



**PUBLIC LAW | ENERGY AND NATURAL RESOURCES**

# Electro-intensive Consumer Status

The publication of Decree-Law 15/2022 of 14 January (“DL 15/2022”) established the organisation and operation of the National Electricity System (Sistema Eléctrico Nacional - “SEN”). It also created the Status of Electro-intensive Consumer (“Status”). In general terms, the Status brings with it a set of obligations and incentives. These are intended to guarantee that facilities benefiting from it enjoy more equal conditions in terms of competition in relation to facilities of the same nature operating in other Member States of the European Union.

The ministerial order now published specifies *(i)* the eligibility requirements for consumer facilities operators to be awarded this Status (Article 194(1) of DL 15/2022) and *(ii)* the obligations and support measures for facilities covered by the Status (article 195(3) of DL 15/2022).

**The ministerial order specifies the eligibility requirements for consumer facilities operators to be awarded this Status and the obligations and support measures for facilities covered by the Status**

## Access and admission requirements

Regarding the requirements to be awarded the Status, DL 15/2022 already stated that consumers 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 networks or higher, can be recognised as electro-intensive consumers.

Ministerial Order 112/2022 establishes the minimum electricity consumption and degree of electro-intensiveness that operators of facilities applying for the Status must comply with. Ministerial Order 112/2022 establishes the need for an annual electricity consumption equal to or greater than 20 GWh and an annual consumption in the normal off-peak and super-peak periods equal to or greater than 40% of consumption in at least two of the last three years.

With regard to the degree of electro-intensiveness, Ministerial Order 112/2022 provided that facilities wishing to benefit from the Status must have an annual electro-intensiveness level equal to or greater than 1 kWh/€ of gross added value, based on the average of the last three years.

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As for the way to obtain the Status, DL 15/2022 (Article 193(1)) provides that facilities wishing to register for the Status must send the Directorate-General for Energy and Geology (“DGEG”), by 15 June of each year, all the information and documentation necessary to confirm their eligibility. This information and documentation that must accompany the application for the Status was also regulated by Ministerial Order 112/2022, specifically in its Annex I. Some of the items that must be included with the application to be awarded the Status:

- i) Identification of the applicant, by indicating the company name, legal entity ID number, registered office, e-mail, and telephone contact.
- ii) Identification of the consumption facility and corresponding economic activity code.
- iii) Electricity supply contract, through connection to the very high tension, high tension or medium tension network.
- iv) Gross annual added value of the consumption facility in the last three years. This amount must be certified and audited.

### Admission contract

DL 15/2022 provides that, when the DGEG approves the application to be awarded the Status, the facility will be sent the draft Status admission contract. This draft does not yet exist but should be approved by order of the Director-General of the DGEG within 60 days of the entry into force of Ministerial Order 112/2022.

**The admission contract is valid for one year from the calendar year following the one in which it is signed. It is also possible to renew it for equal periods of one year.**

The admission contract is valid for one year from the calendar year following the one in which it is signed. It is also possible to renew it for equal periods of one year (Article 4(1) of Ministerial Order 112/2022).

In this regard, compliance with the eligibility conditions for the Status is assessed on an annual basis. This implies that, for it to be possible to renew the Status admission contract, the interested party must submit a new admission application by 15 June of each year. This new application must include all the information and documentation necessary for the DGEG to confirm compliance with the requirements for eligibility for the Status under the Decree-Law 15/2022 and Ministerial Order 112/2022.

In case of non-compliance with the eligibility requirements for the renewal of the registration contract, the application for renewal will be rejected and the support granted to the consumer facility may have to be returned (Article 4(4) of Ministerial Order 112/2022).

Any changes to the conditions established in the Status registration contract must be communicated to the DGEG (Article 5(1) of Ministerial Order 112/2022). Two conditions are imposed in this regard (Article 5(2) of Ministerial Order 112/2022): **(i)** the changes must be formalised by signing a new registration contract between the facility operator and the DGEG; and **(ii)** the intended changes cannot lead to non-compliance with the Status eligibility requirements.

The following are causes for termination of the Status registration contract (Article 6 of Ministerial Order 112/2022):

- i) Cessation of activity.
- ii) Supervening non-compliance with the eligibility requirements of the Statute.
- iii) Failure to comply with the obligation to communicate changes to the contractual conditions.
- iv) Failure to comply with the terms of the obligation to install and operate the measuring, recording and control equipment.

The decision to terminate the registration contract is taken by the Director-General of the DGEG and, once adopted, leads to the termination of the support measures resulting from the Status (Article 6(3) of Ministerial Order 112/2022).

### Support measures for electro-intensive customers

Ministerial Order 112/2022 divided the support measures for electro-intensive consumers into two levels: **(i)** reduction of energy policy, sustainability and general economic interest costs (Custos de Interesse Económico Geral - “CIEG”) in consumption from the RESP (Public Service Electricity Network) (Article 9 of Ministerial Order 112/2022); **(ii)** reduction of CIEG in self-consumption (Article 10 of Ministerial Order 112/2022).

Regarding consumption from the public service grid, electro-intensive consumers will be entitled to a partial reduction of the charges corresponding to the CIEG, through an exemption from paying the extra cost of special regime generation from renewable energy sources, in terms to be made operational by the Energy Services Regulatory Authority (“ERSE”).

In the case of self-consumption, electro-intensive customers will benefit from a full exemption from the charges corresponding to the CIEG. In addition, the network access tariffs approved by the ERSE will apply to them, each year, under the terms of DL 15/2022.

Ministerial Order 112/2022 also defines the general features of the risk coverage mechanism referred to in Article 195(2) paragraph d) of DL 15/2022. This is a risk coverage mechanism, for which the State is responsible, relating to the payment of the medium and long-term purchase price of electricity from renewable energy sources, through contracts with a minimum duration of five years (Article 11 of Ministerial Order 112/2022). This risk coverage will take the form of a guarantee and will result from a risk coverage policy, which must cover at least 10% of the operators’ annual consumption. The coverage is provided by Banco Português de Fomento. The guarantee conditions and the volume of guarantees available at any given time will be defined by Banco Português de Fomento.

### Entry into force

The ministerial order enters into force on 15 March 2022. However, the charge reduction measures, and the risk coverage mechanism established in it will only take effect after approval by the European Commission under the state aid rules. ■