

New Biomethane Decree: incentive mechanisms for the biomethane industry pursuant to the PNRR provisions

1. Foreword

On 15 September 2022, pursuant to the M2C2 measure, Investment 1.4¹ of the Italian Recovery and Resilience Plan (the "PNRR"), the Minister of Ecological Transition signed the new decree which is intended to define a regulatory framework for incentive measures aimed at the development of biomethane fed into the natural gas grid providing (i) a capital contribution of 40 % on the eligible costs of the incurred investment and (ii) a specific feed-in tariff (the "New Biomethane Decree").

In particular, Article 11 of Legislative Decree 199/2021 (implementing the RED II Directive) envisaged the adoption of new decrees aimed at defining the criteria and procedures for the granting (through competitive procedures) of a non-repayable contribution on eligible costs incurred, *inter alia*, for investments for efficiency improvement, partial or total reconversion of existing biogas plants, for new biomethane production plants.

Indeed, the previous incentive mechanism (the Ministerial Decree dated 2 March 2018, on "*Promotion of the use of biomethane and other advanced biofuels in the transport field*" the "**2018 Ministerial Decree**"), applies to the plants that will enter into operation within 31 December 2022 (pursuant to Ministerial Decree dated 5 August 2022 entered in force on 19 August 2022, the previous incentive mechanism shall apply (also) to the plants that will enter into operation within 31 December 2023²).

In particular, the New Biomethane Decree provides for specific criteria in order to promote the circular economy through the definition of incentives for the production of biomethane to be fed into the gas grid, obtained from new plants and from the conversion of existing agricultural biogas plants.

The entry into force of the New Biomethane Decree will occur only after its registration by the *Corte dei Conti* and its publication in the Official Gazette.

Please find below a selection of the main new provisions which might be of interest for our Clients.

¹ Mission 2, Component 2, Investment 1.4 concerning "*Development of biomethane according to criteria to promote the circular economy*," for a total amount of Euro 1,730.4 million.

² Based on the Ministerial Decree dated 5 August 2022 published on 18 August 2022, and entered in force on 19 August 2022, the previous incentive mechanism (pursuant to Ministerial Decree dated 2 March 2018), shall apply (also) to the plants that will enter into operation within 31 December 2023. In particular the Ministerial Decree 5 August 2022 provided that, *inter alia*: (i) the relevant company submits the formal request of admission to the incentive mechanism (pursuant to Art. 9 of Ministerial Decree dated 2 March 2018) to the GSE within 30 days from the entry into force of the 2022 Decree, i.e. within 18 September 2022; (ii) the project obtains from GSE the qualification for the obtainment of the incentives within 31 December 2022; (iii) the relevant plant has already obtained the authorization for the construction and the operation.

2. Areas of intervention

The following paragraphs set out the main information about the New Biomethane Decree:

- ✓ Purpose and scope of the New Biomethane Decree
- ✓ Eligibility requirements
- ✓ Incentive award mechanism
- ✓ Contingents and competitive procedures
- ✓ Non-cumulability of incentives
- ✓ Competitive procedures for plants located in other EU States
- ✓ Final considerations

The New Biomethane Decree is available in Italian at the following [link](#).

3. New Biomethane Decree

Please find below a brief, and by no means exhaustive, description of the main provisions of the New Biomethane Decree.

3.1 Purpose and scope of the New Biomethane Decree

Based on the provisions set forth under Article 1, the New Biomethane Decree applies to the following categories of plants (please refer to below paragraph 3.3):

- a. new plants fueled by (i) agricultural elements (“*matrici agricole*”) and (ii) organic waste;
- b. revamped agricultural biogas power plants.

In particular, the aforementioned plants are eligible for the incentives whether (i) the interventions have not been commenced before the publication of the ranking list on the accepted projects (please refer to below paragraph 3.4) and (ii) they enter into operation by 30 June 2026.

N.B. The acquisition of lands and preparatory works such as obtainment of permits and the performance of preliminary feasibility studies are not to be considered as the commencement of works related to the interventions under (a) and (b) above³.

³ Pursuant to Article 1, Paragraph 3, an intervention is considered commenced when the first commitment makes an irreversible investment, such as the ordering of facilities or the starting of construction works.

