MAY 26

INFORMATIVE NOTE

ENERGY

New approach to managing electricity grid capacity

This diploma aims to create and regulate a set of mechanisms for the amendment of reserve capacity titles ("**TRCs**"), complementing Decree-Law No. 15/2022, of 14 January, as amended ("**DL 15/2022**").

Rationale and objectives

As stated in the preamble, the diploma arises to overcome the limitations of DL 15/2022 regarding flexibility, optimisation, and reconfiguration of allocated capacity for injection into the public electricity service grid ("**RESP**").

The objective of the diploma is to expand the range of options available to interested parties to ensure that they effectively use the grid capacity allocated to them, successfully developing their projects, while promoting a more dynamic and efficient management of the grid injection capacity.

As this diploma is declared to be complementary to DL 15/2022 and aims to create additional flexibility beyond that provided for therein, it should, in our view, be understood that the mechanisms created under this diploma do not prejudice the other rights provided for in DL 15/2022, nor do they intend to create additional restrictions on their exercise.

Mechanisms

To achieve these objectives, the legislator created the following mechanisms for amending TRCs, additional and complementary to those provided for in DL 15/2022:

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Energy team

1. Mechanisms for changing the qualitative object of the TRC (i.e. technology or interconnection point)

i) **Technology change.**

The ability to change the technology is regulated, both of power plants with TRC in the general access modality, and in the modality of agreement with the grid operator, although unequally for both[1], insofar as in the second case only the alteration of up to a maximum of 20% of the injection capacity is allowed.

The regime also presupposes a ratio of at least 1:1 between installed power (in AC) and injection power, although this is only implied and is not explained in the diploma.

In the event of a partial change in the TRC technology in the form of an agreement for storage installation, a maximum grid charging power of 25% of the power subject to change is allowed to be required.

ii) **Hybridisation**.

The general right to hybridisation under DL 15/2022 is also reaffirmed, which DL 100/2026 clarifies in some respects. While the change in technology modifies the base technology that is the subject of the TRC, hybridisation adds to it a technology that shares, in whole or in part, the connecting capacity of the TRC.

It should be noted that, regarding hybridisation, the diploma clarifies that – as already follows from DL 15/2022 – all TRCs are hybridisable and that the power plant resulting from hybridisation can start operating before the base power plant.

Although it is suggested that the failure to commence operation of the base power plant within the legal deadline may lead to the expiry of the TRC, article 76 of DL 15/2022 is clear in the sense that the validity of the prior control title of the power plant resulting from hybridisation (and the power of the TRC that it uses) is not impaired by the termination of the prior control title of the base power plant. This is, in fact, a basic rule to ensure the legal certainty of hybridisation projects.

The ability to change the technology is regulated, both of power plants with TRC in the general access modality, and in the modality of agreement with the grid operator, although unequally.

iii) **Change of interconnection point.**

It is now possible to change the interconnection point of the TRCs in the modality of agreement with the grid operator and at the request of the interested party. For TRC issued in the general access modality, this right already existed, under the terms of article 18, paragraph 14, of DL 15/2022.

1 In the case of changing the technology of the TRCs under the modality of agreement with the grid operator, the legislator designates this mechanism as a "partial reduction of injection capacity", since, theoretically, it is possible simply to reduce part of the capacity instead of using that same part for a new technology. However, as no reduction in grid connection charges is envisaged in the event of a reduction (unlike what occurs in the case of assignment), in practice this mechanism appears to be useful only as a means for a partial change of technology.

In a split off, it is mandatory to make available to third parties, through the regulated mechanism of assignment provided for in the diploma, a part of the capacity of the split-off TRC.

2. Mechanisms for changing the quantitative object of the TRC (i.e. injection capacity)

i) **Split off.**

It allows the split of the capacity covered by a TRC allocated in the modality of agreement with the grid operator into separate TRCs, up to a maximum of three. The objective is to allow flexibility for each TRC to have its own destination, which may be subject to changes in the interconnection point and technology, be transferred to third parties or subject to hybridisation, in general terms.

However, some restrictions are foreseen:

- It is mandatory to make available to third parties, through the regulated mechanism of assignment provided for in the diploma, a "part" of the capacity of the split-off TRC (although a minimum amount to be ceded is not defined), within a logic close to a sharing of benefits and taking into account the scarcity of the grid capacity resource;
- A minimum of 50 MVA is established for TRCs for connection to the transmission grid;
- It refers only to the change of technology for storage facilities, although the regime of this diploma allows the change to another production technology (this may possibly be an oversight);
- The legal text also suggests that the change of the interconnection point to the grid is allowed only for the capacity that has been made available for transfer, although doubts remain about the prescriptive or declarative nature of Article 9(2), from which this interpretation appears to derive. The conditioning of the partial change of the interconnection point is paradoxical since without splitting the change of the interconnection point (in its entirety) is possible.

ii) **Aggregation.**

It allows the pooling of capacities that are the object of different TRCs (allocated in the general access modality or in the modality of agreement with the grid operator), allowing an increase in the scale of the projects. However, aggregated TRCs shall refer to the same grid and transmission grid substation or voltage level, depending on whether they refer to the distribution grid or transmission grid.

iii) **Waiver.**

The right to partially or totally waive the injection capacity included in a general access TRC is regulated, without activation (or with only partial activation) of the deposit.

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3. Mechanisms for changing ownership and/or reconfiguring the object of TRCs

i) **Exchange.**

The exchange of injection capacity held under different TRCs of agreement is allowed, entered with the same operator of the RESP, and whose interconnection points belong to the same grid.

