



Sérvulo & Associados | Sociedade de Advogados, SP, RL



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Update

Energy

Extension of exceptional measures to simplify procedures for the production of energy from renewable sources

SÉRVULO's Energy team |

Decree-Law no. 22/2024 of 19 March was published yesterday, extending the exceptional measures to simplify procedures for producing energy from renewable sources, amending Decree-Law no. 30-A/2022 of 18 April, which will remain in force until 31 December 2024.

The legislator has thus come to recognise that the measures contained in that Decree-Law have made it possible to achieve extremely important progress for the country, having contributed to achieving the goals and objectives set at national and European level, particularly with regard to reducing dependence on fossil fuels and accelerating the territorially just energy transition, understanding that, given the current political context, it is necessary to ensure the continuity of these measures until the new government considers their definitive validity.

Recalling the important contributions of Decree-Law no. 30-A/2022 of 18 April, which truly opened the door to simplifying procedures for producing energy from renewable sources, it is worth highlighting some of the most important measures which were then introduced:

1. Under the Environmental Impact Assessment Legal Framework (Decree-Law no. 151-B/2013, of 31 October), it is no longer mandatory for the environmental impact assessment (EIA) authority to give its opinion on projects for the installation of renewable energy power plants, storage facilities, UPACs and the respective connection lines to the RESP, as well as on projects for the production of hydrogen by electrolysis from water, that are not located in sensitive areas, which will now only take place at the request of the licensing authority when there are evidence that the projects are likely to have a significant impact on the environment.

It also established the integration of administrative procedures for issuing opinions and authorisations into the EIA or analysis of environmental implications (“*análise de incidências ambientais*”) procedures, as well as the reduction to 10 days of the deadlines for issuing mandatory opinions set out in sectoral regimes applicable to the projects in question, the absence of which is equivalent to the non-opposition to the continuation of the procedure.

Also, within the scope of the EIA, Decree-Law no. 30-A/2022, of April 18, established that power plants for self-consumption using a primary solar source are exempt from EIA when:

- i) They are installed in built structures or buildings, except in the case of classified buildings or those in the process of being classified and their respective protection zones; or
- ii) Are installed in existing or future artificial areas, such as shopping complexes, department stores, industrial parks or allotments, logistics platforms, campsites and car parks, except on artificial water body surfaces;

2. However, of even greater relevance and impact was the rule introduced by the Decree-Law in question, according to which the entry into operation of renewable energy power plants, storage facilities and UPACs no longer depends on the prior issue of an operating license or operating certificate, but can now begin after the communication by the grid operator that the conditions for connection and injection of energy into the grid have been met and after prior notification to the Directorate-General for Energy and Geology (DGEG). In turn, the operating license or operating certificate now only has to be applied for within three years of such notification by the grid operator, and the DGEG may even waive the need for a prior inspection.

Thus, the deadline established in Decree-Law no. 15/2022, of 14 January, for the issuance of the operating license or operating certificate now only applies to the entry into operation of the power generation centre, storage facility or UPAC, under penalty of the expiry of the RESP injection capacity reservation title or prior registration under the terms established in that Decree-Law;

3. The prior control procedure for the installation of renewable energy source power plants and UPACs with an installed capacity of 20 MW or more, or for the installation of a wind power primary source power plant with at least 10 towers, is now to be instructed with a proposal for local community involvement projects;

4. The decree also established the possibility for wind power generation plants to inject energy into the RESP above the assigned connection power, where the provisions of articles 72 and

73 of Decree-Law no. 15/2022 of 14 January for retrofitting apply, with the necessary adaptations;

5. Finally, a reference to the simplification introduced in article 4-A, regarding the control of urban planning operations inherent to these projects, which will be the subject of an autonomous update, also with a view to analysing some issues related to the combination of this regulation with the changes introduced to Decree-Law no. 555/99, of 16 December (RJUE), by the so-called "*Simplex Urbanístico*" (Decree-Law no. 10/2024, of 8 January).

Notwithstanding the enormous importance of the extension of the measures introduced by Decree-Law no. 30-A/2022, of 18 April, operated by Decree-Law no. 22/2024, of 19 March, the need for which was evident given the doubts that arose as to whether they would expire, it is important to note that the temporary nature of these measures, which were extended for a short period of 8 months (until 31 December 2024), should be overcome in the future, and it is hoped that Decree-Law no. 15/2022, of 14 January, will perhaps be amended to include these "exceptional" measures as a rule.