

Chapter 19

ITALY

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I OVERVIEW

In Italy, energy markets are almost entirely liberalised,² but they are subject to strict regulation and public service obligations. Regulation closely mirrors the legislation adopted by the institutions of the European Union (EU)³ with a view to fostering the creation of a single energy market for electricity and gas, and to ensuring security of supply throughout the EU.

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2 The liberalisation of the Italian electricity and gas markets was driven by the EU electricity and gas directives. The process started with the adoption of Legislative Decree No. 79/1999 (the Bersani Decree), transposing Directive 96/92/EC for the electricity industry and Legislative Decree No. 164/2000 (the Letta Decree), transposing Directive 98/30/EC, for the gas industry. The main focus of the EU legislator was that of ensuring effective and non-discriminatory third-party-access (TPA) on the 'network services' (i.e., services operated through a grid that constitutes a natural monopoly – electricity transmission, dispatching and distribution; gas storage, transportation, dispatching and distribution). For this reason, rules on unbundling of network operators (legal, accounting, information, functional and even ownership unbundling) have been issued. Moreover, rigid conditions for refusing access to networks and now even to solve congestions managements have been established at EU and national level.

3 Directives 96/92/EC, (the First Electricity Directive), 2003/54/CE (the Second Electricity Directive), 2009/72/EC (the Third Electricity Directive) and Directives 98/30/EC (the First Gas Directive), 2003/55/CE 8 (the Second Gas Directive) and 2009/72/EC (the Third Gas Directive); see also Regulations (EC) No. 1775/2005, 713/2009, 714/2009 and 715/2009 and the 'Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems' established in Regulation (EU) No. 984/2013.

Transmission and distribution of both gas and power are fully regulated and subject to non-discriminatory third-party access (TPA) rules.⁴ Gas production is operated under public concessions;⁵ electricity production is an open market activity, but power plant construction generally requires an authorisation and may be subject to public service obligations (e.g., with a view to ensuring security of supply).⁶ Gas imports based on agreements of a duration exceeding one year also require an authorisation,⁷ and may attract public service obligations. Supply of electricity and gas is fully liberalised at the wholesale and retail level.⁸ However, domestic customers and small businesses are still entitled to benefit from a 'safeguarded service', under reasonable tariffs set by the Authority for Electricity Gas and Water (AEEGSI). There is an increasing trend to switch from the safeguarded service to the free market.⁹

Electricity consumption has dropped over the past five to six years because of the economic crisis (with the ensuing drop in production activities), a mild climate and a wider dissemination of more efficient electric devices in houses and firms.¹⁰ The drop in demand has significantly reduced the amount of electricity generated from non-renewable sources (which is granted priority access to the transmission and distribution grid).¹¹ Imports still account for the vast majority of Italian electricity consumption (76 per cent in 2014).¹²

Like electricity, Italian gas supply largely depends on imports.¹³ Domestic production only covered (approximately) 10 per cent of Italian gas consumption in 2015.¹⁴ Because of the economic crisis, energy efficiency, the mild climate and competitive pressure exerted by renewable sources (which receive state incentives), gas consumption in Italy has diminished significantly over the past five years compared with 2008.¹⁵ In 2015, gas consumption increased by 10.5 per cent compared with 2014, but it still remained well below the 2008 level.¹⁶

4 Bersani Decree, Articles 3 and 9, and Letta Decree, Article 8.

5 Letta Decree, Articles 1 and 4–7.

6 Bersani Decree, Article 8.

7 Letta Decree, Article 3.

8 Traders of natural gas must be included in a list compiled by the Ministry of Economic Development before selling gas to final customers.

9 AEEGSI, 2015 Annual Report, pp. 65–66. At the end of 2014, the safeguarded service was still provided to 10,794,000 customers for gas and 25,408,000 for electricity.

10 AEEGSI, 2015 Annual Report, p. 54. In 2014 electricity consumption dropped to 309TWh, about 3 per cent less than 2013 electricity consumption (318.5TWh). 2015 data are not available to us.

11 Bersani Decree, Article 3, paragraph 3, and Article 11, paragraph 4, transposing Directive 2009/28/EC, Article 16.

12 The electricity imports in 2014 came mainly from Switzerland (54 per cent), France (33.9 per cent) and Slovenia (11.6 per cent) (AEEGSI, 2015 Annual Report, p. 46).

13 Gas imports in 2014 originated mainly from Russia (47 per cent), Algeria (12.3 per cent) and Libya (11.7 per cent) (AEEGSI, 2015 Annual Report, p. 124).

14 See <http://dgsaie.mise.gov.it/dgerm/bilanciogas.asp>.

15 AEEGSI, 2015 Annual Report, pp. 158–159. In 2014 gas consumption fell down to 61.9G (m³), about 11.6 per cent less than the 2013 natural gas consumption (70.1G (m³)).

16 According to the Ministry of Economic Development, gas consumption amounted to 61,912 million m³ in 2014, and 67,522 million m³ in 2015; whereas it amounted to 84,883 million m³ in 2008 (see <http://dgsaie.mise.gov.it/dgerm/bilanciogas.asp>).

The drop in demand for gas and power, in conjunction with the development of gas import infrastructures (e.g., the entry into operation of new liquefied natural gas (LNG) regasification terminals and the expansion of gas pipelines) and the increase in domestic production of electricity, has made the Italian energy markets more liquid during the past six years.

