Guidance Note on the carrying out of the 2023 Energy Audits Obligation by non-SMEs in line with Energy Efficiency Regulations (SL 545.33).

1. *Introduction*

Regulation 10 of SL 545.33 of 2021 makes it mandatory for, and the responsibility of, non-SMEs registered and doing business in Malta[1] to carry out energy audits to the established **quality level and frequency as outlined in this regulation**. These enterprises are to submit the next Energy Audit by 5th December 2023.

This guidance note is addressed primarily to enterprises which qualify or may qualify[2] for the statutory energy audit to assist in the discharge of this responsibility. It is also very relevant to energy auditors who may be entrusted with the carrying out of such audits. This note supersedes any previously issued guidance notes.

2. *Enterprises qualifying for mandatory audits – Non-SMEs.*

For the purpose of this obligation "small and medium-sized enterprises" means enterprises as defined in Title I of the Annex to Commission Recommendation 2003/361 of the 6th May 2003 concerning the definition of micro, small and medium-sized enterprises. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises[3] which employ fewer than two hundred and fifty (250) persons and which have an annual turnover not exceeding fifty million euro (€50,000,000), and, or an annual balance sheet total not exceeding forty-three million euro(€43,000,000). **Enterprises not falling within this definition are classified as Non-SMEs**.

It is the responsibility of economic operators to determine whether they qualify as non-SMEs and are therefore subject to mandatory audits without there being the need for any further notice from any competent authorities.

The Energy and Water Agency within the Ministry for Environment, Energy and Enterprise may request that an economic operator that 'prima facie' could be deemed to qualify as a non–SME, to furnish it with a copy of the self–assessment analysis that it carried out to determine whether it qualifies as an SME.

[1] Large companies and subsidiaries of large companies in Malta and Maltese subsidiaries of large foreign companies.
[2] See Para 3 for entities which do not presently qualify as non-SMEs but expect to do so in the near future.
[3] 'User guide to the SME definition' published by the European Commission shall be used as a general guide to interpret the definition and to determine how to treat particular relationships of the enterprise with other enterprises or investors when calculating the enterprise's staff and financial figures for comparison with the established thresholds.

3. *Competent authorities and their responsibilities.*

The Energy and Water Agency (herein referred to as EWA) will be coordinating and supervising the 2023 statutory energy audit initiative. Correspondence should be addressed to the Chief Executive Officer, the Energy and Water Agency, Pinto Business Centre, Mill Street, Qormi.

The EWA will be co-operating with the Regulator for Energy and Water Services (REWS) where appropriate and as indicated in the paragraphs below.

To simplify administrative procedures, while respecting applicable data protection and confidentiality, each non-SME will be asked to consent to the exchange of information relevant to this project between EWA and REWS.

4. *Date of completion of the 2023 Audit.*

The 2023 statutory audit must be completed by the 5th December 2023 at the latest[4]. Failure to send the requested documentation by the 5th December 2023 may lead to enforcement action, which may include the imposition of administrative fines.

It is highly recommended that Non-SMEs commence the carrying out of the audit sufficiently early to allow adequate time for a good quality audit to be completed by the due date.

In the case of companies that do not presently qualify for mandatory audits according to their last audited annual accounts but may do so at a later date, their first audit shall be due on the next deadline as establised in the Energy Efficiency Regulations.

5. *Meetings and communication between the non-SME and the Energy and Water Agency.*

EWA will be organising meetings with non-SMEs on the 2023 audit initiative. Non-SMEs may also request individual meetings with EWA on the quality of previous audits[5], or any other matter relevant to the 2023 audit.

The officer representing the non-SME may be assisted by other persons as may be required.

Enterprises may submit a request for clarifications on the requirements of SL 545.33 and this Guidance Note to EWA. However, any pending clarifications will not be accepted as a valid reason for failure to meet deadlines.

[4] See section 10 for reporting to EWA.

[5] Attention is drawn to correct evaluation of savings. e.g. Possibility of double-counting and overlap between savings from the recommended measures should be considered, and eliminated.

Replies to clarification requests that are of general interest may be published in a generalised format by the EWA and REWS on their websites without reference to the identity and commercial interests of the enterprise making the original request for clarification.

