

URÍA MENÉNDEZ
PROENÇA DE CARVALHO

The Portuguese Environmental Simplex Implications on
infrastructure projects (energy in particular)

Decree-Law 11/2023 of 10 February at a glance

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Content

1. Overview and transitory regime
2. General shortening of licensing deadlines and new mechanism for certifying tacit approvals
3. Environmental impact assessment: reduced scope
4. New environmental-corridors assessment for infrastructure projects
5. Overall simplification of environmental licensing
6. Prior communication and authorisation for the transfer of water-use permits
7. Simplification of the legal framework governing water use
8. The new simplified permitting procedure for re-use of water

Overview and transitory regime

- Decree-Law 11/2023 of 10 February (“**Decree-Law 11/2023**”) amended the main Portuguese legal frameworks on **environmental**, **water** and **waste**.
- The key objective is to **simplify environmental licencing** in order to reduce obstacles to business activities without compromising the environment.
- Modifications established by Decree-Law 11/2023 entered into force, in general, on **1 March 2023** and are applicable to **ongoing procedures**, except for the following amendments, which enter into force on 1 January 2024:
 - Implementation of the Single Environmental Report; and
 - New legal regime on the certification of tacit approvals.
- This presentation summarises the main (but not all) changes introduced by Decree-Law 11/2023 and **with focuses specifically on changes relevant to infrastructure and energy projects**.



General shortening of licencing deadlines and new mechanism for certifying tacit approvals

Shortening of procedural deadlines

- Reduction of the general **deadline for the issuance of opinions** from 20 to **15 working days**
- Reduction of **deadlines in environmental procedures** in general (except the deadline for deciding an environmental impact assessment, which **increased** from 100 to **150 working days**)

Clarification of the rules on deadlines

- The **deadline for the issuance of a final decision** is always counted as from the date of receipt of the application
- No suspension of deadlines in cases of **prior hearings** and public entities' **requests for (i) additional elements, (ii) improvement of applications or (iii) inspections** (up to a maximum of 10 working days)

Tacit approvals formation

- Increase in the number of cases of **tacit approvals in environmental procedures**
- Lack of payment of fees or expenses does not prevent the formation of tacit approvals

Certification of tacit approvals

- Establishment of an electronic procedure that **certifies the occurrence of tacit approval**, by issuing a certificate within 8 working days of the request for its issuance

Environmental impact assessment

Reduced scope

I. Exclusion of case-by-case discretionary decisions for projects that are not located in sensitive areas:

The following projects are no longer subject to environmental impact assessment (“EIA”) on a case-by-case basis:

SOLAR PLANTS

Solar plants, provided that:

- i. The installed area is **less than 15 ha**;
- ii. The facility is **located at least 2 km away** from other solar plants with an **installed power exceeding 1 MW**, insofar as the combined area of those plants does not result in an area of 15 ha or more; and
- iii. The solar plant is connected to the Public Service Electric Network (“RESP”) by interconnection lines with a voltage of **no more than 60 kV** and a total length of **less than 10 km**.

WIND FARMS

Wind farms with:

- i. One tower;
- ii. Located over 2 km from another tower.

OVERHEAD LINES

Overhead lines with:

- i. Voltage **not exceeding 30 kV**; and
- ii. A total length of **less than 10 km**.

Environmental impact assessment

Reduced scope

II. Reduction of cases of mandatory EIA

The following projects are no longer subject to mandatory EIA (notwithstanding possible EIA resulting from a case-by-case discretionary analysis):

SOLAR PLANTS

When the area occupied by solar panels and inverters is:

- i. **Less than 100 ha** in non-sensitive areas; and
- ii. **Less than 10 ha** in sensitive areas

Under the former wording of the law the criteria was that the EIA would be mandatory for power plants with 50 MW or more for non-sensitive areas and 20 MW or more for sensitive areas, independently of being a solar plant.

WIND FARMS

- i. Wind farms and overpowering of existing wind farms with:
 - a. **Fewer than 20 towers;**
 - b. In non-sensitive areas; and
 - c. **Located at a distance of more than 2 km** from other wind farms;
- ii. Overpowering of existing wind farms outside the area of the wind farm and that have been subject to EIA when the final result of the project with the overpowering, whether alone or with previous overpowerings, is **fewer than 30 towers.**

INTERCONNECTION LINES

Electricity-transmission-network installation:

- i. **Less than 20 km and 110 kV** in non-sensitive areas; and
- ii. **Less than 110 kV** in sensitive areas.

