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Amendments to the regulatory framework for renewable energy

1. Introduction

Decree-Law No. 99/2024, of 3 December (“**DL 99/2024**”), which partially transposes, inter alia, Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 (the “**RED III Directive**”), was finally published on 3 December.

This highly awaited amendment to the Portuguese regulatory framework for renewable energy aims to (i) speed up and simplify the licensing process for renewable energy projects; (ii) facilitate their connection to the public grid, and (iii) generally, provide greater legal certainty to promoters and investors.

DL 99/2024 amends both Decree-Law No. 15/2022, of 14 December (“**DL 15/2022**”), which governs the organisation and operation of the National Electricity System, and Decree-Law No. 151-B/2013, of 31 October (“**RJAIA**”), which regulates the environmental impact assessment regime.

DL 99/2024 and the consequent changes it introduces to the existing regimes will enter into force on 18 December.

2. Regimes affected and key changes

For ease of reference, below, we have set out the key changes to the following regimes:

- Environmental impact assessment
- Hybridisation
- Storage
- Presumption of public interest
- Repowering (*reequipamento*)
- Deposit bond (*caução*)
- Deadlines
- Compensation for municipalities
- National Agricultural Reserve
- Self-consumption (*autoconsumo*)
- Bilateral energy contracting and registration
- Electro-intensive consumers

2.1. Environmental impact assessment

The changes introduced to Article 12 of the RJAIA appear to somewhat contradict the aforementioned goals of DL 99/2024, as a new mandatory requirement has been established concerning those renewable power plants, and infrastructure, which are subject to environmental impact assessments (“**EIA**”) – they now must submit an EIA scoping proposal (*proposta de definição de âmbito*).

This is arguably the only case where changes introduced by DL 99/2024 appear to add further bureaucracy to the licensing process. In any case, this mandatory scoping proposal for the above-mentioned types of infrastructure may provide an important degree of clarity to the overall environmental permit process, since promoters will be able to clearly address potential doubts over the scope of an EIA at an early stage.

The changes introduced to DL 15/2022, on the other hand, mean that renewable electricity production installations that use solar power and their storage installations which are to be installed in buildings or other artificial structures will not be subject to an EIA. However, an exception to this has been provided

concerning (i) facilities installed on the surface of artificial bodies of water, and (ii) listed buildings and their protection zones.

2.2. Hybridisation

DL 99/2024 has amended the “hybridisation” concept provided for in DL 15/2022 by clarifying that owners of renewable electricity production centres can hybridise their projects once they have secured the relevant production licences, prior registration or prior communication; it is not necessary for the projects to be operational.

Furthermore, the concept of “hybridisation” has been expanded to include the possibility of adding “new storage units”. Hence, the promoters can now take advantage of the hybridisation regime and its benefits for the purposes of installing new storage units in their projects.

2.3. Storage

Changes have also been introduced to the definition of “storage installation” set out in DL 15/2022, which now comprises (i) autonomous/standalone storage (*armazenamento autónomo*), and (ii) collocated storage (*armazenamento colocalizado*). In the first case, the installation is directly connected to the public grid, whereas in the second, the installation is combined with the electricity production centre – with both using the same grid connection point.

The collocated storage activity is now subject to the prior verification of charging capacity through the public grid, as owners may also want to charge batteries directly from the grid. This verification procedure will be conducted by the relevant grid operator and the Portuguese National Energy Grids (“REN”) (*Redes Energéticas Nacionais*), which is the overall coordinator of the electricity system. This procedure is unified and must also be assessed in the context of the licensing process for collocated storage installations. No reference has been made regarding the same procedure for autonomous/standalone storage.

2.4. Presumption of public interest

The amended DL 15/2022 now includes a presumption of public interest in relation to the planning, construction and operation of renewable electricity production installations and/or storage installations, including their connection to the grid, for the purposes of Decree-Law No. 140/99, of 24 April (the “**Rede Natura Regime**”) and Decree-Law No. 58/2005, of 29 December (the “**Water Law**”).

It should be noted that although it has been somewhat anticipated, no provision for public interest has been made regarding the National Agriculture Regime or concerning the regime for the protection of cork oak (*sobreiro*) and holm oak (*azinheira*).

2.5. Repowering (*reequipamento*)

DL 99/2024 has amended the concept of “repowering” (*reequipamento*) provided in DL 15/2022 by changing “deployment polygon” (*polígono de implantação*) to “deployment area” (*área de implantação*).

The amended Article 62 of DL 15/2022 now provides that the repowering of solar or wind power plants is not subject to a prior assessment procedure or the decision to submit to an EIA or to an EIA itself; it is intended that the retrofitting of the installation(s) should occur within the implemented area and provided that it complies with all of the conditions imposed by the relevant environmental permit.

It is particularly worth noting that, for wind power plants, no requirement as to the number of wind turbine generators exists.

2.6. Deposit bond (*caução*)

Changes have also been introduced concerning the deposit (*caução*) applicable to injection capacity titles (*títulos de reserva de capacidade*) awarded through the execution of grid connection agreements. The relevant amount will now be calculated using EUR 10,000 per MVA as a reference (as opposed to EUR

15,000), and the deposit bond must be kept for a minimum period of 30 months (as opposed to 24 months), which must be extended until the power plant/storage installation/self-consumption unit (“UPAC”) enters into operation.

The consequence of non-compliance with these rules is the termination (*caducidade*) of the procedure. Moreover, DL 15/2022 now provides that the deposit bond may be returned in the event of the failure to execute the grid connection agreement due to reasons attributable to the relevant grid operator.

