

Flash

Energy

Special and extraordinary regime for the development and operation of small-scale biomass powerplants

Framework

Decree-Law no. 64/2017, 12 June, sets forth a special and extraordinary regime for the development and operation by municipalities or by municipalities' decision, inter-municipal communities or specific purpose municipal associations of small-scale biomass powerplants. The aforementioned Decree-Law was approved following a public tender open by the Government in 2006 for the construction and operation by private entities of residual biomass power plants. Nevertheless, after the end of said tender procedure, about 50% of the total available grid injection capacity (100MW) for that purpose was not installed.

Afterwards, Decree-Law no. 120/2019, 22 of August, amended and republished those rules, following the approval by the European Commission of rules for the support of biomass powerplants located near forest areas of critical fire hazard (for further information see [*Flash New Biomass Power Plants: Special regime October 2019*](#)).

Order no. 76/2021

Order no. 76/2021 was published on the 1st of April 2021 to densify number 5 of article 5 of Decree-Law no. 64/2017, as amended. Said Order sets forth the following:

- First, the elements that shall be included in the production and operation license requests for the relevant biomass power plants;
- And also, the rules that shall be followed within the potential auction procedure to be carried out by the General Administration for Energy and Geology (*Direção-Geral de Energia e Geologia*, DGEG) when the number of requests for the development and operation of the relevant power plants exceeds the available injection capacity in the Public Service Electricity Grid (*Rede Elétrica de Serviço Público* RESP) – on the continent, 60MW – as set forth by article 3 of Decree-Law no. 64/2017, as amended.

About the Requests

Let us begin by focusing on the elements that shall be included on the requests for the licenses which are necessary for the development and operation of the relevant biomass power plants.

According to article 4 of Decree-Law no. 64/2017, as amended, the granting of **production** and **operation licenses** for the development and operation of the relevant biomass power plants, is governed by the rules for production of electricity from cogeneration¹. Notwithstanding, the Order expressly determines the specific rules which are applicable to the requests and the remaining elements that shall be included in the license requests.

For the **production** license the promoters shall include in the request:

- Certified copy of the public contract whereby municipalities, inter-municipal communities or specific purpose municipal associations have transferred the power to develop and operate the relevant biomass power plants;
- Full identification of the applicant, including the email address;

¹ Approved by Decree-Law no. 23/2010, of 25 March, in the current wording.



- Project for the construction of the cogeneration facility, including descriptive memory, drawings, proof of the right to use the land and precise description of the location;
- Demonstration of the calculation of primary energy savings;
- Demonstration of the fraction of primary energy consumption from renewable sources, where applicable;
- Demonstration or contractual proof with third parties, if applicable, of the use of thermal energy produced in cogeneration;
- Schedule of the actions necessary for the installation of the cogeneration unit, including the indication of the deadline for entry into operation;
- Conditional favorable or favorable environmental impact statement or environmental compliance decision for the implementation project;
- Approved architecture project or favorable prior information, when the production facility in cogeneration requires the execution of an urban operation that is subject to prior control;
- Reserved Capacity Title for the injection in the RESP not exceeding 10MW, except for self-consumption production without injection of excess electricity in the RESP or with injection of surpluses that is equal to or less than 1 MVA;
- Opinion of the Portuguese Environment Agency, I.P., when there is no environmental impact assessment procedure;
- Opinion of the Institute for Conservation of Nature and Forests, I.P., on the sustainability of the resource to be exploited by the biomass power plant.

Operation license

Once the plant is installed, the promotor shall submit the following documents to obtain the operation license:

- Declaration signed by the technicians responsible for the design and supervision of the construction attesting that the installation is completed and the power plant prepared to operate according to the approved project and in compliance with the conditions integrated in the final decision of granting the production license;
- Proof of the entering into the mandatory civil liability insurance;
- Declaration of acceptance of the safety report, where required, if dangerous substances in certain amounts are at the establishments;
- REN's favourable opinion as global manager of the National Electricity System;
- Opinion of the competent RESP operator on the compliance with the conditions for connecting and injecting energy into the network;
- Air emissions title issued by the territorially competent Regional Coordination and Development Commission, where applicable;
- Where applicable, title of use of water resources for captures or discharges that are not carried out through municipal supply and sanitation systems.

The auction procedure

Let us move on to the second part of the Order, which establishes the potential auction procedure to be promoted by DGEG for the determination of which requests for development and operation of the relevant biomass power plants are deferred after being included in the limit of 60MW of available injection capacity in the RESP.

First, DGEG shall draw up the list of promoters entitled to participate in the auction procedure and publish it on the website, which means, the promoters who have submitted requests for the granting of production and operation licenses for biomass power plants.

Then, at least three weeks in advance from the beginning of the auction procedure, DGEG prepares and publishes the auction procedure's program and timetable. Subsequently, DGEG should organise a clarification session for the training of participants.

“ DGEG shall draw up the list of promoters entitled to participate in the auction procedure and publish it on the website “



After the end of the auction, DGEG proceeds to draw up the preliminary list of results which is ordered in descending order of the offers of discounts to the market premium, which is due together with the price of the Iberian Electricity Market (MIBEL) as remuneration for the electricity produced by the relevant biomass power plants and injected into the RESP. Participants have five days to respond to the order of the preliminary list.

Once the pronouncement or the deadline for pronouncement has finished, participants are notified of the provisional final list. The provisional final list shall be transformed into a definitive list by multiplying the discount offer by the percentage of energy produced for self-consumption and subsequently notified to the participants.

Pursuant to Article 3(6) of the Decree-Law in analysis, reserved capacity titles issued on behalf of auction participants who do not win, shall expire. In this case, the security provided pursuant to Article 5A of Decree-Law no. 172/2006 is reimbursed to the promoter.

Concluding

The potential auction procedure set forth by this Order aims to prevent the injection capacity allocated for this specific type of biomass power plants from exceeding the available 60MW that initially motivated the publication of Decree-Law no. 64/2017. This purpose becomes clear through the expiration of the reserved capacity titles that have been issued on behalf of promoters who do not win the auction procedure.

Despite that, it is incumbent upon us to ask why the limit was not established beforehand. For example, by auction procedure for the award of plots of reserved capacity from the available 60MW for this type of biomass power plants? Perhaps excessive capacity for the development and operation of the relevant biomass power plants has already been awarded.

We also ask, since it is not clear, when will the requisite for the application of this special regime be assessed? This is, at what time will the excess of requests for development and operation of this type of biomass power plants be assessed?

Finally, the concept of the set of requests at hand is dubious. Is this concept limited to the requests of production licenses? Or, perhaps, it also includes applications for operation licenses?

If the answer to this second question is affirmative, what happens to the production licenses that had been issued when the reserved capacity title for injection in the Public Grid expires?

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André Salgado de Matos
Benedita Líbano Monteiro