

09 February 2023

New Biomethane Decree: Operating Procedures and call for the first competitive procedure

1. Foreword

By the MASE¹ Decree dated 13 January 2023 and published on 17 January 2023 the operating procedures related to New Biomethane Decree have been adopted, drafted with the support of GSE, as set forth in the Ministerial Decree No. 340 of 15 September 2022 published in the Official Gazette on 26 October 2022 and entered into force the following day (the "**New Biomethane Decree**").²

The Operating Procedures provide for specific information for an appropriate implementation of the New Biomethane Decree provisions, including the schemes for the public procedures (the application forms, the documentation to be submitted for the verification of compliance with the requirements, and the forms of the standard contracts to be entered into between the GSE and the Applicants).³

Following our previous Newsletter on the Biomethane Decree, we decided to highlight some interesting profiles of the new Operating Procedures, and the related new incentive mechanisms.⁴

2. Areas of intervention

More in detail, this newsletter focuses on the following items of the Operating Procedures⁵:

- ✓ *Clarifications on the scope of the Operating Procedures*
- ✓ *Available batches and re-awarding of the and unallocated production capacity*
- ✓ *Public competitive procedures*
- ✓ *Requirements and criteria for accessing incentives*
- ✓ *Grounds for exclusion from the ranking list and from the access of the incentive mechanism*

¹ Article 1 of Decree Law 173 of 2022, converted into law by Law 204 of 2022, replaced the previous denomination of Ministry of Ecological Transition (*Ministero della Transizione Ecologica*), in Ministry of Environment and Energy Safety (*Ministero dell'Ambiente e della Sicurezza Energetica* – "MASE")

² Please consider that New Biomethane Decree was issued according to the Mission 2, Component 2, Investment 1.4 of the National Recovery and Resilience Plan (the "PNRR") on the development of biomethane according to criteria to promote the circular economy, for a total amount of **Euro 1,730.4 million**.

³ The Applicant is defined as the entity (natural or legal person) that supports the expenses for the realization of the intervention (new construction or revamping) and is the holder of the authorization title for the realization of such activities and the operation of the plant as well as the holder of the agreement for the connection of the grid (with the third-party connection obligation, if provided). The Applicant is entitled to participate in the competitive procedures in order to apply for the incentive mechanism provided for under the New Biomethane Decree (feed-in tariff and capital contribution) (par. 1.2 of the Operating Procedures).

In the event that the biomethane is obtained from biogas produced in a plant (consisting of the biomass management and anaerobic digestion sections) under the ownership of a party different from the owner of the biogas purification and refining section, the Applicant is identified as the owner of the authorizations for the construction and operation of the upgrading section, as well as of the grid connection contract (with third-party connection obligation, if provided).

⁴ In our previous Newsletter (available at the following [link](#)) we focused on the main relevant aspects of the New Biomethane Decree.

⁵ The Operating Procedure are available in Italian at the following [link](#).

- ✓ Type of contracts
- ✓ Brief overview on the awarding of the capital contribution and feed-in tariff incentive mechanism

3. Operating Procedures

Please find below a brief, and by no means exhaustive, description of the main provisions of the Operating Procedures.

3.1 Clarifications on the scope of the Operating Procedures

The New Biomethane Decree applies to the following categories of biomethane plants:

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

The Operating Procedures provide relevant information in relation to the (i) type of plant; (ii) category of intervention; and (iii) intended use of the biomethane produced by the plant in order to fall within the scope of application of the New Biomethane Decree.

(i) *Type of plant:*

- pursuant to Article 2 of the New Biomethane Decree an **agricultural plant** means a biogas production plant that is part of a farm's production cycle or that uses materials from agricultural, forestry, livestock, food and agro-industrial activities not constituting waste. If the Applicant is an agricultural company, the definition of "agricultural plant" includes plants partially using organic waste;
- pursuant to Article 2 of the New Biomethane Decree a **plant fueled by organic waste** means a biogas production plant using the organic fraction of municipal solid waste (so called "FORSU") as well as wastes falling under the types of elements under letters b), c), d), f) of Annex VIII, Part A, to Legislative Decree No. 199/2021⁶. Waste must meet the definition given in Article 183 of the Italian Environmental Code⁷(i.e., biodegradable garden and park waste, food and kitchen waste produced by households, restaurants, offices, wholesale operations, canteens, food services and retail stores, and comparable waste produced by food industry facilities).