The tariffs for natural gas paid in 2014 by domestic customers in Italy were higher than the average price in the EU, except for the highest consumption class (>5,253.60m³ per year), which were 2 per cent lower. Following the trend of the past years, industrial customers in Italy paid higher tariffs for the lowest consumption classes (<263,000m³ per year) and lower tariffs for the higher consumption classes.¹⁷

Following the past years' trends, in 2014 domestic consumers in Italy paid lower electricity tariffs than the average prices applied in the EU for the lower consumption classes (<2,500kWh per year) and higher than the average prices applied in the EU for the higher consumption classes (>2,500kWh per year). In the same year, industrial customers in Italy paid higher electricity tariffs for all consumption classes than the average price paid by industrial customers in the EU, by about 25 per cent.¹⁸

II REGULATION

i The regulators

The energy sector is regulated through primary (both national and regional)¹⁹ and secondary legislation, the latter being adopted by the Ministry of Economic Development or the AEEGSI.

The Ministry of Economic Development defines the strategic lines and sets out general principles for the organisation and functioning of the electricity and gas markets (e.g., new capacity generation, energy efficiency measures and security of supply).²⁰ It also defines certification systems for energy efficiency and promotes agreements with the Italian regions with the aim of granting minimum quality levels for the supply of electricity and gas within the entire national territory. In March 2013, the Ministry published the National Energy Strategy, a very long document discussing the objectives for 2020 and 2050.²¹

The AEEGSI, which is an independent body, governed by a committee of five members elected for seven years, regulates, controls and monitors the electricity and gas markets in Italy. It was established under Law No. 481/1995 for the purpose of protecting consumers' interests, promoting competition and ensuring quality, efficiency and

17 AEEGSI, 2015 Annual Report, pp. 26–28.

18 AEEGSI, 2015 Annual Report, pp. 21–25.

19 Article 117 of the Italian Constitution defines whether the cases in which the national or the regional legislator is entitled to adopt relevant rules in the energy sector. For more details, see D Diaco, 'Produzione, trasporto e distribuzione nazionale dell'energia nei giudizi di legittimità costituzionale in via principale, (2002–2015)', Constitutional Court, Research Department, available at www.cortecostituzionale.it/documenti/convegni_seminari/stu_281.pdf.

20 Legislative Decree No. 93/2011.

21 See www.sviluppoeconomico.gov.it/images/stories/normativa/20130314_Strategia_Energetica_Nazionale.pdf.

cost-effectiveness of energy services. The AEEGSI is entrusted with the task of establishing a transparent tariff system, which must balance the economic interests of operators against general social objectives. Furthermore, the AEEGSI has an important role in the promotion of environmental protection and efficient use of energy. It advises the government and Parliament and provides observations and recommendations concerning issues in the regulated sectors of electricity and gas. The AEEGSI issues general regulations applicable to the energy markets' operators, and resolutions or orders applicable to single operators, for which it must provide comprehensive reasoning. Under Article 2 of Law No. 481/1995, the AEEGSI determines its costs, which are entirely recovered from the companies it regulates. The AEEGSI may also issue fines.²²

ii Regulated activities

Regulation in the energy markets may be more or less pervasive depending on the activities involved. In a nutshell:

a for the electricity market:

- import, export, supply (wholesale and retail), and metering services are liberalised in compliance with the EU legal framework,²³ but they remain subject to public service obligations descending from EU and national legislation;²⁴
- generation is an open market activity, but there are still limitations descending from public service obligations. Moreover, pursuant to Article 8, Paragraph 1 of the Bersani Decree, a single operator cannot generate or import, directly or indirectly, more than 50 per cent of the total amount of electricity produced and imported in Italy. Furthermore, construction of thermoelectric power plants with power-production capacity above 300MW requires a single licence issued by the Ministry of Economic Development with the consent of the region concerned, following a procedure that involves all of the administrative entities concerned. The licence recognises the plant as a work of public interest;²⁵
- transmission and dispatching services are reserved to the state and operated under a concession regime by the publicly owned company Terna SpA (which is also the owner of the national transmission grid). These activities are fully regulated (e.g., conditions for access, unbundling rules, applicable tariffs and network code);²⁶ and
- distributors operate under concession regimes (DSOs) at the local level. Distribution activities are fully regulated (e.g., conditions for access, unbundling rules, applicable tariffs and network code); and²⁷

b for the gas market:

22 Law No. 481/1995, Article 2, Paragraph 20, Letter (c).

23 Directive 2009/72/EC (the Third Electricity Directive).

24 Law No. 239/2004, Article 1, Paragraph 2, Letter (a) and (b).

25 Article 1, Paragraph 1, of Law Decree No. 7/2002, converted by Law No. 55/2002.

26 AEEGSI, Resolutions No. 268/2015/R/eel, 296/2015/R/com, and 654/2015/R/eel, as subsequently amended.

27 AEEGSI, Resolutions No. 612/2013/R/eel, 296/2015/R/com, 646/2015/R/eel, 654/2015/R/eel, and 233/2016/R/eel, as subsequently amended.

