



Consultation Document 08/2014

**PROPOSED CHANGES TO THE RULES AND REGULATIONS
OF THE MARKETS AND PLATFORMS ORGANISED AND MANAGED
BY GME - DISCIPLINARY MEASURES, PARTICIPATION
REQUIREMENTS, COMPLAINTS AND DISPUTES**

1. Introduction

With this consultation document, *Gestore dei mercati energetici* (hereafter: GME) intends to gather comments and suggestions from interested parties about some changes to the Rules and Regulations governing its markets and platforms. The proposed changes are focused on: i) the disciplinary measures that GME adopts in case of breaches of the Rules and Regulations by participants; ii) the requirements for participation in/suspension/exclusion from the market/s; and iii) the provisions regarding the resolution of complaints about market operations.

The above provisions have a cross-cutting nature within the different markets/platforms that GME organises and manages, apart from obvious differences related to the specificity of each market (e.g. mandatory nature of some platforms, GME's role of central counterparty, documents that the applicant is held to submit upon admission and various reference institutions in charge of approving the rules). Consequently, GME plans to globally revise the Rules/Regulations, with a view to achieving a structured and homogeneous regulatory setting to the benefit, among others, of participants active on the different markets/platforms.

The document describes the general content of the main proposed changes, grouped by area, and their rationales, which have led GME to rethink the current regulatory design.

In particular, the changes described in the following paragraphs concern:

- the Integrated Text of the Electricity Market Rules (hereafter: Electricity Market Rules), approved by the Ministry of Economic Development, after seeking the opinion of *Autorità per l'energia elettrica, il gas e il sistema idrico* (electricity, gas and water system regulator, hereafter: AEEGSI);
- the Rules Governing the OTC Registration Platform referred to in art. 17 of Annex A to AEEGSI's Decision 111/06, as subsequently amended and supplemented (hereafter: PCE Rules), approved by AEEGSI;
- the Natural-Gas Market Rules (hereafter: Gas Market Rules), approved by the Ministry of Economic Development, after seeking the opinion of AEEGSI;
- the Regulations of the Gas Balancing Platform (PB-GAS) (hereafter: PB-GAS Regulations), approved by AEEGSI;
- the Regulations of the Natural-Gas Trading Platform (P-GAS) (hereafter: P-GAS Regulations), approved by the Ministry of Economic Development, after seeking the opinion of AEEGSI;
- the Rules governing the operation of the regulated market and of the platform for registration of bilaterals of guarantees of origin (hereafter: P-GO Regulations), approved by AEEGSI;

- the Rules governing the Green Certificates Bilaterals Registration Platform referred to in article 12, para. 3 of the Ministerial Decree of 18 December 2008 (hereafter: PBCV Rules), approved by GME¹.

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Interested parties are invited to send their comments in writing to GME's Institutional Relations & Communication - "**Relazioni Istituzionali e Comunicazione**" - by **11 December at the latest** (end date of the consultation) in one of the following ways:

- by e-mail to: info@mercatoelettrico.org
- by fax to: **+39-06-80124524**
- by mail to: **Gestore dei mercati energetici S.p.A.**

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

¹ It is worth pointing out that, unlike for the other Rules/Regulations mentioned above, the changes to the PBCV Rules, proposed here, will be limited to the provisions on the suspension the participant from the markets/platforms.

2. Proposed changes to some provisions concerning participation and exclusion requirements

The following are the main changes that are proposed to be made to the provisions concerning the participation and exclusion requirements:

- **Revision of criteria for admission of the applicant to GME's Markets/Platforms**

Contrary to the current Rules/Regulations (namely Electricity Market Rules, Gas Market Rules and P-GO Rules, the latter limited to the M-GO trading system), a participant previously excluded from the market owing to a disciplinary measure applied by GME will have the option of submitting a new participation application, 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 a disciplinary measure more severe than the written notice of violation, the pecuniary penalty and the suspension. This change is based on the consideration that the current provisions of the respective Rules/Regulations – which actually prevent a party from re-acquiring the status of market participant, if he/she/it has been previously excluded from the market, except in case of exclusion on request by the participant - appear to be too restrictive of the option for a party to join a regulated bidding system. At the same time, where GME still has a credit towards the participant requesting re-admission and previously excluded from the market (owing to failure to pay the fees for participation therein and the payables arising from transactions concluded on the market/platform), the participant will be re-admitted only if he/she/it has extinguished the payment of the amounts owed to GME and anyway no sooner than sixty months after the exclusion.

- **Revision of criteria for suspension/exclusion of the participant from the Market/Platform**

With a view to strengthening measures to safeguard the market, GME will have the option of suspending 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 he/she/it still qualifies under the applicable participation requirements or if the data that he/she/it has provided, in compliance with the notification obligations laid down in the Rules/Regulations, do not enable GME to reach him/her/it. In the latter case, the suspension will remain in effect until the participant becomes reachable again. Additionally, an explicit provision will be added - not only to the Rules/Regulations

mentioned above, but also to the PBCV Rules - to limit the option of the participant to file a request with GME for exclusion from the market/platform, if the participant has been suspended owing not only to failure to pay the fees and/or the payables resulting from trades on the market/platform, but also to a specific disciplinary measure adopted by GME. As is obvious, after the expiration of the period of suspension, the participant may file the request for exclusion with GME under the procedures and within the time limits specified in the Rules/Regulations of each market/platform. With particular regard to the P-GO, changes will be made to the measures undertaken by GME in case of non-payment of fees: i) on the PB-GO (mandatory platform), the participant will be suspended until the date of compliance; and ii) on the M-GO, the participant will be suspended for 6 months; after the expiration of this period, if the participant has not paid the fees, he/she/it will be suspended from the M-GO.