3.2 Eligibility requirements

Limits to the eligibility to the incentive mechanism:

In particular, the New Biomethane Decree provides that the following entities are prevented from the access to the incentive mechanism:

1. "companies in difficulty" pursuant to the definition set out in the Communication 2014/C 249/01 of the European Commission⁴;
2. entities subject to one of the causes of exclusion set forth under Article 80 of Legislative Decree 2016, No. 50 (the "**Public Contracts Code**"), concerning the so-called general requirements of honorability, integrity and reliability of competitors for public tender procedures;
3. entities that benefit from the previous incentive mechanism provided for under the Ministerial Decree dated 2 March 2018.

Criteria for eligibility to the incentive mechanism:

In order to be eligible for the incentive mechanism, the biomethane plants shall be compliant, *inter alia*, with the following requirements:

1. possession of the authorizations title for the construction and operation of the plant;
2. connection proposal from the competent grid operator accepted by the applicant (in case the plants must be connected to the gas transmission and distribution grid with the third parties obligation to connect to such grid);
3. the biomethane shall be compliant with the biomethane sustainability requirements set out under EU Regulation;
4. further sustainability requirements set forth under EU Regulation, related to the plants and/or producers pursuant to Article 4 of the New Biomethane Decree.

3.3 Incentive award mechanism

The New Biomethane Decree (Article 3) recognises to the categories of plants described in the paragraph 3.1 above, an incentive consisting of (a) a capital contribution and (b) a specific feed-in tariff, as follows:

- a. **capital contribution of 40%** on the eligible expenses⁵ of the incurred investment, within the limits of the

⁴ A company is considered to be in difficulty if, in the absence of state intervention, it is almost certainly destined to economic collapse in the short or medium term. Therefore, a firm is considered to be in difficulty if at least one of the following circumstances are met: (a) in the case of a limited liability company, whenever it has lost more than half of its share capital due to accumulated losses; (b) in the case of a company in which at least some partners have unlimited liability for the company's debts, whenever the company has lost more than half of its equity, as shown in the company's accounts, due to accumulated losses; (c) when the company is subject to bankruptcy proceedings for insolvency or meets the conditions under national law for the opening of such proceedings at the request of its creditors; (d) in the case of a company other than an PMI where, over the past two years: (i) the debt-equity balance of the company is higher than 7.5; (ii) the interest coverage rate of the company (EBITDA/interest) is lower than 1.0.

⁵ **Eligible expenses** for granting of the capital contribution (under Article 8): (a) the costs for the construction and efficiency improvement of the plant; (b) the equipment for monitoring and oxidation of biomethane, exhaust gas and monitoring of fugitive emissions; (c) the costs of connection to the natural gas grid; (d) the costs for the purchase or acquisition of software which are functional to the management of the plant e) **the costs of design, construction management, testing, consultancy, feasibility studies activities, and purchase of licenses, related to the implementation of the above investments, up to the maximum of 12% of the total eligible expenses;** f) the costs for the digestate composting phase.

maximum investment cost (please refer to Annex 1 of the New Biomethane Decree);

- b. **feed-in tariff** applied on the net production of biomethane, for a period of 15 years and granted from the date of entry into operation of the plant, calculated as follows:
- ✓ **all-inclusive tariff**⁶ (“*tariffa omni-comprendiva*”): for plants with a production capacity equal to or lower than 250 scm/h that feed biomethane into grids with a third-party connection obligation, it is possible to apply for the obtainment of an all-inclusive tariff (*alternatively, the producer may apply for the obtainment of the premium tariff*). In such cases, the guarantees of origin are issued and simultaneously transferred free of charge to the GSE;
 - ✓ **premium tariff**⁷ (“*tariffa premio*”): for plants with a production capacity higher than 250 scm/h (as well as all plants that feed biomethane into grids with no third-party connection obligation) a premium tariff be applied. In this case, the guarantees of origin are assigned to the producer.

Please find below a table representing the benchmark prices for the construction of new plants, and for the conversion of agricultural plants works.

Type of biomethane production plants	Biomethane production capacity	Benchmark price ⁸ (€/MWh)
Small agricultural plants	$C_p \leq 100$ smc/h	115
Other agricultural plants	>100 smc/h	110
Plants powered by organic waste	No capacity treshold	62

The GSE, following the execution of the relevant agreement with the producer, awards the incentives monthly in accordance with the measurement data of the biomethane fed into the natural gas grid (as better specified in the application procedures, to be approved by decree of the Ministry upon proposal of the GSE).

