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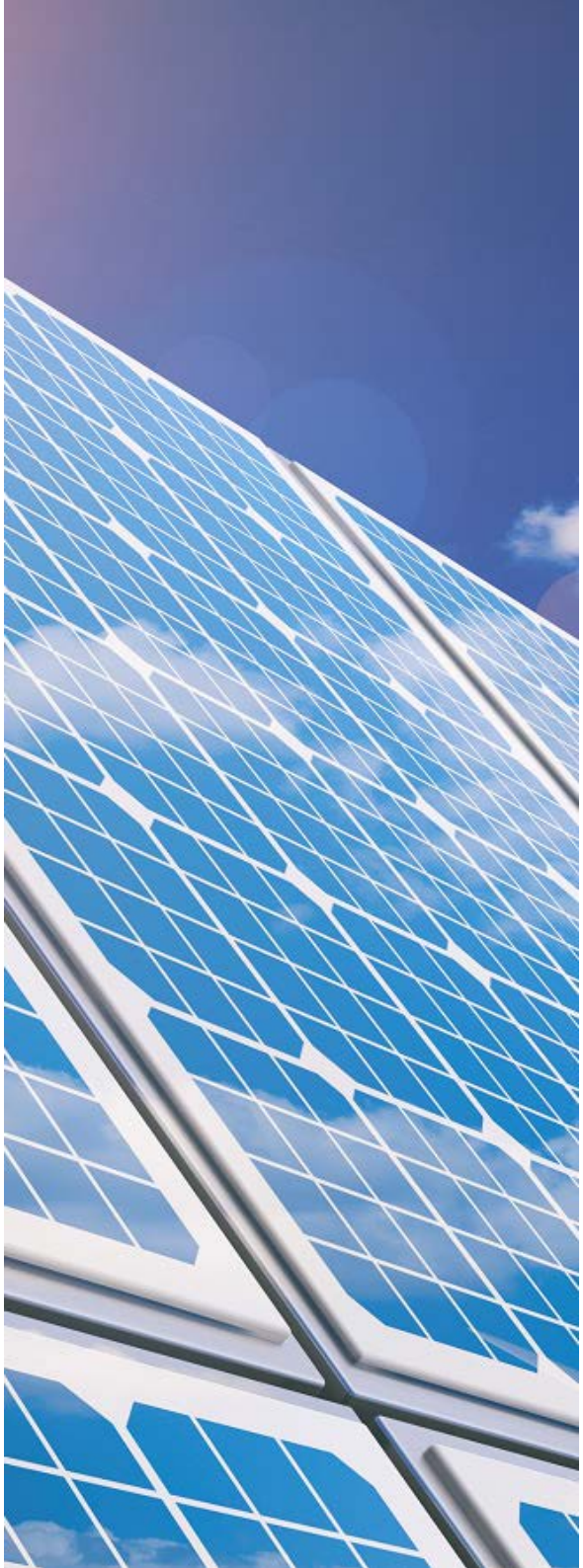
Reform of the Portuguese electricity sector's legal framework

Decree-Law 15/2022 of 14 January at a glance

January 2022



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* **Excluded fields:**

(i) electricity production in **cogeneration**; **(ii)** organisation, access and carrying out of **electric mobility** activities; **(iii)** electricity production from **wave energy** in the pilot zone; and **(iv)** electricity production from **nuclear energy.**

Transitory Regime

Key transitory rules of Decree-Law 15/2022

- **Pending permitting procedures**:
  - **General rule**: **the new regime will apply to permitting procedures pending before DGEG, without prejudice to acts already carried out**. Regarding pending permitting procedures, the duration applicable to ongoing deadlines will be the one established in the legal regime in force on the date the respective counting begins, with the provisions of the new regime applying to the subsequent phases of the permitting procedure.
  - Procedures awaiting grid reception capacity following drawing of lots (*sorteio)* and for which the performance bond has already been provided are not affected by tender procedures and the grid injection capacity will be granted as soon as available.
  - Procedures in which the grid injection capacity was obtained prior to 4 June 2019 and have not yet requested the licensing (e.g. production licence) will have a 6-month period to submit the permitting procedure request. Otherwise the procedures will be cancelled.
  - **Requests related to agreements to be entered into with the grid operators**:
    - procedures that, when the new regime enters into force (i.e. 15 January 2022), have already obtained a final classification, as per the terms foreseen in DGEG's online list, may continue and shall proceed in accordance with the terms and deadlines set out in new regime. The deadlines established in the new regime will apply to the following calendar year (2023);
    - any other request that does not fall within the aforementioned scenario will expire.

Transitory Regime

Key transitory rules of Decree-Law 15/2022

- **Remuneration regimes**: power plants with guaranteed remuneration schemes or other subsidized remuneration support schemes granted previously shall continue to benefit from such regimes for their respective terms.
- **End of regulated electricity sale tariffs**: 31 December 2022, for consumers connected in special low voltage. 31 December 2025, for consumers connected in nominal low voltage.
- **Dismantling of electricity power plants**: the last title holder of a power plant that ceased its operations on a date prior to the entry into force of the new regime must submit a dismantling plan to DGEG within 6 months from the date of entry into force of the new regime (i.e. 15 January 2022).
- **Electricity sector regulations updates**: the following regulations applicable to the electric sector currently in effect must be updated within 18 months from entry into force of the new regime: **(i)** Grid Regulation, **(ii)** Access to Grids and Interconnections Regulation, **(iii)** Grids Operation Regulation; **(iv)** Service Quality Regulation; **(v)** Commercial Relations Regulation; **(vi)** Tariffs Regulation; **(vii)** Intelligent Electricity Distribution Grid Services Regulation; **(viii)** Self-consumption Regulation; **(xi)** Technical Self-consumption Facilities Regulation; and **(x)** Self-consumption Certification and Inspections Regulation.
- **Administrative easements for electric lines**: regime applicable to administrative easements for electric lines to be reviewed and new legislation to be approved in the near future (Decree-Law no. 43335, 19 November 1960 will continue to apply until then). DGEG to submit a proposal to the Government within 6 months.

