance lines). In comparative terms, this standardisation also operates as a form of ‘compliance-by-design’, consistent with EU-derived accountability logics for publicly supported projects, where contractual architecture becomes part of the evidentiary infrastructure required to demonstrate continued fulfilment of eligibility conditions.

On this basis, the minimum contractual content reconstructed in §7 should be read not as a descriptive checklist, but as the operational threshold for a sector-specific model capable of making the agrivoltaic ATI not merely admissible, but predictably manageable and financeable across permitting, incentive, and funding phases. In this sense, the ATI does not emerge as an abstractly superior form of cooperation, but as the organisational model most functionally suited to the development and authorisation phase of Italian agrivoltaic projects, within a broader legal architecture that may subsequently evolve towards more structured vehicles for long-term operation and financing.

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