



INSTITUTO
MIGUEL GALVÃO TELES

THE NEW LEGAL FRAMEWORK FOR THE ELECTRICITY SECTOR

Comments on Decree-Law no. 15/2022,
of 14 January

INSTITUTO MIGUEL GALVÃO TELES

Instituto Miguel Galvão Teles (IMGT), established in 2015 at Morais Leitão, Galvão Teles, Soares da Silva & Associados (Morais Leitão), seeks to pay homage to and keep alive the memory of Miguel Galvão Teles (1939-2015), as a great lawyer, legal theorist, professor and philosophy enthusiast.

IMGT is guided by freedom and depth of thinking, ethics, active citizenship, integrity, independence, generosity and openness to the worlds and values which reflect the legacy of Miguel Galvão Teles, which materialise through academic, cultural and training initiatives fostered by or related to Morais Leitão, and which contribute to promoting knowledge in the areas of law and philosophy, among others.

As an independent entity, in charge of promoting conferences, colloquia and carrying out training actions, IMGT organises twice a year conferences aimed at supporting scientific research and establishing relations with the academy and other knowledge-oriented institutions.

THE NEW LEGAL FRAMEWORK FOR THE ELECTRICITY SECTOR

**Comments on Decree-Law no. 15/2022,
of 14 January**



THE NEW LEGAL FRAMEWORK FOR THE ELECTRICITY SECTOR

Comments on Decree-Law no. 15/2022,
of 14 January



THE NEW LEGAL FRAMEWORK FOR THE ELECTRICITY SECTOR
Comments on Decree-Law no. 15/2022, of 14 January

COORDINATION

Miguel Nogueira de Brito
Tomás Vaz Pinto
Catarina Brito Ferreira
Joana Alves de Abreu

<https://www.mlqts.pt/en/expertise/industries/Energy-and-Natural-Resources/32/>

**IMGT – INSTITUTO
MIGUEL GALVÃO TELES**

<https://www.mlqts.pt/en/knowledge/instituto-miguel-galvao-teles/>

COORDINATORS

Cláudia Baptista
Martim Krupenski
Rui Patrício

PUBLICATIONS

INSTITUTO MIGUEL GALVÃO TELES
ISSN 2184-1764

INDEX

Foreword PEDRO COSTA GONÇALVES	9	Commentary on the new regime of municipal leases and articulation with the RJUE	40
Major thrusts of the new electricity sector regime RICARDO FERREIRA	11	RUI RIBEIRO LIMA INÊS VIEIRA	
Transmission of prior control titles for electricity production and storage activities CATARINA BRITO FERREIRA JOANA ALVES DE ABREU	15	Recognition of public interest and public utility: articles 22(13), 54(2), and 112 of Decree-Law no. 15/2022, of 14 January MIGUEL NOGUEIRA DE BRITO	46
The allocation of injection capacity in the RESP via agreement with the network operator MARTA ALMEIDA AFONSO DIOGO MACEDO GRAÇA	24	Overpowering (<i>sobreequipamento</i>) and repowering (<i>reequipamento</i>) HELDER M. MOURATO MARIANA PINTOR	51
Coordination with specific schemes: environmental impact assessment and environmental impact analysis DIANA ETTNER	30	Hybrid Power Plants and the Hybridization of Power Plants – The simultaneous use of different renewable primary energy sources in electricity generation projects RICARDO ANDRADE AMARO JOANA ALVES DE ABREU	58
		Self-consumption and energy communities RUI DE OLIVEIRA NEVES MARGARIDA MESQUITA MACHADO	62

Management of distribution networks: articles 107 to 109 and 284 of Decree-Law no. 15/2022, of 14 January MIGUEL NOGUEIRA DE BRITO	67	Final and transitory provisions of Decree-Law no. 15/2022, of 14 January: articles 275 to 307 MIGUEL NOGUEIRA DE BRITO	110
Concessions for the operation of electricity transmission and distribution networks: a comparison between the bases of concessions and the Public Contracts Code MARGARIDA OLAZABAL CABRAL ALESSANDRO AZEVEDO	79	Glossary	117
Closed networks open to electricity supplier choice and freedom of supply FILIPE MATIAS SANTOS	86		
Electro-intensive Consumer Statute – what are the main novelties and advantages? GISELA MORGADO DE ANDRADE JORGE LÚCIO	92		
The system for financing the social tariff under European Union law LUÍS DO NASCIMENTO FERREIRA	98		
Technological Free Zones: articles 216 to 225 of Decree-Law no. 15/2022, of 14 January VÍTOR PEREIRA DAS NEVES NICOLE FORTUNATO	104		

FOREWORD

It is with great pleasure that I preface this book, which brings together texts that present us with a first reflection on various aspects of the regime on the organization and functioning of the National Electric System, approved by Decree-Law no. 15/2022, of 14 January – the diploma, with more than 300 articles, establishes the regulatory and administrative discipline to which all activities in the electrical sector are subject, from the production phase to the commercialization phase; it is, therefore, an important legislative compact in the area of administrative law and public regulation.

In addition to its natural relevance on a specifically regulatory and economic level, the diploma is also important from a dogmatic perspective, as it receives and disciplines, with some innovative or at least particular traits, figures of general administrative law, whether in terms of procedure or at the level of unilateral decisions or administrative contracts.

The texts in this book are dedicated to understanding and explaining all these aspects, prepared by well-known experts on the themes they explore: here we can find the vision of specialists who are well acquainted with the electricity sector from the side of the regulated companies, but also the reading of those who deal with this sector on a daily basis from the regulator's side; these are joined by several lawyers with extensive experience and direct knowledge of the evolution of electricity regulation, from the already distant past of the vertical monopoly to the present day, in which the electricity sector emerges as an essential field of the regulated economy.

Pedro Costa Gonçalves

MAJOR THRUSTS OF THE NEW ELECTRICITY SECTOR REGIME

RICARDO FERREIRA

I. Introduction: a new legal regime for new challenges

At a global level, there is a diversity of countries that have defined decarbonization goals, having self-imposed a set of strategies to achieve them in the short/medium term. Portugal took, in 2016, at the Conference of the Parties to the United Nations Framework Convention on Climate Change, the commitment to achieve carbon neutrality by 2050.

To achieve this goal, the Roadmap for Carbon Neutrality 2050 (RNC 2050) was approved by the [Resolution of the Council of Ministers no. 107/2019, of 1 July](#).

At European level, the commitments mentioned are quite ambitious, with a diverse set of instruments that will have to be put into practice to carry them out. It is, therefore, in this context that it is important to bear in mind that,

under [Regulation \(EU\) 2018/1999 of the European Parliament and of the Council, of 11 December 2018](#), on Governance in the Energy and Climate Action Union, it was determined that all Member States should prepare and submit to the European Commission an integrated national energy and climate plan for 2021-2030.