- production is operated under farming concessions;²⁸
- import and sales are open market activities subject to the EU legal framework,²⁹ but operators must comply with public service obligations descending from EU and national legislation.³⁰ Moreover, pursuant to Article 3 of the Letta Decree, imports of gas based on agreements exceeding one year are subject to prior authorisation by the Ministry of Economic Development; imports of gas based on agreements shorter than a year must be communicated to the Ministry of Economic Development at least 30 days before the import takes place. Furthermore, Legislative Decree No. 130/2010 establishes thresholds concerning the maximum volume of gas that can be placed into the Italian gas transmission system or sold therein by a single operator.³¹ Finally, pursuant to Article 17 of the Letta Decree, companies willing to sell gas to final customers must request the Ministry of Economic Development to include them in the ‘List of operators licensed for the sale of gas to final customers’;
- storage is operated under a concession issued by the Ministry of Economic Development for a 20-year maximum period to operators meeting the necessary technical, economical and organisational requirements;³² storage activities are fully regulated (e.g., conditions for access, unbundling rules, applicable tariffs and network code);³³
- all the operators meeting the technical requirements may engage in transportation activities. Snam Rete Gas SpA (Snam) and SGI SpA coordinate gas transportation operators at national level. Snam, as a ‘major transportation operator’ is also entrusted with the balancing and dispatching service.³⁴ Transportation, balancing and dispatching activities are fully regulated (e.g., conditions for access, unbundling rules, applicable tariffs and network code);³⁵ and
- distributors (DSOs) operate under concession regimes at the local level. Distribution activities are fully regulated (e.g., conditions for access, unbundling rules, applicable tariffs and network code).³⁶ Concessions must be awarded through public tenders.³⁷

28 See, *inter alia*, Letta Decree, Articles 1 and 4–7.

29 Directive 2009/72/EC (the Third Gas Directive).

30 Law No. 239/2004, Article 1, Paragraph 2, Letter (a) and (b) and Letta Decree, Article 22.

31 The Italian Antitrust Authority is entrusted with the task of monitoring the implementation of the threshold set by Legislative Decree No. 130/2010 and issuing fines for failure to comply.

32 Letta Decree, Article 11.

33 AEEGSI, Resolutions No. 77/2016/R/gas, and 296/2015/R/com.

34 AEEGSI, Resolution No. ARG/gas 45/11.

35 AEEGSI, Resolutions No. 297/2012/R/gas, 284/2013/R/gas, 514/2013/R/gas, and 296/2015/R/com.

36 AEEGSI, Resolutions No. 108/06, 296/2015/R/com, and 173/2016/R/gas, as subsequently amended.

37 Letta Decree, Article 14. The forthcoming wave of new tenders will dramatically change the landscape of the Italian gas distribution market. Pursuant to Article 46 *bis* of the Decree Law No. 159/2007, the ongoing concessions that are granted by single municipalities should be

iii Ownership and market access restrictions

There are no restrictions on ownership of (new or existing) energy assets, service providers or licence holders, nor market access restrictions other than technical, economic and organisational requirements for the operation of services awarded through tenders or subject to authorisation. However, certain mechanisms can apply to monitor the transfer of ownership of certain energy 'strategic assets' (see Section II.iv, *infra*).

iv Transfers of control and assignments

Any transaction that may result in a transfer of ownership or control of a company holding energy assets of national interest, such as the gas transportation network, plants for sourcing from other states, or the electricity transmission grid, is subject to prior notification to the government,³⁸ which has the power to veto such a transfer insofar as it would represent an exceptional threat to the national interests of the security and continuity of supply.

The acquisition by a non-EU person³⁹ of a controlling stake in companies holding the above-mentioned strategic energy assets is subject to prior notification to the government,⁴⁰ which has the power to veto or attach conditions to the acquisition (in the event that it constitutes a serious prejudice to essential national interests).⁴¹

III TRANSMISSION/TRANSPORTATION AND DISTRIBUTION SERVICES

i Vertical integration and unbundling

The former de facto monopolistic structure of the Italian electricity and gas markets, which were managed by ENEL and ENI respectively, underwent significant changes following the liberalisation process and the introduction of unbundling obligations on vertically integrated energy operators at the beginning of 2000.⁴²

replaced by concessions granted by groups of municipalities, so as to reach minimum scale efficiency (Ambiti Territoriali Minimi, or ATEM). By Ministerial Decrees issued in January and October 2011, the Italian territory was divided into 177 ATEMs. Tenders can only take place for ATEMs. This will significantly reduce the number of concessions and DSOs (currently, there are more than 6,500 concessions and the number will drop to 177).

38 Notification must be submitted within 10 days from the adoption of the resolution and, in any case, before its implementation. For more details, see G Scassellati Sforzolini and F Iodice, 'Italy', in B A Facey (ed.) *The Foreign Investment Regulation Review* (3rd edn, Law Business Research, 2015).

39 Non-EU persons are defined by Article 2, Paragraph 5 of Law Decree No. 21/2012 as any individual or entity that is not resident, domiciled, or with its registered office, headquarters or centre of main interest, in any EU or EEA Member State, nor established therein.

40 Notification shall be submitted within 10 days from the acquisition of the controlling stake.

41 Law Decree No. 21/2012, Article 2 and Decree of the President of the Republic No. 85/2014, Article 1.

42 See the Bersani Decree, transposing Directive 96/92/EC for the electricity market and the Letta Decree, transposing Directive 98/30/EC for the gas market.

Unbundling obligations on energy companies are now regulated by Legislative Decree No. 93/2011.⁴³ For electricity transmission, Legislative Decree No. 93/2011 imposed ownership unbundling (OU)⁴⁴ on Terna. Terna was then certified compliant with the OU model on 5 April 2013.⁴⁵ For natural gas transportation, Legislative Decree No. 93/2011 left open the possibility to certify gas transmission companies according to the OU, the independent transmission operator (ITO)⁴⁶ or the independent system operator (ISO)⁴⁷ model. Since at

43 Legislative Decree No. 93/2011 transposes Directives 2009/72/EC (the Third Electricity Directive) and 2009/72/EC (the Third Gas Directive) for the internal electricity and gas markets respectively.

