

The Portuguese Government approved four Decree-Laws aimed at reforming the forest sector, based on three main areas of intervention: territorial planning and management of the forest, ownership of the property and protection of the forest in the areas of prevention and firefighting. These diplomas were published on 12<sup>th</sup> June 2017, namely:

- [Decree-Law no. 64/2017, of 12 June](#), that defines new rules for the construction and operation, by municipalities, of power plants to produce energy (electricity and heat) from forest biomass;
- [Decree-Law no. 65/2017, of 12 June](#), that updates the Legal Framework for Forest Management, Intervention, and Zoning Plans, approved by Decree-Law no. 16/2009, of 14 January, as amended, aiming at a better clarification of the relation between the regional forest zoning programs and other programs and plans for territorial management and a stronger protection of the forests by providing the authority to monitor compliance with such rules to the Institute for Nature Conservation and Forests (*Instituto da Conservação da Natureza e Florestas*) (“ICNF”);
- [Decree-Law no. 66/2017, of 12 June](#), that sets forth the conditions and procedure for the recognition of forest management entities (agricultural cooperatives, private limited-liability companies or public limited-liability companies), who shall manage forest areas belonging to several owners in order to enhance their profitability by means of joint management;
- [Decree-Law no. 67/2017, of 12 June](#), that updates the rules for creating forest intervention areas (ZIFs), approved by Decree-Law no. 127/2005, of 5 August, as amended, as well as enhances the creation of new ZIFs and improves the operation of existing ones.

The biomass installed capacity in Portugal is currently of 564 MW (according to provisional data available on [DGEG’s website](#)), 60% of which is located in the central region of the country, whilst the indicative target for 2020, adopted by Portuguese Renewables’ Action Plan for 2013-2020 and the National Energy Strategy for 2016<sup>1</sup>, is of 769 MW.

Considering its relevance in complying with the 2020 indicative targets and in supporting the protection of the forest, land and forest preservation and firefighting, we highlight Decree-Law no. 64/2017, of 12 June (“Decree-Law 64/2017”), namely the following aspects: (I) scope and purpose, (II) location of power plants, (III) municipal initiative, (IV) applicable procedure and (V) price support mechanism.

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<sup>1</sup> Both adopted by Order in Council no. 20/2013, of 10 April.



## I. Scope and purpose

Decree-Law 64/2017 assigns to municipalities the power which has not been fully mobilized by the private sector in the context of the international tenders launched in 2006 by the Directorate General of Energy and Resources (*Direcção Geral de Energia e Geologia*) (“DGEG”) for 15 new biomass power plants – i.e. around 50% of the 100 MW of injection power then put out to tender.

Specifically, the power to inject (*potência a injectar*) to the electric grid of public service (“Public Grid”) is limited and cannot exceed, on the mainland, 60 MW and each power plant up to 15 MW.

The power plants shall use biomass and may also use up to 5%, on an annual basis, of fossil fuels (made from coal, petroleum and natural gas) as ancillary and starting fuel.

## II. Location of power plants

The biomass power plants installed pursuant to Decree-Law 64/2017 must be located in the counties (*concelhos*) to be designated by Order in Council to be approved by the members of Government responsible for civil protection, local authorities, energy and environment and forests affairs.

In order to achieve the greatest impact on fire fighting and forest preservation, said location and the power attributed to each power plant shall be selected on the basis of the following criteria:

- The proximity to critical areas of fire (*zonas críticas*)<sup>2</sup> or areas with forest stands;
- The existence of power reception capacity in the grid;
- The proximity to other forest biomass power plants or other forestry industries, that are consumers of forest biomass;
- The possibility of implantation preferably in zones or industrial parks, or other business location areas or zones that enable or complement, in addition, the use of thermal energy.

## III. Municipal initiative

The municipalities of the counties selected pursuant to the abovementioned criteria shall build and operate the biomass power plants in order to produce electricity and heat, either directly or through intermunicipal communities (*comunidades intermunicipais*) or municipal associations (*associações de municípios*) with specific purposes (both created under Law no. 75/2013, of 12 September, as amended).

The construction and operation rights may also be transferred by the entities referred to above to different public or private entity, according to the relevant legal rules.

The transfer is therefore subject to prior authorization by DGEG, the procedure being initiated upon request of the holder of the reception point (*ponto de recepção*) or the production license (*licença de produção*), which shall: (i) indicate briefly the decisive reasons for such transfer; (ii) identify the prospective transferee; (iii) attach a statement of the transferee accepting the transfer and all the licensing conditions; and (iv) attach the proof of

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<sup>2</sup> As defined by Decree-Law no. 127/2005, of 5 August, as amended.



payment of the applicable fee. Once the authorization for the transfer has been granted, the transferee must request DGEG, within the deadline set by the latter, the registration (*averbamento*) of the production license in its name, attaching for this purpose a certificate of the contract that titled said transfer. The authorization expires if, within the same period, the legal transaction that titles the transfer is not concluded.

