

DECREE-LAW ON THE NATIONAL POWER SYSTEM

Energy and Natural Resources | Presentation of the main legislative changes in the sector

January 2022

EXECUTIVE SUMMARY

On January 14 2022, Decree-Law No. 15/2022 was published in Diário da República, establishing the organization of the National Power System ("SEN"), transposing Directive (EU) 2019/944, of the European Parliament and of the Council, of 5 June 2019, and partially transposing Directive (EU) 2018/2001, of the European Parliament and of the Council, of 11 December 2018.

This Decree-Law comes into effect on January 15.

This presentation highlights the main novelties and changes introduced by the Decree-Law in question, with an impact on the activity of energy production from renewable sources.

This information is not intended to be exhaustive or replace the original legal text, so its reading is indispensable, nor is it intended nor may it be understood as replacing any legal advice in each specific case.

PUBLIC CONSULTATION

It is worth noting that a proposal for this Decree-Law was subject to a public consultation in November 2021. Some of the public's inputs were acknowledged, resulting in changes in the regime approved by this Decree-Law, compared to what was initially proposed, in the following aspects:

- I. Time limits for obtaining licenses: extended
- II. Applicability to pending processes: extension of the scope of the safeguarded processes
- III. Transfer of titles: freely transferable of the TRC, but with reinforced deposits
- IV. Municipality compensations: changes in their scope
- V. Self-consumption: wider concept of proximity

POWER PRODUCTION FROM RENEWABLE SOURCES

POWER PRODUCTION

ELIMINATION OF PRODUCTION REGIMES AND REMUNERATION SCHEMES

POWER PRODUCTION REGIMES

The distinction between the Ordinary Production Regime and the Special Production Regime is eliminated.

REMUNERATION SCHEMES

The guaranteed remuneration regime is eliminated. Thus, the activities of production and storage of electricity will be paid under market prices and/or other contractual arrangements between private parties.

This elimination does not affect the application of guaranteed remuneration schemes already allocated, maintained or extended by previous legal diplomas, which shall apply until the end of period for which they were established.

It remains possible to allocate, through competitive procedures, financial support for the production of electricity from renewable energy sources, in order to enable the recovery of the investment's opportunity cost.

POWER PRODUCTION

RENEWABLE ENERGY SOURCES

For the purposes of this Decree-Law, "renewable energy sources" are renewable non-fossil energy sources, namely wind, solar, aerothermal, geothermal, hydrothermal, oceanic, hydric, biomass and renewable gases.

Biomass means the biodegradable fraction of products, waste and residues from biological origin from agriculture, including vegetal and animal substances, from forestry and related industries, including fisheries and aquaculture, as well as the biodegradable fraction of waste, including industrial and municipal waste of biological origin;

GRID CAPACITY RESERVATION TITLE

GENERAL ACCESS: CHANGES IN THE DEPOSITS The procedures applicable to power production from renewable sources remain as provided previously, although with changes.

GRID CAPACITY RESERVATION TITLE ("TRC")

The TRC may be granted through the same three methods: the general access method, the agreement method and the competitive procedure method.

1. GENERAL ACCESS (VIA A REQUEST)

Changes were introduced regarding the deposit. It is now provided to DGEG and its value remains at €10.000,00 per MVA. However, the Decree-Law introduced a maximum limit of \notin 10 Million and a minimum period of 30 months, which is extended until the project reaches commissioning.

The deposit provided shall be maintained to ensure the issuance of the applicable prior control titles.

GRID CAPACITY RESERVATION TITLE

ACCESS VIA AGREEMENT: DEFINITION OF QUOTAS

2. AGREEMENT METHOD

The Government must define quotas of the maximum injection capacity in the national public grid ("RESP") to be allocated through this method.

The requests for the agreement must be submitted to DGEG until March 15.

Changes were also introduced regarding the deposit. The value is increased to € 15.000,00 per MVA, with the maximum limit of €10 Million.

