



PROJECTS AND ENERGY

Public consultation on the reform of the national electricity system law

The new draft [decree-Law](#) governing the organisation and operation of the national electricity sector has been put out for public consultation. This decree-law gathers together in a single piece of legislation the rules on all activities in the electricity sector, except for cogeneration and electric mobility activities. It also repeals a number of separate pieces of legislation that had governed different activities up till now.

The new law also incorporates Directive (EU) 2019/944 on the internal electricity market and, partially, Directive (EU) 2018/2001 on renewable energy, into Portuguese law.

Significant changes are also made in the new law to practically the entire value chain of the electricity sector, from generation to supply, to network operation and the selection of monopoly service providers.

Without attempting to cover ever provision of the new law, in this note we intend to list some of the main changes it will introduce.

Generation of electricity

The distinction between production under the ordinary system and under the special system, where the rules had already been largely harmonised in the last legal revision in 2019, is eliminated altogether.

The deadline for issuing the production licence will be one year from the issuance of the capacity reservation certificate (TRC). The time limit for issuing the operating licence will be reduced from two years to one year from the issuance of the TRC, except in specific cases and without prejudice to any extension.

Change of control over the promoter is prohibited until the operating licence is issued and this extends the arrangements established for the two solar auctions.

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The issuance of a TRC in the general form becomes dependent on the prior payment of compensation to the electricity system of €1500.00 per MVA. However, the law does not clarify whether the value of the co-payment with the networks will be maintained, nor what happens in the event of expiry of the TRC due to the opening of an auction.

Access to the grid under an agreement with the grid operator will now depend on the annual setting of a quota by the Government member responsible for energy, which may be differentiated by technology and by production for self-consumption.

The supporting documents on which the issuance of the production and operation licence depends will be altered and the rules on substantive and non-substantive changes to electricity generating plants will be reviewed.

The installation of solar photovoltaic panels on built structures or on the ground in delimited areas, including industrial parks or lots, will now always constitute works of minor urban planning significance and be exempt from municipal licensing.

A compensation mechanism is established for municipalities where electricity generating plants with an injection power of 50 MVA are installed. Under this mechanism, the promoter is obliged to install a self-consumption production unit in municipal buildings with an installed power equivalent to 0.3% of the connection power of the electricity generating plant, or to pay one-off compensation of €1500.00 per MVA of injection power, and the requirement for any higher compensatory payments or allowances is prohibited.

Provision is made for the possibility of the rights to inject electricity generation into the grid being allocated with restrictions, instead of being allocated on a firm basis.

It will become mandatory to submit a closure plan when applying for a production licence and this will have to be guaranteed by a security deposit or an annual contribution from the promoter.

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Small generation units

To avoid artificial fragmentation of licensing processes, it is provided that whenever two power plants are less than 2 km apart, the prior control rules applicable to the joining of the installed capacity of two or more projects must be followed.

Hybridisation, over-powering and repowering

The rules on over-powering are extended to all renewable energy plants, from any source. They are thus given the possibility to increase the installed capacity up to 20%, without changing the injection power.

The repowering of any renewable power plants is regulated and, as an incentive, an increase in injection power of up to 20% is allowed in the case of full repowering actions, until the targets set out in the PNEC 2030 (National Energy and Climate Plan 2030) are achieved.

Repowering actions are exempt from environmental impact assessment, provided there is no increase in the number of wind power plant towers.

In terms of remuneration, both over-powering and the increase in connection power due to repowering fall under the general remuneration scheme. In the case of repowering, the electricity injected corresponding to the initial injection power will continue to benefit from any subsidised scheme.

The hybridisation of renewable projects from the outset is allowed and the possibility of hybrid projects being held by different owners is expressly established, even if they are not in a group or control relationship.

Networks and system management

The law provides for the position of integrated technical manager of the high-, medium- and low-voltage distribution grids, and it is possible for this position to be held jointly with the operation of grids or separately, under the terms of the concession to be awarded.

Low-voltage distribution concession contracts may be extended until the end of the calls for tender still to be launched regarding the future development of this activity. These contracts may also be amended to allow for adaptation to the new realities of smart grids and new technologies.

The network operation regulation must be revised to accommodate the principles of probabilistic and dynamic network management.

The network investment and development plans will now be classified by sector programmes and be approved by Resolution of the Council of Ministers. Furthermore, the procedure for approving, revising and updating the plans will be changed.

Provision is made for the possibility of creating system services markets of regional scope, subject to approval by the ERSE.

The activity of the operation of closed distribution networks (RDFs) is regulated. Until now, this activity was subject to implementation by ministerial order.

Storage and response to demand

The activity of energy storage is defined and regulated, when undertaken independently, and a licensing system similar to that of electricity generating plants applies to it.