In this sense, [DL 15/2022](#) not only ensures the transposition of [Directive \(EU\) 2019/944 of the European Parliament and of the Council of 5 June 2019](#), on common rules for the internal electricity market, but also, partially, that of [Directive \(EU\) 2018/2001 of the European Parliament and of the Council of 11 December 2018](#), on the promotion of the use of energy from renewable sources.

The instruments now available to those involved in the SEN are varied: from electrification of consumption to energy efficiency, intelligence in the networks

or expansion of the forms of energy pricing. However, in all of them the question of the path to carbon neutrality is unavoidable.

Increased penetration of renewables is the challenge facing Europe (and the rest of the world). But with the urgency of reaching the targets it is critical to ensure that plans to install renewable capacity actually materialize.

First, we must secure investment and investors. In this sense, the stability of the legal, regulatory and regulatory framework is fundamental.

Second, it must be ensured that administrative barriers to investment are removed. Of particular importance here is streamlining the processes and procedures leading up to licensing.

II. Concentration of the legal regime in a single diploma

DL 15/2022 is a very relevant piece of legislation, not only because it has redefined the legal framework for the electricity sector, taking on aspects relevant to the promotion of renewable energy (for example, with regard to over-equipment and retrofitting) but

also because it concentrates in a single piece of legislation all the regulations that were previously scattered across multiple diplomas.

Thus, among the matters that until now were dispersed and will now be regulated in DL 15/2022 are the following: *(i)* the unlawful appropriation of energy; *(ii)* tariff adjustments; *(iii)* the social tariff; *(iv)* the extinction of regulated tariffs at all voltage levels; *(v)* the guaranteed remuneration regimes; *(vi)* the overequipment regime; *(vii)* the supplierswitching logistic operator regime; and *(viii)* the selfconsumption regime.

Some specific aspects of the organization and structure of the sector, such as electric mobility, are still left out.

Although the concentration of the legal regulation of the matters is very relevant in the sense of regulatory stability, it is believed that it would be possible to go further and foresee a revision of the legislation tending only in pre-established periods, promoting a broad participation of all operators in the sector in the modification of the legal regime.

III. Administrative simplification

It is necessary, therefore, to ensure not only that the deadlines of the procedures are met, but – even more importantly – that these procedures are, in fact, the right ones to promote investment in the sector. Here it is fundamental that the procedures are carried out in a participative manner. Knowledge of the difficulties that promoters may face on the ground is crucial to enable any unnecessary obstacles to be removed and procedures to be streamlined.

The new diploma also takes very important steps in the simplification and systematization of processes. By eliminating the differentiation between “ordinary regime” and “special regime”, by ensuring clarity in the forms of “permission” for the development of generation activities and by redefining the licensing processes for generation activities, which are intended to be faster and more efficient, we are promoting the placement of the thousands of MW of capacity that still needs to be installed to achieve the demanding decarbonization goals imposed.

But the work does not end there. In fact, the European Commission itself assumes it, having chosen the topic of licensing as a target for discussion and improvement.

From this point of view, without prejudice to the very relevant contribution that the new diploma has made, it is necessary to continue and deepen the path.

It is therefore necessary to simplify and clarify procedures.

In this regard it is worth mentioning several proposals, both at the European and national levels.

Thus, at the European level, common Key Performance Indicators should be established for all Member States, including the indication of the percentage of allowances allocated in relation to the number of applications made, the average duration of the procedure, the levels of administrative and judicial challenge related to procedural issues, the rate of abandonment of applications due to procedural delays, the financial costs per MW of installed capacity requested, and the number of entities involved in the procedures. In addition,

the digitalization of license allocation procedures should also be promoted.

At the national level, the following measures, among others, should be taken: improve cooperation between administrative bodies involved, establish a single point of contact between the administration and the promoters, establish tacit authorization regimes, introduce a clear division of responsibilities between the various parties involved in the procedures, and promote the publicity of the procedures.

IV. Three goals for the future

In a nutshell, through DL 15/2022 the Government introduces three objectives in light of which it proposes to view the future of the electricity sector: to concentrate the legal regimes, to decentralize and decarbonize electricity generation, and to simplify administrative procedures.

It is not difficult to agree with these three objectives, and their importance in restructuring the electricity sector to prepare it for the new challenges brought by climate change cannot be overstated.

It now remains to be seen whether the promise of the legislature will be redeemed by the practice of the Administration...

TRANSMISSION OF PRIOR CONTROL TITLES FOR ELECTRICITY PRODUCTION AND STORAGE ACTIVITIES

CATARINA BRITO FERREIRA
JOANA ALVES DE ABREU

I. Introduction

DL 15/2022 amends the regime of transmission of prior control titles, inaugurating – in view of the legal regime approved by Decree-Law no. 172/2006, of 23 August (DL 172/2006), – a new concept of transmission and new rules regarding its authorisation, according to the phase of development of the electricity generating centers and autonomous storage facilities.

Article 22 of DL 172/2006¹ established the authorisation regime, by the

¹ As amended by Decree-Law no. 264/2007, of 24 July, 23/2009, of 20 January, 104/2010, of 29 September, 215-B/2012, of 8 October, by Law no. 7-A/2016, of 30 March, by Decree-Law no. 38/2017, of 31 March, and 152-B/2017, of 11 December, by Law no. 114/2017, of 29 December, and by Decree-Law no. 76/2019, of 3 June.

licensing authority, for the transfer of the production license. The procedure defined therein consisted of the presentation of a transfer request that included elements relating to the identification and profile of the prospective transferee, as well as a declaration by the transferee accepting the transfer and all the license conditions. Once the transfer was authorised, the transferee then requested the endorsement of the license, attaching a certificate of the contract that had provided the transfer.

Given the procedure described, the transfer corresponded to a change in the ownership of the production license, which could only occur after the issue of the operating license. The cases of restructuring of companies by merger or spin-off, as well as the transfer of

the management or operation of the generating plant were also subject to the authorisation procedure for the transfer of the production license.

With the entry into force of DL 15/2022, the rule is now the transferability of prior control titles, with different rules, applicable according to the stage of development (and licensing) of the power plant or autonomous storage facility.

II. Transmission of TRC

A. Endorsement procedure

TRCs can be transferred until the production license is issued, regardless of the method of awarding them. In accordance with paragraph 8 of Article 18 of DL 15/2022, the transfer is made through the endorsement of the existing TRC by the DGEG or by the network operator which has entered into the agreement for the construction or reinforcement of the network, as applicable.

In addition to situations involving a change of ownership, the title is also considered to have been transferred whenever there is a direct or indirect

change of control over the holder² (cf. paragraph 9 of Article 18 of DL 15/2022).

However, given the typical content of the TRC, it may be understood that the endorsement procedure will not apply, by analogy, to cases of change of control of the holder of the TRC. The lack of a specific procedure and the inapplicability of the rules defined in Article 18 to these situations, as well as the option not to expressly determine that the entire transmission is subject to authorisation, may raise doubts as to whether it is effectively subject to authorisation by the DGEG or the network operator.