Following the agreement, the request for a production license requires the provision of a deposit in the amount of $\leq 10,000.00$ per MVA, with a maximum limit of ≤ 10 Million, for a minimum period of two years, extended until the power plant starts operating.

GRID CAPACITY RESERVATION TITLE

COMPETITIVE PROCEDURE: UNIFIED WITH WATER DOMAIN USE PERMIT PUBLIC INTEREST

3. COMPETITIVE PROCEDURE

This method is only available for the production of electricity from renewable energy sources.

Through this Decree-Law, the legal regime of the SEN now provides for the unification between this competitive procedure for the granting of the TRC and the competitive procedure for the granting of the permit for the private use of public water domain resources.

An important change is the recognition, for all purposes provided for in legal or regulatory norms, of the public interest and public utility of the installations of electricity generating centers, storage facilities and respective connection lines up to the interconnection point which have obtained the grid capacity reservation title under a competitive procedure.

PRIOR CONTROL PROCEDURES

PRODUCTION AND OPERATING LICENSES: TIME LIMITS

PRIOR CONTROL TITLES

The prior control titles and procedures are harmonized across the energy sector.

The activity of power production from renewable energy sources may require production and operating licenses or a prior registration and operating certificate. This Decree-Law introduced a number of important changes.

1. PRODUCTION AND OPERATING LICENSES

The application for a production license must be submitted by promoter within **1 year** after the issuance of the TRC, in cases where an EIA is carried out. Otherwise, the application must the be submitted within a maximum of **6 months**. The production license is issued within 1 year after the request.

The operating license is issued within 1 year from the date the production license is granted, except:

- i. If the TRC is issued through the agreement modality, the deadline is 90 days after the date of entry into operation of the respective RESP infrastructures to be built or reinforced;
- ii. If the operationalization of the connection conditions by the grid operator occurs after the termination of the period of 1 year, the deadline is 90 days after the availability of that infrastructure.

Deadlines may be extended

PRIOR CONTROL PROCEDURES

PRIOR REGISTRATION AND OPERATING CERTIFICATE

2. PRIOR REGISTRATION AND OPERATING CERTIFICATE

Applicable to the production of electricity from renewable energy sources for the total injection into the RESP with an installed capacity up to 1 MW.

With the registration, a mandatory deposit of €5.000,00 per MVA must be provided to DGEG.

The frequency of mandatory inspections of the installations is extended from 6 to 8 years.

This Decree-Law makes explicit the possibility to change, just once, the location of the installation, as long as the point of injection into the RESP is not changed.

After the issuance of the proof of registration, the operating certificate must be obtained within 9 months.

There will be a cumulation of requests for registered projects located less than 2 km from other projects that have been registered previously by the same applicant. This does not apply to prior control procedures that have been initiated before the entry into force of this decree-law.



PENDING PROCESSES

TRANSITORY REGIME FOR RESERVE CAPACITY ALLOCATION AND PRIOR CONTROL PROCESSES



The new regime applies to pending cases, without prejudice to acts already performed.

However, please note the following transitory regime:

- i. In pending prior control procedures, the time periods in progress have the duration established in the legal regime in force on the date the respective counting begins, and the provisions of this Decree-Law apply to the subsequent phases of the procedure.
- ii. In pending processes awaiting grid capacity reservation, following the drawing of lots and with a deposit already provided, the TRC will be granted as soon as reservation capacity becomes available.
- iii. In cases where the TRC was granted prior to the entry into force of Decree-Law No. 76/2019, of June 3, promoters must request the respective prior control title within **6 months** from the entry into force of this Decree-Law, in accordance with the terms set out therein.
- iv. In pending processes for the allocation of the TRC via an agreement, where the promoter has already **obtained a final classification**, in accordance with the list published on DGEG's website, the process shall continue in accordance with the provisions of paragraphs 12 et seq. of the article 20, and the deadlines established therein shall refer to 2023.

v. All other pending requests shall expire.