Transitory Regime

Key transitory rules of Decree-Law 15/2022

- **Low voltage distribution grids' concessions**: the new regime extends the term of low voltage distribution grids concession agreements (municipal grids), including those where the term has already elapsed. The extensions' duration will reflect the period necessary for a new operator to be awarded a concession pursuant to a public tender and to begin its operations.

  While the relevant pubic tender(s) is not completed, the current concessionaires shall annually provide the grantor with a registry comprising:

  i. all assets attached to the concession;

  ii. assets shared with other concessions;

  iii. assets shared by all concessions.

- Within 3 months from the new regime's entry into force, the current concession holders must reach an agreement with the National Association of Portuguese Municipalities, together with the applicable Government body, on the contractual changes deemed necessary in order to implement the transitory regime set forth in DL 15/2022.

- **Activities subject to concessions**: the holder of the national distribution grid (RND) will continue to carry out its activities foreseen in the concession agreement and to ensure the coordination of the distribution grids' operations until the integrated manager of distribution grids begins to carry out its activity. The unification of the technical management of the distribution grids will result in the amendment of the concession agreements in force.

Permitting regime: generation, self-consumption and storage

Permitting procedures unification (electricity production, storage and self-consumption)

Applicable permitting procedure per activity type:

Activity type	Licences (production and operation licences)
	i. All non-renewable power generation; ii. Renewable power generation with total injection into the grid or for self-consumption with an installed capacity of > 1 MW; **iii. Autonomous storage with an installed capacity of > 1MW**; **iv. Generation or autonomous storage subject to environmental impact assessment or environmental incidences assessment**; v. Other generation and storage activities that are not exempt from permitting procedures nor subject to prior communication or registration.

* Innovations in **bold**.
* **Permitting procedure exemptions**: a) self-consumption with installed capacity of < 700 W and no surplus grid injection; and b) research and development, demonstration and test projects within the production, self-consumption and storage activities with an installed capacity of < 700 W and no surplus grid injection.

Permitting regime: generation, self-consumption and storage

Licencing Regime

Licences (production and operation licences)

– **Deadlines to request the Production and the Operation Licence:**

(i) Production Licence: deadline to submit licence request reduced to **1 year** from the issuance of the grid injection capacity title (TRC) for projects subject to environmental impact assessment procedure; and reduced to **6 months** if no environmental impact assessment procedure applies.

Production Licence to be issued within a maximum period of 1 year from request.

(i) Operation Licence:

a. deadline to submit licence request reduced to **1 year** from the Production Licence issue date; or

b. within **90 days from infrastructure's availability**, in case implementation by grid operator of grid availability exceeds the 1 year period; or

c. within **90 days from date of start of grid infrastructure's operations** in case of direct agreements with grid operator.

Permitting regime: generation, self-consumption and storage

Licencing Regime

Licences (production and operation licences)

– **Deadlines to request the Production and the Operation Licence (cont.):**

Different deadlines may apply for: **(i)** Grid Injection Capacity Titles (TRC) awarded via competitive procedure or **(ii)** generation plants using non-renewable energy as a primary source or hydro power plants (maximum 6-year period).

Extensions: deadlines may be extended once for a maximum period of 1 year.

Remuneration scheme conversion: FiT power plants with a Production Licence issued five or more years ago and which have not yet reached COD are converted into “merchant” power plants in case sponsors request and are granted an extension of the deadline to obtain the Operation Licence.

Permitting regime: generation, self-consumption and storage

Licencing Regime

Licences (production and operation licences)

Grid injection capacity title ("TRC"):

- Production Licence continues to depend on a previous TRC being granted through one of the following modalities: (i) **general access**; (ii) **agreement with grid operator**; and (iii) **competitive procedure** (DGEG to make public indicative calendar of tender procedures to be launched every 3 to 5 years).
- **No TRC required**: (i) UPACs, unless in case of injection of electricity into the grid superior to 1 MVA; (ii) hybridization; (iii) autonomous over-equipment and over-equipment (*sobreequipamento*); and (iv) repowering (*reequipamento*).
- **TRC awarded with restrictions**: it is now possible for TRC to be awarded with restrictions under the general access regime. New method establishes that the grid operator may identify restrictions on a case-by-case basis, which shall be reflected in the Production Licence.
- Except where TRC is awarded through competitive procedure, the grid operator may change, for technical reasons not attributable to the interested party, the substation and/or voltage level of the substation connection *(wording of the norm seems to imply that this unilateral change may take place after the TRC is awarded and before the Production Licence is obtained).*

Permitting regime: generation, self-consumption and storage
Licencing Regime

Licences (production and operation licences)

Grid injection capacity title ("TRC") (cont.):

- **SEN compensation**: issuance of TRC awarded trough the "general access" modality entails payment of a National Electric System (SEN) contribution of € 1,500/MVA.
- **Transferring TRC**:

TRC awarded in all three modalities may be transferred until the Production Licence is issued

i. A transfer takes place whenever there is a direct or indirect change of control of the TRC holder's share capital.

ii. Transfer is subject to TRC's bond reinforcement by half of the initial amount, except if:

   a. transfer to SPV: (i) which corporate scope of activities is construction and operation of power plants, UPACs or storage facilities' implementation and (ii) which sole shareholders are the TRC holders.

   b. (i) shares are sold to financing entities; (ii) change of direct control of TRC holder as a result of pledges of shares being executed within the scope of agreements with financing entities; or (iii) change of direct control of TRC holder as a result of a corporate restructuring that does not entail the change in the ultimate beneficial owner.

