

# **New Rules for Renewable Energies and Licensing Simplification**

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The European Parliament and the Council adopted the 3rd Renewable Energy Directive (Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023, hereinafter the RED III Directive), with the aim of responding to the growing challenges posed by decarbonisation, in an international context of strongly pressured value chains and geopolitical tensions unfavourably driving large-scale industrial projects, whilst at the same time increasing the EU's energy and climate ambitions.

The Portuguese Government decided to pass into law a partial transposition of the most immediate provisions of the RED III Directive through Decree-Law No. 99/2024, of 3 December, which amends the regulatory framework for renewable energies, and alters both Decree-Law No. 15/2022, of 14 January, which establishes the legal framework for the National Power System, and in Decree-Law No. 151-B/2013, of 31 October, which regulates environmental impact assessment.

Alongside this partial transposition, the Government sought to introduce measures to simplify and reduce bureaucracy in the licensing of renewable energy projects, including self-consumption generation and renewable energy communities. Likewise, and aimed at improving the competitiveness of the Portuguese industrial sector within a broader logic of green reindustrialization, highly focused on the electrification of industrial consumptions, changes are introduced in Electro-intensive Consumer benefits framework.

Lastly, and in line with the Government's recent public statements, this Decree-law provides for a legal framework to be established for the activity of bilateral registration and contracting of energy and/or power. This mechanism is considered to be of significant support through the removal of unjustified and disproportionate regulatory and administrative obstacles to the contracting of cPPAs (*Corporate Power Purchase*

*Agreements*), seeking to increase the attractiveness of this product and the liquidity of this market.

We highlight the main legislative changes introduced:

### **1. Environmental Impact Assessment**

The process for defining the scope of the environmental impact study in the Environmental Impact Assessment procedure is now mandatory for renewable energy power plants, whilst remaining optional for the remaining typologies of projects.

The process for defining the scope of the environmental impact study, which remains optional and the choice of the promoter in all other cases, is intended to bindingly define the content that must be included in the Environmental Impact Study for the correct assessment of the potential environmental impacts of the projects to be developed.

Solar power plants and co-located energy storage facilities are exempt from Environmental Impact Assessment when they are installed in existing or future buildings or artificial structures, with the exception of:

- artificial water bodies;
- of buildings classified or in the process of being classified and their protection zones;
- areas or structures relevant to the safeguarding of national defence or security interests.

The repowering of a solar or wind primary power plant is not subject to a prior assessment procedure and a decision to submit to an Environmental Impact Assessment (case-by-case decision), nor to an Environmental Impact Assessment procedure.

## 2. Regulation of the Power Sector

### a. Licensing

**Conceptual clarifications** are introduced regarding the storage facilities and hybridization, the latter expressly including storage in a pre-existing power plant or self-consumption generation unit.

**Overriding public interest and the overriding interest for public health and safety** for the planning, construction and operation of renewable power plants and/or storage facilities, including their grid connection infrastructures, is transposed, thus allowing:

- the affectation of national habitats or priority species of a site on the national list of sites, a site of Community interest, a Special Area of Conservation and a Special Protection Area, through the approval of compensatory measures necessary to protect the overall coherence of the Natura 2000 Network, which will be assessed in the Environmental Impact Assessment;
- the practice of prohibited acts or activities, or the use of prohibited means, relating to the protection of protected bird species, when there is no satisfactory alternative and the maintenance of populations of protected species in a favourable conservation status is not affected, such acts being licensed by the ICNF, I.P.;

Additionally, one of the requirements for the derogation of environmental objectives defined in the Water Law is also fulfilled<sup>1</sup>.

As for the exploitation of standalone or collocated storage facilities, charging capacity from the grid is now verified within the licensing procedure. The TSO or DSO and the System Manager shall determine, in consultation with the DGEG, the maximum apparent power allowed for charging from the system for the storage units of the storage facility.

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<sup>1</sup> Law No. 58/2005, of 29 December, as amended.

