

# Momentum

---

**Solar Power  
Projects**

---

**37**

Practical aspects and  
challenges from an urban  
planning perspective

---

**3rd quarter**

---

**2023**



# Solar Power Projects

Practical aspects and challenges  
from an urban planning perspective

## Index

- 01** What type of soils can be allocated to the execution of this type of projects?
- 02** Is it possible to associate this type of project with others, of a different nature, to be developed on the same soil, for example, agricultural or forestry projects?
- 03** What kind of constraints may exist for the development of these projects from an urban planning point of view?
- 04** Is it possible for a municipality to suspend the municipal plans in force to accommodate my project in the municipality?
- 05** In which situations are these projects subject to urban licensing proceedings?
- 06** My project has a PIP. Which rights does the PIP entitle my project? Can I extend the PIP deadline?
- 07** Is it necessary to have an Environmental Impact Assessment?
- 08** Which entities may be involved in approving my project?
- 09** Do I need a use permit issued by the municipality or the operating license issued by the energy administrative authority (DGEG) is enough to start operations?



# Solar Power Projects

## Practical aspects and challenges from an urban planning perspective

Portugal is among the countries in Europe that benefit from better conditions for the installation of photovoltaic power stations, with irradiance values (kWh/sqm) only observed in certain regions of Spain and Italy. Solar power plants are thus multiplying in the country, whether for delivering energy to the grid or for self-consumption.

Decree-Law 72/2022, of October 19, aiming to accelerate the installation of new photovoltaic capacity in Portugal, guarantees faster licensing, and financial compensation to Municipalities of 13,500 euros for each MW installed in their territory thus improving the administrative authorities will towards licensing of solar power plants.

After publication of Decree- Law 72/2002, the European Council has issued Regulation (“EU”) 2022/2577 of December 22, 2022, establishing a regime to accelerate the deployment of renewable energies, published in the Official Journal of the European Union on December 29, 2022. Purpose and scope of this regime is to establish temporary emergency rules to speed up the licensing procedure applicable to the production of energy from renewable energy sources, with special emphasis on specific technologies or types of energy projects renewable energies capable of accelerating in the short term the pace of deployment of renewable energies in the European Union.

However, companies still face several challenges from an urban planning and licensing point of view, either related to the urban planning instruments in force, which are still often outdated in relation to the new energy market reality, or with the difficulties arising from the interpretation and combination of the various regimes involved in the administrative procedures prior to the installation and operation of solar power plants.

This publication aims to be a summary, in the form of questions and answers, of the main aspects of the legal framework and of the main challenges felt by operators in relation to the urban control proceedings involved in the implementation of solar power plants.

## 1.

### What type of soils can be allocated to the execution of this type of projects?

There is no specific type of soil suitable in terms of its framework in urban regulations for the implementation of this type of project.

The location of the soil is decisive for various technical reasons, but the main issue regarding the type of soil from the point of view of territorial management instruments, results from the size of the land needed for the implementation of the projects. Given that urban land already has a high building load, it is difficult to find land available for the implementation of this type of project, so the land located in areas qualified in the urban planning instruments as rustic land are the ones that prove to be the most attractive and with the greatest feasibility of hosting photovoltaic projects.

It is essential that, at the level of the applicable urban planning instruments, the possibility of allocating the land to this type of use is foreseen in a more or less direct way, being that the production of solar energy, due to its specificity, does not fit into the traditional categories of uses, housing, commercial, industry, agricultural, forestry and agriculture – forestry mixed use. Operators are not infrequently faced with difficulties arising from the antiquity of municipal plans, which have not yet been adapted to this new reality and contain very restrictive provisions as to the permitted uses for each category of soil, in particular with regard to the categories of rustic soil, namely agricultural and forest areas.

Most of the so-called new generation municipal master plans already contain rules for framing installations for the production of renewable energy, but these are still far from covering the entire national territory. Indeed, this new

generation of municipal urban master plans (the “PDMs”) establishes provisions that aim to make the infrastructure compatible with other activities or occupation of the land with which they may interfere, namely the implementation of solar panels on metallic supports at a level above the ground that allows their coexistence with the natural fauna and flora and with agricultural holdings, extensive livestock, small greenhouses, etc. In this sense, it is foreseen the possibility of implantation, in the various categories of soils, of Infrastructures and equipment to take advantage of the ecological potential, namely renewable energy producing units.