Permitting regime: generation, self-consumption and storage

TRC roadmap – the general access regime

DGEG to make public within 6 months from enactment of DL 15/2022 the grid capacity available per connection substation and voltage level

Sponsor submits TRC request to DGEG via new online platform indicating: injection capacity, connection substation identification, voltage level and applicable grid operator

Automatic rejection if request: (i) does not match a publicized substation or exceeds total capacity available at intended substation; or (ii) when intended grid injection capacity has already been requested by a preceding request

If the request is not rejected, within 5 days DGEG:
i. Grid capacity without restrictions: notifies sponsor to provide the bond; or
ii. Grid capacity with restrictions: forwards the request to grid operator to identify associated restrictions within 20 days. Within 5 days from communicating restrictions, DGEG informs sponsor to provide bond within 20 days if it accepts the restrictions

Within 5 days from bond provision, DGEG forwards request to relevant grid operator to issue its decision within 45 days (this period may be suspended once for 30 days if the grid operator requests additional information)*

Requests may be refused due to:
i. lack of service provision payment within 10 days from grid operator notification;
ii. lack of payment of the National Electric System contribution (€ 1,500/MVA) within 10 days of grid operator's notification; or
iii. lack of technical conditions allowing grid connection or if connection can affect grid's reliability and safety.
Additionally, pending requests will be forfeited if the related injection point is later subjected to a competitive procedure (subject to bond release)

Grid operator's decision to be notified to both DGEG and sponsor and, if favourable, the TCR must be issued within a 10-day period

* Grid operator decision follows the order in which the requests are received from DGEG, which in turn respects the electronic platform entry order.

Permitting regime: generation, self-consumption and storage

TRC roadmap – the agreement with the grid operator

Government to issue yearly decision regarding maximum grid injection capacity for this modality until 15 January of every year

Requests to be submitted by project sponsors to DGEG by 15 March, which subsequently forwards the requests to the grid operator (requests cannot relate to grid injection points subject to tender procedure).
Requests must be accompanied by bond provision documents

a) Technical criteria of SEN's safety and reliability (use of infrastructures and optimizing the SEN operation and management);
b) Territorial and environmental sustainability criteria (efficiency and rationalization of infrastructure planning, obtaining municipality's prior favourable information, existing environmental approvals or proof of use of land title);
c) National goals regarding applicable technology.

Requests to be analyzed and listed by order of priority by grid operator until 10 August according to the criteria **above** (still to be densified by DGEG but likely to follow the 2020/2021 ranking criteria)

Within 5 days from its elaboration, grid operator notifies DGEG of the list, which subsequently notifies the sponsors whose requests were excluded within 5 days. The relevant sponsors have a 10-day period to dispute the exclusion.*
Upon the elapsing of said period, and after hearing the grid operator, DGEG has a 10-day period to perform the final validation, followed by a 5-day period to notify the sponsors and publicize it online.

Subsequently, within 10 days from the online publishing the grid operator sends the grid studies' fee quote to the sponsors together with payment deadline.
Until 30 April of the following year, the grid operator provides the grid studies, grid enhancement or new infrastructure construction costs, deadline for construction of new infrastructure and agreement draft proposal.

Project sponsor has 30 days to inform grid operator whether or not it accepts. If it does, the agreement must be signed by 30 November and the grid operator must provide a copy of the agreement to DGEG and SEN's global manager within five days of it being executed.

* In the year in which the request was submitted and following year, at grid operator's discretion, excluded requests may be approved in substitution of approved requests that did not result in the execution of the agreement.

Permitting regime: generation, self-consumption and storage

Licencing Regime

Licences (production and operation licences)

- **Changes to the Production Licence request elements:**
  i. Facilities' dismantling plan documentation to be submitted within the Production Licence request;
  ii. a favourable previous information (PIP under urban planning rules) issued by the municipality if the project is not subject to an AIA or environmental incidences assessment procedure. An autonomous opinion from the municipality is no longer required in any other instances.
- **Inspections prior to issuing Operation Licence:** should DGEG fail to meet the 30-day deadline to carry out the inspection, sponsor can engage an accredited entity to carry out the inspection instead (good alternative to circumvent DGEG delays, but sponsor bears the costs).
- **Production Licence amendment:** DGEG to publish online the types of amendments to the Production Licence that will require new inspection to the facilities. Changes to the final blueprints reflecting changes during construction works/project execution not deemed amendments to Production Licence (they only need to be recorded in the Production Licence).

Permitting regime: generation, self-consumption and storage

Licencing Regime

Licences (production and operation licences)

– **Transfer of Production Licence to third parties (similar to the TRC regime):**

i. Requires authorization from the DGEG and the transfer is registered in the Licence itself;

ii. A transfer takes place whenever there is a direct or indirect change of control in the Production Licence holder's share capital.

