

National Electric System: Legislative Review

Decree-Law no. 15/2022, of 14 January, which will come into force on 15 January 2022, amends the basic regulatory framework of the electricity sector, including renewable energy (the “**National Electric System Law**”).

Some of the most important amendments introduced by National Electric System Law are referred below. We highlight three positive aspects of the law: it (i) clarifies and simplifies procedures for granting energy production and storage titles, (ii) promotes self-consumption and participation of consumers in renewable energy communities and citizen energy communities, and (iii) provides regulation for repowering, hybrids, hybridization and storage.



Electricity Generation from Renewable Sources (except hydroelectric power generation): important amendments

Deadline to request the issue of the production license. One year (for projects that require environmental impact assessment) or six months (for projects that do not require environmental impact assessment) counted from the date of the injection capacity reservation title.

The production license is issued within the maximum deadline of one year counted from its request.

Deadlines for the issue of the operating license. One year counted from the date of the production license, with some exceptions.

Definition of different deadlines and extension of deadlines. Deadlines may be set differently for the auctions aimed at granting injection capacity reservation titles.

The deadlines may be extended at request:

- in case they are not achievable for reasons not attributable to the titleholder, being a one-off extension limited to the maximum period of one year;
- in exceptional circumstances justified by the titleholder, being the extension authorized by the member of Government responsible for the energy sector and not subject to limitations.

For power plants that have production licenses issued for at least five years and that benefit from guaranteed remuneration (feed-in-tariffs), the exceptional extension authorized by the member of Government responsible for the energy sector causes the modification of the remuneration regime, which becomes market price or bilateral agreements.

Failure to request the production license and obtain the production license and the operating license within the deadlines determines the cancellation of the injection capacity reservation title.

Small production units (“UPPs”): deadline to request the issue of the operating certificate. Nine months counted from the date of the prior registration certificate, except in case the grid operator delays the delivery of the conditions to access the grid, in which case DGEG (*Direção-Geral de Energia e Geologia*) will determine the suspension of the deadline for the period corresponding to the delay.

UPPs: extension of deadline. The deadline to request the issue of the operating certificate may be extended at request, being a one-off extension limited to the maximum period of half the statutory deadline. Extension by the member of Government responsible for the energy sector in exceptional circumstances seems to be admissible in the same terms described above (although the law is not clear).

Collateral. Different rules depending on the method for granting the injection capacity reservation title:

- General access: the collateral amount is €10,000.00 per MVA, with a maximum amount of € 10 Million for a period of 30 months, which will be extended until the power plant starts commercial operation.
- Direct agreement with the grid operator: the collateral amount is €15,000.00 per MVA, with a maximum limit of € 10 Million for a period of 24 months; Following the execution of the agreement, a collateral is required in the amount of €10,000.00 per MVA for issue of the production license, with a maximum amount of €10 Million, for a period of two years, which will be extended until the power plant starts commercial operation.
- Competitive procedure (auction): auction rules will determine the amount, duration, type of collateral and entity to which the collateral is delivered.

For UPPS, the collateral amount is €5,000.00 per MVA and it shall be delivered to DGEG until five days after the acceptance of the prior registration.

Change of control. The following actions are considered a transfer of the title and are subject to the regime applicable to the respective title transfer, notably the following:

- Change of the direct or indirect control of the holder of the injection capacity reservation title until the issue of the production license – not subject to authorisation from DGEG;
- Change of the direct or indirect control of the holder of the production license until the issue of the operating license – subject to authorisation from DGEG; and
- Change of the direct or indirect control of the holder of the prior registration (for UPPs) until the issue of the operating certificate – subject to authorisation from DGEG.

Transfer of the injection capacity reservation title. The injection capacity reservation title may be transferred until the issue of the production license. This new regime applies to injection capacity reservation titles granted under the general access regime, direct agreement with the grid operator and under competitive procedures (auctions). The transfer is made through endorsement in the title.

The transfer requires the increase of the collateral amount by half of its mandatory amount. This requirement is not applicable, in case:

- The title is transferred to a new company whose sole shareholder is the entity that holds the title;
- Security is created over the shares of the titleholder in favour of financing entities;

- There is a direct change of control as a consequence of the enforcement of pledge over the shares of the titleholder in favour of financing entities;
- There is a direct change of control over the titleholder in the context of group restructuring transactions, provided that the ultimate beneficial owner registered in Portugal remains unchanged.

Transfer of the production license. Transfer of the production license is subject to prior authorisation from the licensing entity (DGEG).

Until the issue of the operating license, the transfer of the production license:

- Is subject to prior authorisation from DGEG (as per the general rule above);
- Requires increase of the collateral amount, except where exempted as described above (*see transfer of injection capacity reservation title*);
- Direct and indirect change of control is deemed as transfer of the production license (and the two bullets above shall apply).