(ii) *Category of intervention:*

- **new construction**, means the construction of a new plant with new or fully regenerated components of all facilities and necessary equipment for the production, conveyance, purification, upgrading of the biogas and the injection of the biomethane into the natural gas grid;
- **revamping**, means an intervention on an agricultural plant for the production and use of biogas for power generation, existing as of the date of entry into force of the New Biomethane Decree (i.e. 27 October 2022), which is converted to the production of biomethane after the date of entry into force of the New Biomethane Decree and, therefore, allocates, in whole or in part, the production of biogas to production of biomethane, also with an increase in production capacity.

Please consider that both the above-mentioned categories of plants take part to the same public competitive

⁶ For further details on the waste under consideration, please see Section 2.3.5.2 of the Operating Procedures.

⁷ Legislative Decree No. 152 of 3 April 2006.

procedures (which are both described below).

(iii) *Intended use of biomethane:*

- **Transport sector:** in case the plant produces biomethane intended for the transport sector, it shall (i) use of specific feedstock for the production of advanced biofuels (i.e., raw materials specifically listed in Annex VIII part A of Legislative Decree No. 199 of 2021) and (ii) achieve at least a 65% reduction of greenhouse gas emissions through the use of biomass;
- **Other uses:** in case the plant produces biomethane intended for other uses, it shall achieve at least an 80% reduction in greenhouse gas emissions through the use of biomass.⁸

3.2 Available batches and re-awarding of the and unallocated production capacity

The above described interventions are eligible for incentive mechanism set forth the New Biomethane Decree following the award of public competitive procedures, in which specific production capacity batches are made regularly available (ref. section 3.3 below).

• **Available batches**

Article 5, paragraph 1 of the New Biomethane Decree (referred to in Section 3.1.2 of the Operating Procedures) provides the following annual batches:

	2022	2023	2024	Total
Total (Scm/h)	67,000	95,000	95,000	257,000

For the competitive procedure related to 2022 (even if the first public competitive procedure has been called in 2023, as further explained below), the entire contingent provided for in the New Biomethane Decree will be made available, while for the competitive procedures that will be called in the years 2023 and 2024, the annual contingent will be distributed over the two procedures by allocating 75% of the production capacity to the first procedure and the remaining 25 % to the second procedure of the year (please refer to the chart in section 3.3 below).

Should the batch made available for the specific ranking be insufficient to cover the entire production capacity of the last admitted plant, the Applicant of that plant will be eligible for incentives only for the portion of production capacity falling within the available batch.

• **Unallocated production capacity batch**

In case of non-saturation of the production capacity of the batch, the GSE – in order to reallocate the available resources and determine the production capacity batches to be allocated in the context of the following competitive procedures – provides mechanisms for reallocation of unallocated production capacity, to be applied in the ranking procedure phase: in each competitive procedure, the remaining unallocated production capacity batch shall be allocated to the batch of the first subsequent procedure, until the batches have been fully distributed.

⁸ The definition of "other uses" also includes the use of the biomethane in industrial plants for the production of electricity and thermal energy only in case of high-efficiency cogeneration, i.e., units recognized as operating in **high-efficiency cogeneration** (so-called "CAR") in accordance with Legislative Decree No. 20/2007 as supplemented by Ministerial Decree of 4 August 2011.

3.3 Public competitive procedures

3.3.1 Modalities of participation

The competitive procedures are conducted online, in accordance with the principles of transparency, publicity, a in a non-discriminatory way.

The applications to participate to the competitive procedures (together with all documentation required by the New Biomethane Decree) must be submitted, under penalty of exclusion, through the GSE dedicated website (*Portale Informatico*).

3.3.2 Calendar of competitive procedures

Pursuant to Article 5, paragraph 2 of the New Biomethane Decree one competitive procedure shall be launched in 2022 (even if the first competitive procedure has been called in 2023) and at least two competitive procedures *per* year shall be launched for the following years (2023, 2024, and eventually 2025 and 2026).

Please find below the schedule of the planned competitive procedures for the years 2022 to 2024, along with a distribution of the annual capacity batches (Appendix A of the Operating Procedures).

TABLE 1 - Allocation of annual contingents / quotas and expected dates for competitive procedures (the percentages shown in the table - 100%, 75% and 25% - refer to the starting values of the annual quotas reported in Art.5, paragraph 1, of DM 2022) - The GSE might update this Table.