Transfers are subject to Production Licence's bond reinforcement by half of the initial amount, except if:

a. transfer to SPV: (i) which corporate scope of activities is construction and operation of power plants, UPACs or storage facilities' implementation and (ii) which sole shareholders are the TRC holders.

b. (i) shares are sold to financing entities; (ii) change of direct control of TRC holder as a result of pledges of shares being executed within the scope of agreements with financing entities; or (iii) change of direct control of TRC holder as a result of a corporate restructuring that does not entail the change in the ultimate beneficial owner.

iii. DGEG has 15 business days to decide. It may request additional information once, which the title holder must provide within 30 business days.

Permitting regime: generation, self-consumption and storage

Permitting procedures unification (electricity production, storage and self-consumption)

Applicable permitting procedure per activity type:

Activity type	Registration (prior registration and operation certificate)	Prior Communication
	i. Renewable power generation for total injection into the grid and with an installed capacity of ≤ 1 MW; ii. Self-consumption with an installed capacity of > 30 kW and ≤ 1 MW; **iii. Autonomous storage with an installed capacity of ≤ 1 MW;** **iv. Research and development, demonstration and test projects within the production, self-consumption and storage activities with an installed capacity of > 30 kW.**	i. Self-consumption (UPACs) with installed capacity of **> 700 W** and ≤ 30 kW; **ii. Research and development, demonstration and test projects within the production, self-consumption and storage activities with an installed capacity > to 700 W and ≤ to 30 kW;** **iii. Repowering (*reequipamento*) of wind farms or solar plants that reduce or maintain the installed capacity set out in their permitting procedure.**

* Innovations in **bold**.

* **Permitting procedure exemptions**: a) self-consumption with installed capacity of < 700 W and no surplus grid injection; and b) research and development, demonstration and test projects within the production, self-consumption and storage activities with an installed capacity of < 700 W and no surplus grid injection.

Permitting regime: generation, self-consumption and storage

Registration Regime

Registration (prior registration and operation certificate)

- **Reduction of deadline to request issuance of operation certificate**:
  i. deadline of **9 months** from registration proof (18 months for hydro power plants);
  ii. deadline may be extended once for half of the initial period.
- Online platform to **automatically issue operation certificate** upon elapsing of the 10-day deadline after submission of inspection report.
- **Transferability**: registration's ownership transfer subject to DGEG's approval until operation certificate issuance (except self-consumption projects). Subject to same transfer rules as Production Licences.
- Projects subject to registration are now subject to **periodic inspections every 8 years** (instead of 6 years, as per previous regime).
- **Registration procedure rules** still to be densified via order to be published by DGEG within 30 days from the entry into force of the regime.

Permitting regime: generation, self-consumption and storage

Registration Regime / Prior Communication Regime

Registration (prior registration and operation certificate)

- **Aggregating of registration requests**: prior registration requests for a storage facility or power plant that is less than 2 km away from another registration holder results in the aggregation of both facilities' installed capacity (requested + registered) to determine applicable licencing procedure for the last plant to arrive (v.g., licence or registration) (avoid artificial fractioning of permitting procedures).

  * **The aggregation rule does not apply** to permitting procedures initiated prior to DL 15/2022.

Prior communication

- **Procedure**: prior communication submitted online followed by automatic issuance of submission proof, after which sponsor may automatically proceed with installation. Sponsor to register the project's entry into operation online.

  In grid injection cases, within 30 days of submitting prior communication, DGEG requests grid operator to make grid connection terms available within 60 days.

- **Prior communication procedure rules** still to be densified via order to be published by DGEG within 60 days from the entry into force of the regime.

Permitting regime: generation, self-consumption and storage

Permitting performance bonds

LICENCES (PRODUCTION AND OPERATION LICENCES)		REGISTRATION (PRIOR REGISTRATION AND OPERATION CERTIFICATE)
1) TRC issuance request	**2) Production Licence request and issuance**	
Request to issue the TRC require providing a bond securing compliance with the applicable administrative procedures. Bond amounts depend on the modality under which the TRC will be issued: i. General access: €10,000/MVA (€10 million cap) in favour of DGEG; ii. Agreement between applicant and grid operator: **€15,000/MVA (€10 million cap)** in favour of grid operator once the agreement is executed (without prejudice of additional guarantees that may be requested by grid operator); iii. Competitive procedure: as defined in the tender documents.	Request to issue the Production Licence is subject to providing or maintaining of the following bonds, in accordance with the modality under which the TRC is issued: i. General access: after the TRC is issued the **€10,000/MVA** (€10 million cap) bond in favour of DGEG is maintained until the permitting titles required to start operations (Operation Licence) are obtained; ii. Agreement between applicant and grid operator: new bond of **€10,000/MVA (€10 million cap)** to be provided in favour of DGEG and maintained until issuance of permitting titles required to start operations (operation licence); iii. Competitive procedure: as defined in the tender documents. **Licences' issuance** Once the Production Licence is granted, the bond provided to DGEG is **reduced by 1/3** of its initial amount. The bond provided to DGEG is **released** once the Operation Licence is obtained.	**Prior registration** **€5,000/MVA bond to be provided in favour of DGEG once the registration is validated.** **Bond release** **Once the operation certificate is issued.** (The new regime's wording contains contradicting information regarding when the bond is released - whether when proof of prior registration is obtained or when the operation certificate is issued. However, given how the wording has been amended after the public consultation procedure, our understanding is that it is released when the operation certificate is issued.)

* Innovations in **bold**.

* **SEN contribution**: apart from providing a bond, the "general access" modality entails payment of National Electric System (SEN) contribution (€ 1,500/MVA) prior to TRC issuance.