3.4 Contingents and competitive procedures

The above described interventions are eligible for incentive mechanism set forth the New Biomethane Decree following the award of public competitive procedures, in which production capacity contingents are made regularly available.

⁶ All-inclusive tariff means: a tariff equal to the standard tariff (set as the basis for the competitive procedure), reduced by the percentage of discount offered and accepted in the competitive procedures referred to in Article 5, including the economic value of the sale of gas as well as the value of the guarantees of origin.

⁷ Premium tariff means: a tariff equal to the difference between the standard tariff (set as the basis for the competitive procedure), reduced by the percentage discount offered and accepted in the competitive procedures under Article 5, the average monthly price of natural gas and the average monthly price of guarantees of origin. If the aforementioned difference is negative, the GSE sets off or requests the producer to pay back the relevant amounts.

⁸ The tariff refers to new agricultural plants, plants fueled by organic waste, and conversions for agricultural plants only.

Available contingents

Article 5, paragraph 1, of the New Biomethane Decree provides the following annual contingents (scm/h):

	2022	2023	2024	Totale
Total amount (scm/h)	67,000	95,000	95,000	257,000

The New Biomethane Decree provides for a single competitive procedure in 2022, and a minimum of two procedures per year starting from 2023.

Competitive procedures

Based on the New Biomethane Decree provisions, the GSE evaluates the projects starting from the opening period of the call for tenders (60 days), and within 90 days after the closing of each procedure, publishes the relevant ranking of the admitted projects. Such competitive procedures are conducted online, in accordance with the principles of transparency, publicity, and in a non-discriminatory way.

The dates of the competitive procedures and the related terms and conditions will be regulated through the application procedures, to be adopted (by Ministerial Decree upon GSE proposal) within 30 days of the entry into force of the New Biomethane Decree.

N.B. If a plant is awarded in the context of one of the abovementioned competitive procedures, the transfer of ownership of the plant to a third party is not permitted before its entry into operation and the signing of the contract with the GSE.

3.5 Non-cumulability of incentives

With regard to the provisions set forth under the New Biomethane Decree, please note that such incentives cannot be cumulated with other public incentives or support measures of any denomination recognized to the same projects (Article 11).

Notwithstanding with the above, there is always the possibility to access to the dedicated energy withdrawal (“*ritiro dedicato*”) mechanism pursuant to Article 14, paragraphs 3 and 4 of Legislative Decree 29 December 2003, No. 387 with reference to the possible production of electricity.

3.6 Competitive procedures for plants located in other EU States

The incentive mechanism set forth under the New Biomethane Decree is also addressed to plants located in the territory of other member states of the European Union and other non-member states bordering Italy, having a free trade agreement with the European Union, that physically export biomethane production to Italy (Article 13). Those plants are eligible for incentives under the New Biomethane Decree if the following conditions are met:

1. existence of an agreement with the member state or third state where the plant is located;
2. provision of a reciprocity system under the above mentioned agreement;
3. compliance of the plants with all the requirements set forth under the New Biomethane Decree.

3.7 Final considerations

In conclusion, the New Biomethane Decree introduced several innovations aimed at promoting the development of the biomethane sector, in line with the objectives of the PNRR, in particular by providing, in addition to a specific feed-in tariff, a capital contribution of 40 % on the eligible expenses of the incurred investment (within the limits of the maximum cost of the eligible investment), which also includes the expenses incurred for the design and engineering of the works as well as for consultancy activities connected to the implementation of such investments, to the maximum amount of 12% of the total eligible expenses.

In addition, with regard to the eligibility criteria, it should be particularly noted the provision of specific requirements for the applicants of honorability, integrity and reliability, which are typical of public tender procedures (and not only the requirements of *anti-mafia* legislation, similarly to other incentive mechanisms for renewable energies).

With regard to the admission to the incentive mechanism, the applicants may access such incentives following the awarding of special public competitive procedures, in which production capacity contingents are regularly made available. A contingent will be allocated and a competitive procedure will be launched starting from this year (2022). For the dates of the competitive procedures and the relevant terms and conditions of such procedures, specific application procedures will be approved (by the Ministry of Ecological Transition upon proposal of the GSE) within 30 days starting from the entry into force of the New Biomethane Decree. Therefore, it is only necessary to wait for the publication of the New Biomethane Decree in the Official Gazette and the approval of the aforementioned application procedures in order to have the complete picture of the operation of the new incentive mechanism.

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