The qualification of the territory has therefore been adapting not only from the point of view of guaranteeing the preservation of other values, but also of positively identifying the areas with the greatest vocation for the installation of wind farms, photovoltaics, or other energy production infrastructures. renewable energies and associated infrastructure, identifying them as uses compatible with the main uses of other natures.

Rules are even established to encourage the adoption of local energy production solutions (micro production) to support activities in buildings, from renewable sources (enabling convergence towards buildings and activities with energy needs close to zero), considering, in particular, (i) the consideration of these operations as of little urban relevance under certain conditions (for example: the installation of photovoltaic solar panels or wind generators associated with the main building, for the production of renewable energies, including micro-generation, do not exceed, in the in the first case, the coverage area of the building and its height at 1 m, and, in the second, its height

at 4 m and the generating equipment does not have a radius greater than 1.5 m, as well as solar thermal collectors for domestic water heating do not exceed the limits established for photovoltaic solar panels) and (ii) reduction of urban fees.

It should be noted that the issue of framing this type of projects in older urban plans that do not expressly provide for the type of use associated with these projects has been debated urbanists and in the sense of the eventual admissibility, in a case-by-case analysis, the following arguments have been adduced:

- a. Photovoltaic solar power plants are part of the concept of urban operation in the modality, not of building, but of urbanization works, as they are works of creation and remodelling of infrastructures with manifest proximity to the other infrastructures referred to, for example, in paragraph h) of article 2 of the Urbanization and Construction Legal Regime (“RJUE”), such as electricity and gas networks.
- b. From the point of view of the applicable rules, it must be borne in mind, that most of the planning instruments in force regulate buildings more closely and strictly because, these have a more perennial character in its implantation in the ground.
- c. Most of the time, such plans define rules aimed at regulating buildings, not having application to the type of territorial infrastructures we are dealing with in photovoltaic projects.
- d. Thus, if it is certain that projects of this type do not correspond, in the case of plans that did not expressly foresee them, to the dominant uses for which the space where they are intended to be installed is oriented, such use can, in most cases, be there materialized, ensuring that the compatibility requirements are in place, which in most cases are defined in the plans themselves.
- e. As they are located in agricultural or forest production areas, the implementation of this type of project does not, as a rule, diminish or destroy the agricultural, forestry or geological potential of the soil and its environmental, landscape and ecological value; quite the contrary, in multiple situations, the implementation of this type of project enhances its value, especially in cases, like many that we have appreciated, which are based on ecological premises: there is, in fact, often, on the part of the promoter, an intention (and a concern) that the development is environmentally responsible, first of all by not using concrete, asphalt or any non-reusable or biodegradable components.
- f. This occupation, due to the stability of the proposed actions with a time horizon of 20 or 30 years, often allows the maintenance of permanent vegetation coverings with high ecological value, made up of autochthonous shrub species, with no room for recurrent operations capable of increasing erosion and the pedogenesis. This configures the effective possibility of protecting the soil resource, and also water through strategies, often contained in the project, for its conservation.
- g. Even in more restrictive regimes, these actions are not excluded from the outset. For example, the National Ecological Reserve regime allows these installations without specific conditions and requirements [Ordinance no. 419/2012, of December 20, in Annex I, Point II, letter f)]; only in areas at risk of erosion and in areas threatened by floods it is subject to a mandatory and binding opinion by the Portuguese Environment Agency. And in the National Agricultural Reserve regime (RAN – Decree-Law no.73/2009, of March 31) article 22 (concerning the use of areas covered by this restriction for public utility purposes) expressly identifies installations or equipment for the production of energy from renewable energy sources even if, with the requirement that they do not cause serious damage to the objectives referred to in article 4 and there is no viable alternative outside the lands or soils of the RAN, with regard to the technical, economic, environmental and cultural components, and should preferably be located on land and soils classified as less suitable.