Permitting regime: generation, self-consumption and storage

General considerations

Articulation with other legal frameworks

- **Environmental impact assessment (AIA) regime:**
  - i. **AIA case-by-case assessment:** DGEG decides on a case-by-case basis whether projects not located in sensitive areas are subject to an environmental impact assessment;
  - ii. **Projects not likely to cause significant impacts on the environment**: the national Environmental Impact Assessment authority may, by joint order with DGEG, identify the types of projects not likely to cause significant impacts on the environment, in which case the statement and the decision established in the environmental impact assessment regime does not apply, notably in scenarios involving power plants with primary solar or wind sources with a connection capacity $\leq$1 MVA.
- **Urbanisation and building edification regime:** installation of solar photovoltaic panels on pre-existing built structures that do not constitute buildings or are directly embedded on the ground in delimited areas, such as commercial complexes, large commercial surfaces, industrial parks or lots, logistics platforms, camping areas and similar infrastructures, constitutes a work of low urban significance (resulting in exemptions from prior permitting procedure by municipalities under urban planning regime). Exceptions apply to classified properties.

Permitting regime: generation, self-consumption and storage
General considerations

Articulation with other legal frameworks

- **National Agricultural Reserve regime:** in case of installation of projects in areas classified as national agriculture reserve areas (RAN), project requests to the RAN authorities must include an agriculture development project confirming that the project is compatible with the land's agricultural use.

Permitting Online Platform

- platform to allow obtaining of automatic proof of tacit approval upon elapsing of the applicable legal deadlines and allow ongoing access to procedure's status;
- introduction of procedure manager figure to be appointed to each ongoing permitting procedure, who will be responsible for ensuring deadlines are met, providing information and clarifications, etc.

Permitting regime: generation, self-consumption and storage

General considerations

Production and operation regime changes

Testing and experimental operation period authorization:

i. Encouraging anticipation of COD deadlines of competitive procedure projects by allowing testing and experimental operation period for such projects (maximum limit of 12 months).

ii. Clarification of remuneration applicable to testing and experimental operation period: merchant.

Permitting regime: generation, self-consumption and storage

General considerations

Compensation payable to municipalities

– Holders of renewable power plants or of storage facilities with the following allocated connection power must:

Connection power > 50 MVA
i. Transfer, on a one-off basis and free of charge, to the municipality or the municipalities where the project is located or nearby population (at the municipality's request): a) a self-consumption unit (UPAC) with an installed power equal to 0.3% of the power connect to the power station or storage facility; or b) electric vehicle charging stations for public use with an equivalent capacity. ii. If the municipality already has installed UPACs, it can instead opt for a one-off payment of €1,500.00/MVA of allocated connection power.
Connection power > 1 MVA and < 50 MVA
One-off payment of €1,500.00/MVA of allocated connection power.

Permitting regime: generation, self-consumption and storage

General considerations

Compensation payable to municipalities (cont.):

Compensation subject to a protocol to be entered into between the municipality and the sponsor during the period between the issuance of the Production Licence and the Operation Licence (protocol is a pre-requisite for issuance of Operation Licence).

If the municipality refuses to sign the protocol, the transfer of an UPAC or electric vehicle charging stations requisite may be substituted by the payment of the monetary compensation.

Municipalities are not allowed to request any other (or higher) concessions or compensation (which incentivizes municipalities and residents to accommodate new projects whilst protecting sponsors from municipalities imposing additional/higher compensation).

Compensation (as an assets transfer or payment) to be carried out/paid after permitting

The compensation regime only applies to renewable power plants/storage facilities that are granted a TRC after the new regime enters into force and not to amendments to permitting titles in case of over-equipment or repowering

Permitting regime: generation, self-consumption and storage

General considerations

Dismantling plan and bond requirement for projects subject to Production Licence

– A dismantling plan needs to be provided with the submission of the Production Licence request.

  The power plant, UPAC or storage facility's dismantling plan includes the measures for removal of equipment and grid connection infrastructures with the aim of minizing the environmental impacts associated with the end of the activity. The plan must be updated when requested by DGEG or other entities responsible for its approval.

Grid operator dismantles grid infrastructure that becomes redundant for the concession upon dismantling and the last licence holder bears the costs

Permitting regime: generation, self-consumption and storage

General considerations

Easements over interconnection lines

- **Article 112(3)(c): "***Request the creation of easements over properties necessary for the establishment of parts of the grid, including those required for the installation of lines dedicated to the connection to the power generators, whenever the construction of such lines is committed to the DSO or the TSO, pursuant the applicable law."*
- Pursuant to Article 160 of the Energy Sector's Commercial Relations Regulation, the construction of the interconnection lines between the power plant and the injection point is committed to the power generators and not the DSO or the TSO.
- New regime limits the power generators' ability to request that the DSO/TSO use their prerogatives to create easements (i.e. right of way) in respect of interconnection lines developed by third parties (generators) but that are licensed in the DSO/TSO's name and become part of the public service concessions once delivered.

Storage

Storage

- **Storage facility**: "*a facility where energy is stored, which can be autonomous when it has a direct connection to the grid and is not associated with a power plant or UPAC, excluding storage facilities that include the electric facility of a consumption facility.*"
- New regime regulates storage and introduces autonomous storage as an activity of the National Electric System (SEN) exercised in a free access regime.
- **permitting procedure**: autonomous storage licensing attribution procedure to follow mechanisms similar to the permitting procedure applicable to generation:
  i. autonomous storage with an installed capacity of ≤ 1 MW is subject to the **registration procedure** (i.e. prior registration and obtaining the operation certificate);
  ii. autonomous storage with an installed capacity of ≥ 1MW or subject to environmental impact assessment or environmental incidences assessment shall be subject to the obtaining of **production and operation licences**.
- Storage associated with generation to fall under generation permitting procedure.
- Production Licence holders may sell storage capacity to third parties.
- **Storage remuneration**: merchant.

