



Ministry of Economic Development

DEPARTMENT OF ENERGY DIRECTORATE-GENERAL FOR NUCLEAR ENERGY, RENEWABLE ENERGIES AND ENERGY EFFICIENCY

DIRECTIVE 2004/8/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 11 FEBRUARY 2004

REPORT UNDER ARTICLE 10(1) COVERING THE MATTERS REFERRED TO IN ARTICLE 9(1) AND (2), ON THE EXISTING LEGISLATIVE AND REGULATORY FRAMEWORK

1. Article 9 of Directive 2004/8/EC of the European Parliament and of the Council

Administrative procedures

1. Member States or the competent bodies appointed by the Member States shall evaluate the existing legislative and regulatory framework with regard to authorisation procedures or the other procedures laid down in Item 6 of Directive 2003/54/EC, which are applicable to high-efficiency cogeneration units.

Such evaluation shall be made with a view to:

- a) encouraging the design of cogeneration units to match economically justifiable demands for useful heat output and avoiding the production of more heat than useful heat;
 - b) reducing the regulatory and non-regulatory barriers to an increase in cogeneration;
 - c) streamlining and expediting procedures at the appropriate administrative level; and
 - d) ensuring that rules are objective, transparent and non-discriminatory, and take fully into account the features of the various cogeneration technologies.
2. Member States shall - where this is appropriate in the context of national legislation - provide an indication of the stage reached specifically in:
 - a) coordination between the different administrative bodies as regards deadlines, reception and treatment of applications for authorisations;
 - b) the drawing up of possible guidelines for the activities referred to in paragraph 1, and the feasibility of a fast-track planning procedure for cogeneration producers; and

- c) the designation of authorities to act as mediators in disputes between authorities responsible for issuing authorisations and applicants for authorisations.

1. The definition of cogeneration as at the entry in force of Directive 2004/8/EC in Italy

Legislative Decree No 79 of 16 March 1999 ‘Transposal of Directive 96/92/EC concerning common rules for the internal market in electricity’, gave the Regulatory Authority for Electricity and Gas (AEEG) (hereinafter ‘the Authority’) the remit of specifying under what terms the combined production of electric energy and heat could be defined as cogeneration and benefit from the related legal incentives.

On 19 March 2002, the Authority therefore issued Decision No 42/02, which established that a cogeneration plant could be identified as such when certain operating values, such as its Energy Saving Index (ESI) or its Thermal Limit (TL) were higher than two minimum values set out in that same Decision.

Legislative Decree No 20 of 8 February 2007 transposing Directive 2004/8/EC of the European Parliament and of Council of 1 February 2004, introduced the new concept of high-efficiency cogeneration (HEC) and set down new criteria for defining it.

Under the provisions of Legislative Decree No 20/07, the specifications for recognising high-efficiency cogeneration (HEC) until 31 December 2010 are the same as those established for cogeneration in the Authority’s Decision No 42/02, as subsequently amended and extended.

2. Main incentives for high-efficiency cogeneration under the current legislation:

- An exemption from the requirement to purchase green certificates, applicable to electricity producers and importers with annual production and imports from non-renewable sources exceeding 100 GWh (Article 11 (1), (2) and (3) of Legislative Decree No 79 of 16 March 1999);
- Electricity produced by cogeneration has priority for dispatching over electricity produced by conventional sources (Article 11(4) of Legislative Decree No 79 of 16 March 1999);
- Cogeneration facilities combined with district heating systems are eligible for green certificates – on a transitional basis and under specific conditions – as provided for by Article 1(71) of Law No 239/04, and only for facilities that meet the conditions under Article 14 of Legislative Decree No 20 of 8 February 2007;
- Where a plant is built by energy services companies or electricity and gas distributors, energy efficiency certificates (white certificates), as instituted by the Decrees of 20 July 2004 of the Ministry of Production Activities jointly with the Ministry of the Environment and Protection of natural resources, may be obtained;

- Tax incentives applicable to excise taxes on methane gas used for cogeneration (Legislative Decree No 504/95 as amended by Legislative Decree No 26 of 2 February 2007);
- Possibility to make use of on-the-spot trading services for electricity produced by high-efficiency cogeneration facilities with a nominal power of up to 200kW (resolution of the Authority of 3 June 2008 - ARG/elt 74/08);
- Possible to apply simplified technical-economic conditions for connections, as defined by the Authority in Resolution No ARG/elt 99/08.

Legislative Decree No 20 of 8 February 2007 transposing Directive 2004/8/EC also set down the terms for issuing a Guarantee of Origin for electricity produced by High-Efficiency Cogeneration (HEC) facilities.