Finally, the criteria of presumed proximity of self-consumption generation units to the usage facilities are altered, removing distance limitations when they are connected to the same substation of the National Transmission Network or the National Distribution Network, and the pre-existing criteria of geographical distance are now applicable to cases where the connection is made through different substations. The distances are also doubled whenever the territories are of low density, declared as such in an Ordinance.

#### b. Deadlines

Regarding the matter of **deadlines** for prior administrative control:

- In power plants subject to a production license and an operating license:
  - The deadlines for obtaining the production and exploitation license, as a whole, are now of:
    - Two years, for renewable energy projects;
    - Three years, for renewable energy projects.
  - The previous deadlines do not include:
    - The periods for the construction of renewable energy power plants, including their connections to the grid, and related infrastructures to ensure the stability, reliability and security of the power grid;
    - the administrative process periods for significant upgrades of the power system to ensure its stability, reliability and security;
    - The periods of the proceedings for the administrative or judicial challenge of a decision, act or omission to comply with the provisions of the Decree-law.
  - The deadlines can now only be extended at the request of the interested party by the member of the Government responsible for the energy area, under exceptional circumstances.

- The Director-General of Energy and Geology may, ex officio, extend the deadlines for a maximum period of six months, whenever he verifies *"extraordinary circumstances arising from the projects, with an impact, in particular, on the safety and reliability of the power system"*.
- In overpowering and repowering:
  - The deadline may not exceed a period of one year, from the respective request, which may be extended by order of the Director-General of DGEG, for a maximum period of three months, upon the reasoned verification of extraordinary circumstances arising from the projects, with an impact, namely, on the security and reliability of the power system.
- In power plants subject to prior registration:
  - One month, whenever the source is solar and the installed power is equal to or less than 100 kW;
  - three months for the remaining solar generation and energy storage units, including units integrated in buildings and artificial structures, with the exception of artificial water body surfaces;
  - Two years, for the repowering of offshore renewable energy projects that are subject to prior registration.

c. Bonds and Securities

The amount of security to be provided for projects licensed through an agreement between the sponsor and the grid operator is reduced from € 15,000.00 / MVA to € 10,000.00 / MVA, and its initial duration is increased to 30 months. In addition, the security deposit must now be maintained until the power plant, storage facility or UPAC comes into operation, under penalty of expiry of the procedure and consequent loss of the grid connection rights, which is in line with what was already contained within the approved form of agreement.

Also regarding the projects licensed through an agreement between the sponsor and the grid operator, it is now foreseen, innovatively, that bond securities must be returned to the interested party whenever the agreement is not entered into for reasons attributable to the grid operator.

d. National Agricultural Reserve

A legal presumption is introduced that the implementation of solar power plants and their internal lines and connection to the RESP is a permitted use of National Agricultural Reserve areas whenever they represent less than 10% of the total contracted area (although this concept is undefined) and less than 1 hectare.

Compliance with the requirements provided for in the legal framework for the National Agricultural Reserve for usage of said land for purposes other than agricultural is also presumed, whenever the intent is to install internal and connection lines of renewable power plants, and their easements do not impose restrictions that harm the dominant crop in that area.

e. Bilateral energy contracting

The Iberian Market Organization, or any of its national hubs, will ensure the management of the activity of bilateral energy registration and contracting, subject to regulation by the Energy Services Regulatory Authority (ERSE). ERSE shall approve the Manual of Procedures for the Bilateral Energy Registration and Contracting Activity.

The regulations for said activity shall be approved within 120 days from the entry into force of Decree-Law No. 99/2024, of December 4, by Ordinance of the member of the Government in charge of energy.

f. Electro-Intensive Customers

The state aid guideline reference has been updated, and now companies which are part of sectors identified within Annex 1 to European Commission Communication 2022/C 80/01 on 'Guidelines on State aid for climate and environmental protection and energy 2022' have now become potential Electro-Intensive Customers. Additionally, the scope of this framework is extended to facilities connected to the power system at low voltage.