Over-equipment, Repowering and Hybridization

Over-equipment (*sobre-equipamento*), Repowering (*reequipamento*), Hybrid projects and Hybridization

- ***Over-equipment**, the alteration of the renewable energy power plant consisting in an increase in installed power achieved by installing more generating equipment or inverters, up to a limit of 20% of the connection power assigned to the power plant in the initial production licence;*
- ***Repowering**, the total or partial substitution of the renewable primary source power plant's generating equipment, without altering the pre-existing power plant's implementation area (*polígono de implantação*);*
- ***Hybrid**, the power plant or UPAC that, in the permitting procedure, simultaneously presents more than one production unit using several primary sources of renewable energy;*
- ***Hybridization**, adding new production units using different primary renewable energy source to an existing power plant or UPAC, without altering their injection capacity;*

Over-equipment, Repowering and Hybridization

Over-equipment (*sobre-equipamento*) and Repowering (*reequipamento*)

- **Permitting procedure**: no TRC required for over-equipment or repowering.
- **Over-equipment and Repowering are deemed non-substantial changes to the existing permitting title** and thus fall under the simplified procedure of amendments to the licence and may be requested after the Production Licence is granted.

Over-equipment (*sobre-equipamento*):

- **Over-equipment is not allowed** for hydro power plants with a connection of over 10 MVA. All other renewable source power plants may be over-equipped (the installed power may be increased in up to a limit of 20% of the connection power, while connection power remains the same).
- **Autonomous over-equipment**: possibility of over-equipment being legally separated and held by a legal entity other than the holder of the power plant, provided certain requirements are met (i.e. group relationship between the two parties, both enter into an agreement regarding the management of the shared injection point).
- **Transferring over-equipment**: the over-equipment cannot be transferred separately from the pre-existing power plant, even where it has legally been separated (except for transfers within the scope of group restructurings in which the ultimate beneficial owner remains the same).

Over-equipment, Repowering and Hybridization

Over-equipment (*sobre-equipamento*) and Repowering (*reequipamento*)

Over-equipment (*sobre-equipamento*) (cont.):

- **Remuneration of over-equipment energy**: merchant for new over-equipment vs. EUR 60/MWh under previous regime.
- **Wind farms already in operation may inject additional energy into the grid** resulting from prior permitting titles (operating licences), maintaining the connection power unchanged regardless of additional energy injection.

Repowering (*reequipamento*):

- All renewable source power plants may be repowered.
- **Environmental impact assessment (AIA):** repowering of power plants with primary solar or wind sources is not subject to AIA, regardless of whether the power plant was subject to an AIA procedure. This rule applies to wind farms provided there is no increase in number of turbines.
- **Remuneration of repowering energy**: merchant (unless guaranteed remuneration applies).

Over-equipment, Repowering and Hybridization

Over-equipment (*sobre-equipamento*) and Repowering (*reequipamento*)

Repowering (*reequipamento*) (cont.):

– **Full power plant repowering**:

i. **General rule:** initial connection power is increased once by up to 20% of the original capacity until PNEC 2030 goals are met (not applicable to hydro power plants above 10 MVA);

ii. **Exception:** if by using the power generation equipment existing in the market with the minimum generation capacity available the aforementioned limit (+ 20% cap) would still be exceed, then:

a. the initial connection power increase cap will be the generating equipment's minimum power; or

b. shall be calculated based on the aggregation of the same sponsor's power plants located in the same grid zone.

Grid operator to choose the option that best safeguards the grid's safety and reliability.

Over-equipment, Repowering and Hybridization

Hybrid projects and Hybridization

Article 74.2 - *"Without prejudice to the use of the same grid reception point, in hybridisation the subsequent licensing title expressly identifies the injection capacity into the grid allocated to the new production unit (...)."* - I.e., **specific injection capacity regarding the new generation units.**

- **Permitting procedure**:
  - Follow **standard permitting** procedures;
  - **No TRC required.**
- **Hydrids and Hybridization attached to hydro power plants may subsist autonomously** even if water use titles are terminated. Independent Production Licences.
- **Autonomous hybridization**: hybridization may be granted to independent parties (i.e., without requiring a group relationship as with over-equipment), provided both parties enter into an agreement regarding the management of the shared injection point.
- Grid **priority for FiT** generation units in case of hybridization of FiT units and merchant units.
- **Transfer**: autonomous hybridization sale of the new generation units requires consent from the pre-existing generator and transferring of permitting title subject to the regimes applicable rules.

Electro-intensive Customer

Requirements applicable to the obtaining of the Electro-intensive Customer Status

- Introduction of a specific regime for electricity consumers of large scale -> "**Electro-intensive Customer Status**".
- The Electro-intensive Customer Status is aimed at the **reduction of final prices** paid for electricity and **access to the latter under more competitive conditions**, ensuring a more level playing field for projects compared to similar installations operating in other Member States.
- Application for Electro-intensive Customer Status to be submitted to DGEG **by 15 June** of each year and, in case of approval, DGEG makes available the draft of the Electro-intensive Customer agreement to be entered into.