TITLE TRANSFERABILITY

TRANSFER OF THE TRC: ALLOWED WITH REINFORCED DEPOSITS

1. TRC

Regardless of the method used to grant each TRC - general access, agreement or competitive procedure it is now set that it may be transmitted until the production license is issued, said transmission being carried out through an endorsement in the title to be made by DGEG or by the competent network operator.

The request for changing the ownership of the reserve capacity title for injection depends on the reinforcement of the deposit by half the amount previously established, and this reinforcement is a condition for the registration.

2. PRIOR CONTROL TITLES

With regard to production licenses, their transferability is subject to the authorization of the licensing entity and, cumulatively, to the compliance with the legal requirements relating to their attribution, as well as to the availability of all elements relating to the identification, technical and financial suitability of the transferee.

Except in cases of self-consumption, the same procedure referred to above will apply, with the necessary adaptations, to the transferability of registration ownership.



ENERGY STORAGE

PRIOR CONTROL TITLES REDUCED FEES **ENERGY SHARING**

This Decree-Law introduces within the SEN regime the matter of autonomous storage.

Energy storage is defined as "deferring the final use of electricity to a moment later than when it was generated through its conversion into another form of energy, namely chemical, potential or kinetic".

An energy storage facility means a facility where energy storage occurs, and it may be autonomous if it has a direct connection to RESP and is not associated to a power plant or a self-consumption production unit ("UPAC"), excluding storage facilities integrating the electrical installation of the user installation.

In what concerns their installation, autonomous electricity storage may require, aside from the TRC, production and operating licenses or prior registration and operating certificate.

In what concerns fees, storage facilities are subject to a single incidence of the grid use tariff and are exempt from paying charges corresponding to services of general economic interest.

DECENTRALISED RENEWABLE ENERGY PRODUCTION

SELF-CONSUMPTION

PRIOR CONTROL: EXEMPT FROM OPERATOR CONSULTATION

The present Decree-Law will now incorporate self-consumption, previously regulated under Decree-Law No. 162/2019, of October 25.

PRIOR CONTROL

The prior control procedures for the production of energy for self-consumption are as following.

Production and exploration license	Prior registration and certificate of operation	Prior notice	Exempt from prior control
For installed capacity greater than 1 MW. Requires a TRC if there is a possibility of injection into RESP above 1 MVA.	For installed capacity greater than 30 kW, equal to or less than 1 MW.	For installed capacity greater than 700 W, equal to or less than 30 kW.	For installed capacity equal to or less than 700 W.

However, the operator of the RESP is not required to be consulted in the prior control procedures.

This exemption does not apply in cases where the possibility of power injection into the RESP exceeds certain limits, or when the annual quota for injection capacity into the RESP fixed by the Government for UPACs that do not have a TRC is depleted.

SELF-CONSUMPTION

DENSIFICATION OF THE CONCEPT OF PROXIMITY

CONCEPT OF PROXIMITY

Production for self-consumption requires that there is proximity between UPACs and user installations ("IUs").

Under the previous self-consumption legal regime, DGEG was responsible for assessing the proximity between UPACs and IUs, through a case-by-case analysis of each project.

The new Decree-Law densified the concept of proximity. As such, UPACs and IUs are considered proximate if they are connected by direct line or internal network.

When operating through the RESP, they are considered as being in proximity:

- 1. If connected to the LV grid if the UPAC and IUs that are no more than 2 km apart or connected to the same transformation point
- 2. If connected to the transmission or distribution grids if the UPAC and IUs connected to the same substation, provided that they are no more than 4km (MV connections), 10km (HV connections) or 20km (VHV connections) apart.

When the proximity criteria are not fulfilled, DGEG retains the power to determine what constitutes proximity.

SELF-CONSUMPTION AND COMMUNITIES

ENERGY SHARING

It is now possible to define sharing modes for the energy produced by UPACs in collective selfconsumption, through fixed or dynamic coefficients, or even through dynamic management systems that allow monitoring, control and dynamic management of energy in real time.