#### **IV. Procedural rules**

For the construction and operation of the biomass power plants, Decree-Law 64/2017 sets forth the following specific rules:

- The municipality shall request to DGEG the issuance of the reception point (*ponto de recepção*) to inject the electricity into the Public Grid as well as the production license (*licença de produção*), pursuant to the terms to be approved by an Order in Council from the Government;
- Following completion of construction of the biomass power plant, the municipality shall present a prior communication with deadline (*comunicação prévia com prazo*) before DGEG in order to enter into operation, which shall replace for all legal purposes the operation license (*licença de exploração*);
- Within no more than 30 (business) days DGEG shall perform an inspection (*vistoria*), according to the relevant legal rules;
- After said term, if the inspection has not yet occurred, the municipality may apply for an inspection by an accredited entity and enter into operation after communicating the respective result to DGEG and paying the applicable fees (when applicable).

The instructive elements of the prior communication with deadline shall be set forth by an Order in Council to be issued by the member of Government responsible for energy affairs.

#### **V. Price support mechanism**

To support the sale of electricity produced in the biomass power plants to be approved and built pursuant to Decree-Law 64/2017, an Order in Council shall be issued by the member of Government responsible for energy affairs which will define the terms to be observed for the purchase of electricity by the last resort supplier (*comercializador de último recurso*)<sup>3</sup>, as well as the remuneration regime to be applied, taking into account the following principles:

- Terms of the purchase of the electricity supplied to the grid must be included in a contract to be executed between the producer and the last resort supplier;
- The availability of thermal energy is freely contracted by the producer;
- The remuneration of the electricity supplied to the grid benefits from a price support mechanism with defined duration;
- The amortization period of the power plant may not be less than above mentioned duration.

The more favorable price shall apply provided that all the following conditions are met:

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<sup>3</sup> Currently EDP Serviço Universal S.A., pursuant to article 73 of Decree-Law no. 29/2006, of 15 February, as amended.



- Use of no more than 5% of fossil fuels (as abovementioned);
- Within 6 months from the entry into operation of the power plant, presentation of a 10-year action plan with a view to long-term sustainability of supply of power plants to be delivered to the ICNF<sup>4</sup>;
- Submitting to DGEG and ICNF an annual report on the biomass consumed, by 31 March of each year, identifying, *inter alia*, the quantity, nature and origin of the same;
- Consenting the monitoring by the ICNF of the biomass consumed.

In line with Order in Council no. 69/2017, of 16 February, Decree-Law 64/2017 expressly prohibits the accumulation of the price support mechanism with public subsidies or non-repayable grants, either to the construction or operation of the power plants. In such cases, the power plants will be subject to a reduction or even elimination of the applicable price support mechanism, until the full neutralization of the impact of the non-refundable subsidy, after which they can resume the guaranteed remuneration for the remaining duration of the same, if it is still at course.

## VI. National Plan of Bio-refineries

The [Resolution of Council of Ministers no. 163/2017, of 31 October](#), adopted the National Plan of Bio-refineries, under a policy of valuing the renewable energy sources and in the context of the use of the biomass, in accordance with the existing national potential. A strategy with the 2030 horizon is thereby assumed to promote all types of advanced bio-refineries in the country from biomass, so far not valued, waste or low economic value, such as agricultural and forestry waste biomass.

Portugal has biomass residues available throughout the continental territory, with potential to be used in bio-refineries and for energy purposes (electricity, heat and advanced biofuels).

Please find below a chart identifying the estimated quantity of residual forest biomass for energy purposes (ton/year), by forest species and by NUTS II (i.e. Nomenclature of Territorial Units for Statistical Purposes):