Transfer is conditioned to the satisfaction of all the legal requirements applicable to its issue.

The application for the transfer of the production license must include information concerning the identification of the transferee, and its technical and financial suitability.

DGEG shall decide on the transfer request within fifteen business days as of the submission of such request (deadline suspends in case clarifications are requested).

The transfer of the production license causes the assignment of all the elements that integrate or are endorsed in the license. We note that, once issued, the operating license integrates the conditions of the production license.

UPPs: transfer of the prior registration. Until the issue of the operating certificate the transfer of the prior registration:

- Is subject to prior authorisation from DGEG;
- Requires increase of the collateral amount, except where exempted as described above (*see transfer of injection capacity reservation title*);
- Direct and indirect change of control is deemed as transfer of the prior registration (and the two bullets above shall apply).

This regime does not apply if the UPPs are for self-consumption.

UPPs: aggregation of UPPs. The application for prior registration of a power plant or storage facility which distances less than 2 kms from another that has already obtained the prior registration, the new power plant or storage facility will be subject to the licensing regime applicable to a power plant or storage facility with a capacity that corresponds to the sum of the installed capacity of both power plants or storage facilities.

UPPs: change in location. Until the end of the deadline to reject the prior registration, the location of the UPP may be changed, for one single time, provided that the grid injection point is not changed.

Compensation to Municipalities. The owner of the power plant or storage facility with connection power exceeding 50MVA will have to make a one-off contribution, free of any costs, to the Municipality or

Municipalities where the plant / facility is located.

Under this regime, the owner of the power plant or storage facility must install a self-consumption production unit with installed capacity equivalent to 0.3% of the connection power of the power plant / storage facility in municipal buildings or equipment for common use, or in other alternative locations indicated by the Municipality. Alternatively, the owner may install electric vehicles charging stations in public locations or for public use with the same capacity.

The owner of the power plant or storage facility with connection power exceeding 1 MVA, but equal to or lower than 50MVA, shall pay a compensation equivalent to € 1,500.00 per MVA.

The compensations do not apply in case the titles are changed for repowering or overequipment of the power plant and in case the titles are issued for hybridisation.

Phased start of commercial operation. Upon request, the operating license may establish a phased entry into commercial operation of the power plant.

Closure plan. Clear rules are created in relation to the closure plan. The new law establishes measures that shall have to be included in such plan.

The National Electric System Law is applicable to pending licensing procedures, without prejudice without prejudice to acts already performed. The following transitory rules apply:

- The deadlines that are already running within pending licensing procedures will have the same duration as foreseen in the legal regime currently in force, and the deadlines that apply to the subsequent stages of the procedures will follow the regime established in the National Electric System Law.
- Article 22(10) (cancellation of the requests for attribution of injection capacity reservation) is not applicable to procedures pending with DGEG that are awaiting the electric system reception capacity after the draw and the delivery of the collateral; in these cases, the attribution of the injection capacity will occur once capacity is available, as well as the production license.
- Without prejudice to the foregoing, in the procedures where the injection capacity has been granted prior to the entry into force of Decree-Law nr. 76/2019, of 3 June, and that have not obtained production license or operating license, nor prior registration or operating certificate, as applicable, the applicants shall have six months counted from the date of entry into force of the National Electric System Law to apply for the applicable licenses / registrations / certificates, otherwise the procedures will be closed and the capacity will be made available.
- In the cases foreseen in the two previous points, the licensing procedures will follow the terms established in the National Electric System Law.
- The new rules on aggregation of UPPs are not applicable to the licensing procedures that have started before the entry into force of the National Electric System Law.
- All procedures concerning requests for direct agreements with the distribution or transport system operators that have been finally ranked in the terms of reference ranking published by DGEG until the date of entry into force of National Electric System Law shall proceed in accordance with the new terms set out in the new law, being the deadlines referred to 2023.



- The procedures concerning requests for direct agreements with the distribution or transport system operators that are not included in the previous point will be closed, and the applicants may apply again for an agreement in accordance with the terms of the National Electric System Law.
- Article 49 (compensations to Municipalities) is applicable to the owners of power plants or storage facilities that have obtained injection capacity reservation title after the entry into force of the National Electric System Law.

The National Electric System Law aims at adjusting the laws and regulations in force to the new challenges and profound transformation brought by national and international goals towards carbon neutrality. It also implements Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU and, partially Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

14 January, 2022

Mafalda Ferreira

Partner CS'Associados

e: mafalda.ferreira@csassociados.pt

Marco Alves

Trainee CS'Associados

e: marcogamalielalves@csassociados.pt

csassociados.pt