44 The ownership unbundling model requires a full separation of transport activities (including both the ownership and management of gas or electricity transportation infrastructures) from the production and sale of natural gas or electricity. In particular, the following conditions have to be met: 1) on the one hand, a person or a legal entity, directly or indirectly exercising control or any voting or appointment right (i.e., rights to appoint members of the supervisory board, the management board or other bodies legally representing the undertaking) over an undertaking that is active in the production or supply of natural gas, or generation or supply of electricity, cannot directly or indirectly exercise control or any voting or appointment right over a TSO or a transport infrastructure; (2) on the other hand, a person or a legal entity, directly or indirectly exercising control or any appointment or voting right over a TSO or a transport infrastructure, cannot directly or indirectly exercise control or any voting or appointment right over an undertaking that is active in the production or supply of natural gas or generation or supply of electricity. Undertakings active in the supply or production of natural gas, or generation or supply of electricity, can keep a merely financial, direct or indirect, minority shareholding in a TSO or transport infrastructure. In other words, such a shareholding can only provide financial rights (i.e., the right to receive dividends) but cannot confer any right to take part in the decision-making process of, or exercise any influence on, the TSO or transport infrastructure.

45 AEEGSI, Resolution No. 142/2013/R/eel.

46 Under the ITO model, the functions of TSOs are performed by a company (namely, the ITO) belonging to the vertically integrated undertaking. However, the ITO company should neither control, nor be controlled by, or have any participation in, or be participated in by, any other company belonging to the vertically integrated group and active in the production or supply of natural gas or generation or supply of electricity. In other words, the supply company within the vertically integrated undertaking and the ITO shall be positioned under a common parent company and shall not be in a (direct or indirect) parent–subsidiary relationship, nor shall it hold any cross-holding. The ITO must comply with tight functional unbundling obligations (as well as with accounting and information unbundling obligations).

47 The ISO model requires full separation between the ownership of the transport infrastructure (which remains within the vertically integrated undertaking) and the management of the infrastructure, which shall be carried out by a company, namely the ISO, which is ownership-unbundled (within the above meaning) from the vertically integrated undertaking, which has kept the ownership of the transport infrastructure. The ISO acts as TSO of the relevant transport system, and is subject to all the obligations and duties that the Third Gas Directive and Third Electricity Directive impose on TSOs.

that time Snam belonged to a vertically integrated undertaking (VIU),⁴⁸ it was originally certified as an ITO.⁴⁹ Upon implementation of the OU model,⁵⁰ Snam obtained a new certification as OU.⁵¹

DSOs belonging to a VIU have to be organised under different legal entities with independent decision-making mechanisms.⁵² DSOs are also required to implement functional and accounting unbundling with the aim of promoting competition, granting neutrality in the management of distribution facilities, avoiding discrimination in the access to commercially sensitive information and avoiding cross-subsidisation among the different segments of the gas or electricity chain.⁵³ Less stringent rules apply to DSOs that serve a negligible amount of clients (fewer than 100,000 supply points).

ii Transmission/transportation and distribution access

Third-party access to transmission and distribution networks is the core of the European and Italian rules on electricity and gas.

In particular, the electricity transmission grid operator (i.e., Terna SpA), and electricity distributors must grant access under equal terms and conditions to every operator requesting it (provided that it complies with technical requirements),⁵⁴ without prejudice to the continuity of the service and in compliance with technical and economic conditions for access. Grid operators must also provide sufficient information to ensure the efficient and safe functioning of the grid.⁵⁵

Likewise, gas transmission and distribution operators must grant access under equal terms and conditions to undertakings requesting it when the system has sufficient capacity and the connection is economically and technically feasible.⁵⁶ In cases of illegitimate refusal

48 According to Article 9 of the Third Gas Directive, Member States were entitled to opt for an unbundling model different from OU if at the date of the entry into force of the Third Gas Directive (i.e., September 3, 2009) the TSO was part of a vertically integrated undertaking (if this was not the case, the TSO will have to comply with the ownership unbundling requirements). The same rules apply in the electricity sector (see Article 9 of the Third Electricity Directive).

49 AEEGSI, Resolution No. 403/2012/R/gas.

50 See Prime Minister Decree of 25 May 2012, enacting Law Decree No. 1/2012, Article 15.

51 See AEEGSI Resolution 515/2013/R/gas.

52 Letta Decree.

53 Legislative Decree No. 93/2011. See also the Integrated Text for Functional Unbundling (TIUF), Annex A to AEEGSI Resolution No. 296/2015/R/com, and the Integrated Text for Account Unbundling (TIUC), Annex A to AEEGSI Resolution No. 231/2014/R/com).

