

Response to GSE consultation on the Implementation of the provisions under Article 5-bis of "DL Agricoltura" on the promotion of biomethane in hard-to-abate sectors

Energy Traders Europe welcome the opportunity to comment on the open consultation on the Implementation of the provisions under Article 5-bis, paragraph 2 of Decree-law no. 63 of 2024 ("DL Agricoltura") to promote the production of biomethane from agricultural biomass and increase its use in hard-to-decarbonize production sectors. More detailed answers to the questions in the consultation document are listed below, accompanied by more detailed reasoning. We remain available to continue the discussion and provide all required information or clarifications.

Detailed comments

A.1: Do you agree with the identification of the scope of application of the regulation both on the biomethane production side and the consumption side?

As outlined below, we observe a potential negative impact of implementing this mechanism on the development of a merchant biomethane market in Italy. Therefore, while we appreciate the current scope, we recommend to not further expand it, thus leaving space in the market outside this mechanism. In our opinion, in a market that assigns additional economic value to biomethane, the green component must also be economically valued; this simply cannot happen if the price of the GO is set to zero, as envisaged by the mechanism established in Art. 5-bis. One of the key side effects of setting the price for GOs to zero, is that the **development of a market for merchant biomethane would be hindered due to a decrease in the liquidity on the M-GO platform** – which is already scarce due to the low transaction volume. This limits the platform's ability to provide accurate price signals reflective of the true value of green molecules in pricing the GO, inter alia making it even harder – that is, less convenient – for economic operators to commercialise domestic biomethane on the

Italian market. We underline that while low liquidity implies higher price volatility, ultimately causing uncertainty of the determination of the incentive (even on a monthly basis) for producers, it also has effects on the determination of the *Tariffa Premio* for all incentivised plants that would not adhere - or could not adhere - to the mechanism provided by the Decree. In addition to the above, M-GO inability to capture the true value of green molecules might also stem from the purchase-based approach provided for in paragraph 39 (4) of Regulation (EU) 2020/2085 (MRR) and MRR Guidance Document No. 3.

A.2: Do you consider the reference to the list of ATECO codes provided in the Public Notice for the submission of project proposals under Article 10 of Ministerial Decree 463 of October 21, 2022, to be exhaustive, or do you believe modifications are necessary? If applicable, please provide elements useful for evaluating potential revision proposals.

GSE proposal regarding the identification of consumer sectors is considered to be in line with the Decree and in particular the reference to in the Public Notice for the presentation of project proposals referred to the art. 10 of the Ministerial Decree of 21 October 2022, n. 463 seems to be appropriate. It is recommendable to avoid further expanding the list and leave space in the market outside this mechanism. Should the authorities consider, in the future, to modify the current list, we stress the importance of opening an ***ad hoc* consultation** to collect input from the stakeholders.

A.3: Under the application of the regulation in question, it is deemed unnecessary to modify the definition of self-consumption already provided in the Implementing Rules of the 2022 Biomethane Ministerial Decree. It is proposed to integrate the Implementing Rules by introducing the definitions of "self-consumed biomethane" and "purchase agreement for self-consumption." Do you agree with this approach? Please provide well-reasoned arguments for any revision proposals.

It is observed that Legislative Decree 63/2024 does not provide a definition of "self-consumption at another site," and the definition proposed in the consultation document risks leading to some situations of uncertainty. Indeed, given the definition of "natural gas network" in Legislative Decree of September 15, 2022, it is appropriate to clarify the types of self-consumption, as a prerequisite for implementing the GSE's Application Rules.

In the absence of a clear regulatory framework for this matter, ambiguities may arise, as well as obstacles in evaluating tax-related aspects and issues connected to the invoicing of physical transactions by midstream companies (which purchase biomethane) and sales companies (for billing the end customer).

In particular, as we believe that the definition of closed network does not identify the case of "direct consumption of biomethane carried out within the same production site by an end consumer", we suggest integrating the definition of closed network in *Regole Applicative* as follows: "*In the case of self-consumed biomethane pursuant to Art. 5 bis, paragraph 2 of Legislative Decree 63/2024, for plants incentivised via Tariffa Premio, by closed network it is meant the feeding of biomethane into the natural gas network via a pipeline that distributes the biomethane within the same production site, where it is used for production processes carried out by a party other than the Requesting Party*".

Moreover, **several elements suggest that "biomethane purchase agreements" between producers and end-consumers as foreseen by the decree can be established only physically through shippers** authorised to off-take the molecule at the grid entry point and sell it at the delivery point, for the reason outlined below

(A4). For the same reasons, **we believe that the “purchase agreement for self-consumption”** (*accordo di compravendita per autoconsumo*) **should not be presented as direct agreements between producers and consumers** – as such transactions, particularly when encompassing physical delivery, would not be executable without the involvement of the shipper.

A.4: Do you identify any critical issues in the definition of a purchase agreement between a producer and an end customer, while maintaining the possibility for an end customer to enter into multiple purchase agreements with different producers? If so, please provide relevant information to evaluate potential revision proposals.

As we mentioned above, we believe that the biomethane purchase agreements between producers and end-consumers foreseen by the decree **can be established only physically through shippers** authorised to off-take the molecule at the grid entry point and sell it at the delivery point for both formal and technical reasons:

1. The presence of the shipper would seem to be implicitly required by the wording of the decree:
 - Art. 5-bis provides that "the provisions of Article 11, paragraph 5 letter d)" of Ministerial Decree 224/2023 (DM GO) remain unaffected. In fact, these provisions require that GOs issued for the production of biomethane by incentivised plants, if used in the "other uses" sector, can only be cancelled in Italy by natural gas sales companies.
 - The article refers to a "*accordo di compravendita*". In this regard it should be noted that the activity of selling to end customers requires the possession of the authorization referred to in Article 17 of Legislative Decree No. 164 of 23 May 2000 (Letta Decree).