		2022			2023			2024		
Term lenght		Dates	No. Procedure	% annual quota	Dates	No. Procedure	% annual quota	Dates	No. Procedure	% annual quota
Opening	60 days	30/1/2023	1	100%	14/7/2023	2	75% residual quota procedure No.1	3/6/2024	4	75% residual quota procedure No. 3
Closing		31/3/2023			12/9/2023			2/8/2024		
ranking list within	90 days	29/6/2023			11/12/2023	31/10/2024				
Opening	60 days				22/12/2023	3	25% residual quota procedure No.2	18/11/2024	5	25% residual quota procedure No. 4
Closing					20/2/2024			17/1/2025		
ranking list within	90 days	20/5/2024	17/4/2025							

Please note the first call for tender has been issued and the procedure will remain open from 30 January 2023 to 31 March 2023.⁹ The applications can be submitted through the GSE new dedicated Biomethane section of its website in the section Area Clienti (Client Area).

3.3.3 Timing of competitive procedures

Each procedure remains open for 60 days from the relevant publication on the GSE website; the GSE evaluates the projects and within 90 days after the closing of each procedure, publishes the relevant ranking of the admitted projects.¹⁰ Please find below some definitions related to the competitive procedures:

⁹ The first notice published on 17 January, 2023 by the GSE "Public Notice for participation in the competitive procedure for access to incentives for biomethane fed into the natural gas grid under Article 5 of the Ministerial Decree of 15 September 2022" is available in Italian at the following [link](#).

¹⁰ Without prejudice to any subsequent controls, for the purposes of the publication of the ranking list, the GSE verifies the possession of the requirements (and possibly of the priority criterion related to the highest reduction of Greenhouse Gases "GHG" emissions) declared by the Applicant, through the examination of the documentation that the same, under penalty of exclusion, shall submit in order to participate to the competitive procedure. In this respect, please consider that the consequence of the lack of evidence of the possession of one or more requirements and/or in the case of a saturated batch of the priority criterion (referred to in paragraph 3.3.4 of this document) is the exclusion from the ranking list.

- **opening period**: period for the submission by Applicants of applications to participate in competitive procedures, corresponding to 60 days (from the opening date to the closing date);
- **documentary completeness evaluation period**: a period of 5 working days from the date of closure of the competitive procedure for the GSE to verify the completeness of the documentation attached to the application for participation and to notify the Applicant any lack of documentation. The Applicant shall rectify the lack of documentation within 5 days from the receipt of the GSE notice. In case of lack of documentation, the "final date of completion of the application for participation in the procedure" referred to in Article 6, paragraph 2, of the New Biomethane Decree, corresponds to the closing date of the procedure;
- **evaluation period**: period following the date of closure of the procedure during which the GSE evaluates the projects based on the applications received, in order to verify the compliance with the requirements for admission to the incentive mechanism. This period, of maximum 90 days from the date of closure of the procedure, ends with the publication of the ranking list.

Please note that the ranking lists are not subject to scrolling.

3.3.4 Priority criterion

The ranking shall be drawn up by the GSE by applying, in order, the following priority criteria (Section 3.4.1 of the Operating Procedures):

1. greatest percentage of reduction offered on the with reference to the relevant tariff;
2. greatest reduction in GHG emissions with respect to the minimum percentage values provided (i.e. 65% for transport use and 80% for other uses, as better specified below under paragraph 3.4 of this document and the "Sustainability Requirements");
3. earliest date of completion of the application for participation in the procedure.

3.4 Requirements and criteria for accessing incentives

In order to be eligible for the incentive mechanism as already provided by the New Biomethane Decree, it is necessary to hold and maintain, from the competitive procedure and for the whole incentive period, *inter alia* the following requirements:

- (i) **subjective requirements of the Applicants;**
- (ii) **objective requirements**, referring to the intervention of the biomethane production plant. Some objective requirements are differentiated according to: (a) the category of intervention (new construction or revamping); (b) type of plant (agricultural plant or organic waste plant); and (c) intended use of the biomethane produced by the plant (use in the transport sector or other uses).

Any modification of the subjective and objective requirements must be promptly notified to the GSE.

