

Consultation Document 06/2014

PROPOSED CHANGES TO THE ENERGY EFFICIENCY CERTIFICATES MARKET RULES

1. Introduction

The “energy efficiency certificates” (or white certificates) scheme was introduced into the national legislation under the Ministerial Decrees of 20 July 2004 – *new identification of national quantitative targets in terms of energy saving and development of renewables as per art. 16, para. 4 of Legislative Decree no. 164 of 23 May 2000* in the natural-gas sector and *new identification of quantitative targets in terms of end-use energy efficiency improvement as per art. 9, para. 1 of Legislative Decree no. 79 of 16 March 1999* in the electricity sector, respectively – as subsequently amended and supplemented.

In particular, under the “energy efficiency certificates” scheme, electricity and natural-gas distributors - having more than 50,000 final customers connected to their distribution grid on 31 December of the two years preceding each reference year - are required to achieve yearly energy-saving targets, by: i) implementing energy-saving projects, entitling them to receive a given amount of energy efficiency certificates (TEE); ii) and/or purchasing on the market (bilaterally and/or on GME’s regulated platform) an amount of TEE sufficient to comply with their obligation. These obligations represent, by operation of law, a burden automatically transferred to all the parties that may, in whatever form, take over the distribution activity in respect of grids that, on 31 December of two previous years had at least 50,000 customers connected thereto.

Within this regulatory framework - in compliance with art. 29 of Legislative Decree no. 28 of 3 March 2011 and with the Decree of the Minister of Economic Development of 28 December and without prejudice to the advisory, regulatory, monitoring and sanctioning tasks of “Autorità per l’energia elettrica, il gas ed il sistema idrico” (electricity, gas and water system regulator, hereafter: AEEGSI) - Gestore dei servizi energetici – GSE S.p.A. (hereafter: GSE) took over the activities of preliminary assessment of individual energy-saving projects and the related activities of certification of the savings achieved; these activities had been previously carried out by AEEGSI.

After carrying out the above activities of certification, GSE sends to GME the requests for issuing the TEE recognised for the savings achieved by the individual projects, in view of the subsequent issuing of TEE to the owners of the above projects.

After issuing the TEE, GME deposits them into the ownership account that the owner of the energy-saving project has opened in an appropriate register (TEE Register), organised and managed by GME. After being deposited, the TEE may be traded: i) on the market organised and managed by GME under the aforementioned Ministerial Decrees of 20 July 2004 (TEE market, hereafter: “MTEE”); or ii) bilaterally, i.e. off the regulated market; however, in the latter case, the parties carrying out bilateral transactions of TEE are required to register their volumes and trading prices within the TEE Register.

The MTEE is governed by the “Rules of Operation of the Energy Efficiency Certificates Market” (hereafter: MTEE Rules), adopted by GME and approved by AEEGSI with its Decision no. 67/05 of 14 April 2005, as subsequently amended and supplemented, and supplemented with its Decision no. 53/2013/R/efr of 14 February 2013.



Considering the maturity and level of growth now reached by the market (take-off in 2006), as well as the feedback that GME received from some sector-specific associations, expressing the desirability of a further stage of development of the MTEE aimed, among others, at maximising the number of participants thereon, GME has issued this consultation document under article 3, para. 3.7 of the MTEE Rules. With this document, GME intends to consult interested parties about some changes to the current MTEE rules (better described in the following paragraphs) with the following main purposes: i) introducing, among the matching criteria, the option for participants to specify to GME their "*unacceptable counterparties*", i.e. counterparties with which/whom, during the market sessions, participants do not wish to trade; ii) putting in place a new guarantee system, in lieu of the current mechanism based on the cash deposit, involving the total financial coverage of obligations that participants acquire in formulating their trading orders, also with a view to optimising the commitment of financial resources by participants, minimising the time needed to complete all market operations and favouring, to the extent possible, the proper finalisation of post-market activities after the closing of transactions on the market.

In addition to the above measures focused on the model of market operation (detailed in the following paragraph), GME is also putting forward a proposal (third part of this document) to update some other parts of the MTEE Rules.

Interested parties are invited to submit their comments about the operational procedures described in this document and, in particular, to respond to the questions for consultation S.1 and S.2.

Please submit your comments in writing to GME – Legale e Regolazione (Legal & Regulatory Office) by 16 October 2014 at the latest (end date of the consultation) in one of the following ways:

- by e-mail to: info@mercatoelettrico.org
- by fax to: +39 06 8012-4524
- by mail to: Gestore dei mercati energetici S.p.A.
Largo Giuseppe Tartini, 3/4
00198 – Rome (Italy)

If you want us to keep all or part of your comments confidential, please specify which parts of your documents are to be kept confidential.