INSTALLATION OF UPAC IN COMMON PARTS OF A BUILDING

The requirements for the installation of a UPAC for individual or exclusive use in common parts of buildings were simplified.

CITIZEN ENERGY COMMUNITIES

The Decree-Law provides for Citizen Energy Communities, transposing article 16 of Directive 2019/944. This figure is parallel to Renewable Energy Communities ("CER").

CONVERSION OF SMALL, MICRO AND MINI PRODUCTION UNITS

Small production ("UPP"), micro production and miniproduction units can be converted to UPAC

OVER-EQUIPMENT, REPOWERING, HYBRIDS AND HYBRIDIZATION

OVER-EQUIPMENT AND REPOWERING

PRIOR CONTROL: MERE MODIFICATION The subject of over-equipment and repowering is now regulated within the SEN legal regime.

PRIOR CONTROL

The over-equipment or repowering of an installation does not constitute a substantial change to the preexisting prior control title. Therefore, they follow the procedure applicable to the mere modification of the prior control title for the power plant.

However, the repowering of solar or wind power plants, if they maintain the installed power initially established, is subject to prior communication.

The over-equipment and re-equipment can be requested after the issuance of the production license or previous registration title and prior to the issuance of the exploration license or exploration certificate

In the case of solar or wind power plants, repowering is not subject to an EIA procedure, provided that, in the case of wind power plants, there is no increase in the number of wind turbine generators.

OVER-EQUIPMENT AND REPOWERING MARKET REMUNERATION

REMUNERATION

The energy generated from the over-equipment, repowering and additional power is freely sold in the market.

However, the Decree-Law provides for the maintenance of guaranteed remuneration schemes for overequipment and additional energy licensed and in operation on the date the law came into force, until the end of their term.

Additionally, the additional power and energy from over-equipment of power plants that that will be authorized under the transitory regime of article 2 of Order No. 203/2020, of August 21, it is remunerated in accordance with the applicable guaranteed remuneration regimes and during the respective period of validity, up to the limit of the connection power attributed in the respective prior control title.

OVER-EQUIPMENT

Over-equipment of power plants was previously regulated by Decree-Law No. 94/2014, of June 24.

All renewable energy generating centers can be over-equipped, with the exception of hydroelectric plants with a connection power greater than 10 MVA.

Invoicing of the energy from the over-equipment delivered to the grid is made separately from the energy produced by the over-equipped electroproduction center.

As a rule, over-equipment cannot be transmitted autonomously from the power plant.

AUTONOMOUS OVER-EQUIPMENT

Over-equipment can be legally separated from the pre-existing installation. The over-equipment is added to the prior control title in the name of a person other than the electroproduction center owner that is controlled by the latter.

The autonomous over-equipment may be integrated into the original facility, or transformed into an independent power plant, which constitutes an alteration to the prior control title.

REPOWERING OVERVIEW

All renewable energy source power plants can be repowered.

With a total repowering, the grid capacity reservation of the power plant is increased by up to 20% of the initially allocated capacity – with the exception of hydroelectric plants with a grid capacity reservation exceeding 10 MVA.

The repowering energy can be used to ensure balance between generation and consumption and participate in the market for resolving technical restrictions after the daily market, the replacement reserve market and the regulation reserve market.

HYBRIDS AND HYBRIDIZATION

PRIOR CONTROL

1. HYBRIDS

The Decree-Law authorizes the installation of hybrids, i.e., a power plant or UPAC that, in the prior control procedure, simultaneously presents more than one production unit using several primary renewable energy sources.

It follows the prior control procedures normally applicable to production centers.

2. HYBRIDIZATION

The possibility of hybridization was already provided under the previous SEN legal regime. It consists of an addition to an existing power plant or UPAC of new production units that use several primary renewable energy sources, without changing the pre-existing injection capacity.

The hybridization needs to follow the normally applicable prior control procedures. The new prior control titles are added to the previous one and identify the adjusted injection capacity into RESP.

It does not require a TRC, as there is no increase in the injection capacity.