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A rule is established that storage will be subject to a single tariff for use of the grids (for loading or injection), and an exemption from payment of the CIEG (costs of general economic interest) for storage facilities is also provided for.

Provision is made for a legal scheme that allows consumers to participate in the market through demand response services. They would do this by submitting offers to reduce or increase the consumption of final customers, in organised markets or through bilateral contracting, separately or through aggregation.

Sales and aggregation

The system for access to and engaging in the aggregation activity (currently only defined and referred to in the legislation on self-consumption) is defined and it is based on the supply system.

Aggregation is subject to mere accounting separation from other activities, unlike supply, which remains subject to legal separation.

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Suppliers will now have to provide electricity contracts at dynamic prices when they have more than 200,000 customers and the customer has a smart meter.

Last resort supply will no longer cover the purchase of electricity from producers with a guaranteed tariff. This role will now be performed by the aggregator of last resort.

The figure of the logistical operator for the change of supplier is extended to aggregation and now includes the change of aggregator.

Self-consumption and energy communities

The definition of citizens energy communities is created by incorporating Directive (EU) 2019/944 into Portuguese law. These now coexist with renewable energy communities and are essentially governed by the same rules.

Provision is made for the possibility of implementing dynamic coefficients in the sharing of electricity produced by UPACs (Self-consumption Production Units) and dynamic management systems managed by an entity outside grid operators (for example, the entity managing collective self-consumption).

To mitigate difficulties in accessing the grid to inject surplus self-consumption, an annual quota will be set by the member of the Government responsible for energy. Up to this quota, it is not necessary to consult the operator of the RESP (Public Service Electricity Network) for projects up to a certain size.

The proximity criterion relevant to self-consumption and energy communities has been redefined and it is now stipulated that, within certain characteristics or distances, this criterion is automatically observed.

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Electro-intensive customers

The status of electro-intensive customer is created and gives these customers a specific set of rights in using the grid. The definition of the minimum degree of electro-intensiveness is now to be defined by ministerial order and to be established on an annual basis.

Customers included in annexes 3 to 5 of the European Commission Communication on state aid guidelines for the environment and energy sectors, connected to medium voltage grids or higher and complying, where applicable, with the requirements of the European Emissions Trading Scheme, may be recognised as electro-intensive customers.

Support given to electro-intensive customers includes, in the electricity sector, the possible exemption form or reduction of CIEGs (Costs of General Economic Interest). It also includes access to a risk hedging mechanism by the State in the purchase of renewable electricity under long-term contracts.

Public tenders to engage in monopolistic activities

The rule is established that monopolistic activities are carried out by an operator selected in a competitive tendering procedure, instead of direct designation by law. The exception is the integrated management of system risks and guarantees, which remains entrusted to the OMIP (The Iberian Energy Derivatives Exchange).

Thus, for the activities of last resort supply, last resort aggregation, issuance of guarantees of origin and the logistical operation of the change of supplier and aggregator, provision is made for the launch of tenders. Under these procedures, the entity that will perform each of these functions in the future will be selected and operate under a licence granted for periods of 10 or 20 years, depending on the case.

Until the tenders are launched and concluded, the activity will continue to be carried out by the companies currently performing these functions.

Technological free zones and innovation and development projects

The system of technological free zones (ZLTs) in the energy sector is regulated and three technological free zones have already been created. One is in Viana do Castelo and will develop offshore renewable energies. Another is in Abrantes and it will deal with innovation and development projects in the context of the closure of the Pego Thermoelectric Power Plant. The third is in the Mira Irrigation Perimeter and it will be used for pilot projects for the simultaneous use of land for electricity generation and agricultural activity.

The innovative projects to be implemented in the context of the ZLTs are exempt from the payment of network access tariffs and the construction costs of the network connection branches. However, they are subject to the payment of an amount to be defined by the ERSE to share network costs. These projects also benefit from a simplified licensing system.

Application to projects under development and existing projects

Provision is made for the new rules to apply to proceedings pending before the DGEG, without prejudice to acts already carried out. Only the continuity of application of the guaranteed remuneration schemes already awarded, maintained or extended is safeguarded. These will be maintained in the terms and with the deadlines under which they were awarded.

It is provided that projects that obtained injection capacity in the network prior to Decree-Law 76/2019 have a period of six months to request the prior control permit (as a rule, a production licence). If they do not do so, they will lose their capacity.

As regards projects developed in agreement with the operator and covered by the terms of reference, provision is made for the forfeiture of all requests, except for projects which, on the date the decree-law comes into force, (i) have already received, accepted and paid the budget for conducting preliminary grid connection studies, or (ii) have an environmental impact statement issued.

The owners of power plants that have been shut down as of the entry into force of the decree-law (as will be the case of the Sines and Pego power stations) will be required to present a closure plan within six months. If they do not do this, they will be disqualified from being awarded new grid injection capacity. ■

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