6. *Audit experts: Qualification and/or accreditation and independence.*

Audits must be carried out under the responsibility of internal or external experts. The non-SME selects its own auditor/s[6].

1. External expert/s

An external expert employed to conduct an energy audit for the purpose of SL 545.33 must be:

i. a person listed on the website of the Regulator for Energy and Water Services (REWS) as an energy auditor or accepted as an energy auditor in another EU Member State. Evidence of such acceptance must be provided.

OR

ii. if a suitable registration scheme is not established in another Member State where the auditor/s are based, a person qualified to MQF level 6 or higher in Engineering or a relevant applied science discipline[7] and has followed an appropriate training course as in G.N. 13024. Evidence of the qualifications and training claimed must be provided.

OR

iii. a person from a non-EU country who is qualified to MQF level 6 or higher in Engineering or a relevant applied science discipline [6] and has followed an appropriate training course as in G.N. 13024. Evidence of the qualifications and training claimed must be provided.

OR

iv. a firm engaged to conduct the audit which is reputable in the industry with expertise and a track record in energy management and/or energy auditing. The audit must be signed by a person qualified and accepted as above 1(i) and (ii).

Unless the auditor is listed on the REWS website, the eligibility of the auditor is subject to the approval of the Agency **prior** to the start of the audit.

[6] ISO 50002:2014 Section 4.1 and 4.2

[7] Acceptance or otherwise of persons qualified in an applied science discipline 'related to engineering' wishing to conduct a statutory energy audit will be decided by REWS on a case by case basis and upon application by the person concerned.

2. In-house experts

In-house experts may carry out or be members of the team carrying out an audit required by SL 545.33 provided that: -

i. They qualify as in para. (i), (ii) and (iii) above.

ii. No one expert is directly engaged in the activity being audited.

iii. The experts act in an independent manner in the performance of the audit.

The selected energy auditors must have access to the necessary energy monitoring tools/equipment to measure data as requested by the minimum criteria of the energy audits and the support of other experts in different fields of engineering applicable to the enterprise being audited.

3. The energy audit of a non-SME many times requires the support of experts in different fields of engineering applicable to the enterprise being audited. One energy auditor, as defined in points (1) and (2) of this section is to act as Lead Auditor having the responsibility to manage the audit and lead the other experts ensuring compliance to ISO 50002. The list of other auditors/experts giving input to the final report is to be forwarded in the template to be submitted.

7. <u>Energy Audit Quality</u>

The audits shall meet the following minimum criteria (as per Sixth schedule of SL 545.33):

(a) be based on up-to-date, measured, traceable operational data on energy consumption and (for electricity) load profiles;

(b) comprise a detailed review of the energy consumption profile of buildings or groups of buildings, industrial operations or installations, including transportation;

(c) build, whenever possible, on life-cycle cost analysis (LCCA) instead of Simple Payback Periods (SPP) in order to take account of long-term savings, residual values of long-term investments and discount rates;

(d) be proportionate, and sufficiently representative to permit the drawing of a reliable picture of overall energy performance and the reliable identification of the most significant opportunities for improvement.

Energy audits shall allow detailed and validated calculations for the proposed measures so as to provide clear information on potential savings. The data used in energy audits shall be storable for historical analysis and tracking performance.

8. The 2023 Audit.

A 2023 statutory energy audit must be compliant with ISO 50002:2014 or EN 16247 and the criteria for energy audits set out in the Sixth schedule of SL 545.33 and as listed under section 7. Energy Audit Quality.

The report must be written in the English or Maltese language.

While the level of detail of the audit is specific to the organisation and is decided between the non-SME and the auditor, it is pointed out that a Type 1 audit is not sufficient where ISO 50002[8] describes a Type 1 audit as a 'preliminary audit for larger organisations or facilities'.

For an enterprise to fulfil this obligation it must submit to EWA (in electronic format) a duly filled in Summary Report Standard Template and Energy Audit Report Declarations as made available online. EWA may still demand and require at short notice a copy of the full energy audit report to fulfil its statutory obligation to administer the national scheme 'to assure and check their (the audit's) quality, including, if appropriate, an annual random selection of at least a statistically significant percentage of all the energy audits carried out'.