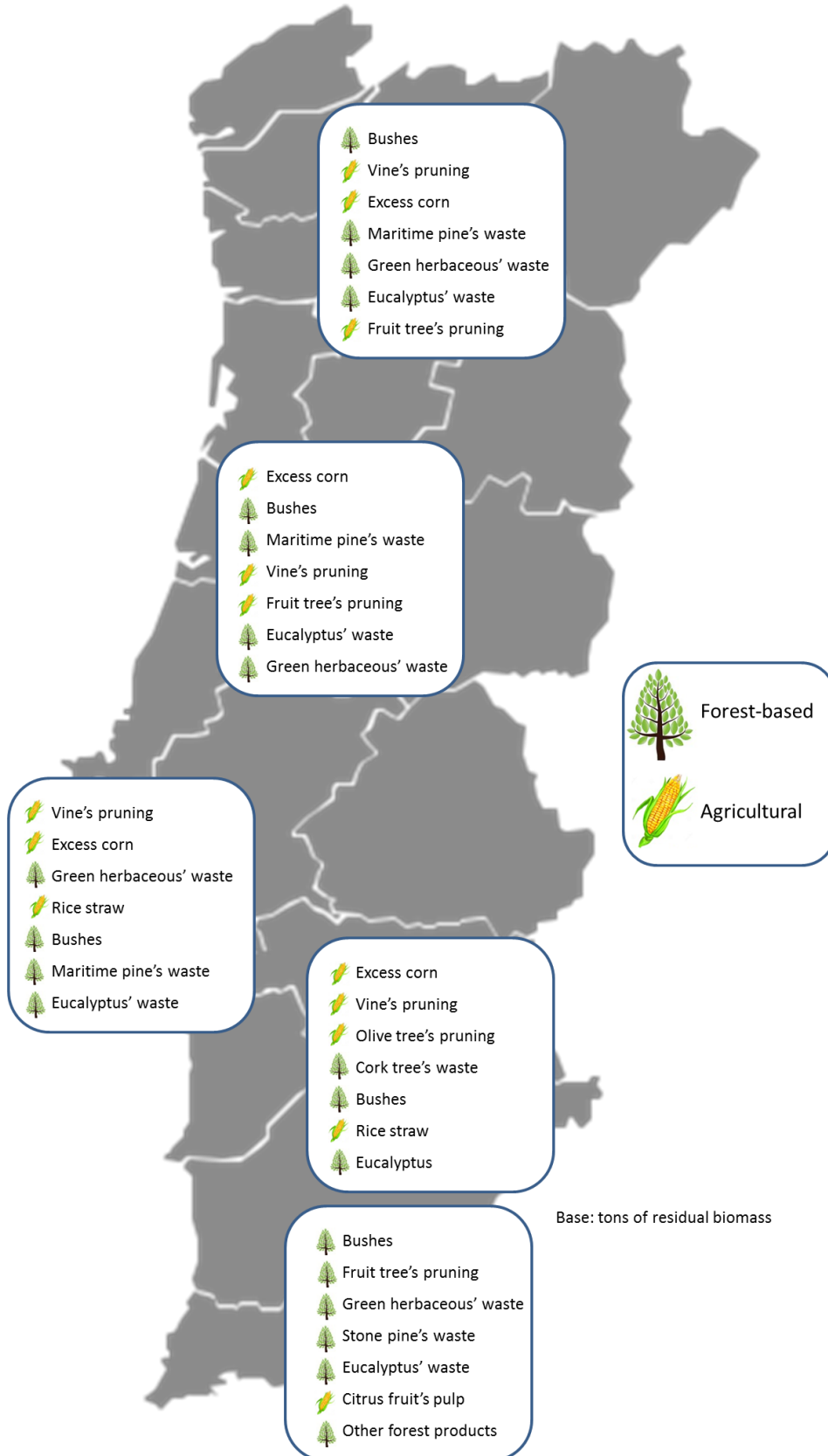
NUTS II Region	Maritime Pine	Stone Pine	Eucalyptus	Cork Tree	Holm Oak	Oak Tree	Other Forest Species	Green herbaceous waste	Bushes
North	168 547	-	82 401	2 792	1 396	65 376	57 204	100 000	373 979
Centre	331 474	-	216 733	9 504	4 752	34 770	20 862	100 000	342 613
Lisbon MA*	9 108	5 443	9 108	5 108	-	432	2 160	52 000	24 041
Alentejo	31 108	53 449	124 432	130 441	78 265	-	8 484	89 000	129 611
Algarve	3 630	17 820	15 246	7 306	2 977	-	8 172	100 000	155 126

Lisbon AM = Lisbon Metropolitan Area

<sup>4</sup> The said plan is ruled by Decree-Law no. 5/2011, of 10 January, as amended, and shall be developed in close cooperation with forest producers' organizations and local authorities.



Also, please find below the main categories of residual biomass produced by NUTS II:





## VII. Final remarks

Decree-Law 64/2017 came into effect the day after being published, i.e. 13.06.2017, setting forth a special regime aiming at providing attractive conditions to build and operate a considerable number of biomass power plants at a local scale. The scope of such measures is the protection of the forest in close proximity with the areas of prevention and firefighting as well as the potential boost in local and regional development; whilst the greatest challenge will be how the relevant municipalities will be able to put together the know-how and funding necessary to implement such projects.

Much remains to be defined, particularly as regards the rules for the issuance of the reception point and the production license and key aspects of the remuneration applicable to the sale of electricity produced in the biomass power plants.

The specific configuration of elements yet to be defined will have a significant impact in the success of this measures and will shape the terms of the future collaboration between the promoters and the financing entities and those that will provide the necessary technical knowledge to the implementation of such projects.