It is therefore possible to defend the compatibility of this use with the dominant uses for which the categories of space where it is intended to be located, corresponding to a use that does not jeopardize the principles that should guide the occupation of the rural soil, namely, not compromising the use of natural, agricultural, and geological resources or biodiversity and the fundamental natural and anthropic biophysical integrity of the territory. However, when the use is not expressly accepted or results from the use of undetermined concepts, such a conclusion will always depend on the free appreciation of each Municipality before the specific project under analysis.

## 2.

### **Is it possible to associate this type of project with others, of a different nature, to be developed on the same soil, for example, agricultural or forestry projects?**

The association of solar panels with other types of projects, in particular agricultural projects of an innovative nature, is widely developed in several foreign countries and is beginning to gain momentum in Portugal.

Agro-photovoltaic systems provide shade (as effective as trees) for food crops and at the same time produce energy with photovoltaic (solar) panels. In this way, it is possible to protect the crops from excess heat (it works best in summer crops), maximize the return on agricultural land use and mitigate climate change. The results applied to a plot of 2 000 sqm allowed verifying a return on land use of 1.6. That is, a field of 100 hectares, with a combination of crops and solar panels, is as productive as a field of 160 hectares, where agricultural and energy production is separated into different parts of the land.

The association of the various uses involved in this type of project brings, however, added challenges in terms of the urban framework, insofar as the soil on which the project will be implemented must be suitable for both uses, which is not always easy considering the existence of numerous municipalities where the new generation of PDMs have not yet been implemented.

## 3.

### **What kind of constraints may exist for the development of these projects from an urban planning point of view?**

The choice of potentially suitable land for the execution of this type of project must also take into account, in addition to the uses allowed in the applicable municipal urban plans, any constraints and public utility restrictions that may condition or even prevent the execution of the projects.

The conditions of use for a given land are assessed through specific diplomas and the urban plans applicable to the area where the property is located. The former contains the legal discipline of soils that must be observed by the urban plans and prescriptions that are binding for the administration and individuals. Those regulatory diplomas justify their purpose, the scope and the nature of the restrictions that result from it and identify the supervising entity that is responsible for monitoring compliance with the restrictions imposed.

Constraints must be identified and respected in the plans that link the transformation of land use (special plans and municipal urban plans), constituting a limitation to the proposals of these planning instruments. Thus, they must be marked in the so-called Conditioning Plans (“Planta de Condicionantes”), which include administrative easements and restrictions of public utility. The Municipal urban plans, the “Plantas de Condicionantes” and the “Plantas de Ordenamento” are normally easily available online, namely in the Municipalities’ websites.

The main easements and utility restrictions that appear to be potentially relevant to photovoltaic projects are the following (please note that the list is not exhaustive):

•

---

In derogation of the general regime resulting from the RJUE, Decree-Law no. 72/2022, October 19, foresees simplified prior control of urban operations regarding power plants for renewable energy sources and production of hydrogen by electrolysis of water.

The diploma stipulates, that photovoltaic projects with a power of less than 1 megawatt (MW) are exempt from urban prior control. In these cases, the promoter only must notify the municipality of the location of the equipment, its area of implantation and to file a term of responsibility in which he declares that he knows and complies with the legal and regulatory rules applicable to the installation of structures.

### a) The National Ecological Reserve (REN)

REN is a biophysical structure that integrates the set of areas which, due to ecological value and sensitivity or due to exposure and susceptibility to natural risks, are the object of special protection typified through coastal protection areas, areas that are relevant to the sustainability of the terrestrial hydrological cycle and areas for the prevention of natural risks.

The REN's areas identified in the "Plantas de Condicionantes" of the municipal and intermunicipal territorial plans constitute an integral part of the municipal ecological structures.

The following uses and actions are prohibited: a) Plotting operations; b) Urbanization, construction and expansion works; c) Roads; d) Excavations and landfills; e) Destruction of the vegetation cover (not including the actions necessary for the normal and regular development of operations for agricultural use of the soil, current operations for exploration of forest areas and extraordinary phytosanitary protection actions provided for in specific legislation).

It is considered compatible with the REN and with the objectives of ecological and environmental protection and prevention and reduction of natural risks, the uses and actions that, cumulatively: (i) do not jeopardize the func-

tions of the respective areas, under the terms of Annex I to Decree-Law No. 166/2008 and (ii) are identified in Annex II to Decree-Law No. 166/2008 as exempt from any type of administrative control procedure or subject to prior notice ("Comunicação Prévia").

