

# Recent regulatory developments in Italian gas and electricity sectors

## Contents

- Premises  
page 1
- Anti-Crisis Decree  
page 1
- Renewable Decree  
page 2

## 1. Premises

Italy has very recently approved two important pieces of legislation in the gas and electricity sectors:

- 1) the Law dated 27 January 2009 converting the Law Decree n. 185/2008, better known as "*Decreto anti crisi*" decree (hereinafter, "**Anti-Crisis Decree**"); and
- 2) the Ministerial Decree issued on 18th December 2008 implementing the Budget Law 2008 and regulating, inter alia, the green certificates and renewable energy market (hereinafter, "**Renewable Decree**").

## 2. Anti-Crisis Decree

In order to face the economical and financial crisis affecting the European and international markets the Anti-Crisis Decree introduces, *inter alia*, urgent measures to be implemented in Italy in the natural gas and electricity sectors. The Anti-Crisis Decree was issued with temporary effectiveness on 29 November 2008 and it has been finally converted into law on 27 January 2009.

We summarise herebelow the most relevant provisions of the Anti-Crisis Decree in the Italian natural gas and electricity sectors: please consider that the great majority of these provisions simply provide for general principles which must be further specified and enacted by implementing regulations.

### 2.1 New method of calculation of price of electricity (Section 3, paragraph 10)

The Anti-Crisis Decree provides for certain material changes to the Italian electricity market.

In order to reduce the price of the electricity it is provided that within 90 days following its entrance in force as law (*i.e.* approximately within the end of April 2009) the *Ministero per lo Sviluppo Economico* or "**MSE**", in consultation with the Italian Authority for electricity and gas ("**AEEG**"), shall amend and/or introduce specific provisions regulating the electricity market so that the price of electricity of the Day-Ahead Market (or "**MGP**") shall be established "on the basis of the different prices offered on the market by the operators, on a binding basis, and accepted by GME, with priority to the bids with the lowest price".

The mechanism introduced by the Anti-Crisis Decree is intended to change from the current system based on a "marginal price rule" to a new system based on a "pay as bid rule". The change is intended to decrease the average price of electricity traded on the "**MGP**". Commentators, however, have argued that the decrease in the market prices will be quite marginal. Since the Anti-Crisis Decree only provides for a few general principles, much will depend on how the MSE and the AEEG will implement them.

### 2.2 New Intra-Day market on the Italian Power Exchange Market ("**IPEX**")

A new intra-day market within the IPEX called "*Mercato Infragiornaliero*" ("**MI**") shall be established instead of the current "*Mercato di Aggiustamento*". The MI shall be carried out on the basis of continuous negotiations between the closing of the MGP and the opening of the dispatching services market ("*Mercato per il Servizio del Dispacciamento*" or "**MSD**").

The introduction of the MI is aimed to minimise the costs deriving from any variance between the effective withdrawal and the programmes of withdrawal of energy on the basis of which operators bid on the "**MGP**".

### 2.3 New rules on the “Despatching Services Market”

The MSD shall be changed as follows:<sup>1</sup>

- i. It will be operated by Terna S.p.A. (*i.e.* the national concessionaire of transmission and dispatching services);
- ii. the energy price shall be established on the basis of the different prices offered on a binding basis by each authorized operator and accepted by Terna S.p.A. with priority to the offers with the lowest price and until satisfaction of demand;
- iii. the AEEG will report on a yearly basis to the MSE, within 30th September of each year, on the electricity market and will provide proposals to foster competition and transparency;
- iv. within the end of April 2009, the AEEG, in accordance with the MSE:
  - has to conform its resolutions so that the producers/owners of essential plants (*impianti essenziali*)<sup>2</sup> have to bid the offer of power on the MSD pursuant to "*terms and conditions established by the AEEG...implementing mechanisms so as to minimise the costs for the electricity system and to guarantee a fair remuneration for the producers of energy*";
  - has to adopt any other appropriate measure to ensure the efficiency of the dispatching activities.

The new regulations are aimed at reducing the costs of despatching services on the MSD. The previous regulation provided for public auctions published by Terna S.p.A. and/or Acquirente Unico S.p.A., inviting the producers to offer and bid on the MSD the quantity required from time to time to preserve the efficiency of the Italian system of electricity. According to the government the existing regulation has resulted in high prices on the MSD.

### 2.4 New structure of the national grid (Section 3, paragraph 12)

In addition to the above, within 24 (twenty-four) months the MSE may divide the relevant grid into three macro-areas in order to reduce the price differences among the four areas in which the Italian market is divided today and power production is currently paid at very different prices depending on the location of power plants in the territory.

## 3. Renewable Decree

By a decree on 18 December 2008 the MSE enacted certain provisions of Budget Law 2008, regulating the renewable energy system and, in particular, the green certificates incentive mechanism (hereinafter, “Green Certificates” or “CV”).<sup>3</sup>

<sup>1</sup> By means of which the resources required for the safety of the national system of electricity are selected "*transparently and efficiently valorising each resource*".

<sup>2</sup> Expressly defined as the plants "*technically and structurally required to face any network imbalance or to maintain the security levels of the system for significant periods*", as defined from time to time by Terna S.p.A.

<sup>3</sup> According to Article 11 of Legislative Decree no.79/1999 (the “**Bersani Decree**”), generators and importers of electricity produced from non-renewable sources, which annually produce or import power for more than 100 GW/h (net of co-generation, internal consumption and exports) are under the duty to inject a given proportion of electricity produced from renewable sources (“**Renewable Energy**”) into the national power system in the following year (the “**Renewable Obligation**”). The Renewable Obligation is calculated on the basis of the self-certification filed to the GSE of the amount of electricity produced or imported within the 31<sup>st</sup> March of each year for the previous year. Pursuant to Budget Law 2008 for the period between 2007-2012 the Renewable Obligation has been increased every year of 0.75% (*i.e.* for the year 2009 is equal to 4.25%). The Renewable Obligation may be fulfilled also by purchasing from other producers or from the GSE the corresponding amount of electricity, or the related rights (*i.e.* the Green Certificates).