Requirements applicable to the obtaining of the Electro-intensive Customer Status

i. Installations exposed to international business;
ii. Minimum average annual electricity consumption (to be established by Ministerial Order);
iii. Minimum electro intensity degree (to be established by Ministerial Order);
iv. Consumer's installations activity falls within the sectors identified in Annex 3 or 5 of European Commission Communication 2014/C 200/01;
v. Medium voltage, high voltage or very high voltage grid connection; and
vi. Compliance with EU emissions trading system (CELE) or Intensive Energy Consumption Management System's requisites.

Electro-intensive Customer

Incentive measures

Consumers that obtain the Electro-intensive Customer Status may **benefit from the following incentives**:

	INCENTIVE MEASURES
1	Partial or total reduction (with a minimum of 75%) of the Costs of General Economic Interest (CIEG) levied on the global use of the system tariff through the grid electricity consumption component;
2	UPACs: (i) exemption from the application of proximity criteria between consumption facility and UPAC; and (ii) total exemption from CIEG costs levied on the global use of the system tariff through the UPAC's electricity self-consumption component;
3	Where applicable, compensation of the indirect CO_2 costs for companies covered by the CELE subject to a high risk of carbon leakage under the applicable regime;
4	Access to a risk coverage mechanism, on behalf of the State, for the purchase of electricity from renewable energy sources through long-term contracts;
5	In case of execution of renewable energy purchase agreements: total exemption from CIEG costs levied on the global use of the system tariff within the scope of such agreement (consumer may benefit from this particular exemption if it is requested during a period equal to the total production and operation licensing periods applicable to the generator's specific power plant. This term starts from when the regime enters into force (i.e. 15 January 2022) – new regime's wording is rather unclear and confusing).

* Applicable obligations and aforementioned incentives to be regulated through Ministerial Order still to be published.

Social Tariff

Social Tariff

- **Funding** by all non-renewable power generators and **hydro power generators with connection capacity above 10 MVA, regardless of whether the injection capacity is limited to 10 MVA**.

  Article 199: "*The costs of the social tariff and its financing apply to all holders of power plants with a non-renewable primary energy source and hydro power plants with a connection capacity greater than 10 MVA, in proportion to the installed power of each power plant, regardless of whether or not the grid injection power is limited to 10 MVA*".

- By 30 June each year DGEG must inform the ERSE of the power generators contributing to the social tariff's funding.
- The characterization of the social tariff and its funding regime must be reviewed by the DGEG, in articulation with ADENE and having heard ERSE, during the last semester of each four year period counted from the enactment of DL 15/2022.

Self-Consumption (UPAC)

Self-Consumption Generation

- **Permitting procedure for individual or collective self-consumption**:
  i. Follow **standard permitting** procedures (i.e., prior communication, registration or production and operation licences);
  ii. UPACs with expected grid injection capacity below 1MVA **do not require a TRC**.
- Government to decide annually **how much injection capacity will be allocated to UPACs without TRC** via regulatory decree.
- Until the injection capacity annually allocated by the Government is exceeded, **no consultation to grid operator is required** unless electricity is to be injected into the grid and injection capacity exceeds:
  i. 50% of the contracted capacity of the consumption facility with a normal low voltage consumption profile; and
  ii. 30kVA, when connected to low voltage distribution grid, or 100 kVA, when connected to the national distribution or transmission grid.

Self-Consumption (UPAC)

Self-Consumption Generation

- **Types of self-consumption**: individual or collective. Collective types:
  i. Collective self-consumption;
  ii. Renewable energy communities;
  iii. Citizen energy communities (introduction of this new figure).
- In addition to UPACs subject to license or registration, **UPACs subject to prior communication** must also take out a civil liability insurance policy.
- **Changes in UPACs' installation rules**:
  i. Obligation of installation by certified entities applicable to UPACs with installed capacity > 700 W;
  ii. UPAC may be installed before the consumption facility's definitive supply agreement is entered into.
- **ADENE - Agency for Energy** becomes responsible for promoting self-consumption and responsible for providing clarifications and information to self-consumers and self-consumption sponsors.

Self-Consumption (UPAC)

Self-Consumption Generation

- **Self-consumer**: "*A final consumer that produces renewable energy for their own consumption, in their facilities located in national territory, and who may store or sell electricity of renewable origin from their own production, provided that, in case of non-residential renewable energy self-consumers, these activities do not constitute their main business or professional activity, and they may carry out this activity in individual self-consumption or collective self-consumption forms when, respectively, the self-consumption is for consumption in one electric consumption facility (IU), or in two or more IUs, with, in both cases, the UPAC(s) being installed in the IU or in their proximity and with connections between them trough the Grid, and/or internal grid and/or direct line, without prejudice to the right of ownership over the UPAC being held by third party(ies)*".
- **Article 83(1)**: "*The proximity between the UPACs and the IU(s) is a requirement for the exercise of the production for self-consumption*."
- Proximity between UPACs and consumption facilities as a requisite for access to the self-consumption activity.

Self-Consumption (UPAC)

Self-Consumption Generation

- Concept of "**electric proximity**" between UPAC and consumption facilities objectively defined:
  i. When UPACs and consumption facility are connected by a direct line or internal grid; or
  ii. When connected to the Grid:
    a. if the UPAC is connected to the low voltage distribution grid, it is no more than 2km apart from the consumption facility or, alternatively, are connected to the same transformer substation; or
    b. if the UPAC is connected to the distribution or transmission grids, the UPAC and the consumption facility are connected to the same substation and the distance between the UPAC and the consumption facility is not above:
      1. **4 km** (in case of medium voltage connections);
      2. **10 km** (in case of high voltage connections); and
      3. **20 km** (in case of very high voltage connections).

