

ENERGY

NEW LEGAL FRAMEWORK FOR THE
NATIONAL ELECTRICITY SECTOR
DL 15/2022, OF 14 JANUARY 2022
ELECTRICITY GENERATION

VdA EXPERTISE



January 2022

Decree-Law no. 15/2022, of 14 January 2022 ("DL 15/2022") was published on 14 January. The act was approved following a public consultation period that included over 160 contributions from players of the energy sector. DL 15/2022 consolidates different electricity sector frameworks foreseen in scattered legislation, while also reviewing and clarifying certain aspects that were raising doubts in the sector.

Our first Flash comprises an overview of the legal framework applicable to power generation licensing (including the procedure to be followed, deadlines and bonds), and highlights relevant aspects developed by the new legal framework.

DL 15/2022 picks up on Decree-Law 76/2019, of 3 June 2019 and retains the requirement of obtaining a title of reserved capacity to inject in the public grid (*título de reserva de capacidade* ("TRC")) before starting any power generation activities. However, the new act changes some aspects of licensing procedure, notably regarding deadlines and bonds to be provided, while adding new legal concepts promoters should heed such as the compensation to the National Electrical System (*Sistema Eléctrico Nacional*) ("SEN"), assignment to municipalities and the requirement to submit power station decommissioning plans.

CAPACITY RESERVATION CERTIFICATES

Electricity generation or storage requires the prior approval of the reservation of capacity set out in the TRC, which then entitles using the point of injection into the public grid with or without restrictions. This prior approval is not required, however, for generation units for self-consumption ("UPAC") that do not inject more than 1 MVA into the RESP, hybridization, over-equipment and repowering projects. TRCs may take the following forms:

General Form

The DGEG will publish the grid availability map (substation and voltage level) for general form applications on its website within six months from the entry into force of DL 15/2022. The applications will be granted on a *"first come, first served"* basis.

Note that DL 15/2022 establishes that grid operators can grant the general form capacity reservation with or without restrictions, but applicants allocated capacity reservation with restrictions are entitled to accept or reject such restricted capacity reservation.

The act also requires providing a bond of EUR 10,000/MVA upon filing the capacity application, which must remain valid up until the commissioning of the relevant generation center. The issue of a TRC is further subject to paying a compensation of EUR 1,500/MVA to the SEN.

Agreement with Grid Operators Form

The new act changed the procedure to reserve capacity through an agreement with the RESP operator. The new procedure begins with the Government's annual publication every 15th of January of the quotas to be allocated according to technology, grid operator, full injection or self-consumption. There are fixed deadlines for both submitting applications (15 March) and the authorities reviewing such applications, namely they must ensure that an agreement is executed with the grid operator by November of the year following that in which the relevant application was submitted. Any processes not included within these timeframes expire but can be resubmitted within a next procedure. The DGEG is further tasked with clarifying the criteria to rank projects and determine the order in which they will be reviewed.

Besides the bond (of EUR 15,000/MVA) to be provided along with the capacity application, interested parties will have to pay an amount corresponding to 5% of the budget accompanying the agreement executed with the grid operator. The remaining amount is secured, but such bond will be released upon full performance of the agreed payment schedule.

Despite the new procedure approved for executing agreements with the grid operator, applications already given a final ranking at the time the act came into force are protected and continue according to their terms under the new DL. The deadlines established in the act will only apply in the calendar year following the year in which the new framework becomes effective. Pending applications will expire but can be resubmitted pursuant to the new act.

PRIOR CONTROL

DL 15/2022 consolidates the licensing procedure of generation activities by type and installed capacity of the relevant generation center as follows:

Production and operation licenses: applicable to non-renewable generation, renewable generation for full injection into the RESP or for self-consumption with an installed capacity >1 MW, autonomous storage with an installed capacity >1MW, generation or autonomous storage when subject to an environmental impact assessment procedure (EIA) or assessment of environmental nuisances and other generation and storage activities not subject to prior registration, prior communication or prior control-exempt.

Prior registration and operation certificate: applicable to renewable generation for full injection into the RESP, with an installed capacity ≤1 MW, generation for self-consumption with an installed capacity of between > 30 kW and ≤ 1 MW, autonomous storage with an installed capacity ≤ 1 MW, and research projects with an installed capacity > 30 kW.

Prior communication: applicable to generation for self-consumption with an installed capacity of between >700 W and ≤ 30 kW, research projects of between > 700 W and ≤ 30 kW, and repowering of solar or wind power stations that maintain or reduce the installed capacity initially established, provided the same remain in the same implementation area. Note that any material changes to the power plant, UPAC, or storage facilities, modifying the core features of the facility (including, but not limited to, technology, fuel or electricity source) are subject to a further prior control as described above, but the existing TRC remains valid.

BONDS

DL 15/2022 changed the rules on bonds (*caução*) to be provided as part of the licensing of generation and storage projects.