The prohibition of urbanization, construction and expansion works does not include the construction of agricultural related structures such as cooling houses, greenhouses and packing structure.

Annex II to the REN's legal regime also provides for the installation of a photovoltaic solar project as "*production and distribution of electricity from renewable energy sources*", subject to "*Prior Notice*". Please note the installation of solar photovoltaic projects is prohibited in the bed and in the margins of lakes, ponds and reservoirs and in areas of instability and slopes, being subject to the authorization regime in the other classes of the water cycle sustainability areas and in the natural hazards prevention areas (Annex III). The "*Prior Notice*" is a simplified procedure carried out in writing and addressed to the competent Regional Development and Coordination Commission (the "CCDR"), which is the national level authority responsible for the REN, in accordance with Decree-Law No. 166/2008.





## b) National Agricultural Reserve (RAN)

The RAN is composed by the group of land that, in agro-climatic, geomorphological and pedological terms, have greater aptitude for the agricultural activity. The RAN is a public utility restriction associated to a special territorial regime, which establishes a set of conditions for non-agricultural use of the soil, identifying which ones are allowed taking into consideration the objectives for the various types of land and soils.

The RAN includes land units that have a high or moderate aptitude for agricultural activity (classes A1 and A2). The areas benefited by hydro-agricultural exploitation works not inserted in urban soil identified in the territorial plans of intermunicipal or municipal scope are also classified as RAN.

RAN areas are mandatorily identified in the conditioning plants of the municipal urban plans. The RAN easement determines that the areas covered by it must be related to agricultural activity and are non aedificandi areas, with a view to sustainable use and effective management of rural areas.

Non-agricultural uses of areas integrated in the RAN can only occur when, cumulatively: (i) they do not cause serious damage to the RAN objectives and (ii) there is no viable alternative outside the RAN's land or soil, as regards to the technical, economic, environmental, and cultural components, and should preferably be located in the lands and soils with less agricultural aptitude (article 22 of the RAN's legal regime). This exception includes, among others, installations, or equipment for the production of energy from renewable energy sources.

The installation of renewable energy parks in areas subject to the RAN's legal regime is admitted by RAN's legal regime (paragraph d) of article 22/1 of Decree-Law no. 73/2009) and was already object of a guidance of General Directorate for Agriculture and Rural Development ("DGADR"), dated 2017 (the "Guidance"). Please note that the Guidance arises following numerous requests for installation of projects of this nature, especially in the region of the Alentejo, with extensive areas of occupation by photovoltaic panels for production of energy intended for sale to the electricity network, which led the DGADR to impose restrictions on

this type of occupation of the RAN soils. According to the Guidance, the installation or production of electricity is only admitted when the following assumptions are cumulatively verified:

- a. It is integrated into a viable agricultural exploration.
- b. It is intended for the production of energy only for the use of the same exploration.
- c. It has a small area compared to the size of the exploration.

This last requirement may present some challenge being it necessary to sustain that the agricultural area is, in any case, bigger than the energy area and that the energy area is simultaneously an agricultural exploration area since the photovoltaic panels are over the trees.

Non-agricultural uses of areas integrated in the RAN are subject to a prior binding opinion of the respective regional entities of the RAN within the urban licensing or prior notice procedure.

## c) Rede Natura (RN) 2000

RN2000 is an ecological network of European scope resulting from the transposition into national law of the UE Directives Birds and Habitats with objectives in terms of the conservation of wild birds and biodiversity, respectively, including, the Special Protection Zones ("SPA") and the Special Conservation Zones ("ZEC") that function as instruments to protect the objectives set by the aforementioned directives.

The territorial management instruments applicable in the ZECs and the SPAs must guarantee the conservation of habitats and populations of the species according to which those areas have been classified. When all or part of the ZEC and SPA are located within the limits of protected areas, classified under the terms of the law, this objective is ensured through special plans for the organization of protected areas. In the areas not covered by the referred special plans and whenever the reports of the applicable municipal urban plans do not contain in the respective report the basis of the approved restrictions, the installation

of solar photovoltaic projects is admitted under favourable opinion by the Institute for the Conservation of Nature and Forest Conservation (“ICNF”) (or the competent CCDR when determined by the Minister for the Environment and Urban Planning, depending on the geographical area or the typology of the project).

