



PUBLIC LAW AND CORPORATE M&A

Changes to the legal framework applicable to the self-consumption of renewable energy

Decree-law no. 162/2019 of 25 October: the new Legal Framework Applicable to the Consumption of Renewable Energy

Decree-Law 162/2019 (“DL 162/2019”), which sets out the new **Legal Framework Applicable to the Consumption of Renewable Energy**, was published in the official gazette, Diário da República, on 25 October 2019. DL 162/2019 partially implements Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018, and revokes Decree-Law 152/2014 of 20 October, on the Legal Framework on Self-consumption Production Units (“UPAC”) and Small Production Units (“UPP”).

The new rules only apply from 1 January 2020 or 1 January 2021, depending on the type of self-consumption project. The new provisions include energy production for collective self-consumers, organised into condominiums, with a production unit being installed in the common areas of the building for shared consumption.

The option to sell any surplus production to the Public Service Electricity Network (“RESP”) is maintained. However, the sale price will be fixed freely with the suppliers that agree to buy the energy, in contrast with the previous rules, which provided for a pre-defined price.

DL 162/2019 now covers only self-consumption through UPACs and introduces the concept of collective self-consumption in communities. The regulations for UPPs, which are intended for sale and not for self-consumption, have been contained in Decree-Law 172/2006 of 23 August (“DL 172/2006”) since 3 June 2019.

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In general terms, the following highlights are among the most significant aspects of the new DL 162/2019:

- (i) It establishes the legal framework applicable to the self-consumption of renewable energy, setting out the rules on the activity of decentralised electricity production associated with Electrical Installations of Use (“IU”) by the self-consumer of renewable energy. Therefore, the scope of application of DL 162/2019 now covers solely the decentralised production of electricity from renewable energy sources.
- (ii) It also establishes the legal rules on **Renewable Energy Communities** (“REC”). RECs are legal entities, whether for profit or not, formed on the basis of an open and voluntary membership of their members, quotholders or shareholders. These may be individuals or legal entities, and they may be public or private in nature. They can include small and medium-sized enterprises or local authorities, which are independent of their members or shareholders, but effectively controlled by them. RECs must meet the following requirements:
 - a. The members or participants are located in close proximity to the renewable energy projects or carry on activities relating to the renewable energy projects of the energy community in question;
 - b. The projects are owned and carried on by the REC;
 - c. The main objective of the REC is to provide its members or the places where the community operates with environmental, economic and social benefits, rather than financial profits.
- (iii) The concept of “**self-consumption**” implies consumption ensured by electricity produced by UPACs and carried out by one or more self-consumers of renewable energy.

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- (iv) The concept of the UPAC consists of **one or more production units for self-consumption**, with renewable energy as the primary source (DL 162/2019 does not limit the renewable energy coming from solar energy) associated one or more of the IUs (associated, or not, with an electricity supply contract made with a supplier), intended primarily to satisfy their own needs for the supply of electrical energy.

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- (v) The activity of self-consumption using UPACs, regardless of the voltage of the consumption installations, can be carried on by (i) **individual self-consumers**, (ii) **collective self-consumers**, organised in condominium buildings, under the horizontal property regime or not, or a group of self-consumers located in the same building or area of apartments or houses, **in close vicinity**, industrial, commercial or agricultural units, and other infrastructures located in a defined area, which have UPACs and (iii) **RECs**.

The relationship of close vicinity or the proximity of the project must be assessed on a case-by-case basis by the DGEG (Directorate-General of Energy and Geology), assuming the physical and geographical continuity of the project and its self-consumers or participants in the REC. It is also possible to take into account (i) the substations to which the project is connected, (ii) the different voltage levels associated with the project and (iii) any other point of a technical or regulatory nature.

- (vi) There is no limit to the number of self-consumption production units to be installed, but, **depending on the total installed power, the UPAC may be subject to different levels of administrative prior control.**
- (vii) **Different levels of administrative prior control prior are defined for the installation of the UPAC**, depending on whether the installed power is (i) equal to or less than 350 W, in which case the UPAC is not subject to prior control, (ii) greater than 350 W and equal to or less than 30 kW, in which case the UPAC is subject to mere prior communication, (iii) greater than 30 kW and equal to or less than 1 MW, in which case the UPAC is subject to prior registration and a certificate of operation, under the terms of DL 172/2006 or (iv) above 1 MW, in which case the UPAC is subject to a production and operation licence, under the terms of DL 172/2006.
- (viii) It is only mandatory for the network operator to be heard in relation to the prior registration process in cases in which the UPAC provides for the possibility to inject power into the RESP.
- (ix) If the UPAC is subject to registration or a licence, the self-consumer must take out a **civil liability insurance policy** to cover any harm caused to third-party people or property as a result of engaging in the activities of electricity production by UPAC.
- (x) In the case of a UPAC with the possibility to inject more than 1 MVA into the RESP, the beginning of the procedure to obtain an electricity production licence depends on the prior allocation of reserve capacity of injection into the RESP.
- (xi) In the case of collective self-consumers, the registration to install a UPAC in the name of condominium members and any recourse to financing by the condominium and its conditions, follow the rules on changes and their costs provided for in the regulations on horizontal property in the Civil Code.
- (xii) The registration to install a UPAC in a common area of a building organised as a condominium or the use of a common part for the passage of cables or other components of the production of electricity by UPAC, first requires the authorisation of the meeting of the condominium members, decided by a simple majority.
- (xiii) With respect to the remuneration, the energy surplus to the self-consumption can be sold (i) on an organised or bilateral market, including through a contract for the purchase of renewable energy; (ii) through a participant in the market against payment of a price agreed between the parties; or (iii) through the market facilitator.

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- (xiv) The total electrical energy produced by the UPAC must be metered (*i*) in the case of collective self-consumption and (*ii*) in the case of individual consumption, when the unit is connected to the RESP and the installed power is greater than 4 kW. The metering of the total electrical energy produced by the UPAC is done by remote metering, in other words a digital form of metering energy consumption through a smart meter that communicates production and consumption data in real time.
- (xv) UPACs with installed power exceeding 20.7 kW and less than 1 MW are subject to **inspections** every 10 years. If the installed power is 1 MW or higher, the inspections will be conducted every 8 years. For this purpose, the DGEG prepares and publishes on its website, no later than 31 December of each year, the programming of the periodic inspection to be carried out in the following year. Then, no later than 31 March of each year, it publishes the conclusions of the report on the supervisory activities carried out in the year immediately preceding it.
- (xvi) Any change in the parties to the contract for the supply of electricity to the use installation associated with the UPAC or in its ownership must be registered.

The installations to produce electricity from pre-existing **non-renewable** sources of energy are subject to the old rules (Decree-Law 153/2014 of 20 October). Installations for the production of electricity from renewable sources of energy for self-consumption that are currently in operation will now be governed by the new rules.

However, contracts with the Supplier of Last Resort remain valid and continue to be governed by the old rules either until the end of the term of the contract or until 31 December 2025, whichever date comes first.

DL 168/2019 takes effect (*i*) from **1 January 2020**, in relation to individual self-consumption projects and collective self-consumption projects or RECs, which have both a smart metering system and are installed at the same voltage level; or (*ii*) from **1 January 2021**, in relation to other self-consumption projects.

By 31 December 2019, the DGEG and the ERSE (energy Services Regulatory Entity) must publish the regulations necessary to implement individual self-consumption projects and collective self-consumption projects or RECs, which have both a smart metering system intelligence and are installed at the same voltage level.