The benefit of the reduction of charges corresponding to the CIEG applicable to Electro-Intensive Customers is expanded, being increased to 85%:

- in the case of Electro-Intensive Customers in the sectors identified in Annex 1 to the European Commission Communication 2022/C 80/01 on the 'Guidelines on State aid for climate and environmental protection and energy 2022' as belonging to a sector "at significant risk"
- in the case of Electro-Intensive Customers in the sectors identified in Annex 1 to the European Commission Communication 2022/C 80/01 on the 'Guidelines on State aid for climate, environmental protection and energy 2022' as belonging to a sector "at risk", where they demonstrate that at least 50% of their electricity consumption comes from renewable energy sources, and, cumulatively, at least 10% of that consumption is provided by a forward procurement instrument or bilateral contract, or at least 5% covered by self-consumption from renewable sources.

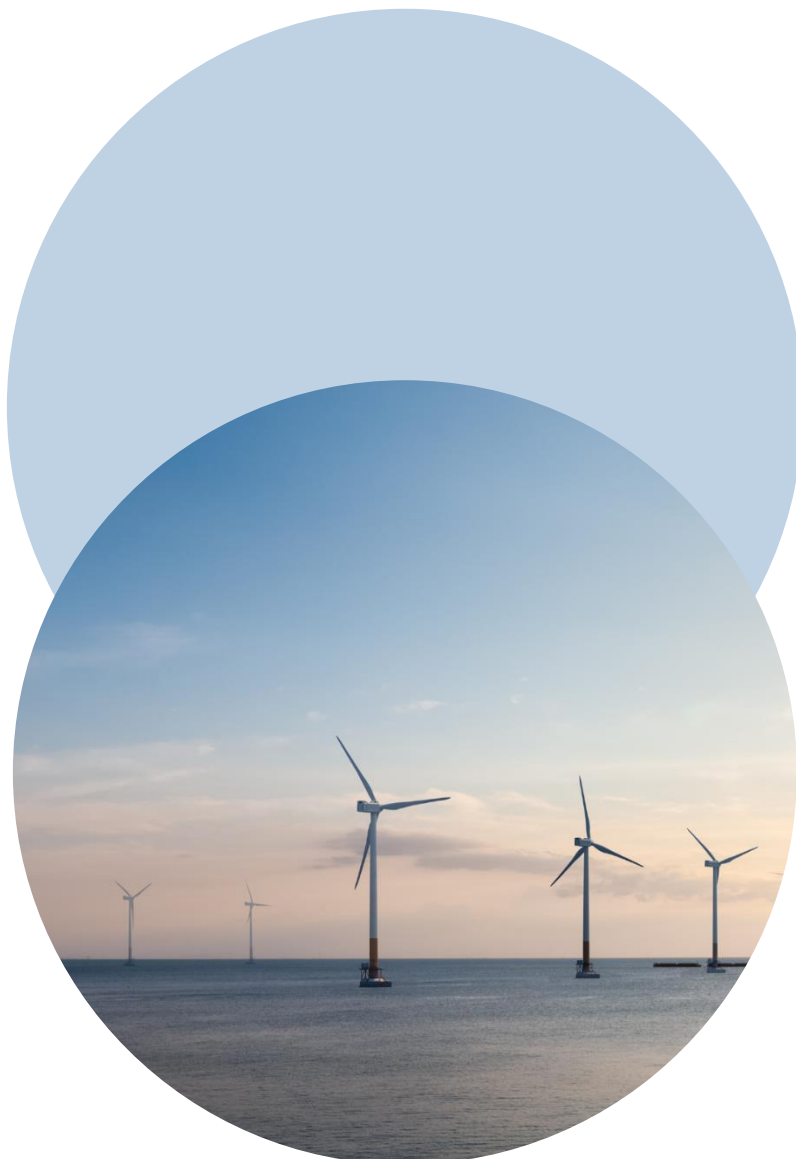
g. Other

The rule on municipal concessions is clarified, providing, among others, that the concessions may now be replaced by municipal option by a one-off, lump sum, cash compensation in the amount of € 1,500.00 per MVA of allocated connection power.



These municipal concessions shall be awarded through a contract to be signed between the interested party and the municipality or municipalities affected by the project, and are a prerequisite for the issuance of the exploitation license.

**Decree-Law No. 99/2024, of December 3, enters into force on December 18, 2024.**



**Thinking about tomorrow? Let's talk today.**

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