



PUBLIC LAW | ENERGY AND NATURAL RESOURCES

Simplification of prior control procedures for renewable energy production

[Decree-Law 30-A/2022](#) was published on 18 April to approve the exceptional measures intended to ensure the simplification of the procedures for producing energy from renewable sources. These measures came into force on 19 April and will be in force for a period of 2 years.

These exceptional measures have been published by the Government in the current macroeconomic and geopolitical situation. They stem from the energy crisis triggered by the COVID-19 pandemic which has been made worse in the meantime by the war in Ukraine. This has had a very detrimental effect in terms of price rises and security of supply.

In general, these new measures are intended to simplify the administrative procedures for projects that produce energy using renewable sources. This simplification is compensated with the establishment of additional material requirements for the promoters. In fact, Decree-Law 30-A/2022 placed the emphasis on two areas. The first was the promoter's own control over the project, which, among others things, dispensed with the need to have the operating licence/certificate to operate the project immediately. The regulatory requirements were verified subsequently. The second point of emphasis was the greater accountability of promoters, because a set of obligations to on them are defined, in particular, the plans for the involvement of local communities). We highlight below the most important aspects of the exceptional arrangements now approved.

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Scope of application

- The exceptional measures apply to the setting up and entry into operation of (i) renewable energy power plants, storage facilities, Self-Consumption Production Units (*Unidades de Produção para Autoconsumo* - "UPACs") and their connection lines to the Public Service Electricity Grid (*Rede Elétrica de Serviço Público* - "RESP"); (ii) facilities for the production of hydrogen by electrolysis from water; and (iii) electricity transmission and distribution infrastructures.

For such facilities not located in sensitive areas and below the thresholds set out in Annex II of the RJAIA, their start of operations is only subject to the prior opinion of the EIA authority when the licensing authority requests it.

Submission to an Environmental Impact Assessment (“EIA”)

- For such facilities not located in sensitive areas and below the thresholds set out in Annex II of the [RJAIA](#), their start of operations is only subject to the prior opinion of the EIA authority (to date, this had always been mandatory) when the licensing authority (typically, the DGEG – Directorate General for Energy and Geology) requests it because there is solid evidence that the project is likely to cause significant impacts on the environment.
- Changes or extensions to projects to produce hydrogen by electrolysis from water are also covered by these simplified arrangements when, in themselves or together with the existing project, they exceed the thresholds set for the energy industry (paragraph 3 of Annex II of RJAIA).
- The issuing of opinions and authorisations provided for in the sector-specific legal rules applicable to the infrastructures included under these rules is done as part of the EIA or AIncA (Assessment of Environmental Incidents) procedure, when this has been carried out at the execution project stage and the responsible bodies have participated in the procedure.
- The public consultation carried out in the EIA or AIncA procedure replaces the publication by edicts provided for in the RLIE (Licensing Regulation for Electrical Installations) for licensing the establishment of transmission or distribution lines.

Sector-specific opinions

- A period of 10 days after receipt of the application is set for the responsible bodies to issue the mandatory opinions provided for in the applicable sector-specific rules. Failure to issue an opinion within that period will be tantamount to not opposing the application.

Starting the operation of projects

- Starting to operate renewable energy generating plants, storage facilities and Self-consumption Production Units (*Unidade de Produção para Autoconsumo* – “UPACs”) is no longer dependent on the prior issue of an operating licence or operating certificate, as applicable.
- Therefore, these projects can start to operate after the communication by the grid operator provided that the conditions for connection and injection of energy into the grid are met and upon prior notification to the DGEG (Directorate General for Energy and Geology).

- In any case, the operating licence or certificate, as applicable, must be applied for within three years of the communication referred to above.
- The time limit for the DGEG to issue an opinion on a request for tests and trials and experimental operation is reduced from 20 to 10 business days.

Technical rules: the installation of renewable energy generating power stations and UPACs must comply with the following determinations, among others, without prejudice to the applicable technical rules:

- Land modelling must ensure infiltration and surface water runoff through the hydrographic network;
- Preservation of the living soil resource with the appropriate natural covering, by planting or encouraging spontaneous natural vegetation, in the entire area of intervention;
- It is preferable for the intervention areas to be closed off using hedges;
- A minimum distance of 1 km around rural and urban land, except in cases where the urban land is destined for economic activity; and
- Territorial concentration of the renewable energy generating plant, storage facilities and UPACs ensuring a reduction in the area occupied, as well as a decrease in the number and size of the lines connecting the generating centre to the RESP (Public Service Electricity Grid) to ensure greater protection of the land resource and the environment.

Local community involvement project

- Prior control procedures for the installation of (i) power generating centres and UPACs with power equal to or greater than 20 MW or of (ii) primary wind power generating centres with at least 10 towers must be supported by a project proposal for the involvement of local communities.
- Among others, the legislature presents as non-binding examples of measures to involve local communities those that promote local employment, biodiversity with the involvement of local associations and populations, and the option of co-investment in the power plant for the local population.
- This means that something that was previously only a good practice and followed by few market players now becomes mandatory.

Integrated Pollution Prevention and Control (“PCIP”)

The production of hydrogen by electrolysis from water, using electricity from renewable energy sources, is not subject to the Integrated Pollution Prevention and Control Rules (*Prevenção e controlo integrados da poluição* - “PCIP”)

- PCIP rules, regulated by [Decree-Law 127/2013](#) of 30 August.

The production of hydrogen by electrolysis from water, using electricity from renewable energy sources, is not subject to the Integrated Pollution Prevention and Control Rules.

Gas suppliers with a portfolio above 2000 GWh/year are obliged to incorporate at least 1% green hydrogen or biomethane in the natural gas supplied in their supply.

Wind-powered electricity generating centres

- Without prejudice to the injection of additional energy and the guarantee of the safety and reliability of the grid or quality of service, wind-powered electricity generating centres may inject more than the assigned connection capacity into the RESP (Public Service Electricity Grid).

Incorporation of biomethane and hydrogen by electrolysis from water

- Gas suppliers with a portfolio above 2000 GWh/year are obliged to incorporate at least 1% green hydrogen or biomethane in the natural gas supplied in their supply. This must be proven by guarantees of origin. However, this may not be feasible at the moment because guarantees of origin for renewable gases are not yet in place and, for example, self-consumption of renewable energy is not eligible for issuing guarantees of origin.
- The DGEG will issue an order to define the incorporation calendar.

Some of the additional requirements and material demands established in this legislation still need to be set out in greater detail or clarified by the responsible bodies. ■