It is the intention of EWA to examine in detail a percentage of the energy audit reports, chosen at random with the condition of including a minimum of one submission from every energy auditor. The Agency may also request to examine the full audit reports.

Should EWA determine, as a result of a detailed examination, that a statutory energy audit does not meet the minimum criteria for acceptability, then the Agency shall notify the non-SME of the deficiencies. It shall also request that the necessary upgrading of the report be completed by not later than three months following the date of EWA's notification. Should, in the opinion of EWA, material shortcomings in the audit still be present as to render the conclusions of the audit insufficient or unreliable as a 'guide for potential savings', then EWA will consult REWS on the issue. Should REWS concur with EWA's opinion, it will proceed according to the provisions of SL 545.33.

9. Exemptions in whole or in part in the 2023 audit.

(1) Enterprises which otherwise qualify for a mandatory audit under SL 545.33 may be exempt[9] from this obligation if:

[8] ISO 50002:2014 (E) Table A.1 – Indicative details of energy audit types.

[9] The Energy and Water Agency alone has the authority to grant exemptions in whole or in part from this obligation.

a) They are implementing an energy or environmental management system certified by an independent body according to the relevant European or International standards such as EN ISO 50001 or EN 16247-1 or EN ISO14001 if it includes an energy audit at least to the same standard as in SL 545.33.
b) Their energy consumption is below 50,000kWh (4,3 toe) per annum.

(2) Enterprises may also be granted the following exemptions from the audit:

a) That part of the enterprise – e.g. building envelope/s – that are already covered by other statutory audits such as certification and/or inspections under the Energy Performance in Buildings Directive.
b) That part of the process covered by other certification schemes so long as the equivalence in standards and criteria of these schemes to those in SL 545.33 are demonstrated by the enterprise.
c) Building and civil engineering projects in construction.

(3) Enterprises claiming exemption as in paragraphs 9(1) and (2) above should submit their application for exemption to EWA in writing clearly explaining the basis of their claim and provide supporting documents and certifications to justify it as per Exemption Guidance available online. EWA will take a decision on the granting or otherwise of an exemption and notify the applicant within fifteen days of receipt of the application, provided that sufficient supporting information is submitted by the applicant.

It is the responsibility of the applicant to ensure that requests for exemption are made in sufficient time to allow for timely completion of the audit in the event of the request for exemption not being admissible.

(4) Enterprises which are auditing a number of similar locations. A non-SME may adopt a sampling method for the audit of a number of similar operations and/or buildings that would otherwise require individual auditing (e.g. branch offices). A statistically significant sample of such items may be audited and the results reasonably extrapolated.

The extrapolation and the sampling method adopted according to the above paragraph are to be explained and justified in the audit report.

10. <u>Inclusions.</u>

EWA requires that consideration, followed if appropriate by an assessment of the technical and economic feasibility of communal (centralised building) heating and cooling system based on chillers/heat pumps, possibly with a building energy management system and incorporating combined heat and power technology be given.

11. Reporting to the Energy and Water Agency, via the summary template provided

Consistent with its obligations to propose national energy policies and also to supervise the quality of energy efficiency statutory audits, as described in Section 8 above, the Agency requires summary reports of statutory audits carried out by non-SMEs for the 2023 program. These need to be submitted using the online templates available at (https://energywateragency.gov.mt/non-sme-audit/) and must be submitted to EWA by the 5th December 2023.

The outputs of the audits, taken in aggregate, may be used by EWA as part of the knowledgebase for developing national policy and for assessing progress towards the national Energy Efficiency targets and to consider whether any national support scheme for implementing recommendations of the energy audits, without prejudice to State Aid Law, is justified. EWA and REWS may publish the data provided in the summary reports in aggregate format (e.g. by sector or national totals) but will not divulge the identity of the enterprise and/or any individual data.

12. Penalties

Penalties will apply for failure to comply with the requirements of SL 545.33.

13. Legal import of this guidance note.

This note is intended to guide non-SME's and certain other enterprises in the discharge of the Energy Audit obligations pursuant to SL 545.33.

It does not alter the legal effects of SL 545.33 or of any other legislation and is without prejudice to any direction that the competent authorities might give in the future.