3.4.1 Subjective requirements

Applicants may participate to the application procedures described above as long as they demonstrate compliance with the subjective requirements set forth in the New Biomethane Decree, which specifically requires that the Applicant (a) is not a company in difficulty pursuant to the definition provided by the Communication 2014/C 249/01 of the European Commission; (b) is not subject to one of the causes of exclusion set forth under Article 80 of Legislative Decree 2016, No. 50 (the Public Contracts Code); (c) is not one of the companies for which a recovery order is pending as a result of a decision of the European Commission in relation to unlawful incentives received and (d) does not benefit from the previous incentive mechanism provided for under the Ministerial Decree dated 2 March 2018.

3.4.2 Objective requirements

To access competitive procedures and incentives under the New Biomethane Decree, the Operating Procedures provide clarifications in relation to, *inter alia*:

(a) requirement of the start of the works (which must not be started before the date of publication of the ranking list), specifying that:

- in case of communication to the competent authority for partial or complete conversion to biomethane production whose variations are considered non-substantial¹¹, the Applicant must provide evidence of having specified (in the same communication or by separate communication) that the works related to the construction of the plant shall not be started before the date of publication of the ranking list;
- Incentives under the New Biomethane Decree are not made available for interventions that:
 - (1) have already been authorized and whose works results to have already started before the publication of the ranking list of the relevant competitive procedure; and
 - (2) have obtained a non-substantial variation subsequent to the publication of the ranking list;

This is because the reference permit title remains the original authorization title and not instead the non-substantial variation.

(b) requirement of possession of the authorization title, which-as of the date of participation in the competitive bidding process-must be (I) obtained, (II) valid (III) effective and (IV) in the ownership of the Applicant. In particular:

- in the case of authorization/permitting titles obtained by "tacit consent", the period tacit consent for the competent administration to raise any objection must have elapsed without any denials, suspensions and/or requests for the acquisition of documents and/or additional information, prior to the sending of the request to participate in the competitive procedure;
- in the case of authorization titles that provide for an express act by the competent Administration, the date of obtainment of the same correspond to the issuance of the final title;
- in case of communication (for interventions of partial or complete conversion to biomethane production whose variations are non-substantial), the date of achievement of the title correspond to the date of the communication, providing evidence of the date of receipt by the Administration (legible protocol, receipt of delivery of the PEC or registered letter, certificate of receipt by the same Administration, etc.).

In the event of transfer of ownership of the facility, a transfer of the relevant permit must be completed prior to participation in the competitive procedure process.

(c) Requirement of possession of the connection to the grid proposal, which shall be accepted by the Applicant: the "date of acceptance" corresponds to the date of sending to the relevant Grid Operator the document concerning the acceptance of the connection proposal.

In the case of transfer of ownership of the plant, it is also necessary to prove the transfer of the accepted connection to the grid proposal.

¹¹ The reference is to Article 8-bis, paragraph 1(a-bis) of Legislative Decree 28/2011.

3.5 Grounds for exclusion from the ranking list and from the access of the incentive mechanism

The Operating Procedures provide a list of cases that, if ascertained by the GSE, lead respectively to (a) exclusion from the ranking list or (b) forfeiture of the ranking position in the ranking list and consequent loss of the right to receive the incentives (see paragraphs 3.6 and 3.7 of the Operating Procedures).

3.6 Type of contracts

There are two types of contracts that the Applicant may enter into with the GSE (see Section 7 of the Operating Procedures), and specifically:

- (i) a contract for the payment of the all-inclusive tariff ("**TO Contract**") for plants with a production capacity equal or lower than 250 Scm/h that feed biomethane into grids with a third-party connection obligation. For this type of plants, the Applicant can apply for the obtainment of an all-inclusive tariff alternatively, the producer may apply for the obtainment of the premium tariff, in this case, the biomethane produced will not be subject to withdrawal by the GSE;
- (ii) a contract for the payment of the premium tariff ("**TP Contract**") for plants with a production capacity of higher than 250 Scm/h, as well as all plants that feed biomethane into grids with no third-party connection obligation.

3.6.1 Methods of activating the TO contract

The TO contract is activated from the date of entry into operation of the plant limited to the regulation of the technical and economic conditions of withdrawal by the GSE.

For the purpose of finalizing the contract, within 30 days after the end of the start-up and testing phase, the Applicant shall notify the date of the conclusion of that phase. This date will constitute the date of commercial operation from which the incentive period through the all-inclusive tariff will begin.