Environmental impact assessment

Reduced scope

III. Amendments of projects

Specific amendments of projects are no longer subject to mandatory EIA or case-by-case analysis, **insofar as the projects fall within the scope of types 3 to 9 of Annex II** of Decree-Law 151-B/2013 31 October, as amended (e.g. energy, food) and according to the following:

AMENDMENTS TO OR EXTENSION OF PROJECTS

- i. The initial project must have been subject to an EIA;
- ii. The initial project and the amendment/extension are **not located in a sensitive area**;
- iii. The amendment/extension is in the area of the project subject to a favourable or conditioned favourable environmental impact statement (“**EIS**”);
- iv. There is no **change in the activity** or the **substances or mixtures used or produced** in relation to the authorised economic activity codes; and
- v. The amendment/extension does not involve the implementation of a component that itself corresponds to another category **distinct from the initial project**.

AMENDMENTS FOR EQUIPMENT REPLACEMENT

- i. The initial project obtained a favourable or conditioning favourable EIS;
- ii. The replacement is in the area of the project subject to a favourable or conditioning favourable EIS;
- iii. The conditions imposed of the EIS are met;
- iv. The initial project and the amendment are **not located in a sensitive area**; and
- v. There is no **change in the activity** or the **substances or mixtures used or produced** with reference to the authorised economic activity codes.

Assessment of new environmental-corridors for infrastructure projects

- Simplification of EIA procedure for specific **public-service** infrastructure, **creating the corridors' assessment** in the areas of:
 - water;
 - electricity;
 - natural gas;
 - piped liquefied petroleum gases;
 - public transport; and
 - telecommunications.
- In these cases, the applicant may opt for a specific administrative procedure – **the corridor environmental analysis** – to identify the most environmentally appropriate options for the infrastructure that it needs to build for the project without needing to conduct an EIA in the preliminary project phase.
- With the decision obtained in the corridor environmental analysis, an EIA in the execution project phase may then be carried out.
- The decision is valid for 4 years and may be extended.



Assessment of new environmental-corridors for infrastructure projects

01

The applicants submit an environmental study of corridor alternatives (“**EAAC**”) to the Portuguese Environment Agency (“**APA**”)

02

Within 3 days of receiving the EAAC, the APA starts a **deliberative procedural conference** involving all relevant administrative entities

03

Within 15 days of receiving the EAAC, the procedural conference identifies any missing information or relevant information for the sponsor to submit

04

Within 3 days of receiving the missing information from the applicant, APA submits the EAAC for public consultation for **a maximum period of 30 days**. If there is a Strategic Environmental Assessment, the maximum public-consultation period is **15 days**

05

Within a maximum period of 80 days of receipt of the EAAC, the entities involving the procedural conference will forward their statement to the APA. If there is a Strategic Environmental Assessment, **the maximum period is 65 days**. Tacit acceptance understood to exist if the decision is not communicated within this deadline

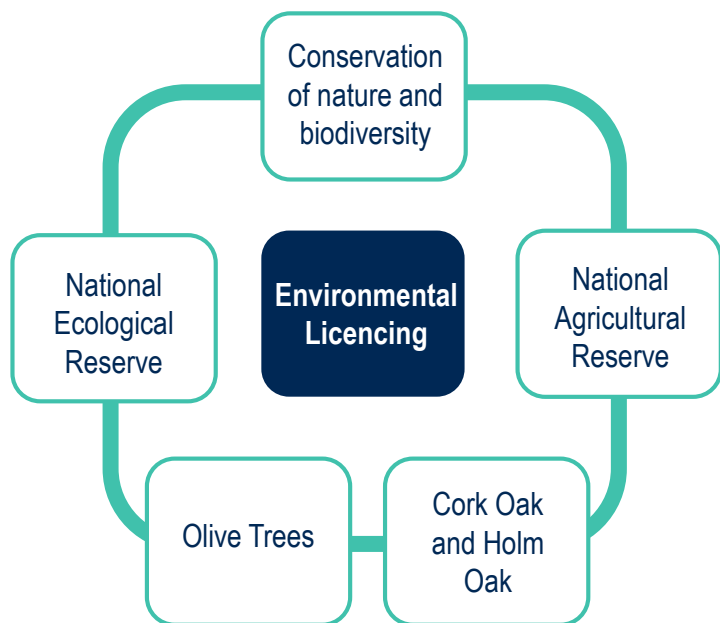
06

Within a maximum period of 100 days of the date of receipt of the EAAC, the decision of the procedural conference is notified by the APA to the applicant.