#### 4. Is it possible for a municipality to suspend the municipal plans in force to accommodate my project in the municipality?

The suspension, total or partial, of the PDM provisions can take place in two situations:

- a. Directly by the suspension of municipal plans, when there are exceptional circumstances resulting from a significant change in the perspectives of local economic and social development or situations of environmental fragility incompatible with the implementation of the options established in the Plan (article 126, paragraph 1/b of Decree-law 80/2015, May 14 – the “RJIGT”).
- b. When preventive measures are established due to the preparation, revision, or alteration of a plan (article 134, paragraph 2, of the RJIGT).

The first situation and respective legal provision has been used by several municipalities to accommodate the suspension of plans that contain rules preventing the execution of certain projects that are considered of relevant economic interest for the Municipality. The suspension is often accompanied by preventive measures that expressly enshrine the possibility of hosting this type of project. The procedure provided for in the law is, however, relatively complex and implies, in addition, of course, to the study of the economic and social advantages of the project, the following procedure: 1) elaboration of the proposal and municipality deliberation (article 126, paragraph 1/b), and articles 134, paragraph 2 and 135, paragraph 1, all of the RJIGT); 2) instruction; 3) opinion of the CCDR; 4) public discussion when the adoption of provisional norms is at stake (article 138, paragraph 5 of the RJIGT); 5) approval



by the municipal assembly (articles 126, paragraph 1/ b), 134, paragraph 2 and 137, paragraph 1 of the RJIGT); 6) publication and deposit (article 191, paragraph 4/h) and 4/ l, in conjunction with articles 190, paragraph 2/ b), 191, paragraph 8 of the RJIGT.

#### 5. In which situations are these projects subject to urban licensing proceedings?

According to RJUE, the execution of construction works depends on previous licensing procedure. Only constructions that are incorporated permanently into the soil qualify as “buildings” for this licensing purposes.

In general, such licensing proceedings may assume two main forms:

##### a) Permit proceeding

Plotting operations, urbanization works, and land remodelling works in an area not covered by a plotting permit, construction, alteration, or expansion works in an area not covered by a plotting permit or a detailed plan and construction, reconstruction, expansion, alteration or demolition of buildings in areas subject to administrative easements or restrictions of public utility, are subject to an administrative license. Demolition works of buildings that are not foreseen in the reconstruction works license are also subject to the issuance of a construction permit.

## b) Prior notice proceeding

The following urban operations are subject to prior notice proceeding, among others: (i) reconstruction works which do not result in an increase in the height of the facade or the number of floors; (ii) urbanization works and land remodelling works in an area covered by a plotting permit; (iii) construction, alteration or expansion works in an area covered by a plotting permit or a detailed plans and urban operations preceded by favourable prior information (“PIP”).

Specific licensing of a photovoltaic solar project comprises two main aspects: the licensing of the activity, which must be carried out with the General Directorate of Energy and Geology (“DGEG”) and the authorization to carry out the construction or building works, to be handled with the Municipality.

For the purposes of the authorization of the construction and building works associated with photovoltaic solar projects qualification as a building depends on the concrete constructive solution and the impact that the project can cause, that is, the type of panel, installation and technology, which will dictate the impact on the territory and the need for a greater or lesser fixer of each panel, which can go from a simple stake to a shoe (“sapata”) with a considerable dimension.

The RJUE only exempts from licensing (article 6-A, paragraph 1/g): “works of minor urban relevance”) the installation

of photovoltaic solar panels associated to a main building, to produce renewable energy, including micro-production, which do not exceed the building’s coverage area and if its height is maximum 1 m high. The text of the law associates the exemption to the case in which the photovoltaic structures are connected to main building, (which shall be itself licensed). When no (licensed) main construction exists, it will be difficult to apply the referred exemption.

