

CS' Legal Update 02'22

Incentive to the Production of Renewable Hydrogen and Other Renewable Gases.

The Portuguese government has approved legislation on public subsidies for the production of renewable hydrogen and other renewable gases, in another crucial step towards a decarbonized economy. The new legislation is aimed at fostering investments by private and public entities, which will have to work together in close coordination.

O [rder No. 98-A/2022](#), of the 18th of February, recently approved the Regulation of the Incentive System to Support the Production of Renewable Hydrogen and Other Renewable Gases (the "Regulation"). The Regulation is a part of the Recovery and Resilience Plan ("PRR") in the component of Climate Transition and in the dimension of C14-Hydrogen and renewables.

This *legal update* highlights the four key aspects established by the Regulation for granting subsidies to renewable hydrogen production projects, namely: (A) Beneficiaries, (B) Projects, (C) Expenditure and (D) Financing.

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Legal Framework:

Firstly, we highlight the following key pieces of legislation applicable to the production of renewable hydrogen and to the granting of financial support:

[Regulation \(EU\) 2021/241](#) of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility ("**RRF**");

[Commission Regulation \(EU\) No 651/2014](#) of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ("**RGIC**");

[Decree-Law No. 6/2015](#), of 6th of January, which establishes the conditions and rules to be observed in the creation of incentive systems applicable to companies in mainland Portugal;

[Decree-Law No. 62/2020](#) of 28th August, establishing the organization and functioning of the National Gas System and its legal regime ("**DL 62/2020**");

[Resolution of the Council of Ministers No. 63/2020](#) of 14th August approving the national strategy for hydrogen and setting targets to be met by 2030 ("**EN - H2**");

[Resolution of the Council of Ministers No. 53/2020](#) of 10th July, which approves the National Energy and Climate Plan 2030 ("**PNEC 2030**");

[Resolution of the Council of Ministers No 107/2019](#) of 7th January approving the Roadmap for Carbon Neutrality 2050 ("**RNC2050**").

A. Beneficiaries

A.1. Eligibility

Potential beneficiaries of support under the Regulation must meet a number of eligibility criteria.

- beneficiaries must be duly incorporated as public or private legal entities;
- they must not have any tax and social security debts or overdue wages;
- beneficiaries must have the required legal qualifications and standing, and have the technical, physical, financial and human resources necessary to perform the project by the date on which the application is approved;
- potential beneficiaries must be in a balanced economic and financial position or have the capacity to finance the project and be able to prove that they are not financially impaired, as defined by the Regulation.

A.2. Obligations

Beneficiaries will be subject to the specific obligations defined in the respective tender procedure notices (announced on the [PRR](#) and [Environmental Fund](#) websites) as well as in the financial support contracts to be entered into by the environmental regulator and the ultimate beneficiary, after completing a procedure where applications are analysed and selected and a favourable decision is rendered.

However, the Regulation does establish certain obligations for ultimate beneficiaries, such as:

- beneficiaries must give the necessary permissions to access the places where the projects will be developed and to sites where the elements and documents necessary for monitoring and controlling the project are located;
- they must keep all data relating to the investment made in digital format;
- they must publicize the support they have received;
- they must uphold the legal conditions necessary for performance of the activity; and
- the goods and services acquired in the context of the projects cannot be used for any other purposes, for leasing, be disposed of or taxed without the Environmental Fund's prior authorization.

B. Project

B.1. Type

Projects eligible for funding shall aim to produce renewable gases from energy generated by installations using renewable energy sources only, i.e., wind, solar (thermal and photovoltaic) and geothermal energy, ambient energy, tidal, wave and other forms of maritime energy, hydraulic, biomass, landfill gases, wastewater treatment plant gases, and biogas.

B.2. Maturity

In addition to the above, the potential beneficiaries of incentives provided for in the Regulation are obliged to demonstrate that the projects for which they wish to obtain support under the Regulation have the appropriate degree of maturity. Doing so will entail the following, among other things: (i) they have an obligation to submit the documents regarding the application for prior registration for the production of renewable gases, as provided for in Article 70 of DL 62/2020, (ii) they must obtain a prior opinion from the Directorate General of Energy and Geology, stating that the project falls within the classifications described in **B.1.** and (iii) they must produce a descriptive report regarding the project that includes technical specifications and a justification of the investment costs.

C. Expenses

C.1. Eligible	C.2. Ineligible
Extra costs required to promote the production of renewable gases (where they can be identified as a separate investment in the overall cost of the investment, e.g. a component added to a pre-existing installation), corresponding to the difference between the costs of:	Investments related to the production of renewable energy (electricity or heat) for use in the production process of renewable gases, as well as equipment for the consumption of renewable gases produced.
(i) investment for the production of renewable gases provided for in the project and	Internal costs of the beneficiary entity.
(ii) investment in a conventional facility for the production of natural gas steam reforming hydrogen of the same capacity in terms of effective energy production.	Expenditure of consumption or conservation and maintenance, as well as operating expenses of the beneficiary entity.
	Property purchases, including land.
Ancillary investments with storage, transport and distribution of renewable gases, technical support systems for optimized management of the production of renewable gases provided that they are strictly related and indispensable for the technical/economic feasibility of the project, subject to the maximum standard cost of investment by previously defined technology.	Company transfer and land or property use rights.
	Investment for electricity transport infrastructure.
	Recoverable VAT, regardless of effective recovery by the beneficiary.
	Interest and financial charges.
Costs incurred with intangible investments provided that they have been shown to have been acquired under market conditions and from third parties not related to the acquirer.	Manager's fund.
	Current advertising.

D. Financing

Financial support will be granted in the form of a non-reimbursable subsidy, which will not exceed a funding rate of 100% of the validated eligible costs. The support allocated is also subject to the thresholds defined in regulations on state aid, in particular the maximum financing threshold of €15 Million per company and per investment project, as defined in the RGIC.



Conclusions

The Regulation, which will be effective retrospectively from 28th September 2021, defines the criteria and mechanics for granting financial support to the production of renewable hydrogen and other renewable gases. In particular, it provides mechanisms for implementing the tender procedure opened by [Notice No. 01/C14-i01/2021](#), for the support of renewable gas production projects, first published on 28th September 2021, and republished subsequently.

In view of the limitations described above defined for compliance with state aid legislation – in particular related to project maturity, eligible costs and the maximum funding threshold – the parties that will primarily be interested in obtaining financial support using this route will be producers who wish to adapt pre-existing projects to fit the concept of production of renewable hydrogen and other renewable gases as defined by the Regulation and by DL 62/2020.

However, any public or private legal entities wishing to enter the market for the production of renewable hydrogen and other renewable gases may benefit from the financial support covered in the Regulation provided that they comply with the criteria described above. Indeed, in order to meet the targets set by the EN-H2, PNEC2030 and RNC2050, it is not only desirable, but ultimately necessary to attract new investors as a way of promoting the gradual introduction of green hydrogen as a sustainable cornerstone of a broader transition strategy towards a decarbonized economy.

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