However, if this is not the case, there would be no point in clarifying that there is transmission of the TRC in cases of change of control, so it is accepted that any change of control, direct or indirect, will also be subject

² Pursuant to the provisions of Article 3(e) of DL 15/2022, control corresponds to the “exercise of decisive influence over a company, through rights, contracts or other means which, individually or jointly, directly lead to: i) the holding of shareholdings representing more than half of the share capital; ii) the holding of more than half of the voting rights; or iii) the possibility of appointing more than half of the members of the management body or supervisory board”.

to a procedure with the DGEG or the network operator.

Given that the TRC should not indicate the shareholder structure of its owner and that, to this extent, the act of registration should not be appropriate for this purpose, the question arises – also due to the short life of application of the rules in question – whether the change of control of the TRC will be dependent on a request for authorisation or whether mere communication of that operation to the DGEG will be sufficient. What procedure can be considered equivalent to that of the endorsement (applicable to the change of ownership)? In fact, even if the endorsement requires an act of the DGEG, it may be questioned whether this does not correspond to a mere automatism, a formality, which aims to provide legal certainty to the new holder of the TRC, who will now be in possession of a title that identifies it as the entity entitled to a certain network capacity for the project it may develop in the future.

However, this function does not exist in cases of change of control of the holder of the TRC, so that, if this is the purpose of that endorsement, the equivalent procedure to be applied to

cases of change of control is, perhaps, that of prior notification.

Note that, as will be seen, the law does not define a minimum content for the application for transmission of the TRC, raising the doubt about the type of analysis that is done by the licensing entity.

Finally, in cases where the TRC corresponds to the agreement entered into with the network operator, nothing is said about the possibility of transmission (change in ownership or change in direct and indirect control) of requests for the conclusion of an agreement that have been prioritised by the network operator, suggesting that, until the agreement is concluded, the transmission should not be subject to the network operator’s authorisation. However, it is admitted that, insofar as the hierarchisation involved the assessment of the criteria provided for in Article 20(5) of DL 15/2022, it will be necessary to ensure that the transmission in question does not affect the assessment made by the network operator. On the other hand, since the change in ownership of the company that submitted the hierarchical application for these purposes corresponds to a modification

of the list drawn up by the network operator, it is accepted that, in these cases, the transmission made must be communicated.

B. Increase of the deposit as a condition for the registration of the change of ownership

The completion of the registration, following a request for a change of ownership, is dependent on the reinforcement of the deposit in half of the amount established in Article 13 of the aforementioned decree-law.³ The express reference in Article 18(10) of

³ The award of a TRC depends on the prior provision of a bond to guarantee the obtaining of prior control titles. The bond must be suitable, autonomous, irrevocable and payable on first request, admitting bank guarantee, bond insurance and bank deposit in an account held by the licensing authority, intended exclusively for this purpose. The value of the bond depends on the type of TRC allocation: in the general access mode, EUR 10,000 is required per MVA of reserve capacity to be allocated, with a maximum limit of EUR 10,000,000 for a minimum period of 30 months, being extended, until the power generation center, the UPAC or the storage facility comes into operation, under penalty of the procedure lapsing; under the agreement between the interested party and the operator of the RESP, the value corresponds to EUR 15,000 per MVA of reserve capacity to be allocated, with a maximum limit of EUR 10,000,000, for a period of 24 months; and under the competitive bidding procedure, the amount of the deposit, the period, the method of provision and the entity to whom it is provided are set out in the procedure documents.

DL 15/2022 to the dependence between the reinforcement of the bond and the application for a change of ownership, and not the transfer application, may lead to the conclusion that the reinforcement of the bond will only be required in cases where there is an effective change of ownership of the TRC and not when a change of control of the TRC is in question.

However, the law establishes a set of situations that will be exempt from the reinforcement of the guarantee, including in this list: *(i)* the incorporation of a company whose corporate purpose includes the exercise of the activities of construction and operation of an electricity generation center or storage facility or a UPAC and which has as its sole shareholders the holders of the TRC; *(ii)* the encumbrance of shareholdings in favour of financing entities; *(iii)* changes in the direct ownership of the holder resulting from the execution of pledges of shares under agreements entered into with the same financing entities; and *(iv)* changes in direct ownership under group restructuring operations not involving a change in the beneficial owner registered in the Central Beneficiary Register.

However, since the situations of exemption include cases of change of control, it seems that it should be concluded that the rule will be that any transfer, due to change of the holder of the TRC or its control, will be subject to the strengthening of the security.

C. Operation of shareholdings of the TRC holder

The reference to the encumbrance of shares in favour of financing entities as an operation not subject to the strengthening of security, referred to above, also raises the doubt as to what formality is applicable when the promoter intends, within the scope of financing, to provide guarantees in favour of the said entities. It should be noted that the encumbrance, in itself, does not imply a change in the ownership of the TRC, and therefore should not be equated to the figure of transfer, under the terms and for the purposes of Article 18. The transfer of the TRC only occurs in a scenario in which the promoter, as debtor, does not comply with the obligation guaranteed. The wording adopted by the legislator may ultimately lead to considering that the mere provision of guarantees on the shares representing the share capital of the TRC holder depends on the formality applicable to

the transfer of the TRC, which would have to be fulfilled again in case of their enforcement.

This interpretation would require, however, to consider that the legislator intended to extend the authorisation regime of the transfer – limited by paragraphs 8 and 9 of Article 18 to the cases of change of the holder of the TRC and its control – to a situation where the change will only occur in the event that a certain condition is met, and the effective change would also be dependent on authorisation. In addition to the fact that this does not seem to be the legislator's intention in defining the concept of transfer of TRC, it may also be considered that this understanding would create an undesirable complexity in the procedure for constitution of guarantees in favour of banks.

III. Transfer of production license before issuance of operating license

Under Article 36 of DL 15/2022, the transmission of the production license until the issuance of the operating license observes the procedure defined in Article 18 for the “transmission” of the TRC.

However, since the transfer of the TRC also includes the change of direct and indirect control of its holder, it may be concluded that, after the issue of the production license and before the granting of the operating license, the change of control of the holder of the former is also admissible. To this extent, the considerations made with regard to the transfer (change in ownership and control of the holder) of the TRC will also apply with regard to the transfer of the production license until the issue of the operating license.

On the other hand, with the entry into force of DL 15/2022, it is now possible to change the ownership of the production license even before the operating license is granted. In these cases, given the reference to Article 18, the transfer is made by means of an entry by the DGEG, requiring also the reinforcement of the guarantee provided in half of the value established in Article 13.

IV. Filing of the application for transfer of the TRC or production license prior to the issuance of the operating license

Articles 18 or 36 of the law do not clarify how the request for transfer of the TRC

or production license due to change of direct or indirect control or change in the respective ownership is to be processed. It is reasonable to admit that the licensing entity should be satisfied with the data or information obtained at the time the title in question was granted.

Therefore, in the case of TRC transfers, the application must include the identification of the parties in question, as well as the information initially provided by the holder, in accordance with the procedure associated with the method for assigning the TRC.