Under the law, an exchange contract is a contract in which two parties reciprocally transmit one thing in exchange for another.

To the extent that the transfer of ownership of TRCs was already allowed by DL 15/2022, the useful effect of this diploma should, in our view, lead to the understanding that the exchange allows more than a static exchange of positions in TRCs, allowing the reorganisation of the capacity that is the object of the TRCs exchanged by two or more parties (dynamic or flexible exchange), provided that the maximum power resulting from the exchange does not exceed the sum of the power of the TRCs that are the object of the exchange.

More than a static exchange of positions in TRCs, it might allow the reorganisation of the capacity that is the object of the TRCs exchanged by two or more parties.

ii) **Regulated mechanism of assignment.**

A regulated mechanism is created for the assignment of injection capacity allocated under TRCs in the agreement modality, which seems inspired by the assignments provided for in DL 80/2023, for consumption capacity.

In this case, this mechanism seems to be embodied in the creation of a capacity pool that TRC holders agree to release and whose allocation to third party capacity applicants is intermediated by the grid operator, with a final decision by the DGEG.

In cases of split of TRCs, it is mandatory to make available to third parties, through this pool, a "part" of the capacity of the split off TRC (it is not clarified what the minimum amount to be assigned is). In other cases, the provision of capacity under this regime constitutes an option and does not prejudice, in our view, the transmission of the TRC, under the terms of DL 15/2022 and the position in the agreements with the grid operator.

The assignment leads to a change in the payment and guarantee plan in proportion to the capacity assigned to the total capacity. However, it is not clarified what is the mechanism for the repayment by the assignee of the grid reinforcement charges already paid by the assignor at the date of the assignment agreement, and which may amount to truly relevant amounts.

The assignees of capacity under this mechanism will be, with priority, the applicants in agreement with the grid operator who have not yet received the grid costs (in the order of their respective position), who will have the burden of formalising the request for capacity allocation by assignment, under penalty of forfeiture of the agreement requests.

Applications must be made within 60 days from the entry into force of the decree-law.

General decision conditions and criteria for applications

Applications are subject to the following general conditions and criteria:

i) **Deadline for applications:** applications must be made within 60 days from the entry into force of the decree-law (i.e. since 23 May 2026), and the diploma is in force until 30 June 2027[2];

ii) **Procedure:** the DGEG decides on the requests, after a binding opinion from the grid operator;

iii) **Decision Deadlines:** grid operators have 90 days to issue an opinion; the DGEG has 10 days to decide upon receipt of the opinion (Article 5(2) and (3));

iv) **Eligibility:** for the split-off and exchange, only TRCs in the modality according to the grid operator are eligible;

v) **Decision-making criteria:** apart from the waiver of injection capacity and without prejudice to the nuances provided for each specific mechanism, the satisfaction of requests depends on:

- the technical assessment by the grid operator of the technical feasibility of the requests, as well as any grid reinforcements necessary to meet them. This assessment will be done in aggregate form for all applications;
- The non-prejudice of legal positions of holders of TRCs other than the applicant(s);
- If there is competition between applications that are incompatible with each other, from criteria related to (i) priority of projects with greater licensing maturity (in the case of exchange), to (ii) order of precedence in requests for agreement (in the assignment mechanism). If no other specific criteria are defined, in cases not regulated, the decision must take into account the general principles of technical and economic efficiency, transparency and non-discrimination, promotion of the energy transition and security of the NSS, under the terms of article 3 of the diploma, and other criteria to be defined in the ordinance that will implement the rules of this diploma;
- Neutrality in terms of licensing conditions and security scheme.

vi) **Cumulation of requests:** the diploma admits, with some restrictions, the accumulation of requests.

2 In the case of the change in the technology of the TRCs in the modality of agreement with the grid operator, the legislator labels this mechanism as a "partial reduction of the injection power", since theoretically it is possible to simply reduce part of the power, instead of using that same part for a new technology. However, as no reduction in grid connection charges is provided for in the event of reduction (unlike in the case of assignment), in practice this mechanism seems to be useful only as a means for a partial change in technology.

Conclusion

This diploma brings positive measures that can help boost the sector and strengthen the conditions for the viability of renewable electricity projects in an increasingly challenging economic, social, territorial, and environmental framework for renewable source projects, particularly those from solar sources.

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In fact, some of the measures provided for in this diploma had precedents in wind tenders in the past and the dynamics they allowed contributed to making some of the projects included therein viable.

The implementation of this diploma will certainly bring positive results, and it would be considered that some of the measures should be transposed to the general framework of DL 15/2022 in the future, after testing the practical application of this diploma.

However, there will be challenges that may hinder the effectiveness of the measures envisaged, of which we would highlight three:

i) The restrictive requirements placed on the change of technology of agreement TRCs and the apparently restrictive requirements regarding the split-off mechanism, combined with some relevant interpretative doubts;Some interpretative doubts that result from the diploma, whether regarding the restrictions applicable to the cumulation of the split with other figures, the elasticity of the figure of exchange and the connection of the hybridisation regime with the hybridisation regime provided for in DL 15/2022. Depending on the interpretation that may be given to it, these doubts may be converted into additional opportunities or limitations to those expressly provided for in the diploma;

ii) The fact that the measures are generally dependent on the technical assessment by the grid operators of their feasibility and the impacts on grid reinforcements, which will also depend on the number, capacity and grid areas to which the requests made by developers under these regimes refer. ■