In the case of rejection of the Notice of Entry into Operation, the TO contract will be terminated from the first day of the third thermal year following the date of entry into operation of the plant, unless the Applicant requests early termination with notice of at least 60 days starting from the first day of the month following the date of receipt of the request. For the period of time between the date of entry into operation and the aforementioned termination date, the contract will only cover the economic valuation of the quantity of biomethane withdrawn by the GSE. This is without prejudice to the Applicant's right to request the issuance of guarantees of origin related to the plant.

3.6.2 Modalities of activating the TP contract

The Applicant who intends to enter into the TP Contract, following admission to the ranking list, shall:

- (a) submit the Notice of Entry into Operation and accept the general contractual terms of the TP Contract;
- (b) indicate the estimated date of commercial entry into operation on which it assumes any start-up and testing phase of the plant will be completed;
- (c) within 30 days from the conclusion of the start-up and testing phase, the Applicant shall notify the date of the conclusion of the testing phase, and the same date will correspond to the date of commercial entry into operation from which the incentive period through the premium tariff will begin.

In the event that the commercial effective date of the incentive is communicated by the Applicant at a time subsequent to the issuance of the aforementioned measure of acceptance of the Notice of Entry into Operation, the GSE will communicate the activation of the TO Contract with a separate notice, which will form an integral part of the contract.

3.6.3 Modification of the contractual framework

It is allowed to request switching from one contract type to another (i.e., from TO Contract to TP Contract and *vice versa*) for a maximum of two times during the incentive period.

The duration of the related contract (as amended) will be equal to the remaining incentive period and will start from the first day of the third month following the month of transmission of the request for access to TP or TO (as applicable).

3.7 Brief overview on the awarding of the capital contribution and feed-in tariff incentive mechanism

3.7.1 Capital contribution

With reference to the capital contribution, the Operating Procedures (par. 8.1) point out that the effective payment of the capital contribution is subject to the acquisition of the positive outcome of the first inspection visit, to be carried out within 30 days from the issuance of the first sustainability certificate concerning the biomethane fed into the grid.

The contribution is transferred to the beneficiary Applicants in accordance with the operating procedures inherent to the management of PNRR-related resources held in the NGEU state treasury accounts in accordance with the provisions of RGS-MEF Circular No. 29 of July 26, 2022 concerning "PNRR Financial Procedures Circular" and subsequent provisions to be provided by the General Directorate "Financial Management, Monitoring, Reporting and Control Competent Department Mission Unit PNRR" of the Ministry.

Please consider that that all costs falling under eligible expenses referred to in Article 8, paragraph 2 of the New Biomethane Decree must be substantiated with traceable payments by 30 June 2026 (par. 6.1 of the Operating Procedures).

3.7.2 Operating account incentives

The Operation Procedures expressly provide that the Applicant who intends to access the TO will be granted:

- (a) exclusively the share of the tariff inherent to the value of the biomethane fed into the grid during the period between the date of entry into operation of the plant and the conclusion of the investigation for admission to the incentives following the entry into operation of the plant;
- (b) also, the missing share of the tariff, from the date of the commercial entry into operation following the admission to the incentive mechanism.

The incentive is recognized monthly by the end of month M+3 with respect to the month to which the production refers (month M).

The following table shows the timing and payment methods.

Producing reference period	Sending producer self-declaration	Issuance of approval to the Producer and communication of GO number	Invoice issuance (Producer/GSE)	Incentive payment / collection GO issuance
Month M	Within the month M+1	Within the 20th of M+2	Within the end of M+2	Within the end of M+3

4. Final considerations

In conclusion, the New Biomethane Decree has certainly given a new impulse to the sector by implementing Mission 2 of the PNRR, which recognizes 1,730.4 million to new build biomethane plants and revamped biogas plants by introducing several interesting innovations and, in particular, providing – in addition to a specific feed-in tariff – a capital contribution of 40 % on the eligible expenses of the incurred investment.

With reference to the access to the new incentive mechanism, the Operating Procedure (finally) provide Applicants with a detailed framework on the information necessary for a correct fulfillment of the New Biomethane Decree's dispositions and for the purpose of planning the investments and take part to the public competitive procedures.

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It does not constitute a reference for agreements and/or commitments of any nature.
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