DGEG may determine other cases of "electric proximity".

Electro-intensive Customers are exempt from application of proximity criteria

Closed Distribution Grids

Closed distribution grids

- These are **grids outside the realm of distribution grid concessions** for electricity distribution in industrial, commercial or shared-services facilities, railways, ports, airports, camping sites, not aimed at supplying household customers and meeting the following requisites:

    i. due to specific technical or safety reasons, the operation or production process of the users of the grid is integrated;

    ii. the grid mostly distributes electricity to the owner or grid operator or to an undertaking connected to the owner or grid operator.

- **Closed distribution grid managers**' duties are akin to those of distribution grid managers, however managers are not subject to certain restrictions (e.g. restrictions on carrying out production or storage activities).

Technological Free Zones

Technological Free Zones

- Introducing the following 3 technological free zones to be managed by DGEG:

  Viana do Castelo

  - Offshore wind pilot projects.

  Abrantes (Pego)

  - Generation, storage and self-consumption.

  Mira (irrigation perimeter)

  - Agriculture and Power Generation common projects

- Dedicated reserve injection capacity to be preserved for these projects.
- Grid connection costs are assumed by the grid operators and reflected in the grid tariffs.
- Compensation payable by the sponsors to be determined in an amount of EUR per MW/day.

Aggregation and last resort aggregation

Aggregation and last resort aggregation

Article 143: "*the electricity aggregation activity,* (...) *consists of the combination of consumption flexibility, stored electricity, electricity generated or consumed by multiple customers, for its purchase or sale on electricity markets and/or through bilateral agreements* (...)"

- The aggregation activity is subject to **registration** with DGEG.
- **Registered suppliers are exempt** from obtaining aggregator registration and automatically qualify to exercise the aggregation activity after notifying DGEG.

Aggregation and last resort aggregation

Aggregation and last resort aggregation (cont.)

Last resort aggregator: *"(...) obligation of supplementary purchase of electricity from renewable energy generators and self-consumers that inject surplus energy into the grid, as well as the purchase of electricity from generators benefiting from guaranteed remunerations schemes or other subsidized remuneration support schemes (...)"*

- Last resort aggregation **activity is exercised through the awarding of a license** via a competitive procedure and the license shall have a maximum duration of 20 years from the date of its issuance.

Until the last resort aggregator licence is issued, the last resort supplier (CUR) ensures the acquisition of the electricity produced by renewable power generation facilities with an injection capacity not exceeding 1 MW (v.g., UPPs) and UPACs with grid injection.

Article 288, no. 5, sets forth the remuneration formula applicable to the CUR purchases.

Aggregation and last resort aggregation

Logistics operator for supplier and aggregator switching / Integrated Manager of Distribution Grids

Logistics operator for supplier and aggregator switching

- The role of Logistics Operator for Switching Suppliers (OLMC) now includes the activity pertaining to aggregator switching (OLMCA).
- **Activities description**: OLMCA's activity now consists of the procedure of change of: **(i)** supplier by the consumer; and **(ii)** aggregator by the electricity producer, customer or storage facility holder or self-consumer.
- **OLMCA's licence**: the OLMCA licence shall be awarded through a competitive procedure and have a maximum duration of 10 years from the date of its issuance.

Integrated Manager of Distribution Grids

- Introduction of the **Integrated Manager of Distribution Grids** figure, which is a natural or legal person who holds the concession under which they are authorized to carry out the activity of technical management of the high voltage, medium voltage and low voltage distribution grids.
- **Integrated Manager of Distribution Grids activity** is subject to a concession to be awarded through a competitive procedure.

Legal regimes revoked by DL 15/2022

DECREE-LAW	SCOPE
Decree-law no. 328/90, of 22 October	Establishes various measures to prevent the fraudulent consumption of electricity.
Decree-law no. 29/2006, of 15 February	Principles regarding the organisation and operation of the national electricity system, and the exercise of activities of generation, transmission, distribution and supply of electricity and the organisation of electricity markets.
Decree-law no. 90/2006, of 24 May	Establishes the principles for the cost allocation resulting from the remuneration of electricity production.
Decree-law no. 172/2006, of 23 August	Regulates the legal framework applicable to the exercise of the activities of production, transmission, distribution and supply of electricity and the organization of the electricity markets.
Decree-law no. 237-B/2006, of 18 December	Rules applicable to the recovery and transmissibility of the tariff deficit and tariff adjustments.
Decree-law no. 165/2008, of 21 August	Rules applicable to the recognition of annual tariff adjustments for the electricity sector.
Decree-law no. 104/2010, of 29 September and Decree-law no. 75/2012, of 26 March	Procedure applicable to the extinction of the regulated tariffs for the sale of electricity to final customers with certain types of consumption.
Decree-law no. 138-A/2010, of 28 December and Decree-law no. 172/2014, of 14 November	Creation of the social tariff for the supply of electricity.
Decree-law no. 35/2013, of 28 February	Amends the remuneration scheme applicable to a group of electricity power plants.
Decree-law no. 94/2014, of 24 June	Establishes the over-equipment regime.
Decree-law no. 38/2017, of 31 March	Legal regime applicable to the activity of logistic operator for the change of supplier of electricity and gas.
Decree-law no. 162/2019, of 25 October	Legal framework applicable to self-consumption of renewable energy.

Contact lawyers

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