In the case of the transfer of a production license, the application must include the information required for the purposes of the award of the license and which concerns, as applicable, the identification of the transferee and/or the shareholders of its holder or transferee, that is, the information set out in subparagraphs *l)* and *m)* of paragraph 1 of Annex I to Decree-Law 15/2022, adapted as necessary, *i.e.*, paragraph 1 of Annex I to DL 15/2022, *mutatis mutandis*, that is: *(i)* the profile of the partners or shareholders and the percentages of share capital held; and *(ii)* detailed and elucidative information on the share of production capacity held

by the applicant, where the transaction in question has an impact on the same.

It should be noted that, in accordance with paragraph 3 of Article 27, for the purpose of determining the quota, the apparent guaranteed installed power of all the production installations directly owned by the applicant or by a company with which it maintains a group relationship and all the prior control titles issued in favour of the applicants and of a company with which it maintains a group relationship must be considered, regardless of the entry into operation. The share of capacity held within MIBEL cannot exceed 40%.

V. The transfer of the production license after the issuance of the operating license

After the operating license is issued, the transfer of the production license is subject to the authorisation regime set out in Article 36(1) and (3) to (7) of DL 15/2022. In these cases the license holder submits the transfer request, which must include all the elements relating to the identification, technical and financial suitability of the transferee, as well as being accompanied by a declaration of acceptance of the transfer

and all the license conditions. The application is decided by the DGEG within 15 days after its reception. The DGEG may request additional elements only once, suspending the decision period for a maximum period of 30 days for the availability of those elements. The authorisation for the change of ownership determines the endorsement of the production license and subjects the transferor to all the duties, obligations and charges of the transferor, as well as to all the conditions established in the transfer authorisation.

In view of the procedure described, we understand that ‘transfer’, for the purposes of the rules in question, corresponds to the transfer of the title to another entity, *i.e.*, a change in the ownership of the production license.

In fact, the law says nothing about the need to observe any prior control procedure for the change of control of the holder of the production license after the issuance of the operating license. Therefore, it may be understood that this operation is not subject to any communication or authorisation – note that, at this stage of development of the project, it would not even be possible to require the reinforcement of the deposit, since it will have already

been returned at the time of entry into operation.

VI. Transmission of the previous registration

Finally, according to Article 55(9), the “change of ownership” of the previous registration⁴ until the issuance of the operating certificate follows the provisions of Article 36 with the necessary adaptations, except in cases of self-consumption. The reference to this specific type of transmission may be interpreted in different ways. On the one hand, it may be understood as a way of limiting the application of Article 36 (and, by remission thereof, Article 18) to cases where there is a change of the entity that holds the prior registration,

⁴ In accordance with Article 11(3) of DL 15/2022, “the production of electricity from renewable energy sources for total injection into the RESP, with installed capacity equal to or less than 1 MW, the production of electricity for self-consumption with installed capacity greater than 30 kW and equal to or less than 1 MW is subject to prior registration and operating certificate, autonomous storage of electricity with an installed capacity equal to or less than 1 MW and research and development projects, demonstration and testing, in a real environment, of innovative technologies, products, services, processes and models, in the scope of production, storage and self-consumption activities with an installed capacity greater than 30 kW.”

excluding the situations of change of control of that entity – which, thus, will not be subject to authorisation, perhaps because it is a simplified prior control procedure. On the other hand, we admit that by providing, through the referred reference to Article 36, the applicability of the regime foreseen therein – and, also, in a logic of equal treatment of promoters – it will be implicit that all forms of transfer foreseen in that regime (that is, change of ownership and change of direct and indirect control) will be relevant also in the scope of the prior registration.

The law is silent about the change of ownership of the previous register after the issuance of the certificate of operation. However, a procedure for amendment of the previous registration is foreseen and may apply in these cases. Article 55(6) states that changes to the register that are not considered to be substantial are subject to mere registration, and not to re-registration. Article 3(c) clarifies that a ‘substantial change’ is a change to the generating station, UPCA or storage facility that involves a change in the following main characteristics of the facility: the generation technology, the fuel or primary energy source used, and, in the case of thermoelectric or hydroelectric

generating stations, the number of generator sets, as well as their boilers, turbines and generators. Therefore, the change of ownership of the previous registration after the issue of the operating certificate will be considered a non-substantial change, subject to mere annotation. Changes to the registration are processed within the electronic platform and are automatically added to the initial registration, unless they were expressly refused within 30 days.

As in the case of a change of control, direct or indirect, of the holder of the production license after the issue of the operating license, this type of change should also be considered as not subject to authorisation when the holder of a previous registration with an assigned operating certificate is concerned.

THE ALLOCATION OF INJECTION CAPACITY IN THE RESP VIA AGREEMENT WITH THE NETWORK OPERATOR

MARTA ALMEIDA AFONSO
DIOGO MACEDO GRAÇA

I. Introduction

The purpose of this paper is to examine the key features of the second mode of allocation of injection capacity in the RESP as provided for in [DL 15/2022](#). This mode entails an agreement between an interested party, known as the promoter, and a network operator, which may be the TSO or the DSO, as applicable.

Originally planned since 2019, this modality holds substantial importance for the SEN as it facilitates the development of the RESP as a way to increase the generation of electricity through renewable sources while ensuring no impact on tariffs and consumer costs.

As a result, this modality has created favorable conditions for the expansion of the RESP and the pursuit of national electrical diversification, with a specific emphasis on reducing reliance on fossil fuels. It is worth mentioning that the financial responsibility for such infrastructures lies with the promoter.

While several stakeholders within the SEN play significant roles in this mode of allocation of injection capacity, the DGEG is responsible for managing the procedure. Furthermore, it holds the responsibility for approving the draft agreement and densifying the criteria for evaluating and ranking the received applications.

II. Agreement modality for the allocation of reserve injection capacity in the RESP

One of the main areas of interest for SEN's stakeholders is the terms and conditions that govern the issuance of a generation license, which, in turn, requires the prior granting of injection capacity title.

DL 15/2022, similar to previous legislation, establishes three different modalities for the allocation of reserve injection capacity title:

- General access modality;
- Agreement modality; and
- Competitive procedure modality.

However, the new regime appears to benefit from the experience gained through previous procedures for each modality. A notable improvement is the systematic separation and detail description of each modality, following a step-by-step logic that includes the corresponding timetable and the vicissitudes. This enhanced approach is regarded as highly positive, as it contributes to a more structured and transparent process.

III. Agreement requirements, terms and conditions

The agreement modality for allocating reserve injection capacity in the RESP was specifically established for situations where the network's reception capacity is limited. However, it is extremely important to limit the allocation of injection capacity to what is the national energy planning. Thus, it is the responsibility of the Secretary of State for Energy to determine a maximum quota of injection capacity under this modality, considering the renewable energy targets set for Portugal, namely those defined in the strategic plans.

In the context of allocating reserve injection capacity in the RESP through the agreement modality, the agreement itself, whose draft is approved by the DGEG after consulting the network operators, serves as the reserve injection capacity title.