2. Proposed changes to the operation of the Energy Efficiency Certificates Market (MTEE)

As pointed out above, the proposed changes are as follows:

- introducing the option for participants to specify to GME their “unacceptable counterparties” with which/whom they do not wish to trade;
- putting in place a guarantee system that totally covers the value of purchases.

With regard to the first measure, GME is proposing to introduce a new operational feature into the MTEE; this optional feature would enable each participant to provide GME with a list of market counterparties with whom/which he/she/it does not wish to trade.

Considering the risk - reported by various participants - of concluding transactions with market counterparties¹ who/which, in the activities following the conclusion of the transaction, fail to meet all or part of their obligations, this new feature would facilitate the participation of different parties in the market and, to the extent possible, the proper finalisation of activities between counterparty participants after the closing of transactions.

In particular, before the start of each market session, each participant would have the option of providing GME only - under procedures and time limits to be specified in the Technical Rules - with a list of participants that they consider to be “unacceptable” for the purposes of the automatic matching of orders and whose identity would anyway be kept anonymous by GME towards the other participants.

Based on the above list, GME would thus determine the market results in accordance with the MTEE Rules, excluding however the matching of orders entered by a participant with orders of opposite sign entered by another participant that has been specified by the former participant as an “unacceptable counterparty”.

Conversely, as regards the second measure, in order to close all market operations already at the end of each session of the MTEE, GME is proposing a guarantee system like the one applied on the markets of Green Certificates and Guarantees of Origin. This system would no longer involve a “*cash deposit*” but a “*deposit totally covering the value of purchases*”. In this way, GME would close transactions more rapidly and, at the end of each session of the MTEE, concurrently transfer the TEE traded to the respective participants’ ownership accounts.

To facilitate the understanding of the benefits that a security deposit covering the total value of purchases may yield, it is worth summarising the current guarantee system on the MTEE.

By 12:00 of the working day before the opening of each market session, the participant makes an initial deposit into the appropriate bank account of GME and notifies GME of a conventional price, which

¹ It is worth pointing out that the MTEE is based on the continuous-trading mechanism, with the automatic matching, in anonymous form, of the orders of opposite sign entered by participants, where price conditions are satisfied.

should not be lower than the minimum conventional price posted on GME's website, to be used for computing the maximum volume of certificates that participants may purchase².

Therefore, at the end of each session, GME compares the amount to be paid for all transactions concluded by a buying participant with the cash deposit initially made by the same participant and:

- if the amount to be paid for all transactions of the buying participant is lower than or equal to the cash deposit, GME pays the value of transactions, on behalf of the buying participant, to each selling participant;
- conversely,
- if the amount to be paid for all transactions of the buying participant is higher than the cash deposit:
 - for executed transactions whose price is lower than or equal to the conventional price specified by the participant, GME pays the value of the related transactions, on behalf of the buying participant, to the selling participants;
 - for executed transactions whose price is higher than the conventional price specified by the participant, GME notifies the buying participant of the share of the amount of the transaction owed to each selling participant and not covered by the cash deposit, as well as of the bank details of each selling participant that is counterparty to the related transaction. In this case, the buying participant must pay the share of the amount notified by GME into the bank account of the related selling participant, with value date two working days after GME's notification, and send GME a copy of the receipt of payment within the same time limit. Within the third working day following GME's notification, the selling participant notifies GME of the possible non-receipt of the payment from the buying participant. If no notification is made, GME pays to the selling participant, on behalf of the buying participant, the share of the amount of the transaction that is owed to the selling participant and covered by the cash deposit. On the contrary, if the buying participant does not pay the balance of the difference to be paid or if he/she/it fails to send GME a copy of the receipt of payment, GME cancels the market transaction. In this case, GME declares the default of the buying participant, cancels the transaction and pays to the selling participant (from the cash deposit of the defaulting buying participant) an amount (penalty fee) for each TEE traded that is equal to the minimum conventional price posted by GME.

It is clear from the above that that a guarantee system covering the total value of purchases will enable GME to close market operations already at the end of the MTEE session (thus within a much shorter time than at present), i.e. to make payments to selling participants for the total value of trades and consequently and concurrently transfer the TEE from the accounts of selling participants to the ones of buying participants. All the purchases made by a participant during a market session will be automatically covered from a financial standpoint: the buy orders of each participant will be matchable in the order books only if they are totally covered by the security deposit. Moreover, upon the earlier closing of the

² The maximum number of certificates that a participant may purchase during a session is equal to the ratio (rounded to the lower integer) of the cash deposit to the conventional price specified by the same participant.

market session, the ownership accounts in the register will be unblocked, thus permitting the registration of bilateral transactions.

