



ENERGY AND NATURAL RESOURCES

Significant amendment to the Portuguese Electricity Sector Legal Framework Generation: what's new?

The Portuguese legal framework applicable to the activities of the electricity sector has been amended significantly by Decree-Law no. 76/2019, of 3 June 2019, which entered into full force and effect on 4 June 2019¹ (“**DL 76/2019**”). DL 76/2019 principally amends and republishes Decree-Law no. 172/2006, of 23 August 2006, which enacted the legal framework applying to the activities of generation, transmission, distribution and supply of electricity, and to global electricity system management and the logistical operation for switching supplier (“**DL 172/2006**”).

The following are the material topics resulting of the amendments made by DL 76/2019:

- The Directorate General for Energy and Geology (“**DGEG**”, the sector’s licensing and supervisory entity) is now the sole and **overarching licensing entity** for electricity generation undertakings;
- Possibility of **having hybrid electricity generation** (two technologies injecting electricity alternatively into the grid up to the maximum licensed injection capacity) – subject to additional licensing if the second generation technology to be developed is different to the one originally licensed. This is to be further regulated²;
- Allowing **storage of electricity**, to be carried out jointly with a generation undertaking or separately. In the latter case, specific licensing is required and this is subject to further regulation;
- **Limitation on the transfer of a project’s production licence** (the first license to be obtained at a greenfield stage allowing the development of the power generation undertaking) - by share sale, corporate reorganisation, asset sale or, generally, assignment of operation or exploitation of the electricity generation undertaking) until such time as the exploitation licence is obtained (i.e., when the project is fully built and deemed as approved by the DGEG to enter into commercial exploitation);

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¹ Exception being made to article 8 of the amended and republished legal framework on voluntary applications for production licences which we understand – by way of interpretation, given we consider that a cross reference in DL 76/2019 is currently incorrect – are suspended until 45 days have passed from 4 June 2019.

² Expected, pursuant to public declarations of the Secretary of State for Energy Transition, to be further regulated towards end 2019.

- Provision of a **new alternative for the granting of electricity capacity injection** rights by means of **auctions**. These auctions are treated as falling within the public tender procedure category for granting of grid capacity injection rights – this may apply to solar, other technologies or hybrid generation;
- Special Regime Generation (renewables) will have a **production licence with an initial duration of** up to 2 years, which may be extended for an additional year (or half of the initial validity period if less than 2 years). Ordinary regime generation will have a production licence with an initial duration of up to 3 years, which may be successively extended for 1-year periods (up to a maximum of 3 years). Hydro projects can be granted production licences valid for up to 6 years with an additional extension of up to 3 years (or half of the initial validity period if less than 3 years).
- Obtaining **additional extensions** to the above production licence validity periods is now a possibility:
 - (i) validity periods may be further extended in “exceptional circumstances” by ordinance (*despacho*) of the Secretary of State for Energy Transition (as the government member responsible for overseeing energy matters);
 - (ii) the granting of extensions does not appear to have to be grounded on reasons which are not attributable to project promoters (as was the case in the past); and
 - (iii) other production licence durations may be decided in case of attribution of grid injection capacity pursuant to public tender procedures (which include the auction mechanism).
- Possibility of **certain renewable electricity generation projects benefitting from guaranteed remuneration** (a form of Feed-in-Tariff) which may be attributed to projects with an installed capacity of at least 1 MW:
 - (i) by means of public tender (including auctions) - as per remuneration conditions to be determined in the tender documents;
 - (ii) in the case of over-equipment; or
 - (iii) for generation undertakings installed in existing generation projects if using a different primary source of energy even if the granted public service electricity grid injection capacity remains the same (hybrid generation).

Guaranteed remuneration applying to the projects under (ii) and (iii) above is to be allocated by means of order (*portaria*) of the Government member responsible overseeing energy matters and may be preceded by a public tender intended to establish the guaranteed remuneration³.
- **Guaranteed remuneration** for the projects mentioned immediately above **will be allocated for certain periods of time** (not yet specified) and, upon reaching the end of the period, those projects will then be subject to the general remuneration regime which provides for the sale of electricity in the liberalised market. The guaranteed remuneration and general remuneration regime may coexist, including different guaranteed remuneration tariffs, whenever a project is composed by different generation units;

³ Currently, the Secretary of State for Energy Transition.

- **Full amendment of the licensing procedure** to obtain a production licence for generation undertakings with capacities of at least 1 MW. The production licence application can no longer be submitted without first **ensuring title to grid capacity injection rights**, which may occur by means of any of the following⁴:
 - a) application submitted to the DGE, which must then send it to the relevant grid operator within 5 days, with the grid operator having 45 days to issue its decision (after hearing the global system manager and subject to the payment of a price for the service so rendered). Project promoters' requests for grid reservation capacity will be assessed by order of submission – and a financial bond or a form of guarantee has to be provided within 30 days of confirmation of availability of grid capacity;
 - b) direct agreement between a project promoter and the relevant grid operator, under which the project promoter will assume grid capacity reinforcement or construction costs to allow reception of electricity generated by the relevant electricity generation undertaking, including determination of the capacity to be attributed. In this case, the costs provided for in the Commercial Relationships Regulation as a contribution to grid reinforcement will not apply – a financial bond or a form of guarantee has to be provided within 30 days of confirmation of availability of grid capacity; or
 - c) grid capacity reservation title issued by the relevant grid operator pursuant to the terms communicated by the entity managing the public tender procedure for allocation of grid capacity reservation injection rights.

- **Allocation of grid capacity injection reservation rights** may be subject to public tender procedures (including auction mechanisms) by ordinance (despacho) of the Secretary of State for Energy Transition⁵. Public tenders may be held by electronic means and the rules and grid connection points / grid areas, as well as conditions for access to the same, obligations of the bidders and amount of the respective bond will be published for the purpose of each procedure;

- **Ongoing production licensing procedures are suspended until** the applicants obtain, if grid capacity is available, title for reservation of grid capacity injection rights.

⁴ Except where it is the case of installation of a different generation technology in an already existing and licensed electricity generation undertaking, if grid injection capacity remains the same.

⁵ As the current Government member responsible for overseeing energy matters.