



ENERGY AND NATURAL RESOURCES

CHANGE TO THE RULES: OPERATION OF SERVICE AREAS AND LICENSING OF FILLING STATIONS

The new legal rules on operation of service stations and the licensing of establishment of filling stations came into force on 30 May.

The new legal rules on operation of service stations and the licensing of establishment of filling stations came into force on 30 May. The application of these rules is mandatory for premises that are on or adjacent to the National Road Network, regional roads or unclassified roads under the control of EP – Estradas de Portugal, S.A. (“E.P.”), as approved by Decree-Law 87/2014 of 29 May (“DL 87/2014”).

At first reading, the aim revision of the regulatory framework, previously contained in several different pieces of legislation is, above all, to reduce the costs to the state arising from public-private partnerships in the sector.

To achieve this, DL 87/2014 draws a distinction between what are referred to as “Service Areas” – established by the side of the road, which include the access road and are inserted in areas of public road domain which contain equipment and other means for the supply of fuels and energy and support for users and vehicles – and the more generalist “Filling Stations”, which include equipment for the supply of fuel for road vehicles for private, public or cooperative consumption, including the goods and means allocated to this purpose.

Under these new rules, E.P. is the entity with powers to license the setting up of filling stations and to assess and collect the fees associated with this licensing process. This

specific licensing does not substitute all the other licensing applicable to construction, operations and carrying on of activities at the stations.

With the repeal of Decree-Law 173/93 of 11 May and Order in Council 74-A/94 of 16 April, this new legislation provides that the right to operate service areas may be granted by E.P. to the road management companies under its jurisdiction. The granting of this right should preferably take the form of a concession for the construction and/or operation of the equipment and services included in the service area in question.

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In terms of the fees for E.P. licensing of the establishment of filling stations, a distinction is now drawn between filling stations that generate a high level of traffic on accesses to the road and stations with a lesser impact in road infrastructures. This distinction is based on the number of litres of fuel sold at each filling station.

Three further points should also be highlighted:

1. When it comes to the operation of service areas, DL 87/2014 does not apply to existing concessions and sub-concessions.

However, the road management companies in question may ask the public partner or the State for an agreement to apply the new rules, which will have an impact on any payment that may be due;

2. As referred to in summary above, DL 87/2014 does not change the legal rules on licensing and supervision of filling stations established in Decree-Law 267/2002 of 26 November.

3. DL 87/2014 establishes transitional rules for existing processes for licensing of the establishment of filling stations as follows:

- (i) applications for licensing presented on or before 20 May 2014 are governed by the previous rules;
- (ii) establishment licences granted for a fixed period remain in force until they expire (or until their renewal period expires, if applicable);
- (iii) establishment licences granted without a fixed period expire one year from the date of entry into force of the order in council that will the rules on location, classification and functioning of the same (further detail below);
- (iv) establishment licences granted without a fixed period which, on the date of entry into force of the above mentioned order in council, have not been valid for five years will expire after one year from the date of entry into force of this order in council; and
- (v) licences for establishment of filling stations that have not been in operation for more than one year expired on 30 May 2014.

These new rules will also be complemented by an order in council that will establish (i) rules on location, classification, composition and functioning of service areas and filling stations, (ii) procedures for licensing the establishment of filling stations (including the expiry and revocation of the respective licences), (iii) rules on their composition and location on the road network and (iv) the amounts, dates and forms of payment of the fees for the respective licensing processes.

This means that the impact of the changes introduced by this new legislation will depend to a large extent on the content of the said order in council.

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