Consequently, without prejudice to the principle that, at the start of each market session, a participant is not allowed to sell a number of certificates higher than the one in his/her/its ownership account (prohibition of short sale), a guarantee system totally covering purchases will enable any participant, during the session, to resell the certificates previously purchased in the same session.

Questions for consultation

- **S.1:** Do you deem it beneficial to introduce the proposed option of providing GME with a list of "*unacceptable counterparties*"?
- **S.2:** Do you agree on GME's proposal to align the guarantee system of the MTEE with the guarantee systems adopted on the other environmental markets?

3. Further proposed changes to the participation requirements and to the disciplinary measures in case of breach of the MTEE Rules

Taking the opportunity of this consultation process, GME is further proposing the following main changes to the following provisions (apart from minor fine-tuning changes to the MTEE Rules, which would anyway be made in line with the applicable Integrated Text of the Electricity Market Rules³):

- **participation requirements:** contrary to the current relevant of the MTEE Rules, a participant previously excluded from the market owing to a disciplinary measure applied by GME will be allowed to file a new application for participation, provided that at least sixty months have elapsed since the exclusion; this period is regarded as adequate both: i) as a deterrent to discourage the participant from engaging in a non-virtuous conduct on the market; and ii) in the light of the principle of graduation of disciplinary measures, which qualifies the exclusion as the most severe disciplinary measure among the other types of disciplinary measures laid down in the MTEE Rules. The need for this change arises from the consideration that the current provision - actually preventing a party from re-acquiring the status of market participant, if he/she/it has been excluded from the market, except in case of exclusion on request by the participant - appears to be too restrictive of the possibility for a party to take part in a regulated bidding system. At the same time, the participant excluded from the market for non-payment of fees for participation therein will be re-admitted only if he/she/it has paid the sums due to GME and anyway not earlier than sixty months after the exclusion. Furthermore, with a view to strengthening measures to safeguard the market, GME will suspend the participant from the market, if he/she/it fails to respond to requests for verification that GME may make at any time to check whether the participant still qualifies under the established participation requirements. In this case,

³ Articles 10, para. 4 of the Ministerial Decrees of 20 July 2004 provide that: the criteria of organisation of trades shall comply with the market rules approved by the Ministry of Industry, Trade and Handicraft under article 5, para. 1, of Legislative Decree no. 79 of 16 March 1999.

the suspension will be effective until the participant responds to the above request for verification. For the same purposes, GME will suspend the participant even when the data that he/she/it has provided, in compliance with the notification obligations laid down in the MTEE Rules, do not enable GME to reach the participant. In the latter case, the suspension will be effective until the participant becomes reachable again;

- **GME's disciplinary measures in case of breach of the MTEE Rules**, in particular:

- proposed elimination of the “public written notice” among the disciplinary measures that GME may apply to the participant, considering the fact that the purposes of this measure are already included in the private written notice, except for the one concerning the disclosure of the disciplinary measure adopted by GME. At any rate, it is worth stressing that the latter purpose plays a secondary role with respect to GME’s main purpose: in case of breach of the MTEE Rules by a participant, GME adopts corrective measures so as to restore the proper operation of the market;
- the disciplinary measure possibly applied to a participant by GME is proposed to be posted on GME’s website in anonymous form, i.e. without declaring - as it occurs under the current rules - the identity of the participant to which/whom the measure has been applied. The disclosure of the disciplinary measure is useful *per se* to create precedents, i.e. on one hand to inform participants of what happened on the market and, on the other hand, to give evidence of the consequent actions taken by GME. Anyway, it is worth noting that, in accordance with the applicable regulation, if the participant has filed an appeal before the Court of arbitration against the adoption of a disciplinary measure by GME, GME will publish such measure only after the Court of arbitration has confirmed it;
- the time limit that GME has available to adopt a possible disciplinary measure against the participant will be changed: if the participant has received a notice of alleged breach from GME and requests a hearing, the entire process will be closed within thirty days of the hearing and not - as it currently happens - thirty days after the date of sending of the notice. The need for extending the time limit for the disciplinary proceeding is felt above all in the light of the level of maturity and growth reached by the MTEE, which often requires more complex assessments of the arguments and/or pleadings submitted by the participant during the hearing. Furthermore, always with a view to ensuring a proper and orderly disciplinary proceeding by GME, if the participant requests a postponement of the hearing date set by GME, the hearing will be held no later than on the tenth day following the originally set date.