

Decree-Law no. 72/2022



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The implementation of REpowerEU, amendment of Decree-Law no. 30.-A/2022 and other measures.

REPowerEU (further addressed [here](#)) establishes policy measures aimed at accelerating the energy transition in the EU by, among other things, making it easier for renewable energy power plants and storage units to enter into operation. By increasing the number of power plants and storage units that supply and store renewable energy in the EU, the plan aims to (i) diversify the available sources of energy, (ii) control the rise in energy prices and (iii) ensure EU's independence in the supply and storage of energy, as a reaction to Russia's military invasion of Ukraine and to the historic rise in energy prices.

Following [Decree-Law no. 30-A/2022](#), of the 18th of April (“**Decree-Law no. 30-A/2022**”) which approved a first batch of exceptional measures to implement the aforementioned policy, the Portuguese Government approved a new set of exceptional measures by approving [Decree-Law no. 72/2022](#), of the 19th of October. The aim of these new measures is to:

1. further simplify the administrative procedures necessary for renewable energy power plants to enter into operation;
2. provide incentives to the municipalities that host renewable energy power plants;
3. address the issue of the financial viability of projects subject to feed-in tariffs and that have reserve capacity titles awarded in the tender procedures held in 2019, 2020 and 2021; and
4. prioritise the start of construction of infrastructure projects that are already at an advanced stage with regard to the required administrative procedures.

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1. Simplification of administrative procedures

Three main measures were added to the measures already in force (pursuant to Decree-Law 30-A/2022) to simplify the administrative procedures that precede the entry into operation of renewable energy power plants.

First, power plants, storage units and self-consumption production units with an installed capacity of 1MW or less are exempt from prior urban planning verification, joining the already exempt production units specified in the urban planning and construction regime (“RJUE”)¹ and in article 48 of Decree-Law no. 15/2022².

Second, power plants, storage units and self-consumption production units with an installed capacity of more than 1MW are subject to the simplified procedure of prior notification (*comunicação prévia*) as set forth by the RJUE; there is no need to submit a prior information application (*pedido de informação prévia*) in advance.

Third, Municipalities can only reject the prior notification if (i) the project breaches applicable legal and regulatory provisions (ii) there is a declaration of public utility for the purpose of expropriation that covers the building subject to the licensing application (iii) a binding negative report has been issued or a consulted entity has refused approval pursuant to applicable law or (iv) it negatively affects the landscape heritage, except if the territory of the municipality in question has an area of less than 2% occupied by renewable energy projects or a favourable or conditionally favourable environment impact statement has already been issued for project in question, in which case the application cannot be rejected.

Experience has not yet shown us how the market will receive these simplified measures. This notwithstanding, it is possible that lenders financing renewable energy projects – which are now exempt from prior urban planning verification – will still request that verification as a condition precedent to the financing, thus hindering the effectiveness of these new simplification measures. It is nevertheless true that this has not been the case with the exemption implemented by Decree-Law no. 30-A/2022 on the need for an operating license/operating certificate to start production, which has been

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¹ Decree-Law no. 555/99, from 16th December, as amended.

² Establishing the organisation and functioning of the National Electricity System.

well received by lenders/investors. However, unlike the exemption from the operating license/operating certificate, which is accompanied by an obligation to obtain it within a deadline of three years, the new measures described above are not accompanied by a parallel obligation. ^{CS'}

2. Incentives to municipalities

Municipalities will receive compensation from the Environmental Fund (Fundo Ambiental) amounting to 13,500 EUR per MVA of attributed connection capacity. That compensation accrues on top of the compensation set forth by article 49 of Decree-Law no. 15/2022. Payments to municipalities will begin from the 1st of January 2023 onwards.

The lack of financial viability of tendered projects (further explained below) has shown us that it is not sufficient merely to grant connection capacity to effectively accelerate the energy transition. To ensure that the compensation granted by the Environmental Fund effectively translates into an increase in production or storage of renewable energy, it would have been safer to establish the effective construction of installed capacity within the municipality as a trigger for granting the incentive. As it stands, there is a risk that the incentives will be granted while the production or storage units are never actually built. ^{CS'}

The lack of financial viability of tendered projects has shown us that it is not sufficient merely to grant connection capacity to effectively accelerate the energy transition.

3. Priority for advanced projects

The competent System Operator (distribution or transmission) will prioritise procedures for executing agreements for the construction or reinforcement of grid infrastructures if, at the date when Decree-Law no. 72/2022 entered into force, favourable or conditionally favourable environmental impact statements had been issued for the corresponding projects. This measure aims, with limited risk due to the advanced stage in the licensing procedure, to ensure that the grid capacity is increased to allow the granting of more connection capacity. ^{CS'}

4. Financial viability of tendered projects

In 2019, 2020 and 2021, the DGEG³ carried out tender procedures to award grid connection capacity (1400MW in 2019 and 700MW in 2020) in the form of feed-in tariff reserve auctions. As a result of those tender procedures, several producers were awarded reserve capacity titles and the value of the corresponding feed-in tariffs was established.

Due to unforeseen circumstances such as the COVID-19 pandemic, the war in Ukraine, the scarcity of raw materials and the resulting rise in project construction costs, rising inflation and interest rates combined with the fixed sale price per MW established in the tender procedures, those projects became financially unviable.

Two measures have been implemented to ensure that these projects, representing a combined awarded connection capacity of over 1820 MVA, are financially viable and effectively built. **First**, (i) the experimental period and (ii) the corresponding deadline to obtain the operation license for those projects have been extended

by an extra 12 months. During that period, producers will not be bound by the feed-in tariff value established in the tender procedure. The electricity generated during the experimental period will be sold at market price. As such, producers will benefit from an extra 12 months of market remuneration. **Second**, the power plant remuneration will be updated according to the Consumer Price Index from the date of the award of the reserve capacity title until the date on which the relevant power plant enters into operation. ^{CS}

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2nd of November 2022