54 Technical requirements for access to the transmission grid are fixed in the Prime Minister Decree of 11 May 2014.

55 Bersani Decree, Articles 3 and 9.

56 Law No. 239/2004, Article 1, Paragraph 17, provides for the possibility of an exemption from TPA rules in cases where significant investments are needed for the construction (or the expansion) of certain gas infrastructures. Pursuant to Article 1, Paragraph 20, of Law No. 239/2004, and Article 35 of the Third Gas Directive, exceptions are also allowed when

of connection, the AEEGSI may force the network operator to connect other operators. Network operators must also provide sufficient information, to ensure the efficient and safe functioning of the grid.⁵⁷

iii Rates

The AEEGSI is entrusted with the task of setting transmission, dispatching, transport and distribution tariffs both for electricity and gas.⁵⁸ Tariffs must be transparent and based on predetermined criteria to safeguard competition, and ultimately the interests of customers.

The tariffs set by the AEEGSI are maximum tariffs not including taxes, and have to allow for a fair remuneration of the invested capital and full coverage of system costs (operational costs). The tariffs must strike a balance among a number of potentially conflicting interests (e.g., network viability, promoting investments, general social and environmental protection objectives, as well as efficient use of energy sources, customers and, ultimately, consumers' interest not to pay excessively burdensome prices).⁵⁹

Tariffs are determined according to a methodology that is established by the AEEGSI for a certain time frame (and, typically, revised every four years). TSOs and DSOs must submit the tariffs determined on the basis of the above-mentioned methodology for the AEEGSI's prior approval.

In a nutshell, electricity tariffs are based on a price-cap mechanism, which applies to the operation costs (see Law No. 290/2003) and takes into account the following objectives and variables: (1) remuneration of inputs (e.g., return on investments, computed on the weighted average cost of capital); (2) incentives linked to efficiency and investments; and (3) performance objectives.⁶⁰ The AEEGSI Resolution No. 654/2015/R/eel also introduced a 50 per cent profit sharing mechanism, which applies to foster efficiencies.

The same methodology also applies to the gas sector (i.e., price cap, return on investments, profit-sharing mechanism, etc.). In addition, tariffs are charged based on an entry-exit mechanism and operational costs are allocated only to the capacity component. The tariff structure for the transmission of natural gas is likely to change when the Network Codes on Harmonised Transmission Tariff Structures for Gas are adopted by the European Commission.⁶¹

TPA rules prevent an LNG terminal from carrying out its public service obligations. Finally, based on Article 26 of the Letta Decree, natural gas operators may refuse access to the system where it would cause serious economic and financial difficulties with take-or-pay contracts.

57 Letta Decree, Articles 8 and 16.

58 Law No. 481/1995 and Letta Decree, Article 23.

59 See AEEGSI, Resolution No. 654/2015/R/eel stating tariffs for electricity transmission, distribution and measure services for the period 2016–2023, and Resolution No. 514/2013/R/gas, stating tariffs for gas transportation and dispatching for the period 2014–2017.

60 For a thorough economic assessment of tariffs in the electricity sector, please see 'La regolazione delle reti elettriche in Italia', Research Report Series – ISSN 2036-1785, available at www.unibocconi.it/wps/wcm/connect/3e14d72f-bf69-4612-bdf7-c39c6267924a/RR+15.pdf?MOD=AJPERES.

61 The Agency for the Cooperation of Energy Regulators (ACER) issued framework guidelines at the request of the Commission, to establish rules for EU harmonised tariffs for electricity

iv **Security and technology restrictions**

Legislative Decree No. 61/2011 transposed into national law Directive 2008/114/EC on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection. Legislative Decree No. 61/2011 sets the criteria for the identification of the European critical infrastructures. For the energy sector, those infrastructures are then identified by the Ministry of Economic Development. Legislative Decree No. 61/2011 also sets out the criteria for the assessment of the security level of such infrastructures and establishes the rules for their protection from threats both of human (accidental and voluntary, even by means of technology tools) and natural origin. In sum, network operators must appoint a safety and security representative; they are also required to prepare an operator security plan, identifying the assets that are part of the European critical infrastructures as well as appropriate solutions for their protection, considering all potential (even technological) threats and risks that could affect their functionality.

IV ENERGY MARKETS

i **Development of energy markets**

The Bersani Decree has outlined the architecture of the electricity market providing for an organised wholesale market (the Italian Power Exchange or IPEX) for the sale and purchase of electricity and entrusting the company Gestore dei mercati energetici SpA (GME) with its organisation and management.⁶²

The Italian Power Exchange is divided into three segments:

a a spot electricity market, which consists of: a day-ahead market (MGP), organised on an auction model, where transactions are concluded for the following day;⁶³ an adjustment market (MA), which allows the parties to update their purchase and sale offers for the same day; and a market for the dispatching service where Terna SpA, as central dispatching operator, purchases the necessary resources for the management and control of the dispatching system;

b a platform for physical delivery of derivative contracts concluded on the IDEX;⁶⁴ and

c the forward electricity market, where the parties negotiate future supplies of electricity over a longer time horizon than the day ahead.

The wholesale market for natural gas is organised and managed by GME, which plays the role of central counterparty.

and gas transmission. The Commission could adopt the guidelines as a binding EU network code, in the form of a regulation. The legal basis for the Commission and ACER's intervention is Regulation (EC) No. 715/2009.

62 Bersani Decree, Article 5.

63 The company GME acts as central counterparty, purchasing from sellers and selling to purchasers in electricity negotiations for the following day. The majority of electricity wholesale transactions are carried out on this market.

64 The Italian Derivatives Energy Exchange, which is a segment of the Italian Derivatives Market managed by Borsa Italiana SpA, is the market of derivatives whose underlying value is the spot price of electricity.