To obtain recognition as a cogeneration plant under Decision No 42/02 (which is the same as high-efficiency cogeneration (HEC) until 31/12/2010), GSE (*Gestore Servizi Elettrici*, a publicly-owned company) has outlined a special procedure for producers.

GSE has also set up a procedure for issuing Guarantees of Origin (GO) pursuant to Article 4 of Legislative Decree No 20 of 8 February 2007, approved by Decree by the Ministry of Economic Development on 6 November 2007.

GSE also set up technical procedures for the attestation of facilities set out in the Ministerial Decree of 24 October 2005: 'Directives for regulating the issuing of Green Certificates for energy production pursuant to Article 1(71) of Law No 239 of 23 August 2004', regarding the regulations for energy produced by hydrogen fed facilities, fuel cells and cogeneration combined with district heating, and on promotion and incentivisation using green certificates.

Those procedures incorporate the provisions of Article 14 of Legislative Decree No 20 of 8 February 2007 for cogeneration facilities combined with district heating. The procedures referred to above have been approved by the Ministry of Economic Development and are outlined in Appendix 1.

3. New administrative measures to facilitate and simplify authorisation procedures for cogeneration facilities

On the 9 July 2009 the Italian Senate definitively passed Draft Law No 1195-B on the fourth reading. This lays down provisions on the development and internationalisation of businesses and on energy. The sections that refer to measures envisaged for cogeneration, are listed below.

Article 27 (Measures for safety in, and development of, the energy

sector) provides:

- In paragraph 10, that ‘In order to accelerate and ensure the implementation of energy savings and energy efficiency programmes, within the limits allocated by current legislation, the Minister for Economic Development, together with the Minister for the Environment and the Protection of Natural Resources and the Sea and with the Minister for Infrastructure and Transport in agreement with the Joint Conference referred to in Article 8 of Legislative Decree No 281 of 28 August 1997 as subsequently amended, shall outline a special plan for energy efficiency and savings by the 31 December 2009 and convey it to the European Commission. The special plan, outlined with the support of the Agency referred to in Article 4 of Legislative Decree No 115 of 30 May 2008, specifically contains, in particular, paragraph e) entitled ‘Incentive mechanisms for the development of microcogeneration and small scale cogeneration systems’, and paragraph i) entitled, ‘Measures to foster small and medium-sized companies and facilitate their access to self-production, with special regard to distributed microcogeneration and the use of the best technologies for energy efficiency and cogeneration’.
- In paragraph 20, that ‘The installation and operation of microcogeneration units as defined in Article 2(1)(e) of Legislative Decree No 20 of 8 February 2007, shall only require a simple communication to be submitted to the relevant authority under the Consolidated Text of legislative and regulatory provisions for construction laid down in Presidential Decree No 380 of 6 June 2001. The installation and operation of small scale cogeneration units, as defined by Article 2(1)(d) of Legislative Decree No 20 of 8 February 2007, shall be subject to the rules for notifying business start-up in Articles 22 and 23 of the abovementioned Consolidated Text laid down in Presidential Decree No 380 of 6 June 2001’.

Article 30 (Energy Sector Efficiency Measures) sets out in paragraph 16 that ‘For high-efficiency microcogeneration facilities within the meaning of the legislation in force, a Decree of the Minister for Economic Affairs and Finance in agreement with the Minister for Economic Development shall set out rules to simplify the requirements for equipment installation and tax measures and define the simplified procedure for payment of excise duties and other taxes and duties’.

Article 38 (Promoting Energy Sector Innovation) provides, in paragraph 2(c), for ‘the adoption of supporting and financing measures to promote innovation in small-scale energy generation, particularly from renewable, resources as well as energy savings, energy efficiency and microcogeneration’.

APPENDIX 1

Recognition of Cogeneration Plants

Recognition of cogeneration under AEEG Decision No 42/02 (the same as high-efficiency cogeneration (HEC) until 31/12/2010)

Producers who intend to apply for recognition of cogeneration plants under Decision No 42/02 must follow GSE's special technical procedure:

- a) Attestation of the conditions required for recognition as a cogeneration plant;
- b) Application for recognition of cogeneration and statement in lieu of a sworn affidavit (Appendix A1);
- c) Table: Cogeneration Recognition (Appendix B1).

To further facilitate the calculation of the ESI and TL indices, GSE has also, by way of a non-exhaustive example, drawn up a specific document containing a template and guidelines for calculating the indices: 'Indications on determining the quantities involved in the calculation of cogeneration indices'.