In terms of the agreement's content and the allocation of responsibilities it should encompass, the key aspect of the regime is that the promoter is required to assume all the financial costs associated with the construction or reinforcement of the RESP, which is necessary for receiving energy from

the storage facility or generated by the power plant.

Furthermore, to ensure the national electricity system balance and sustainability without imposing excessive burdens on final consumers, the regime foresees two cumulative mechanisms:

- On the one hand, it stipulates that the financial liability of the interested party corresponds to the value determined after the completion of all construction and reinforcement works. As a result, the promoter is required to make an upfront payment of 5% of the budget presented by the network operator upon signing of the agreement. Additionally, the promoter is obliged to provide a bond for the remaining amount, which will be released based on compliance with the agreed payment plan;
- On the other hand, it explicitly states that the infrastructures built or reinforced automatically become part of the public domain and the object of the concession. This occurs through the signing of a property transfer agreement between the promoter and the network operator.

It is important to note that these infrastructures are not considered as assets to be remunerated under the concession agreement in the part corresponding to the cost borne by the promoter.

Nevertheless, the regime maintains a mechanism for sharing the investment burden for the construction or reinforcement of the RESP. This enables a flexible approach to energy generation and storage, where the costs can be shared among multiple interested parties who agree upon the terms with the respective network operator. It is worth noting that this arrangement does not hinder the execution of an agreement with each interested party.

IV. Evaluation and ranking of applications for an agreement

In the procedure leading to the agreement, the evaluation and ranking of the applications are of utmost importance.

In fact, the creation of this allocation mechanism in 2019 was met with great enthusiasm by the stakeholders in the SEN. As a result, there was a significant influx of applications for the reserve

injection capacity title through this modality in the initial months after its implementation, with several hundred applications being submitted. Given this enthusiastic response, it became essential to evaluate the capacity of the interested parties to carry out their proposed projects and comply with the requirements set by the network operator. This evaluation was necessary to ensure the security of the SEN and protect the interests of consumers.

Therefore, it was necessary to rank the different applications, focusing resources on the most viable cases and eliminating those that were unfeasible and merely speculative.

At this level, to ensure transparency and legal certainty, the regime establishes three groups of criteria that need to be considered¹:

1. Technical criteria: These criteria is related to the security and reliability of the SEN, including the utilization of infrastructure and the optimization of the SEN's operation and management;

2. Territorial and environmental sustainability criteria: These criteria focus on efficiency and rationalization of infrastructure planning, such as the joint use of infrastructures by multiple interested parties, obtaining favorable prior information from the municipality, having a favorable environmental impact statement (EIS) for the power plant or UPAC project, or having proof of contractual title that legitimizes the use of the necessary land; and
3. Criteria aligned with Portugal's targets: These criteria are based on national, European and international targets, taking into account the relevant technology.

As this enumeration is manifestly insufficient, further regulations are required to address the densification of the criteria and allocation of relative weights to each one. These regulations will be enacted by the DGEG through an order, after consulting the network operators. The procedure follows a similar approach to the establishment of "Terms of Reference" through previous orders, which outlined the specific terms and conditions of ranking, tie-breaking

¹ Cf. Article 20(5) of DL 15/2022, from which the transcripts are taken.

and assignment of points to each received application.

V. Applications' Specificities

The regime clarifies that an application that is excluded from the final list may be considered for approval as a replacement for another application that has not resulted in the conclusion of the agreement. This consideration is applicable during the year of submission and the subsequent year. The replacement can be made either as a whole or in part, subject to communication by the network operator. The replacement application should observe, to the extent technically feasible, the stipulated ranking.

Applications that have not resulted in the conclusion of an agreement expire on December 31 of the second year, counting from the initiation date of the respective procedure. However, these expired applications may be resubmitted in the following year.

VI. Reserve injection capacity titles' Specificities

Regarding the vicissitudes related to the reserve injection capacity title, it is understood that the regulations applicable to titles granted through other modalities also apply to those granted through the agreement modality. This implies that the transfer of the tile, through the transfer of the contractual position in the agreement, remains possible until the generation license is issued.

Furthermore, the law not only allows for subjective modifications to the tile but also accommodates objective modifications. Specifically, it stipulates that network operators have the authority to make changes to the substation or the voltage level of connection to the substation for technical reasons not attributable to the interested party, while ensuring the preservation of the other elements.

VII. Compatibility with other modalities

One question that may arise regarding the coexistence of three modalities for the allocation of reserve injection

capacity is how to manage potential overlaps. In relation to the agreement modality, two important points should be noted:

1. **Compatibility with the general access modality:** The agreement modality is specifically applicable in cases where there is no reception capacity available in the RESP. In contrast, the general access modality applies to cases where reception capacity is available and has been previously announced;
2. **Compatibility with the competitive procedure modality:** The regime clearly states that applications for executing an agreement cannot involve injection points in the RESP that are part of competitive procedures.

Likewise, the regime establishes that competitive procedures cannot encompass injection points in the RESP that have already been subject to an agreement between the interested party and the network operator. In cases where an agreement has not been concluded but the payment of the budget has already taken place, or in any other situations, the provide bond must be returned.

VIII. Key innovations in DL 15/2022

Lastly, it is worth highlighting two innovations introduced by DL 15/2022:

1. **Assessment of technical conditions for injection:** the regime now explicitly states that the execution of an agreement with the DSO requires the existence or establishment of reception capacity at the RNT substations that feed the distribution network in the areas subject to the agreement request.
2. This provision eliminates agreement procedures without prior assessment by the TSO of the injection capacity available in the RNT, which is crucial for ensuring the security of RNT operations.
3. **Storage** – the new regime expands the practical scope of this modality by allowing the inclusion of “pure” storage systems in the agreement.

COORDINATION WITH SPECIFIC SCHEMES: ENVIRONMENTAL IMPACT ASSESSMENT AND ENVIRONMENTAL IMPACT ANALYSIS

DIANA ETTNER

I. Introduction

The preamble of DL 15/2022 highlights, in terms of the administrative activity of prior control of the activities of the SEN, an idea of compatibility of the various public policy objectives in presence, imposing among them the “consideration of environmental values”.¹

Taking into account this idea of compatibility of public policy objectives, this article aims to analyse, considering the scope of DL 15/2022, how the procedures for prior control of electricity

¹ The administrative activity of prior control of the activities of the SEN is included, according to the preamble of DL 15/2022, within the first fundamental theme in which the decree-law is structured.

production and storage activities are articulated with some specific environmental regimes. In particular, we will take into account: (i) the articulation with the RJAIA, approved by Decree-Law no. 151-B/2013, of 31 October, in its current wording;² and (ii) the AInCA regime, as provided for in Articles 44 to 47 of DL 15/2022. Additionally, the rules, of temporary nature, that were recently approved on this matter by Decree-Law no. 30-A/2022, of 18 April, will also be considered.³

² Decree-Law no. 151-B/2013, of 31 October, was amended by Decree-Law no. 47/2014, of 24 March, and no. 179/2015, of 27 August, Law no. 37/2017, of 2 June, Decree-Law no. 152-B/2017, of 11 December, and Decree-Law no. 102-D/2020, of 10 December.