GME also supervises the markets of:

- a* the spot gas market (MP-GAS), comprising the gas day-ahead market (MGP-GAS),⁶⁵ which is structured in a single trading session, and the intra-day market (MI-GAS);⁶⁶ and
- b* the forward gas market (MT-GAS), operating on a continuous trading basis.

The GME also operates: (1) the platform for trading imported natural gas and royalties on natural gas extracted under domestic concessions (P-GAS);⁶⁷ and (2) the platform for the balancing of natural gas (PB-GAS).⁶⁸

ii Energy market rules and regulation

The Italian Power Exchange is regulated by the amended Integrated Text for the Electric Power Market approved by the Ministry of Economic Development on 19 December 2003 on the basis of the proposal submitted by GME. Wholesale (both spot and forward) gas markets are regulated by the Regulation approved by the Ministry of Economic Development on 6 March 2013, as subsequently amended.⁶⁹

Rules for the P-GAS and PB-GAS markets are set out respectively in the Regulation of the Natural Gas Market approved by the Ministry of Economic Development on 23 April 2010 on the basis of the proposal submitted by GME, as subsequently amended, and in the Regulation approved by AEEGSI with Resolution No. ARG/gas/145/2011.

Market rules include criteria and procedures for the accreditation of the parties on markets and platforms, guarantee requirements and the rules for trading, delivery and invoicing, as well as for sanctions for infringements of the rules.

iii Contracts for sale of energy

At the wholesale level, the purchase and sale of electricity and gas may occur ‘over the counter’ (i.e., by means of bilateral non-standard contracts concluded outside organised markets).

For the purchase and sale of natural gas, the parties may also enter into spot bilateral contracts through the virtual trading point,⁷⁰ which is managed by Snam.

Wholesale bilateral contracts are not subject to restrictions, apart from compliance with technical requirements stated in the regulations issued by GME.⁷¹

65 In the MGP-GAS market the operators submit purchase and sale offers regarding contracts to be executed the following gas-day.

66 In the MGP-GAS market the operators submit purchase and sale offers regarding contracts to be executed in the same gas-day.

67 See the Regulation approved by the Ministry of Economic Development on 23 April 2010.

68 See the Regulation approved by AEEGSI with Resolution No. ARG/gas/145/2011.

69 The text is available at www.mercatoelettrico.org/En/MenuBiblioteca/documenti/20150924_DISCIPLINA_GAS_en.pdf.

70 The virtual trading point is a virtual area located between the entry points and the exit points of the national pipeline grid. See AEEGSI, Resolution No. 137/2002, and 22/2014/R/gas, as subsequently amended.

71 See the Regulation of the Natural Gas Market approved by the Ministry of Economic Development on 23 April 2010, and the Integrated Text for the Electric Power Market approved by the Ministry of Economic Development on 19 December 2003, as subsequently amended.

At the retail level, final customers⁷² may freely enter into individual contracts for the supply of natural gas and power with energy traders,⁷³ who are subject to transparency and information obligations, but are free to define the rates and the contractual terms.⁷⁴ Household customers and small businesses not having entered into any contract on the free market are still granted the safeguarded service. In the electricity sector, Acquirente Unico SpA (AU, a subsidiary of the Gestore dei Servizi Energetici GSE SpA Group) is entrusted with the task of procuring reasonably priced electricity supply for households and small business customers that wish to remain with the safeguarded service. In particular, AU buys electricity on the market and resells it to distributors or retailers for supply to small consumers who have not switched to the free market. In addition, the AEEGSI sets the regulated tariff that applies to those customers⁷⁵ that are still supplied with the safeguarded service. In the gas sector, the AEEGSI merely sets a gas tariff for households and small business customers and customers can choose to remain with the safeguarded service and pay the tariff set by the AEEGSI or to buy natural gas in the free market.

iv Market developments

An important development in the energy retail market is likely to occur following the approval by the Parliament of the annual bill on competition and market liberalisation, which provides for the elimination of the safeguarded service and the full liberalisation of the electricity and gas markets at retail level starting from 1 January 2018.⁷⁶

V RENEWABLE ENERGY AND CONSERVATION

i Development of renewable energy

According to the target set by the Italian legislator, 17 per cent of gross energy consumption should be produced by renewable energy sources by 2020.⁷⁷

72 All final customers are eligible to freely enter into gas and power purchase contracts (see Article 22, Paragraph 1 of Legislative Decree No. 164/2000 for natural gas, and Article 35, Paragraph 1, of Legislative Decree No. 93/2011 for electricity).

73 The sale of electricity is not subject to restrictions at the retail level, while gas traders must request the Ministry of Economic Development to be included in the 'List of operators licensed for the sale of gas to final customers' (Article 17 of the Letta Decree).

74 Traders in the free market are still subject to the above-mentioned public service obligations, as well as to antitrust obligations if they hold a dominant position.

75 The safeguarded service for electricity is granted to: (1) domestic clients; and (2) small businesses with a low-voltage connection with fewer than 50 employees and an annual turnover not exceeding €10 million, not having concluded any contract in the free market. The service is operated by traders or distributors with fewer than 100,000 customers linked to their network, under the economic and quality conditions set by the AEEGSI (Legislative Decree No. 93/2011, Article 35, Paragraph 2).

76 See Bill No. AS 2085, currently under discussion in the Senate.

77 See Article 3 of Legislative Decree No. 28/2011. Under the objective mentioned, the quota of final consumption of energy in the transport sector produced by renewable sources must be at least 10 per cent.