- **Revision of the frequency of GME's verifications of participation requirements**

Contrary to the current two-year frequency or, anyway, failing an explicit temporal reference, GME will have the option - whenever it deems it appropriate – to carry out verifications with a view to determining whether participants still qualify under the participation requirements. This change responds to GME's need to streamline its market monitoring activity, given the greater maturity that both the market and market participants have achieved.

3. Proposed changes to some provisions of the Rules/Regulations of the markets/platforms managed by GME with regard to disciplinary measures, complaints and disputes

The main proposed changes are as follows:

- **Elimination of the public notice of violation 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 of violation, 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 primary purpose: in case of breach of the Rules/Regulations by a participant, GME adopts corrective measures to restore the proper operation of the market.

- **Elimination of the exclusion, on mandatory platforms, among the disciplinary measures that GME may apply to a participant whose conduct has not conformed to the provisions of the relevant Rules/Regulations** (namely PCE Rules, PB-GAS Regulations, P-GO Rules, the latter limited to the PB-GO bilateral trading system)

The rationale behind this change is related to the mandatory nature of the relevant markets/platforms, in/on which participants are required to take part or to register their transactions pursuant to specific legislative provisions. Under the current provisions, the exclusion from the mandatory platforms - more severe than the suspension - would actually allow the participant to be immediately re-admitted to the market/platform, contrary to the suspension measure that GME may adopt, under a graduation principle, for a maximum period of 3 years. The above clearly infers that the suspension would turn out to be more effective than the exclusion, since only the suspended participant would not be allowed to trade on the market/platform for a certain and specified period of time.

- **Introduction of new criteria for adoption of the disciplinary measure of the pecuniary penalty**

Moreover, where the participant has not paid the pecuniary penalty within six months of the date of notification thereof, GME may suspend him/her/it from the market/platform until the date of payment. This provision will enable GME to strengthen the impact of this disciplinary measure. Indeed, the participant to which/whom this measure is applied would continue to trade on the market/platform, even if he/she/it has not yet met his/her/its obligations towards GME. This aspect is all the more true when GME applies the pecuniary penalty as an alternative to the disciplinary measures of suspension and exclusion, in view of the security of the system.

- **Procedures and time limits for GME's publication of the disciplinary measures applied in case of breaches of the Rules/Regulations governing the markets/platforms**

In particular, the disciplinary measure possibly applied to participants by GME will be published on GME's website in anonymous form - i.e. the identity of the participant involved will no longer be disclosed, contrary to the current provisions of the Rules/Regulations - and anyway only after the expiration of the time limit of 30 days, within which the participant may file an appeal against the disciplinary measure before the court of arbitration. 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 current provisions, if the participant has filed an appeal before the court of arbitration against a disciplinary measure taken by GME, GME will publish such measure only after the court of arbitration has confirmed it. Finally, it is worth pointing out that the need for harmonising the time limits for lodging appeals within GME's Rules/Regulations - as indicated in the Introduction - arises from the general purpose of harmonising the application of provisions that have a cross-cutting nature within the various markets/platforms managed by GME.

- **Change of the time limit that GME has available to apply a possible disciplinary measure to the participant**

Where the participant has received a notice of alleged breach from GME and requests a hearing or where GME deems such hearing necessary, the entire proceeding will be closed within thirty days of the date 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 and for enabling GME to hold a hearing is felt above all in the light of the level of maturity and growth reached by the market, 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 the conduct of a proper and orderly disciplinary proceeding by GME, where the participant requests a postponement of the hearing date set by GME, the hearing will be held no later than the tenth day following the originally set date.

- **Introduction of an explicit time limit within which the participant may file an appeal before the court of arbitration against GME's resolution of the complaint**

Without prejudice to the current procedure under which the participant files complaints towards GME, the same participant may file an appeal before the court of arbitration within a maximum of 30 days of GME's notification of resolution of the complaint. This change pursues a two-fold purpose: i) providing participants with more transparency and certainty about the procedures for lodging appeals before the court of arbitration in these cases; and ii) limiting the time of the entire proceeding, by establishing that the time elapsing from the resolution of the complaint by GME to the time of lodging of the appeal by the participant must be adequate.

- In accordance with the best practices observed on the main European markets and also in view of the completion of the market integration process, **introduction of a maximum limit for the compensation paid by GME in case of complaint**

Without prejudice to the criteria for determining the amount of the compensation currently laid down in the Electricity Market Rules, if the complaint is accepted on the Spot Electricity Market (MPE), the amount of the compensation will not exceed € 100,000 and, if the complaint is accepted on the Green Certificates Market, the amount of the compensation will not exceed € 10,000.