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Update

Real Estate, Tourism and Urban Planning

Extension of the temporary regime for renewable energy production licences

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European Council Regulation (EU) 2024/223 of 22 December 2023 amending Regulation (EU) 2022/2577, which established a special scheme to accelerate the deployment of renewable energies, was published last 10 January.

The regulation created special rules aimed at reducing the length and complexity of licensing procedures, which were a fundamental obstacle to the speed and scale of investments in renewable energies, and introduced specific measures for licensing, in particular for urban licensing of certain renewable energy technologies and types of projects with greater potential for rapid deployment, in order to mitigate the effects of the energy crisis.

One of the temporary measures introduced by Regulation (EU) 2022/2577, which has had positive effects and has the potential for significant acceleration in the future, was the introduction in Article 3 of a rebuttable presumption that renewable energy projects are of overriding public interest and important for public health and safety, for the purposes of certain derogations provided for in the applicable Union environmental legislation.

Article 6 of Regulation (EU) 2022/2577 also allowed member states, if certain environmental protection conditions are met, to introduce exemptions from certain environmental impact assessment obligations imposed in EU environmental legislation for this type of project.

Regulation (EU) 2022/2577 would cease to apply on 30 June 2024 and in the interests of clarity for investors and authorities about the legal framework, the Regulation now published makes minor

changes and extends the provisions of that other regulation. The special rules of Regulation (EU) 2022/2577 will therefore remain in force until 30 June 2025.

It should be noted that, in the context and implementation of these European regulations, Decree-Law no. 30-A/2022 of 18 April had already been published in Portugal, approving exceptional measures to ensure the simplification of procedures for producing energy from renewable sources, which was amended by Decree-Law no. 72/2022 of 19 October. From an urban planning point of view, the introduction of Article 4-A was extremely important, establishing a particularly swift and simple procedure for prior control of the urban planning operations inherent to these projects.

This rule was subject to an evaluation within 180 days of its entry into force regarding the effectiveness, administrative gains and environmental impacts of its application. This deadline has long since passed and we don't know what assessment has been carried out. What is certain is that, as stipulated in article 11 of Decree-Law 30-A/2022, this rule, like the others in the exceptional regime approved by this law, will be in force for two years, ending next April 2024.

The above-mentioned extension at European level of the temporary regime for speeding up the process of granting licences, applicable to the production of energy from renewable energy sources, will most probably determine the extension of the validity of the rules of Decree-Law 30-A/2022, and the assessment of the rule in Article 4-A on prior control of urban planning operations should be made at that time.

It will be the ideal time to carry out a much-needed review/clarification of various issues that have arisen over the past two years of practical application of this legislative provision, namely with regard to clarifying the combination with the rules of the Legal Regime for Urbanisation and Building (RJUE), approved by Decree-Law no. 555/99, of 16 December, in particular with the rules now introduced by the recently published "Simplex", approved by Decree-Law no. 10/2024, of 8 January, which will come into force next March. In the context of this law and the changes introduced in terms of exemption from prior control - which cannot fail to be taken into account here, in the interests of harmony and coherence of the solutions adopted -, we would almost be tempted to say that the special regime to be applied to these projects should become that of exemption from control, at least in certain cases.

If it is decided to maintain prior control through the prior communication procedure with a deadline, it would be important to clarify (i) the grounds for rejection, with regard to the concept of negative impact on the landscape heritage, (ii) some aspects of the letter of the law relating to the processing of prior communication and the counting of deadlines, (iii) that the rule in paragraph b) of no. 10 prevents any type of administrative act from being carried out to jeopardise the rights of non-rejection within the legally stipulated deadline, and finally (iv) the meaning and effects of the rule in no. 14 and finally, (iv) the meaning and effects of the rule in paragraph 14, namely whether it is, as we have been arguing, a

presumption of legality of these projects resulting from the presumption of public interest arising from Regulation (EU) 2022/2577.