

ENERGY

NEW LEGAL FRAMEWORK FOR THE NATIONAL
ELECTRICITY SECTOR: DL 15/2022, OF 14
JANUARY 2022 | OVERPOWERING,
REPOWERING, HYBRIDS AND STORAGE

VdA EXPERTISE



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This second Flash on Decree-Law 15/2022, of 14 January ("DL 15/2022") is focused on the overpowering and additional energy legal frameworks, which were until today scattered throughout several legal diplomas. We will also review the applicable regimes for hybridization, repowering and energy storage, which so far have been scarcely developed in the electricity sector's legal framework.

Please find below the definitions of the abovementioned concepts, for which the applicable legal regime is established and clarified under the new DL 15/2022.

Overpowering (*Sobre-equipamento*)

Alteration of a power plant using a renewable source which results in an increase of the reserved capacity through the installation of more generating equipment or inverters, up to a limit of 20% of the original power plant's attributed injection capacity, as set forth in the power plant's initial production licence.

Notwithstanding the increase of the installed capacity, the reserved capacity attributed to the power plant for connection to the grid (*potência de ligação*) remains unchanged.

The overpowering legal framework is now applicable to any renewable energy power plant (and not only to wind farms under the guaranteed remuneration regime), except hydroelectric power plants with a connection capacity exceeding 10 MVA.

Additional Energy (*Energia Adicional*)

The active energy resulting from the use of additional capacity (*potência adicional*), excluding the energy resulting from overpowering, if any. Only wind farms in operation at the date of entry in force of DL 15/2022 are entitled to inject of additional energy.

Repowering (*Reequipamento*)

The total or partial replacement of the generation equipment of a renewable power plant, provided that no there is no change to the polygon of installation of the pre-existing power plant.

With the entire repowering of the power plant (excluding hydroelectric power plants with a capacity exceeding 10 MVA) the capacity may be increased a single time up to a maximum of 20% of the initially attributed injection capacity. However, and without prejudice to the award of additional capacity, the right to the repowering with the award of additional injection capacity expires when the targets set out in PNEC 2030 for the respective primary source are achieved.

Hibridization (*Hibridização*)

Adding to a pre-existing power plant or to a self-consumption unit new generation units using a different primary renewable source of energy, without changing the pre-existing power plant or self consumption units reserved capacity

Storage (*Armazenamento*)

The transfer of the end use of electricity to after the same is generated through its conversion into another form of energy, namely chemical, potential or kinetic, for its future use.

Hybridization, overpowering and repowering projects are not subject to obtaining prior reserved capacity to inject in the public grid. Such projects are also not covered by the new obligation of assignment to municipalities (*cedências*), as foreseen under this Decree-Law.

OVERPOWERING

DL 15/2022 revokes the previous framework applicable to the overpowering of wind farms under guaranteed remuneration regime and extends this possibility to any renewable power plant, except for hydroelectric power plants with a connection capacity exceeding 10 MVA.

The overpowering corresponds to a non-substantial amendment to the pre-existing prior control title, and when requested after the issuance of the relevant prior control title, the same does not follow an independent procedure for amendment of the latter. Therefore, this amendment to the prior control title shall only be subject to prior authorisation of the licensing entity. This authorisation is then endorsed to the pre-existing title and, when applicable, to the operation licence or operation certificate. The request for an amendment to the licence is instructed with the same elements foreseen for the request for a production licence, if applicable to the overpowering authorisation request. Similarly, the procedure for integrating the overpowered project in the original power plant (thus becoming a single power plant), as well as the conversion of the overpowered project into an independent power plant also follows the procedure described above.

The energy of the overpowering (i.e., the energy generated through the additional equipment installed, up to the limit of the additional capacity) is remunerated at a price determined under organized market or under a bilateral contract. However, please note that the overpowering power plants in operation, as well as the overpowering power plants under licensing procedures on the date of entry into force of DL 15/2022, and those that will be authorised under the transitory regime of the previous applicable remuneration regime are entitled to maintain the applicable remuneration regime until its relevant term.

The energy from the overpowering shall in any case be invoiced separately.

The energy generated by the overpowering power plant is subject to curtailment instructions when necessary to ensure the safety and reliability of the grid or the quality of the service.

The possibility of legal separation of the overpowering is maintained in this regime, i.e., the overpowering is developed by a legal entity different from the owner of the original power plant, provided that the same is controlled by the holder of the existing power plant.

For such purpose, the holder of the original power plant and the holder of the overpowering shall enter into an agreement setting forth the terms of the legal separation. However, both entities are jointly and severally liable towards the licensing and supervisory authorities, as well as grid operators.