In derogation of the general regime resulting from the RJUE, Decree-Law no. 72/2022, October 19, foresees simplified prior control of urban operations regarding power plants for renewable energy sources and production of hydrogen by electrolysis of water. The diploma stipulates, that photovoltaic projects with a power of less than 1 megawatt (MW) are exempt from urban prior control. In these cases, the promoter only must notify the municipality of the location of the equipment, its area of implantation and to file a term of responsibility in which he declares that he knows and complies with the legal and regulatory rules applicable to the installation of structures.

As for renewable energy projects with greater capacity (above 1 MW), prior control by the municipalities remains, but with greater agility. These projects will not have to submit a “request for prior information”, but promoters must communicate the intention to build the project. From this communication, the president of the Municipality has eight days to respond: either ask for more information or reject outright. Once additional information is received, the municipality has 30 days to reject the project. Rejection can be grounded in the negative affectation of the landscape heritage, but this justification cannot be used if the project has already had a favourable or conditioned environmental impact declaration, or if the area of the Municipality already occupied by renewable energy projects is smaller to 2%. If, within the deadlines set out in Decree-Law 72/2022, the municipality does not object, then the developers can start building the plants.

That is, according to the new legislation, new photovoltaic plants can be installed in the territory, in a simplified way, with the Municipality being obliged to accept them until an occupation with these installations equal to or less than 2% of its territorial area and existing compliance with applicable legal and regulatory standards.



Also, article 4 of EU Regulation 2022/2577 adopted measures aiming the acceleration of the licensing procedure for the installation of solar energy equipment, stating that the licensing procedure for the installation of solar energy equipment and co-located energy storage assets – including building-integrated solar installations and solar energy equipment on roofs of buildings – on existing or future man-made structures, excluding the surfaces of man-made bodies of water, shall not exceed three months, provided that the main purpose of such structures is not the production of solar energy. This provision is, in our opinion, applicable to agricultural-photovoltaic projects where solar panels are set up in greenhouses and other structures where the main purpose is the agricultural and not the energy production.

## 6. My project has a PIP. Which rights does the PIP entitle my project? Can I extend the PIP deadline?

The RJUE also provides for the possibility to request a Previous Information (“Pedido de Informação Prévia” – the “PIP”) on the possibility of obtaining licensing for the project. The PIP allows obtaining information and a binding decision from the municipality on the feasibility of carrying out a specific construction operation and the respective legal or regulatory conditions, namely related to infrastructures, administrative easements, restrictions of public utility, urban indexes, ceilings (height of the façades), removals and other conditions applicable to the execution of the work.

The PIP allows the applicant, even if he is not the owner of the land, to know its buildability and to grant him rights. However, a complete architectural project is still necessary for such purpose. The more detailed, less future objections can be raised when it comes to the licensing proceeding, permit or prior notice proceeding.

The PIP is decided within a maximum of 30 business days from: a) the date of receipt of the request or elements requested; or b) the date of receipt of the last of the opinions, authorizations or approvals issued by entities outside the

Municipality, when consultations have taken place; or c) the end of the period for receiving opinions, authorizations or approvals, whenever any of the consulted entities does not comment until that date. Opinions, authorizations, or approvals issued by entities outside the Municipality are obligatorily notified to the applicant together with the prior information approved by the municipality, being an integral part of it.

The decision always indicates, the applicable licensing proceeding to each the operation is subject in accordance with the provisions of the RJUE.

If the information is unfavourable, it must contain an indication of the terms under which, whenever possible, it can be revised to comply with the applicable legal requirements, namely those contained in the municipal or intermunicipal urban plans.

A favourable decision on the PIP binds the competent entities in the decision on a possible permit or prior notice proceeding provided that the respective application is filed within one year after the PIP’s decision.

Extension of the PIP’s validity for a one-year period is admitted by law, in certain circumstances, and provided that the legal framework has not been changed since issuance of the PIP.

## 7. Is it necessary to have an Environmental Impact Assessment?

According to the recently approved Decree-Law no. 11/2023, of February 10 (the so called “Environmental Simplex”), solar power plants occupying less than 100 hectares are no longer required to carry out an environmental impact assessment (“EIA”). Before this diploma, obligation of carrying out the EIA applied to any photovoltaic plant with more than 50 megawatts (MW) of power, and plants with more than 20 MW located sensitive areas.