³ Decree-Law no. 30-A/2022, of 18 April, rectified by Declaration no. 14-A/2022, of 26 April, approves

As an initial note, we anticipate that, as regards the solutions adopted by the new law on this matter, no structural changes will be introduced in relation to the options in force until now.

Even so, on the one hand, there is a systematisation of the rules applicable in this field, which is evident in their inclusion in a specific section (Section VII) of Chapter II of the diploma, dedicated to “articulation with specific regimes”.

On the other hand, some relevant clarifications are introduced, especially regarding the articulation with the EIA procedure.

Perhaps more significant, although with a validity period limited to two years, are the rules approved by Decree-Law no. 30-A/2022, of 18 April.

exceptional measures aiming to simplify licensing procedures applicable to renewable energy generation projects, to be effective for two years.

II. Articulation with the AIA regime

A. Framework: the scope of projects subject to AIA

As stated in Article 1(1), the RJAIA regulates the environmental impact assessment of “public and private projects that are likely to have significant effects on the environment”.

Without going into the densification of each of these concepts, what should be noted, as it seems relevant to understanding the specificities introduced in DL 15/2022, is that the RJAIA defines the scope of projects subject to AIA according to three essential criteria.⁴

Firstly, a criterion of typification of projects that, regardless of location, are subject to AIA. These projects are identified in Annex I of the RJAIA and include, for example, the construction of overhead electricity transmission lines with a voltage of 220 kV or more and

⁴ Besides these three essential criteria, Article 1(3)(c) of RJAIA also submits to AIA the projects that, depending on their location, dimension or nature, are considered possible to cause a significant impact on the environment through a joint decision of the members of the government responsible for the sector of the project and the environment.

with a length of more than 15 km (cf. no. 19 of Annex I of the RJAIA).⁵

Secondly, a criterion for setting thresholds, according to which projects are only subject to AIA if they fall within the thresholds set for the general case or sensitive areas⁶ depending on the location of the project.⁷ These projects, as well as the applicable thresholds, are identified in Annex II of the RJAIA, and include, among others, with potential relevance to the activities pursued under the SEN

⁵ These projects correspond to those identified in Annex I of Directive 2011/92 of the European Parliament and of the Council of 13 December, 2011 on the assessment of the effects of certain public and private projects on the environment (Directive 2011/92), which the Directive considers as having a significant impact on the environment.

⁶ According to Article 2(a) of RJAIA, sensitive areas are: (i) protected areas, classified as such by Decree-Law no. 142/2008, of 24 July; (ii) sites of Rede Natura 2000, special conservation zones and special protection zones, classified under Decree-Law no. 140/99, of 24 April, in the context of Council Directives 79/409/EEC of 2 April 1979, on the conservation of wild birds, and 92/443/EEC, of 21 May (Habitats Directive); and (iii) protection zones of real estate classified or under classification assets, defined under Law no. 107/2011, of 8 September.

⁷ These projects correspond to those identified under Annex II of Directive 2011/92, which the Directive does not consider as necessarily having an impact on the environment, giving the Member States the possibility of submitting them to AIA based on thresholds or other criteria (as a case-by-case examination).

(i) Industrial installations intended for the production of electricity, in cases where the installed power is equal to or greater than 50 MW (in the general case) or 20 MW (in sensitive areas);⁸

(ii) Industrial installations for the transmission of electrical energy by overhead cables with an electrical voltage of 110 kV or more and a length of 10 km or more (in the general case) or only an electrical voltage of 110 kV or more (in sensitive areas);⁹

(iii) Hydroelectric installations with an installed capacity of 20 MW or more (in the general case) or all of them (in sensitive areas);¹⁰

(iv) Wind farms with 20 or more towers or located at a distance of less than 2 km from other similar farms (in the general case) or 10 or more

⁸ Annex II (3)(a) of RJAIA.

⁹ Annex II (3)(b) of RJAIA, includes the substations with lines with the same thresholds for the general case and sensitive areas.

¹⁰ Annex II (3)(h) of RJAIA, exempts from AIA in sensitive areas the installations for the production of hydroelectric power with an installed capacity of 1 MW or less as long as they do not cause a change in the river system of the water line nor the implantation of new hydraulic infrastructure.

towers or located at a distance of less than 2 km from other similar farms (in sensitive areas).¹¹

Thirdly, a criterion based on a case-by-case analysis, which in the case of projects not located in sensitive areas, consists of a prior assessment to be carried out by the competent licensing authority on the susceptibility of a specific project to cause significant impact on the environment in relation to its location, size or nature, applicable in the case of projects identified in Annex II of the RJAIA not covered by the thresholds set out therein.¹² In this case, under Article 1(3)(b) (iii) of the RJAIA, the impact of the project on the environment must be assessed in accordance with the criteria

¹¹ Annex II (3)(i) of RJAIA, which also includes the general case of the over-equipping of existing wind farms that have not been subject to AIA, where the final result of the existing project with the over-equipment, isolated or together with previous over-equipment is not subject to AIA, does not involve a total of 20 or more towers or that the distance from another similar wind farm is less than 2 km.

¹² Relying on a specific analysis of the projects, which considers their specificities and particularities, it may be said that the case-by-case analysis as a criterion for assessing whether or not a project is subject to an AIA contrasts with the establishment of such subjection based on Annexes I and II, which is founded on the prior identification of typologies of projects (and, where applicable, thresholds) subject to assessment.

set out in Annex III of the law,¹³ and taking into account the procedure set out in Article 3 of the RJAIA, which provides for a prior opinion from the AIA authority.¹⁴ In the case of projects located in sensitive areas, the need to subject them to AIA is decided by the AIA authority itself.

It should also be noted that under Article 1, no. 4, of the RJAIA, changes or extensions to projects included in Annexes I and II of the law are also subject to AIA when the conditions identified in the various paragraphs of the precept are verified.

Having set out this general framework, we must mention, before moving on to this analysis, that the RJAIA's choice as to the determination of projects subject to environmental impact assessment, based on the case of projects identified in Annex II, on a combination of criteria for such determination (setting thresholds and case-by-case analysis), is not the only option possible under European law.

¹³ These criteria consider the characteristics, location and potential impact of projects.

¹⁴ Under Article 8(1) of the RJAIA, the AIA authorities are APA or the CCDR, depending on the cases provided for in subparagraphs a) and b) of that article.

The RJAIA transposes into domestic law Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (Directive 2011/92).

With regard to the projects included in Annex II of that Directive (corresponding to those identified in Annex II of the RJAIA), Article 4(2) of the Directive provides that the determination of the projects subject to environmental impact assessment to be carried out by the Member States, must be made based on a case-by-case examination or based on thresholds or criteria set by the Member States.

In the Portuguese case, the legislature opted, as we have seen, for a combination of the two procedures in question, and it should be emphasised that this option, corresponds to a transposition of the Directive that may be described as “at most”, and may always be reconsidered in the light of the margin granted by European legislation.