DL 15/2022 further clarifies that the overpowering power plant shall not be transferred separately from the original power plant, even in cases of legally separated overpowering, except when such transfer takes place under a group restructuring and provided that the ultimate beneficial owner is the same.

However, please note that in case termination of the pre-existing power plant prior control title leading to the transformation of the overpowered power plant into an independent power plant, the reserved capacity awarded to the overpowered plant is maintained, whereas the remaining capacity is released.

ADDITIONAL ENERGY

We would like to highlight that wind farms in operation on the date DL 15/2022 comes into force may inject the additional energy awarded under the prior control title to the grid, under the terms to be defined in a connection agreement with the grid operator.

In overpowering and hybrid projects, the original power plant's prior control title termination does not trigger the loss of the prior control title for overpowered or hybrid power plant, and the remaining reserved capacity is released for award under the general terms foreseen in DL 15/2022.

The injection of additional energy is also subject to curtailment instructions as applicable in overpowering projects.

Please note that the overpowering remuneration regime is also applicable to the injection of additional energy.

REPOWERING

DL 15/2022 sets forth the applicable licensing procedure to project repowering, which was not previously foreseen in the legislation, thus clarifying some of the issues faced by promoters when renovating their facilities.

Similarly to overpowering, the repowering also entails a non-substantial amendment of the pre-existing prior control title. However, the repowering of a solar or wind power plant shall only be subject to prior register in case the same maintain the original reserved capacity.

This regime also foresees that the repowering of a solar or wind power plant is not subject to an Environmental Impact Assessment procedure, regardless of whether or not the original power plant has been subject to such procedure, provided that, in the case of wind farms, the repowering does not entail an increase in the number of towers.

Considering that the repowering regime allows an increase of capacity up to a maximum of 20% of the awarded injection capacity, DL 15/2022 further clarifies that the remuneration for the repowering corresponding to such increase in the injection capacity is remunerated under the market regime.

HIBRIDIZATION

As already set forth in previous legislation, although with a different designation, hybridization follows a prior control procedure, thus being subject to a production license, prior register or prior communication, depending on the criteria foreseen in DL 15/2022. However, the licensing entity shall inform the applicant of the elements already delivered and existing in the scope of the initial prior control procedure which remain valid at the moment of the request.

It is also clarified that in hybridization procedures, the subsequent prior control title shall expressly identify the reserved capacity awarded to the new power plant and entails the amendment of the original title of reserved capacity accordingly.

In case of termination of the pre-existing prior control title, the reserved capacity identified in the subsequent prior control title is ensured, and a new title of reserved capacity is issued by the General-Directorate of Energy and Geology (*Direção-Geral de Energia e Geologia*) ("DGEG") under the name of the holder of the new production unit and the remaining injection capacity becomes available for new assignment.



Similarly to the legal separation of the overpowering, hybridization may be granted to a different entity from the owner of the original power plant. However, in this case, there is no obligation that the entity that will develop the hybrid power plant is controlled by the owner of the pre-existing power plant. In any case, an internal regulation or agreement - under the terms of a draft approved by the DGEG - and setting forth the management of injection of electricity to the public grid between the two entities shall be delivered with the production licence application.

The transfer of the prior control title issued for the hybrid project follows the general procedure for the transfer of a production licence, i.e., the same is subject to DGEG's consent. In addition, the transfer is also subject to authorisation of the holder of the pre-existing power plant, as counter-party of the abovementioned agreement.

Lastly, it should be noted that, in case of hybridization of power plants benefitting from a remuneration scheme awarded under a tender procedure or with guaranteed remuneration or other subsidized remuneration, the DL 15/2022 ensures priority of injection to the public grid of all the electricity generated by the power plant under the special regime, according to the generation profile of the respective installation.

STORAGE

Further to the first reference to storage solutions being introduced to the sector's legislation in 2019, storage has been considered within the scope of tender procedures for the award of reserved capacity and well as for the project rankings for the award of the reserved capacity through agreement with grid operator. DL 15/2022 finally sets forth the applicable legal framework for the licensing of such facilities.

In case where electricity generation comprises a storage solution, the prior control procedure applicable to generation incorporates the storage activity. However, if exercised autonomously, this activity shall be subject to a separate prior control procedure under the terms of DL 15/2022.

The storage facility holder may also provide several services to the system (*serviços de sistema*) simultaneously, when technically viable.

On the other hand, grid operators are also entitled to own and operate electricity storage facilities intended primarily for the provision of services to the system (*serviços de sistema*).

As such, and for the purposes of achieving the main goals of services to the system, the grid operators may make available to third parties not used storage capacity, at a cost and under terms to be regulated by Energy Services Regulator (*Entidade Reguladora dos Serviços Energéticos*) ("ERSE").

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