Overall simplification of environmental licensing

Elimination of the duplication of authorisations for projects subject to EIA or Environmental Incidences Assessment (“AlncA”) in the following cases:

i. National Ecological Reserve (“REN”): removal of the need to obtain a favourable opinion from the competent Commission for Coordination and Regional Development (“CCDR”) in case of EIA or AlncA in execution phase.



ii. National Agricultural Reserve (“RAN”): removal of the need to obtain opinions in relation to use of RAN areas in the case of EIA or in AlncA in the execution phase.

iii. Special protected areas for conservation of nature and biodiversity: removal of the need to obtain any authorisations or opinions provided for in the conservation of nature and biodiversity framework in the case of EIA or in AlncA in the execution phase.

iv. Olive trees: removal of the need to obtain authorisation for the cutting or grubbing of olive trees if cutting or grubbing are included in the favourable decision of EIA or in AlncA in the execution phase.

v. Cork oak and Holm oak: removal of the need to obtain authorisation for the cutting or grubbing of Cork oak and Holm oak in the case of EIA or in AlncA and the Portuguese Institute for Nature Conservation and Forestry has issued a favourable opinion in those procedures.

Prior communication and authorisation for the transfer of water-use permits



The transfer of water use permits now differs for:

PRIVATE WATER-USE PERMITS

Transferred by simple **prior communication** to the APA, at least 10 days prior to the date of transfer, provided that the conditions that led the award are maintained

PUBLIC WATER-USE PERMITS

- Transferred upon **authorisation** by the APA, provided that it is demonstrated that the conditions that determined the award are maintained.
- The authorisation request must be accompanied by:
 - Identification of the transferor and transferee; and
 - Transferee's corroboration that it fulfils the conditions and requisites that led the granting of the permit.
- The decision on whether or not to grant authorisation must be issued within 20 working days or it will be **tacitly granted upon expiring of the deadline**.
- Applicable to indirect change of control of the water-use permit (i.e. direct or indirect transfer of shares that ensure control of the company holding the permit).

Simplification of the legal framework governing water use

Several mechanisms were adopted to accelerate and simplify the award of water-use permits:

1 One single water-use permit



When multiple requests for an authorisation/licence are presented by the same operator for the same establishment, **only one water-use permit** is issued.

2 Automatic renewal of licences



Licences that could be renewed are now **automatically renewed** for the same period, provided that (i) the factual conditions and (ii) another conditions that let to their award are maintained, unless the holder of the licence expressly opposes renewal.

3 Tacit approval



Authorisations are considered **tacitly approved after 45 working days** with the exception of:

- i. Water collection for human consumption; or
- ii. Water collection from areas affected by a severe or extreme drought.

4 Reduction of deadlines



Several **deadlines were reduced**, including:

- **The deadline for deciding prior information requests:** reduced to 30 working days
- **The deadline for opinions to be issued:** reduced to 10 working days, counting from the day the opinions were requested
- **The deadline for the decision on a licence request:** counted from the date of the submission of the request (and not from the end of the consulting stage of the procedure)

Simplification of the legal framework governing water use

5 Prior communications subject to a deadline

Replacement of water-use authorisations with a **prior communications, subject to a deadline**, in the following situations:

The restoration of existing structures without any alteration to their initial characteristics, particularly in terms of their footprint on the ground

When the water collection methods do not exceed 5 hp and the capture is not characterised by the licensing authority as having a significant impact on the state of the waters

Carrying out construction works included within the urban fabric governed by a second-generation municipal master plan

Under the terms and conditions set out in the regulation attached to the basin management plan or the applicable special land use plan

The new simplified permitting procedure for re-use of water

Prior communication subject to deadline

➤ Procedure applicable to the **production of hydrogen**, provided that the water for re-use was produced in centralised production systems that were granted a production licence.

The use of re-used water subject to prior communication to the APA allows the private party to initiate activities if the APA **does not oppose to re-use within 20 working days** counting from the prior communication submission.

The procedures related to water for re-use are free of charge.

Permission for the use of re-used water subject to prior communication is valid for **10 years** and is **automatically renewed** for the same time period, except if (i) the APA is aware of a change of circumstances; or (ii) the interested party requests non-renewal. The permit cannot, however, outline the production licence with which it is associated.

CONTACT LAWYER:



João Louro e Costa
Counsel
+351210308613
joao.lourocosta@uria.com