Having said this, let us then move on to the specificities enshrined in the

legal regime of the SEN with respect to environmental impact assessment.

B. The AIA regime within the SEN

As mentioned, DL 15/2022 dedicates a specific section of Chapter II to the articulation of specific regimes, with Articles 42 and 43 of the decree-law being of particular note with regard to the AIA procedure.

Let us look at each of these norms.

Beginning with Article 42 of DL 15/2022, this article aims to introduce some precision about the case-by-case evaluation of projects not located in sensitive areas,¹⁵ whose general regime, as enshrined in the RJAIA, we described above.

Thus, the final part of Article 42(1) of DL 15/2022 begins by clarifying that the decision to subject to AIA projects not located in sensitive areas, submitted to a case-by-case analysis, is the responsibility of the DGEG.

In our view, this is a rule that already derives, for most projects covered by DL 15/2022, from the general

¹⁵ As for projects located in sensitive areas, since the decision is made by the AIA Authority itself, no specificity is foreseen.

nomenclatures of the RJAIA, and has a clarifying scope.

Article 42(2) of DL 15/2022 then establishes that in situations of absence of a decision by the AIA authority, under Article 3(4) of the RJAIA, the project is not subject to AIA, and the procedure must continue.

If in relation to the first part of the rule, the regime is that which already results from the RJAIA, to which this precept refers,¹⁶ the reference made in its final part to the continuation of the process in cases of the absence of a decision on the part of the AIA authority is not clear, and it would be important to be clarified.¹⁷

Moving on now to the analysis of the provisions of Article 42(3) of DL 15/2022, it provides that the national authority of the AIA may, by joint order with the director-general of the DGEG,

¹⁶ Article 3(4) of the RJAIA provides that the opinion of the AIA authority is issued within 20 business days and that the absence of a decision means that the project subject to that opinion is not subject to AIA.

¹⁷ In particular, it is not clear whether the intention is to introduce any deviation from the need for a decision on the subjection to AIA procedure by the licensing or competent authority, as provided for in the RJAIA.

identify types of projects that are not likely to cause significant impacts on the environment, in which the ruling and the decision within the scope of the case-by-case analysis do not take place. By way of example, reference is made to projects for electricity generation centers with a primary solar or wind source with power equal to or less than 1 MVA.

Without prejudice to the fact that this type of dispatch already occurred during the previous legislation,¹⁸ it seems to us that the express provision of this possibility aims to clarify the possibility of its approval to simplify and speed up procedures. The adoption of rulings with this scope may bring two main advantages.

On the one hand, the potential to avoid that, in cases where the insusceptibility of certain projects causing negative impacts on the environment has already been verified, case-by-case analyses are initiated, which naturally imply additional time in the processing of procedures and the allocation of

¹⁸ One example is the Joint Order of 7 October 2021, with the subject: “Applicability of the AIA legal regime to electricity generating centers having solar energy as their primary source and located in artificial areas”.

human resources to this analysis. This advantage is all the greater if these orders are many aimed at situations in which there are many requests for prior appraisal, as instructed under Article 3 of the RJAIA.

On the other hand, the possibility to guarantee uniformity of understanding within the scope of the entities involved, avoiding disparate assessments of the same realities.

What must be ensured, naturally, is that the dispatches issued are as clear as possible, whether regarding the projects covered therein, whether regarding their application in time, or even regarding possible formalities that may be foreseen, in order to avoid that they may become an additional source of uncertainty in a domain that already brings some doubts to the operators.

In this regard, it should be noted that, under this rule, a joint order was recently issued by APA and DGEG, on 15 March 2022, on the applicability of the AIA legal regime to small production units having solar energy as their primary source.

Looking at Article 43 of DL 15/2022, there are some specificities of the AIA

procedure in question within the scope of the change of the production license, with particular relevance as to the case-by-case analysis in situations of changes to projects already subject to an AIA.

In this regard, the RJAIA provides, in Article 1(4)(c), that the AIA procedure must be based on a case-by-case analysis. Article 1(4)(c) provides that changes or extensions of projects included in Annexes I or II, already subject to AIA and authorised, executed or in the process of being executed, are subject to AIA when: *(i)* they correspond to an increase of 20% or more of the threshold and are based on a case-by-case analysis to be likely to cause significant environmental impact; or *(ii)* if no threshold is set or if there is no increase in the threshold, they are considered on the basis of a case-by-case analysis to be likely to cause significant environmental impact.

Article 43(3) of DL 15/2022 provides that, in the case of requests for changes to the production license for projects which have already been subject to an AIA procedure, it is not necessary for the DGEG to request a case-by-case analysis from the AIA authority, in the case of changes to the production license from a solar or wind primary source which:

(i) does not objectively imply any change to the AIA decision and respective grounds; and *(iii)* does not imply a change to the location of the generating plant, UPAC or storage facility or imply a decrease in the area of the generating plant, UPAC or storage facility.

Having identified the main provisions of DL 15/2022 applicable to the AIA procedure, it is also important to note the recent publication of Decree-Law 30-A/2022, of 18 April, which approved exceptional measures to ensure the simplification of procedures for the production of energy from renewable sources.

Adopted in order to accelerate the energy transition, this exceptional regime has introduced important rules on AIA, applicable to projects of: *(i)* renewable energy power generation centers, storage facilities and UPAC and respective connection lines to the RESP; *(ii)* facilities for the production of hydrogen by electrolysis from water; and *(iii)* electricity transmission and distribution infrastructures.

We highlight as particularly relevant two rules adopted by this diploma, related to the AIA procedure.

Firstly, Article 2 (1) of DL 30-A/2022 provides that, with respect to projects included within its scope, a case-by-case analysis is no longer mandatory when these projects are located outside sensitive areas and are below the applicable thresholds. In these situations, the case-by-case analysis will only take place when, justifiably, the DGEG, as the licensing authority, considers that there are indications that the project is likely to cause significant impacts on the environment.

Secondly, Article 2(4) of this diploma determines that, as for renewable energy projects covered by it, the issuing of opinions and/or authorisations foreseen in sectorial legislation takes place within the scope of the AIA or AInCA procedure, carried out during the implementation project phase. By clarifying in the final part of the provision that the intervention of the entities competent for such opinions/authorisations is exhausted, this rule eliminates the need for new pronouncements by these same entities on the same subject, thus allowing for gains in speed in the installation and entry into operation procedures for this type of project.

III. The analysis of environmental incidences

With regard to INCA, the solutions in DL 15/2022 essentially maintain the regulations already contained in the previous regime,¹⁹ with some alterations that are worth noting.

Thus, with regard to the situations in which AInCA is to be carried out, Article 44(1) of DL 15/2022 maintains the rule that it will apply to the issue of a production license for projects not covered by the RJIA, now specifying that we are talking about electricity generation centers, UPACs or storage facilities.

However, a change is introduced in this regard, which should be noted.

In effect, Article 10-A(1) of Decree-Law 17/2026 provided that AInCA would take place in cases where a production license not covered by the RJIA was issued and its location was foreseen in Natura 2000 Network areas.