HYBRIDIZATION

TERMINATION OF TITLES PRIORITY INJECTION INTO THE GRID LEGAL SEPARATION AND TRANSFER OF TITLES If the pre-existing prior control title terminates, the grid capacity reservation identified in the subsequent title remains assured.

Hybridization may be legally separated, which means that it can be granted to an applicant other than the owner of the generating station or UPAC to be hybridized. It follows the same regime as autonomous over-equipment.

The transfer of the subsequent prior control title depends on the authorization of the holder of the preexisting power plant on or UPAC. The grid capacity reservation title remains in the ownership of the holder of the pre-existing power plant or UPAC.

When the pre-existing power plant is under a guaranteed remuneration or remuneration support scheme, the holder of the previous title ensures the priority of the injection into the RESP of all the electricity that it may produce according to the generation profile of the respective installation.

MUNICIPALITY COMPENSATION

MUNICIPALITY COMPENSATION

UPAC INSTALLATION, EV CHARGING STATIONS OR MONETARY COMPENSATION APPLICABILITY The Decree-Law establishes a compensation mechanism in benefit of municipalities, granted for each renewable energy power plant or storage facility with connection power exceeding 1 MVA located in their territory.

Accordingly, the promoter of a power plant or storage facility with injection power exceeding 50 MVA will be required to install, in municipal buildings, municipal buildings, collective use facilities or other nearby buildings, a UPAC with an installed power equivalent to 0.3% of the injection power. Alternatively, they may install electric vehicle charging stations of equivalent capacity, located in public space and intended for public use.

The promoter of a power plant or storage facility with connection power exceeding 1 MVA, but equal or lower than 50MVA, are also required to install UPACs. However, if the buildings already have UPACs installed, the promoter owes a compensation of $\leq 1,500.00/MVA$ of connection power.

These compensations do not apply to changes to the prior control title for the repowering or overequipment of the power plant.

This compensation is applicable to owners of renewable energy power plants or storage facility that have obtained a TRC after the entry into force of this Decree-Law.

TRANSMISSION AND DISTRIBUTION GRIDS

TRANSMISSION AND DISTRIBUTION GRIDS

PDIRD AND PDIRT: SECTORIAL PROGRAM STATUS PDIRD AND PDIRT

The transmission grid operator must draft a PDIRT (Transmission Grid Development and Investment Plan) and the distribution grid operators must propose a PDIRD (Distribution Grid Development and Investment Plan).

After being approved, each of these plans must only be revised, as a rule, every 10 years.

This law has granted PDIRT and PDIRD the status of "sectorial program". As such, the procedures applicable to their preparation and approval are different – such as the need to be approved by Resolution of the Council of Ministers.

This statute has as major impact raising the need to update pre-existing municipal programs and plans that are incompatible with PDIRD or PDIRT.

ELECTRICITY AGGREGATORS AND AGGREGATORS OF LAST RESORT

ELECTRICITY AGGREGATORS AND AGGREGATORS OF LAST RESORT REGISTRATION AND

LICENSING PROCEDURES



An additional novelty is the definition of the regime applicable to the activity of electricity aggregators and last resort aggregators. As for the former, it is now established that the respective application for registration must be submitted to DGEG - with information concerning, among others:

- i. demonstration of technical and economic capacity and suitability;
- ii. identification of the means used to comply with the obligations; and
- iii. authorization to disclose the information contained in the registration application which will issue a decision within 30 days.

AGGREGATORS OF LAST RESORT ("AUR")

An AUR purchases the surplus energy from self-consumption and the electricity produced from renewable sources, when there are no electricity aggregators.

Regarding the activity of last resort aggregators, the competitive procedure is defined as the mechanism for the attribution of the respective licenses, with the opening of the procedure and approval of the parts subject to the issue of an order by the member of the Government responsible.