The Italian incentive system for energy generated by renewable sources comprises a variety of mechanisms.

In particular:

- a* the Cip 6/92 mechanism, which is a feed-in tariff⁷⁸ updated over time. This mechanism is available only for plants falling within the scope of the Cip 6/92 resolution while it was still in force;
- b* the Energy Account system (feed-in premium)⁷⁹ for electricity produced by photovoltaic plants that had come into operation before 26 August 2012 and by thermodynamic solar plants;⁸⁰
- c* green certificates, which are certificates awarded by GSE in proportion to the amount of energy produced by renewable sources and by cogeneration plants that had come into operation by 31 December 2012. The number of green certificates awarded depends on the type of plant used for the energy generation.⁸¹ Starting from 2016, the green certificates system is being replaced by a new incentive system in the form of extra tariffs granted by GSE to operators entitled to green certificates;⁸²
- d* feed-in tariffs for electricity conveyed into the grid by plants fed by renewable sources (except for photovoltaic plants) not exceeding 1MW power (200kW for wind plants) and that had come into operation by 31 December 2012;⁸³ and
- e* tariff incentives for electricity conveyed into the grid by plants fed by renewable sources (except for photovoltaic plants) that came into operation on or after 1 January 2013 (in the form of a feed-in tariff for plants not exceeding 1MW in power and in the form of a feed-in premium for other plants).⁸⁴

The economic incentives in 2014 concerned more than 64TWh of electricity produced by renewable sources. The costs for incentives to renewable energy were about €12.7 billion in 2014, €12 billion of which were covered by the tariff component A3 of electricity and gas bills.⁸⁵

78 A feed-in tariff includes an ‘incentive’ component and a component for the remuneration of electricity conveyed into the network.

79 A feed-in premium consists of an incentive granted exclusively for the electricity produced, not including remuneration for the sale of that energy, which might even be self-consumed by the producer.

80 The Energy Account system consists of a standard premium related to the amount of energy produced. The premium for energy produced by photovoltaic plants was most recently updated by the Ministerial Decree of 5 July 2012.

81 Each energy operator had the obligation to obtain a certain amount of green certificates, and could sell extra green certificates to other operators over the counter or through a trading platform managed by GME, thus obtaining further remuneration for ‘green’ energy produced.

82 Ministerial Decree of 6 July 2012.

83 Law No. 244/2007, and Ministerial Decree of 18 December 2012.

84 Ministerial Decree of 6 July 2012.

85 AEEGSI, 2015 annual Report, pp. 45–46.

Apart from purely economic incentives, there are other important benefits for operators producing electricity from renewable sources. In particular:

- a* the construction of new plants for the generation of electricity from renewable sources is subject to a single licence issued by the relevant region or the delegated province or by the Ministry of Economic Development for plants of power equal to or above 300MW, following a procedure involving all the administrative entities concerned.⁸⁶ A further simplified procedure applies to the construction of new plants below the mentioned thresholds;⁸⁷ and, even more important,
- b* electricity generated from renewable sources is granted priority access to the transmission and distribution grid.⁸⁸

ii Energy efficiency and conservation

The 2020 energy efficiency target for Italy is a reduction in the primary energy consumption by 20 million tons of oil equivalent (TOE) starting from 2010, corresponding to a reduction in the final energy consumption by 15.5 million TOE.⁸⁹

The Italian efficiency incentive system comprises a variety of mechanisms.

In particular, the main incentive mechanisms are:

- a* white certificates,⁹⁰ which are tradable certificates issued by GSE to distributors or Energy Service Companies (ESCOs) that achieve savings in the final use of energy by means of energy efficiency interventions and projects. Electricity and gas DSOs must obtain a minimum amount⁹¹ of white certificates to avoid sanctions by the AEEGSI. DSOs can also purchase white certificates with bilateral contracts or on the market for white certificates operated by GME. The legal framework for the white certificates system⁹² has been subject to continuous evolution and it was most recently amended by the Ministerial Decree of 28 December 2012, which entrusted GSE (instead of the AEEGSI) with the task of evaluating energy efficiency projects. The Ministerial Decree of 28 December 2012 established that white certificates can no longer be issued in conjunction with other incentives granted by the Italian state and are now attributable only for energy savings achieved by means of new projects (or projects in progress). Pursuant to Legislative Decree No. 102/2014, starting from July 2016, the white certificate system will be limited to operators certified according to specific standards.⁹³ In 2015, GSE issued about 5 million white certificates (31 per cent for energy efficiency projects related to electricity savings, 58 per cent for energy efficiency

86 Article 12 of Legislative Decree No. 387/2003.

87 Article 6 of Legislative Decree No. 28/2011.

88 Article 3, paragraph 3, and Article 11, paragraph 4, of the Bersani Decree, transposing Article 16 of Directive 2009/28/EC.

89 Article 3 of Legislative Decree No. 102/2014, transposing Directive 2012/27/EU.

90 White certificates must grant at least 60 per cent of the energy savings target for the period from 1 January 2014 to 31 December 2020 (see Article 7 of Legislative Decree No. 102/2014).