It is important to note that according to Decision No 42/02, cogeneration status recognition - which is always calculated on an *ex post* basis that relates to production during the year prior to application for recognition - is not ongoing and it must be expressly applied for by the producer each time there is an intention to benefit from the legal incentives reserved for cogeneration facilities.

Issuing Origin Guarantees for High-Efficiency Cogeneration

By Decree on 6 November 2007, the Italian Ministry for Economic Development approved the technical procedure for issuing Guarantees of Origin (GO) for electricity produced by high-efficiency cogeneration facilities. This procedure is intended for producers, and defines the operations and documents that are necessary to request GSE to issue a GO on an *ex post* basis.

A GO may be requested both for facilities that have already applied for and received recognition of high-efficiency cogeneration status and for those that have not yet applied for it. In the latter case, GSE shall evaluate compliance with cogeneration conditions beforehand.

The Approval Decree and the Annexes to the technical procedure required for GO applications (Annexes A2, B1 and B2) may be downloaded from the www.gse.it website on the pages stated below:

- a) Technical procedures for issuing Guarantees of Origin for electricity produced by high-efficiency cogeneration;
- b) GO application and statement in lieu of a sworn affidavit (Annex A2)
- c) Tables: Cogeneration Recognition and GO Application (Annexes B1 and B2)

Certifying cogeneration facilities combined with district heating for the issue of green certificates (application of Article 14 of Legislative Decree No 20 of 8 February 2007)

Applications for the attestation of cogeneration facilities combined with district heating may only be made for facilities that comply with the conditions set out in Article 14 of Legislative Decree No 20 of 8 February 2007. The conditions set out below must be specifically verified.

The rights acquired by the operators of facilities, which have been developed or are being developed under Article 1(71) of Law No 239 of 23 August 2004, as in force on the 31 December 2006, remain valid provided that the facilities meet at least one of the following requirements:

- a) they entered into operation in the period between the date of entry into force of Law No 239 of 23 August 2004 and 31 December 2006;
- b) they were authorised in the period between the date of entry into force of Law No 239 of 23 August 2004 and 31 December 2006, and enter into operation by 31 December 2008;
- c) they enter into operation before 31 December 2008, and construction actually began prior to 31 December 2006.

With regard to the above, as provided by the Ministerial Decree of the 24 October 2005 'Directives regulating the issuing of green certificates for energy production pursuant to Article 1(71) of the Law No 239 of 23 August 2004', GSE outlined the technical procedures for attestation and the issuing of green certificates for the facilities referred to above. These were approved by Ministerial Decree on the 21 December 2007 by the Ministry for Economic Development in agreement with the Ministry for the Environment and Protection of National Resources and the Sea.

The procedures are aimed at producers who apply for attestation as cogeneration facilities combined with district heating, for the subsequent issuing of green certificates. The attestation of plants is a technical recognition procedure provided for by the legislation and is necessary for later eligibility for incentives under the green certificates system.

The procedures are divided into two sections:

1. Procedure for attestation of cogeneration facilities combined with district heating (Section 1)

Section 1 looks at the types of action that are eligible for incentives and provides a detailed description of technical and authorisation documents which producers must submit to GSE to obtain technical attestation as facilities that are eligible for incentives. The type of documentation may vary depending on the action or plant status (whether it is already up and running or is still at the planning stage) and it may be downloaded in an editable format through a special link on the website. It is stressed that attestation is granted by the GSE's Attestation Commission, which evaluates

attestation applications by producers on the basis of an analysis carried out by its own technicians (including following on-site inspection of facilities).

2. Procedure for the administration and issuing of green certificates for cogeneration facilities combined with district heating (Section 2)

Section 2 describes methods for the administration of green certificates. Specifically, it describes the methods for opening ‘owner accounts’ so that green certificates may be deposited for the owners of cogeneration facilities combined with district heating and facilities run off hydrogen or fuel cells. The methods for changing ownership of accounts are also outlined.

Green certificates are issued to owner accounts for the cogeneration facilities combined with district heating exclusively on an *ex post* basis. A producer’s application may only be granted after the condition of the cogeneration plant has been verified.

Main national and European rules on cogeneration

National Laws and Decrees, European Directives.

Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC.

Law No 239 of 23 August 2004: 'Reorganisation of the energy sector and government delegation for restructuring energy regulations' published in Official Gazette of the Italian Republic No 215 of 13 September 2004 - general series.

