

## WHITE CERTIFICATES: IS THERE A FUTURE?

The interministerial decree of 10 May 2018, published on the Official Gazette of the Italian Republic of 10 July 2018 and entered into force on 11 July (the "**Corrective Decree**"), modified the current interministerial decree of 11 January 2017 on the subject of energy efficiency certificates (TEE or white certificates) in an attempt to resolve, at least temporarily, a full-blown crisis that determined a relevant increase in the prices of the white certificates traded on the GME market, that, at the beginning of 2018, reached a value three times more than the 2015 value (from 100,00 Euro/TEE provided for in most of the business plans to peaks of 490.00 Euro/TEE).

The fluctuation of prices is due to the scarcity of white certificates on the market - due to an important decrease in the projects presented to the GSE, of around 75%, also due to regulatory and regulatory uncertainty and the consequent loss of operator confidence, and to a simultaneous cancellation by the GSE of already approved projects - against a constant demand from the obliged parties, which does not follow market logic.

In order to cope with this situation and safeguard a mechanism that remains a point of reference on the European scene, the Minister of Economic Development has therefore adopted the following main measures through the Corrective Decree:

- the additionality has been eliminated with reference to replacement interventions, for which the base line is indicated in the *ex ante* situation. Please note that the burden of proving the additionality of the intervention is borne by the operator and that the application of this concept, especially in the industrial sector, has proved to be very problematic and a constant source of considerable disputes with the GSE;
- flexibility has been increased for the obliged subjects to two years in order to compensate the minimum annual obligation to 60%;
- the obliged parties have now the possibility to request the issuing of white certificates not corresponding to energy savings, between April and May, until the minimum annual obligation is reached, with the possibility of redeeming them in the following two years;
- a maximum ceiling of 250 euros has been identified for the fee paid to distributors (it is noted that ARERA has published on this point the consultation document 385/2018 / R / efr of 12 July 2018, on which observations and suggestions are expected within 7 August 2018);
- additional eligible interventions have been introduced and a first group of standard projects has been published;
- simultaneous eligibility to white certificates and public revolving funds.

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Although it is difficult to make assessments, it is reasonable to assume that the measures envisaged by the Corrective Decree will help to contain price fluctuations and reduce risk factors in project evaluation, which will allow operators to gradually regain confidence in the mechanism.

It is evident, however, that the fate of the mechanisms also (and above all) depends on the attitude that the GSE will decide to adopt. After the rigid approach of the last years, characterized by retrospective revocation or cancellation of previously approved projects, with consequent requests to return the already granted white certificates (often on the basis of nothing other than a different orientation of the GSE) and the discretionary application of uncoded criteria (such as the so-called economic additionality), which have generated a substantial dispute still pending before the administrative courts, we hope to move to an attitude of dialogue and support to operators and clarity on the criteria applied in the evaluation of projects, which allows to regain confidence in the incentive and interest mechanism for the implementation of projects of economic efficiency, for the benefit of the whole community.

#### **DISCLAIMER**

La presente Newsletter ha il solo scopo di fornire informazioni di carattere generale. Di conseguenza, non costituisce un parere legale né può in alcun modo considerarsi come sostitutivo di una consulenza legale specifica.

The only purpose of this Newsletter is to provide general information. It is not a legal opinion nor should it be relied upon as a substitute for legal advice

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#### • **CONTACTS**

Piero Vigano, Partner  
Tel. +39.02.7217091  
Via Dante 9, 20123 Milano, IT  
E-mail: [piero.vigano@grplex.com](mailto:piero.vigano@grplex.com)

Irina Gherca, Senior Associate  
Tel. +39.02.7217091  
Via Dante 9, 20123 Milano, IT  
E-mail: [irina.gherca@grplex.com](mailto:irina.gherca@grplex.com)

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