ISSUANCE OF GREEN CERTIFICATES

ISSUANCE OF GREEN CERTIFICATES

LICENSING VIA A COMPETITIVE PROCEDURE **GUARANTEES OF ORIGIN**

Guarantees of Origin provide attest to the share or amount of energy from renewable sources in each supplier's energy mix.

These certificates are granted by a Guarantee of Origin Issuer ("EEGO"). The entity carrying out the role of the EEGO must be licensed.

Under this Decree-Law, the mechanism established for awarding the EEGO's license is the competitive procedure, for which the opening and tender documents are defined by the Government.

ELECTRO-INTENSIVE CONSUMER STATUS

ELECTRO-INTENSIVE CONSUMER STATUS OVERVIEW

This Decree-Law includes the regime of the electro-intensive consumer, applicable to electricity-intensive facilities exposed to international trade.

The electro-intensive consumer status sets out obligations and support measures for the consumer that aim to ensure a level playing field with facilities of a similar nature operating in other EU member states.

The requirements to obtain this status include:

- i. Compliance with minimum thresholds electricity consumption and electro-intensity degree (to be defined by the Government);
- ii. Integration in the sectors of activity identified in Annex 3 or Annex 5 of the European Commission Communication on the "State Aid Guidelines for Environmental Protection and Energy 2014-2020";
- iii. Connection to the VHV, HV or MV grid;
- iv. Compliance with the requirements established under the EUETS or the Management System for Intensive Energy Consumption.



SYSTEM SERVICES MARKET OVERVIEW REIONAL MARKETS

System services markets intend to ensure the operation of the SEN under appropriate technical conditions, while providing an opportunity for increased remuneration for its participants.

Participants may include renewable energy power plants, the surplus energy from production for selfconsumption and storage facilities. The owner of a storage facility may provide several system services simultaneously.

The process of contracting system services by the SEN's global manager is governed by competitive, open and transparent market mechanisms that aim to minimize costs to the SEN.

This market has a European scope when expressly determined by European legislation, and a national scope in all other situations. This Decree-Law also provides for the possibility of implementing system services markets of a regional scope whenever the need for them is identified, with the approval of ERSE.

Under European regulations, system services may include specific products for balancing energy and balancing capacity.

MISAPPROPRIATION OF ENERGY

MISAPPROPRIATION OF ENERGY LEGAL PRESUMPTION

Regarding sanctions, this specifies the applicable regime to acts of energy misappropriation, defining it as *the capture of electricity in violation of the applicable legal or regulatory rules and regardless of the validity of the contract and under any modalities of access or use*.

It is worth highlighting the legal presumption that is made regarding the benefits of this practice, which are attributed to the contract holder of the production, storage or consumption installation point, whenever it exists, or alternatively to its owner, depending on the energy injected or consumed and the periods of use of the connection point with the transmission or distribution network.

In this regard, the presumption can be rebutted by proving the non-invoicing of the injection or the nonuse of the installation by the person to whom it has been attributed, plus (i) the existence of a user to whom the benefit resulting from an EIA can be attributed or (ii) the non-existence of any possible user.



FREE TECHNOLOGICAL ZONES

CREATION OF ZLT FOR PILOT PROJECTS SIMPLIFIED PRIOR CONTROL This Decree-Law regulates the Free Technological Zones (ZLT) in the energy sector, which aim to *promote* and facilitate research activities demonstration and testing, in a real environment, of technologies, products, services processes, innovative models, concepts, business models, specific regulatory frameworks specific regulatory frameworks, in the scope of the activities of production, storage promotion of electric mobility and self-consumption of electricity.

Three specific ZLT are created for the for the establishment of pilot projects.

The installation of investigation and development projects in ZLT follows the prior control procedures of prior communication or prior registration, as applicable in accordance with the general rules.

The prior registration procedure applicable to these projects has some specificities, as it does not require the provision of a deposit, the payment of fees, the issuance of the operating certificate and the performance of an inspection. Furthermore, the injection capacity into the RESP assigned is shown in the registration certificate and has a limited duration, which cannot exceed three years from the availability of the infrastructure for connection to the RESP.

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