Decree of the Ministry for Production Activities, and Ministry of the Environment and Protection of Natural Resources of 24 October 2005: 'Directives for regulating the issuing of green certificates to energy production pursuant to Article 1(71) of Law No 239 of 23 August 2004' published in the ordinary supplement to Official Gazette of the Italian Republic No 265 of 14 November 2005 - general series.

Legislative Decree No 20 of 8 February 2007: 'Transposal of Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC.'

Decree of 6 November 2007: 'Approval of the technical procedures for issuing the guarantees of origin for electricity produced using high-efficiency cogeneration' published in Official Gazette of the Italian Republic No 275 of 26 November 2007.

Decree of the Minister for Economic Development, in agreement with the Minister for the Environment, Protection of Natural Resources and the Sea of 21 December 2007: 'Approval of procedures for identifying renewable resource facilities and hydrogen, fuel cell and cogeneration facilities combined with district heating for the purpose of issuing green certificates' published in Ordinary Supplement No 9 to Official Gazette of the Italian Republic No 16 of 19 January 2008.

Decisions of the Regulatory Authority for Regulatory Authority for Electricity and Gas

Decision No 42/02 'Conditions for recognising the combined production of electricity and heat as cogeneration, as provided by Article 2(8) of Legislative Decree No 79 of 16 March 1999' published on the Regulatory Authority for Electricity and Gas website (www.autorita.energia.it) and in Official Gazette of the Italian Republic No 79 of 4 April 2002 - general series.

Decision No 60/04: ‘Use of the *Cassa Conguaglio* (Equalisation Fund) for the Electricity Sector to intensify and broaden inspections on electricity production facilities powered by renewable and equivalent resources and cogeneration facilities’ published on the Regulatory Authority for Electricity and Gas website (www.autorita.energia.it) and in Official Gazette of the Italian Republic No 108 of 10 May 2004

Decision No 201/04: ‘Consolidation and amendment of Regulatory Authority for Electricity and Gas Decisions No 42 of 19 March 2002 and No 168 of 30 December 2003, regarding the identification of the combined production of heat and power as cogeneration, and cogeneration unit dispatching rules’ published on the Regulatory Authority for Electricity and Gas website (www.autorita.energia.it) and in Official Gazette of the Italian Republic No 288 of 9 December 2004.

Decision No 215/04 ‘Approval of regulations regarding checks and inspections of electric facilities powered by renewable resources, equivalent resources and cogeneration facilities’

Decision No 296/05 ‘Adjustment of reference parameters for the recognition of combined heat and power production as cogeneration, under Article 3(3.1) of Decision No 42/02 of the Italian Regulatory Authority for Electricity and Gas of 19 March 2002’, published on the Regulatory Authority for Electricity and Gas website (www.autorita.energia.it) and in Official Gazette of the Italian Republic No 26 of 1 February 2006.

Decision No 2/06 ‘Extension of the term of office for members of the committee of experts set up under Article 2(2.4) of Decision No 60/04 of the Italian Regulatory Authority for Electricity and Gas of 22 April 2004. Definition of electricity used by power station ancillary services, for the purpose of inspection as referred to in the same Decision No 60/04’.

Decision No 280/07 ‘Technical-economic terms and conditions for electricity withdrawals pursuant to Article 13(3) and (4) of Legislative Decree No 387/03 of 29 December 2003 and Article 1(41) of Law No 239/04 of 23 August 2004’ published on the Regulatory Authority for Electricity and Gas website (www.autorita.energia.it) and in Official Gazette of the Italian Republic No 284 of 6 December 2007.

Decision No 307/07 ‘Adjustment, with effect from 1 January 2008 of the reference parameters adopted for the recognition of combined electricity and heat production in the form of cogeneration, under Article 3(3.1) of Decision No 42/02 of the Italian Regulatory Authority for Electricity and Gas of 19 March 2002’ published in the Ordinary Supplement to Official Gazette of the Italian Republic No 11 of 14 January 2008.

Resolution ARG/elt 74/08 'Integrated text of the technical-economic methods and conditions for on-the-spot electricity trading.'

Resolution ARG/elt 99/08 'Integrated text of the technical and economic conditions for electricity grid connections, with the obligation to connect third party electricity generation facilities (Integrated text on active connections)' published on the Electric and Gas Authority website (www.autorita.energia.it) and in the Ordinary Supplement to Official Gazette of the Italian Republic No 196 of 22 August 2008.

Resolution ARG/elt 145/08 'Amendment to Regulatory Authority for Electricity and Gas Resolution No 42/02 of 19 March 2002, concerning cogeneration of electricity from renewable resources'.