91 The amount of white certificates is subject to review every year.

92 The system was introduced in Italy by the Ministerial Decrees of 20 July 2004.

93 Article 12, paragraph 5 of Legislative Decree No. 102/2014.

projects related to natural gas savings and 11 per cent for energy efficiency projects in the transport sector not related to electricity and natural gas savings), corresponding to total savings in primary energy of 1.7 million TOE;⁹⁴

- b* incentives for small-sized energy efficiency measures (thermal insulation of walls, replacement of heating devices with condensing boilers, replacement of in-house lighting systems with more efficient ones, installation of shielding and shading systems and building automation), which are financed by gas tariffs;⁹⁵ and
- c* tax deductions for energy requalification projects on buildings (65 per cent until 31 December 2016 and 36 per cent starting from 1 January 2017).⁹⁶

iii Technological developments

Italy is a leader in the research and development of smart grid technologies. Since 2011,⁹⁷ many grid pilot projects have been implemented and concluded by private operators.⁹⁸ On the basis of the results of the grid pilot projects already implemented, the AEEGSI is currently studying possible incentive mechanisms for electricity distribution operators to convert the current electricity distribution grids into an integrated smart distribution system conveying distributed generation.⁹⁹ The AEEGSI is currently assessing the possibility of launching new experimental projects in areas not already tested under the pilot projects already concluded.¹⁰⁰

Another important technological development in the energy sector is the recent approval by the AEEGSI of the technical requirements of new generation meters (second generation meters or 2G), which allow a real-time monitoring of electricity consumed and consequently real-time pricing, and which will in the next year replace the first generation meters.¹⁰¹

VI THE YEAR IN REVIEW

Some of the key developments in legislation in the energy sector in 2015 and 2016 include:

- a* Law No. 208/2015: (1) provides new incentives for operators managing biomass, biogas and bioliquid power plants; and (2) grants tax deductions for energy requalification projects on buildings (65 per cent until 31 December 2016 and 36 per cent starting from 1 January 2017);
- b* Law-Decree No. 210/2015, converted by Law No. 21/2016, has postponed the term for the publication of calls for tenders for the service of gas distribution at ATEM

94 GSE, Annual Report for 2015, pp. 139–140.

95 Article 28 of Legislative Decree No. 28/2011, and Ministerial Decree of 16 February 2016.

96 The system has been extended to 31 December 2016 by Law No. 208/2015.

97 The pilot projects were launched by the AEEGSI with the Resolution No. ARG/elt 39/10.

98 The Italian pilot projects already concluded were implemented by Enel Distribuzione (CP Carpinone), A2A Reti Elettriche (CP Lambrate and CP Gavardo), ASSEM San Severino Marche, ACEA Distribuzione (CP Malagrotta), and ASM Terni.

99 AEEGSI, Consultation Document No. 255/2015/R/eel.

100 AEEGSI, Consultation Document No. 255/2015/R/eel.

101 AEEGSI, Resolution No. 87/2016/R/eel.

- level, including for ATEMs for which the term has already expired; the criteria to be followed in tenders for the award of the gas distribution service have been reformed by Decree of the Ministry of Economic Development No. 106 of 20 May 2015;
- c* the Decree of the Ministry of Economic Development of 16 February 2016 has redefined the incentives for small-sized energy efficiency measures and for the production of thermal energy from renewable sources; and
- d* AEEGSI Resolution No. 209/2016/E/com has established the procedure for mandatory mediation before the Mediation Service as a condition for legal action in disputes between customers or final consumers and operators in sectors regulated by the AEEGSI.

Some of the key corporate transactions in the energy sector include:

- a* 18 April 2016: Edma Srl sold to Estra Energie Srl its 59.59 per cent shareholding in Prometeo SpA, which is active in the sale of electricity and gas at retail level, thus obtaining sole control over Prometeo SpA
- b* 21 December 2015: merger of Società Elettrica Altoatesina SpA, holding company of the SEA group, which was active in the generation of electricity (mainly from hydroelectric sources), in the distribution of electricity and gas, in the supply of heat and of green certificates, and Azienda Energetica SpA, holding company of the AE group and active in the generation of electricity (mainly from hydroelectric sources), in the distribution of electricity and gas, in the supply of heat and of green certificates, in the management of public lighting plants and in the transmission of electricity. Alperia SpA is the new company resulting from the merger;
- c* 9 December 2015: Terna – Rete Elettrica Nazionale SpA, the national electricity transmission grid operator, acquired a 100 per cent shareholding in SELF – Società Elettrica Ferroviaria Srl, controlled by the Ferrovie dello Stato group and active in the transportation and transmission of electricity on the high and very high-voltage grid that belonged to Ferrovie dello Stato SpA; and
- d* 30 November 2015: ERG Power Generation SpA, belonging to the ERG group and active in the generation and sale of electricity and related products, acquired a branch of E.On Produzione SpA consisting of 16 plants for power generation from hydroelectric sources.

VII CONCLUSIONS AND OUTLOOK

The Italian energy sector has undergone significant changes in recent years, implementing important reforms towards liberalisation and environmental sustainability. The reform process will no doubt continue in the next few years.

Among the most positive developments concerning the energy sector in Italy is the implementation of measures to ensure full neutrality of DSOs towards retail traders. New measures include standardised network codes regulating the obligations and rights of DSOs and traders, the introduction of smart meter systems, which provide consumers with real-time invoicing, and the development of smart grids, which will increase the reliability and quality of power supplies, integrate renewable power sources and increase energy efficiency by balancing electricity consumption and supply.

On the other hand, some aspects need greater attention by the regulator, such as incentives for renewable energy, energy efficiency projects and e-mobility, which appear underdeveloped in the current scenario. Tariff systems should also be structured differently to eliminate progressive rates and encourage a smarter use of gas and power in houses and firms.

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