The Renewable Decree is an act of wide-range application, containing provisions of very different nature and field of application (including IAFR plants qualification procedure; remuneration of biomass plants; Green Certificates; guarantees of origin; monitoring activities on renewable plants field to be carried out by GSE). The following may be considered as the most relevant amendments to the renewable sources regulation introduced by the Renewable Decree.

### **I. Single Tariff for small renewable plants ("*tariffa omnicomprensiva*")**

Instead of Green Certificates, and upon request of the producer at the moment of applying for the qualification of plants fed by renewable sources ("**IAFR Plants**"),<sup>4</sup> only IAFR Plants with a power not higher than 1 MW (or 0.2 MW for wind plants) may benefit for this new kind of incentive.

The Single Tariff will be granted for a period of 15 years and will vary (i) on the basis of the nature of renewable source used to feed the relevant IAFR Plant, pursuant to the provisions set forth under the Schedule 3 attached to Budget Law 2008;<sup>5</sup> and (ii) the status of the IAFR Plants (*i.e.* new plant, plant revamped, plant repowered).

The Single Tariff will be granted exclusively on the basis of the "*energy effectively injected in the grid*": this means that in principle no Single Tariff "*a preventivo*" (*i.e.* on the basis of forecasted production), as currently allowed for CVs, may be granted in favour of operators.

### **II. Green Certificates**

#### **(a) General profile**

The Renewable Decree confirms the following profile, as already set forth under Budget Law 2008:

- operators of IAFR Plants are entitled to Green Certificates for: (i) 15 years for the energy produced by plants which have been commissioned after 31<sup>st</sup> December 2007; (ii) 12 years for the energy produced by plants which have been commissioned until 31<sup>st</sup> December 2007; and (iii) 8 years for the energy, in particular non renewable energy, produced by plants which have been entered into operation before 29<sup>th</sup> April 2006;
- each Green Certificate is valid to satisfy the Renewable Obligation (of its purchaser) for the year in which the Renewable Energy it represents was produced and for the following 2 years;
- the value of a Green Certificate represents 1 MWh.

A relevant amendment introduced by the Renewable Decree concerns the so called Green Certificates "*a preventivo*" (*i.e.* on the basis of the forecasted production in the current or following year): the issuance of such kind of CVs is now allowed only upon the issuance of a guarantee by the producer in favour of GSE. Such guarantee can be in the form of an equivalent amount of energy or of a first demand bank guarantee. Such obligation will apply only for the IAFR plants which are already in operation and from 30<sup>th</sup> June 2009.

<sup>4</sup> As for the obtainment of CVs, the producer who intends to obtain the Single Tariff has to apply to GSE (the entity in charge with the role of incentivizing electricity generation from renewable and assimilated sources and managing the market system based on Green Certificates) to be entitled with the qualification of IAFR Plants. The request to obtain the qualification of IAFR Plants has to be presented within the following 3 years from the date in which the plants has been entered into operation in order to obtain the incentive.

<sup>5</sup> For example, the Single Tariff for wind farms will be equal to 30 Eurocent/kWh, multiplied for the quantity of Energy granted with such incentive.

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#### (b) Green Certificates market in Italy

The Renewable Decree intends to substantially modify the current structure of the Italian market for CVs.<sup>6</sup> An important change is that information on all sales of CVs will have to be published on the Green Certificates Bilateral Registration Platform managed by GME ("PBCV") including the CVs transactions effected out of the PBCV, on the free market, by disclosing the most relevant information of the transactions. Information will have to include price, number, kind of the transferred Green Certificates and counterparty.

This means that following the adoption of the Renewable Decree, and related technical regulation published by GME, all CVs transactions and their price will be registered on the PBCV.<sup>7</sup>

Such obligation to register a CVs transaction on PBCV has been introduced to allow GME to gather the required information to monitor and forecast the trends of the market and to communicate to GSE the relevant information required to calculate the value of CVs on the basis of the trends of the Italian market of electricity.<sup>8</sup>

### III. Other Regulatory Changes

Please consider that the Italian Parliament is also discussing the so-called "Development Annex" ("Collegato Sviluppo") to the Budget Law 2009, which shall contain provisions related to the gas and electricity sectors. In particular it shall: (i) introduce a specific regulation for the nuclear energy sector (*i.e.* localisation of nuclear plants; procedure for the construction of nuclear plant; constitution of a specific Authority which shall be responsible for the regulation and implementation of nuclear safety and protection in Italy); (ii) simplify the procedure for the construction and management of LNG-rigasification plants. Only upon the approval of the final version of the Development Annex to Budget Law 2009 it will be possible to effect an exhaustive analysis in this regards.

<sup>6</sup> As you may know, this is currently composed of (i) regulated market, on an IT trading platform operated by GME, regulated by a system of offer "monitored and controlled" by GME itself; and (ii) free market, composed of undisclosed transactions between market operators carried out by simple inscription on the CV account entitled to each of the operators at GSE.

<sup>7</sup> Article 13, paragraph 3, of the Renewable Decree provides just for an information obligation in favour of GME regarding the detail of the transaction.

<sup>8</sup> In particular, on the basis of such information the price at which GSE has to buy the "expiring Cvs" (*i.e.* the Cvs not transferred to comply with the renewable Obligation at the end of their period of validity)