- The text of the article implicitly excludes financial agreements, as the object of the agreement is identified in “produced biomethane”¹. It is therefore considered that the definition of “*accordo di compravendita*” should be supplemented as follows: “*si intende un accordo di compravendita del biometano sottoscritto tra il Soggetto richiedente e un cliente finale hard-to-abate per il tramite di un soggetto in possesso dell’autorizzazione alla vendita ai clienti finali di cui all’articolo 17 d.lgs 23 maggio 2000, n. 164, che garantisce un beneficio analogo all’autoconsumo in sito*”.
2. Shippers have the necessary know-how for managing all activities arising from the conclusion of a transportation/distribution contract (e.g., booking capacity, nominations, settlement) and are capable of integrating biomethane volumes into the natural gas supplies already active with large industrial clients. Moreover, as they manage a wide portfolio of plants and volumes to overcome significant and prolonged unavailability, they substantially mitigate the risk of underdelivery. Furthermore, shippers can aggregate different biomethane producers and connect them with a broad portfolio of final customers, optimising the supply and mitigating the risks of unbalances.
- Moreover, the final customer, to meet the total natural gas demand that cannot be covered by the contracted biomethane, would still need to rely on a shipper – which in turn will have the incentive and the capability to accommodate for the consumer’s entire demand profile. In this regard, it is advisable to conduct a consistency check regarding the MWh of biomethane produced and the cancelled GOs.

¹ Pursuant to the Ministerial Decree of 15 September 2022, biomethane is understood to be the “fuel obtained from the purification of biogas in such a way as to be suitable for injection into the natural gas network”, i.e. the physical molecule.

CONSULTATION RESPONSE

We also believe that the “*accordo di compravendita*” should be better defined overall.

For instance, this should not be simply considered as a trilateral supply agreement between producer, shipper, and consumer, but also as the combination of two bilateral agreements – namely between producer and shipper and between shipper and consumer. In this case, the parties involved would clearly need to prove to GSE the relationship between the two bilateral contracts.

We also believe that, provided the presence of a licensed shipper, **the decree should provide the broadest possible flexibility in negotiating the “*accordo di compravendita*”** and all other connected agreements on a commercial basis to avoid slowing down the development of a market for biomethane in Italy.

For instance, **it should allow it the option to withdraw from the agreement** at the end of the natural gas supply with the final customer. In this way, the producer and the final customer could choose, during the period covered by the “*Accordo*” (potentially well over 5 years), from a variety of shippers, thus promoting the absence of entry barriers in the biomethane shipping activity and providing the customer with better synergy with the natural gas supply.

It must also be considered that a shipper which supplies natural gas to the end customer might not want to share the delivery point with other shippers (who deliver biomethane) and might not want to perform a gas supply where the delivered volumes are 'compensation' volumes relative to the biomethane delivered by a third shipper.

A.5: Do you agree with the identified minimum conditions for purchase agreements for self-consumption?

As we discussed above, we do not share many of the features characterising the purchase agreement for self-consumption (“*accordo di compravendita*”), starting with the involvement of the shipper that should be made mandatory for physical delivery. Otherwise, **we would like to underline our concern with respect to the claim**

that GO can be cancelled for zero-emission claims under the ETS. While we appreciate the stance taken by the Italian authorities in this regard, we underline that the European law foresees otherwise. MRR Guidance document No. 3 of 17 October 2022 "Biomass issues in the EU ETS"², page 25, is very clear in stating that "*For the EU ETS operators [...] the evidence required is the "proof of sustainability" for each of the consignments (batches) of biomass used so that emissions from biomass can be zero-rated in the annual emissions report.*"

Furthermore:

- We point out that **including information on sustainability and GHG emission reduction criteria in the GOs is not sufficient to replace the PoS.** Indeed, under Regulation 2022/996³ the Commission envisages precise rules to verify sustainability and greenhouse gas emissions saving criteria (therefore the to declare biomethane as eligible for zero-emission claims under ETS) which do not apply in the issuance of the Guarantees of Origin and that national registries are not required to apply when issuing GOs. In other words, it is not just about the information contained, but the verification process matters as well. This interpretation is in line with the Union Database regulation under Article 31a of Directive (EU) 2023/2413 (RED III), based on which the European Commission intends to implement a PoS-GO connection, where biomethane will have to be coupled with the PoS, with only the option – not the requirement - to add the GO integrating the PoS for the sole purpose of disclosure. Any present or potential misalignment between Italian and European law should be addressed as soon as possible.

² MRR Guidance document No. 3 of 17 October 2022 "Biomass issues in the EU ETS" ([link](#))

³ Commission Implementing Regulation (EU) 2022/996 of 14 June 2022 on rules to verify sustainability and greenhouse gas emissions saving criteria and low indirect land-use change-risk criteria ([link](#))

CONSULTATION RESPONSE

- Further clarifications are requested regarding the 'instructions of the consumer' which, from the proposal, seems limited to the right of withdrawal and the methods of managing the GOs.
- In relation to the **minimum duration of the agreement**, aiming to ensure maximum flexibility to the parties, **it is not considered appropriate to introduce additional requirements** beyond those predetermined by Article 5-bis. Therefore, consistently with what argued under A4, in a view of guaranteeing the highest possible flexibility, we recommend not specifying any fixed minimum duration for the "*accordo di compravendita*". This should be left to the negotiation between producer, shipper, and consumer.

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