General form: EUR 10,000/MVA (capped at EUR 10,000,000) for a minimum 30 months. The bond is extended up to the commissioning of the power plant and must be provided upon the grant of the capacity reservation application;

Agreement form: EUR 15,000/MVA (capped at EUR 10,000,000) for 24 months. This particular bond is released upon submission of the generation license application, which must be accompanied by a security of EUR 10,000/MVA for the reservation of granted capacity (capped at EUR 10,000,000) for a minimum two years. This bond is extended up to the commissioning of the generation center. The amount of the security will be reduced by a third of its original amount upon the issue of the generation license. A security of EUR 5,000/MVA must be provided for projects subject to prior registration.

Forfeiture of Bonds

Bonds will be forfeited to the SEN in the event of the promoters' failure to perform their obligations (including failure to meet the deadlines for securing a generation license or an operating license), but promoters will also forfeit 50% of their bonds if they reject the grid reinforcement costs budget within the context of agreements with the grid operator. As the grid reinforcement costs cannot be forecasted with absolute certainty, the risk of forfeiting the bond based on rejection of the budget could have a significant impact on decisions to invest in projects in the form of agreement.

LICENSING DEADLINES

The Projects' licensing deadlines are among the most contentious novelties introduced by DL 15/2022 even though the act foresees that pending prior control procedures, namely that the deadlines running will have the duration established in the legal framework in force at the time they started to run.

The new framework establishes that generation licenses must be applied for within one year after the issue of the relevant TRC if EIAs are to be conducted. If no EIA is required, the deadline to submit the application drops to six months. These deadlines are considered excessively short by the players in the sector.

The act also establishes quite stringent deadlines for project completion: operation licenses must be applied for within one year from the issue of the production license for instance, save where the grid connection conditions cannot be ensured within that deadline.

DL 15/2022 gives the licensing entity a one-time only option to extend deadlines by one year. Deadlines can also be extended in exceptional cases by order of the member of Government in charge of energy.

Note that the act's transitional provisions establish that promoters of procedures that have already obtained capacity of injection into the RESP before the entry into force of Decree-Law 76/2019, of 3 June 2019 but have yet to secure a production or operation license, or a registration or an operation certificate, have six months from the entry into force of DL 15/2022 to submit the relevant application, otherwise they may lose capacity.

TRANSFERABILITY

According to DL 15/2022, TRCs are transferrable up until the issue of a generation license. The transfer is perfected upon the DGEG or the Grid Operator making the appropriate entry in the certificate. The transfer is however subject to reinforcing the bond by one half of its amount, save where the transfer is made to a SPV specifically incorporated to develop the project and whose only shareholders are the TRC holders.

For the above mentioned purposes, a transfer of TRC is deemed to take place in the event of a direct or indirect change of control over the TRC holder, save where the shareholdings are given as collateral to lenders or in the event of direct changes in control as part of group restructuring operations that do not change the ultimate beneficial owner registered with the Ultimate Beneficial Owners (*Registo Central de Beneficiário Efetivo*).

The TRC transferability regime is also applicable to the production license.

ASSIGNMENT OF MUNICIPALITIES (*CEDÊNCIA*)

One of the major novelties brought by DL 15/2022 is the concept of "assignment" to municipalities, which requires owners of power stations with a capacity exceeding 50 MVA to assign, on a one-time basis and for free, to the municipality where their power station is located, a UPAC with an installed capacity equivalent to 0.3 % of the power plant's connection capacity for installation in municipal buildings or collective use equipment or, as indicated by the municipality, to populations located near the center or, alternatively, electric vehicle charging stations located in public space

(with equivalent capacity).

Promoters with power plants or storage facilities with connection capacity of up to 50 MVA and greater than 1 MVA, or if the abovementioned projects already have installed UPACs, must pay a lump sum compensation in cash of EUR 1,500.00/MVA of connection capacity allocated. The assignments must be executed between the promoters and the municipalities by means of a protocol. If the municipalities should refuse to sign the protocol, the assignment is replaced with the above compensation.

These rules do not apply to promoters whose prior control procedures predate the entry into force of this decree-law.

DECOMMISSIONING PLAN

All promoters are now required to submit a decommissioning plan containing the measures for removing the equipment, facilities, and infrastructure connecting to the RESP, with a view to minimizing the environmental impacts of decommissioning, using the best available techniques to minimize the environmental impacts of decommissioning, whose removal costs are borne by the last holder of the operating license. This rule does not apply promoters that were already required to submit decommissioning plans with their generation license application as part of EIA procedures, or within six months from the entry into force of this act (notably power stations whose commissioning predates its entry into force).

Contactos



MANUEL PROTÁSIO
MP@VDA.PT



ANA LUÍS DE SOUSA
ALS@VDA.PT



VANDA CASCÃO
VC@VDA.PT



CATARINA MILAGRE
CMN@VDA.PT



MARIA GORJÃO HENRIQUES
MMH@VDA.PT



MARTA STOCK DA CUNHA
MSK@VDA.PT