Article 6 of the EU Regulation 2022/2577 establishes that with regard to projects in the field of renewable energy, as well as projects in energy storage and grid-related projects



that are necessary to integrate renewable energy into the electricity system, Member States may grant exemptions from the environmental impact assessments provided for in article 2(1) of Directive 2011/92 /EU and species protection assessments provided for in article 12(1) of Directive 92/43/EEC as well as in article 5 of Directive 2009/147/EC, provided that (i) the project is located in a specific area of renewable energy or in a specific area of the connected network infrastructure necessary to integrate renewable energy in the electricity system, (ii) Member States have defined a specific area of renewable energy or some specific area of the network of network infrastructure related area, (iii) such area has been subject to a strategic environmental assessment pursuant to Directive 2001/42/ EC of the European Parliament and of the Council and (iv) based on existing data, the competent authority ensures that appropriate and proportionate mitigation measures are applied to ensure compliance with article 12(1) of Directive 92/43/EEC and article 5 of Directive 2009/ 147/EEC. If these measures are not available, the competent authority ensures that the operator pays monetary compensation to species protection programs in order to ensure or improve the conservation status of the affected species.

Also, according to the same EU Regulation 2022/2577, the installation of solar energy equipment and co-located energy storage assets — including building-integrated solar installations and solar energy equipment on roofs of buildings — on existing or future structures, provided that the main purpose of such structures is not the production

of solar energy, is now exempted from the obligation, if applicable, to determine the need to submit the project to an environmental impact assessment, or from the obligation to carry out a specific environmental impact assessment, by way of derogation from Article 4(2) of Directive 2011/92/EU and point 3(a) and (b) of Annex II, either alone or in conjunction with point 13(a) of Annex II to that directive.

## 8. Which entities may be involved in approving my project?

Without prejudice to the entities involved in the procedure for obtaining production and exploration licenses, namely the DGEG which is the competent entity for applying the production and injection regime into the network and the municipality where it will be installed the project, which is the entity with attributions within the scope of urban control, the following entities may also be involved in the prior urban control procedure, with competences in terms of application and supervision of special legal regimes eventually applicable to the project depending on its location and the existence of one or more of the constraints identified above by way of example, the CCDR, the Portuguese Environment Agency (“APA”), the Infrastructures of Portugal (“IP”) and ICNF.

## 9. Do I need a use permit issued by the municipality or the operating license issued by the energy administrative authority (DGEG) is enough to start operations?

Under the terms of paragraph 5 of article 4 of the RJUE, “the use of buildings or their fractions, as well as changes in their use, is subject to authorization”.

The concept of building refers to “a permanent construction, provided with independent access, covered, limited by exterior walls or master walls that go from the foundations to the roof, intended for human use or for other purposes”. In fact, Regulatory Decree no. 5/2019, of September 27, qualifies “general energy production and distribution systems” as territorial infrastructure and not as buildings.

The need to trigger a procedure after the licensing of works is limited to cases in which it is intended to verify the fulfilment of the conditions for the use of a building or its fractions and does not apply to cases where it is intended to use a construction which does not qualify as a building or a fraction thereof, as in the present case. Thus, even when there is a prior urban control of the facility works under the RJUE, it will not be necessary to apply for a use permit under the same regime and operations can start as of DGEG operating license is issued.



**Filipa Névoa is a lawyer in the Real Estate, Tourism and Urban Planning department at SÉRVULO**, she provides legal advice to several public and private entities, in matters of planning and zoning, namely, licensing procedures and authorisation of private town-planning operations and tourist licensing, as well as in real estate transactions, including, in particular, conducting due diligence to real estate assets.

**Filipa Névoa**  
[fne@servulo.com](mailto:fne@servulo.com)

This publication of Sérvulo & Associados is for informational purposes only.  
Its content does not constitute legal advice or imply the existence of a relationship between attorney client.  
The total or partial reproduction of the content depends on the express permission of Sérvulo & Associados.

**Sérvulo & Associados**  
**Sociedade de Advogados, SP, RL**

Rua Garrett, 64  
1200-204 Lisboa – Portugal

T +351 210 933 000

F +351 210 933 001/2