2.7. Deadlines

DL 99/2024 has substantially amended Article 14 of DL 15/2022, which regulates the deadlines applicable to the request for and issuance of production and operation licences. Of the changes introduced by DL 99/2024, this will arguably raise the most doubts for promoters and stakeholders.

Article 14 now provides that the deadlines applicable to the request for and issuance of production and operation licences may be extended, without limitation, in exceptional circumstances, by order of the relevant Minister responsible for the energy sector and following a justified request by the applicant.

Furthermore, the changes introduced now provide for a maximum period of 2 years for a production or operation licence (i.e. the entire procedure for issuing the relevant licence) to be issued for onshore renewable energy projects. A limitation period of 3 years is provided for offshore energy projects. This deadline may be extended, for a period of 6 months, by order of the Director-General of the Portuguese Directorate-General for Energy and Geology (“DGEG”) in the event of extraordinary circumstances resulting from the projects. Thus, there is a limited possibility of extending the deadlines.

It has also been clarified that the deadlines referred to in Article 14 do not include the periods relating to the (i) construction of the renewable electricity production centres (including their grid connection facilities and ancillary infrastructure); (ii) administrative procedures for modernising the grid, and (iii) legal or administrative challenges to any decision, act or omission regarding compliance with the rules established in DL 15/2022.

Also noteworthy is the introduction of a rule providing that the prior control procedure applicable in cases of overpowering (*sobreequipamento*) and repowering (*reequipamento*) cannot exceed one year, which is extendable by order of the DGEG, with certain limitations, from the respective request, for the relevant repowering of power plants and energy storage installations as well as for their connection infrastructure.

Finally, the deadlines for the prior registration procedures (*procedimento de registo prévio*) applicable to small solar production units (less than 100kW) and other solar production installations subject to this regime have also been reduced, as well as the deadline for concluding a procedure related to the repowering of a renewable energy electricity production centre that does not result in an increase in the respective capacity of more than 20% (a maximum of 3 months in this case).

2.8. Compensation for municipalities

DL 99/2024 has also introduced further changes concerning the compensation to be provided to municipalities (*cedências*). Under the amended regime, owners of renewable electricity production centres or storage installations that inject more than 1 MVA must compensate the relevant municipalities with either an UPAC with an installed capacity of 1% of the injection power of the project (as opposed to 0.3%) or vehicle charging stations located in public spaces and for public use.

2.9. National Agricultural Reserve

The amended DL 15/2022 now provides that whenever the implementation perimeter of solar power plants and their power lines (both internal and those connected to the public grid) includes areas which are part of the National Agricultural Reserve (the “RAN”) and those occupied areas represent less than 10% of the total contracted area (provided that they are less than 1 ha.), those RAN areas will be considered useable for the production of renewable energy.

Moreover, the law now presumes compliance with certain requirements set out in the RAN legal regime when the use of areas included in the RAN for the installation of electricity poles, the passage of internal lines and lines connecting power plants to the public grid does not impose restrictions arising from the line easement that damages the crops in the affected area.

2.10. Self-consumption (*autoconsumo*)

The changes introduced by DL 99/2024 also affect the concept of “proximity” between the UPACs and the utilisation facilities for self-consumption; proximity is a requirement for the carrying out of self-consumption. Concerning the UPACs and the utilisation facilities which operate via the public grid, there are alternative conditions which must be met. These conditions are applicable to (i) the UPACs connected to low voltage distribution networks; (ii) the UPACs connected either to distribution networks or transmission networks, and (iii) cases where the UPAC and the utilisation facility are not connected to the same substation.

A new provision has been added to DL 15/2022 which provides that the operation certificate (*certificado de exploração*) for the UPACs must be issued within 10 days of the submission of the inspection report confirming the installation’s compliance. In any case, it is now the DGEG’s responsibility to verify compliance with the conditions to obtain such certificate and inspections may be carried out up to two years after the procedure has been completed.

2.11. Bilateral energy contracting and registration

A new regime for energy registration and bilateral energy contracting has been created by DL 15/2022, with provisions setting out the key terms of the activity; it consists of the registration of all transactions operated by bilateral energy contracts in which at least one of the parties is a “market agent”. The activity includes the (i) mandatory registration of bilateral energy contracts (including price and volumes), and (ii) bilateral energy contracting, which is voluntary.

While the managing entity (*entidade gestora*) of the activity shall be the entity responsible for the forward market under Article 4(1) of the Santiago International Agreement, which created MIBEL, the activity shall be primarily regulated by the Portuguese Energy Services Regulatory Authority (ERSE).

The terms and conditions of the activity of energy registration and bilateral energy contracting must be approved by ordinance (*portaria*) of the Minister responsible for the energy area within 120 days of the entry into force of DL 99/2024.

2.12. Electro-intensive consumers

New measures to support electro-intensive consumers have also been proposed. The most notable of these measures is a reduction of 75% or 85% of the charges corresponding to the general economic interest costs (*custos gerais de interesse económico*) included in the system use tariff (*tarifa de uso global do sistema*) in the component of electricity consumption through the public grid, although the reduction cannot mean that the payment of those charges is less than EUR 0.5/MWh. However, this is only applicable to electro-intensive consumers who purchase electricity using bilateral contracts and not to those who are self-consumers through the public grid; these users remain exempt from the general economic interest costs.

There are certain obligations to evidence the consumption mode in order to benefit from the support, and such evidence should be provided by cancelling the relevant guarantees of origin.

3. Further information

For ease of reference, please see below the links for the relevant legislation mentioned in this Legal Briefing.

- » [DL 99/2024](#)
- » [RED III Directive](#)
- » [DL 15/2022](#)
- » [RIAlA](#)
- » [Rede Natura Regime](#)
- » [Water Law](#)

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