Now, differently, there is no longer a reference to the location of the

¹⁹ Articles 10-A to 10-C of Decree-Law no. 172/2006, of 23 August, in the wording introduced by Decree-Law no. 76/2019, of 3 June.

projects, and it is stated that the AInCA procedure takes place “when the sectoral legislation expressly determines it”. Although this wording is not absolutely clear, it seems to us that the reference that now exists to “sectoral legislation” has in view legal regimes of an environmental nature that determine the need for AInCA, as is the case of Decree-Law no. 140/99, of 24 April, in its current wording, in its Article 10.

As for the AInCA procedure, the main provisions already included in the previous regime are maintained, whether in relation to the competence of the CCDR to carry it out, or in relation to deadlines, or in relation to procedural phases and formalities. Additionally, there is now only one provision on this type of analysis within the scope of the alteration of the production license, in Article 47 of DL 15/2022.

On this point, the new law provides that when the issue of the production license has been preceded by an AInCA, the DGEG will send the amendment request to the territorially competent CCDR, for an opinion on the maintenance of the DInCA. However, the same situations in which a case-by-case analysis of change requests to projects already submitted to an

AIA procedure, as referred to above, are exempted from the need for this decision, that is, cases which: *(i)* do not objectively involve any change to the AIA decision and respective grounds; and *(ii)* do not involve any change to the location of the generating center, UPAC or storage facility or imply a reduction in the area of the generating center, UPAC or storage facility.

IV. Final consideration

As a final consideration on this matter, it must be said that the aims of clarification and simplification of regimes, which were sought with some of the rules just described, are naturally positive.

However, one cannot help but wonder if it would not be possible to go even further in terms of simplification and articulation of procedures, especially in cases where AIA is required – as this is, as is recognized, so complex and comprehensive, assessing the projects in all their multiple dimensions.

In particular, the question is whether it would not be possible to create single and truly integrated procedures, which would ensure the environmental impact

assessment of projects and the prior control of the activities of the SEN, in terms that are, in fact, recognised as possible by Directive 2011/92 itself.²⁰

This is, to a certain extent, the path adopted by DL 30-A/2022, of 18 April, especially when it centralises in the AIA procedure for projects in the execution phase, the intervention of the entities competent to issue opinions and authorisations foreseen in sectoral legislation. It would now be important to monitor and evaluate the effects of this rule, in order to be able to take advantage of its full potential in similar situations.

²⁰ Article 2(2) of Directive 2011/92 provides that: “[t]he environmental impact assessment may be integrated into existing procedures for the approval of projects in the Member States, or, failing that, into other procedures or into procedures to be established to meet the objectives of this Directive”.

COMMENTARY ON THE NEW REGIME OF MUNICIPAL LEASES AND ARTICULATION WITH THE RJUE

RUI RIBEIRO LIMA
INÊS VIEIRA

I. The new regime of municipal transfers

A. Introduction

From early on, municipalities have required the owners of renewable energy generating plants to make concessions or pay compensation for the establishment of generating plants in their districts.

However, it is certain that over time this practice has appeared truly disparate among municipalities: on the one hand, not all municipalities require the payment of compensation on the part of electricity generation center owners for the installation of such facilities in their territory; on the other hand, the municipalities that require such services do so in a heterogeneous manner – sometimes demanding monetary compensation (one-off payments or as

monthly or annual rent, with different associated values), and sometimes requiring non-monetary services (which includes, in particular, the construction of collective use equipment to serve local communities).

The legal framework for these claims by municipalities was, until the entry into force of [DL 15/2022](#), given by (i) [Decree-Law no. 424/83, of 6 December](#), which established the payment of an annual rent by EDP,¹ as holder of hydroelectric generation centers,² to the municipalities whose territorial area was affected by the zone of influence of the said generation centers, and by (ii) Annex II

¹ At the time with the status of a state owned enterprise.

² And also as the owner of thermoelectric power plants.

of [Decree-Law no. 189/88, of 27 May](#), which established the obligation of the owners of wind generation centers covered by the guaranteed remuneration regime foreseen in the referred Annex II to pay a rent to the municipalities. The other compensations and transfers required by the municipalities had no legal framework, a circumstance that resulted in an element of great unpredictability for the owners of the power plant in the context of their licensing.

DL 15/2022 thus sought to establish a legal regime for transfers establishing “a predictable, transparent and non-discriminatory mechanism for transfers by producers, which aims to contribute to meeting the energy needs of municipalities and local populations, regulating [...] a practice that has been random, unregulated and rarely articulated with the primary purpose of the respective projects”.³

B. The regime of transfers (and compensation) to the municipality(ies) in DL 15/2022

The new transfer regime, set out in Article 49 of DL 15/2022, is applicable to the owners of renewable electricity

³ Cf. preamble of DL 15/2022.

generation plants or storage facilities with an attributed connection power greater than 1 MVA⁴ which obtain the TRC as from 15 January 2022.⁵ The formalisation of the transfer – through a duly signed protocol – is a condition for issuing the operating license for the electricity generation center.⁶

Article 49 establishes two different assignment regimes, applicable according to whether the respective installations have an assigned connection power (i) greater than 50 MVA or (ii) less than or equal to 50 MVA, but greater than 1 MVA. Thus:

- The owners of renewable energy generating plants or storage facilities with an allocated connection power greater than 50 MVA shall transfer, on a one-off basis and free of charge, to the municipality(ies) where the

⁴ Holders of renewable electricity generating stations or storage facilities with an allocated connection power of less than 1 MVA – whose installation and operation is subject, pursuant to Article 11(3), to prior registration and operating certificate, and no longer to a production and operating license – are not covered by the scope of application of the precept. Also excluded from the scope of application are “changes to the prior control title for retrofitting or overfitting, [and] [...] the issuing of a prior control title for hybridisation”.

⁵ See Article 276(6).

⁶ See Article 49(5).

generating plant or storage facility is located:

- UPAC with installed power equivalent to 0.3% of the connection power allocated for installation in municipal buildings or collective use equipment or, by indication of the municipality, to the populations that are located near the installation; or, alternatively,
- electric vehicle charging stations with an installed power equivalent to 0.3% of the allocated connection power, to be installed in public spaces and for public use.⁷

In the event that municipal buildings or collective use facilities are already equipped with UPCAs, the provision provides that the municipality(ies) may determine the substitution of the transfer by a one-off cash compensation of EUR 1500 per MVA of connection power attributed.⁸ Similarly, if there is

⁷ See Article 49(1).

⁸ See the second part of Article 49(3). Doubts remain, however, as to the articulation of this power of the municipality with the power of the holder of the generating plant to assign to the municipality, alternatively, charging stations, as provided for in Article 49(1).

no agreement with the municipality(ies) regarding the transfer to be made, the holder of the renewable source electricity generation center or storage facility may also replace the transfer by the monetary compensation referred to.⁹

- The owners of renewable electricity generating stations or storage facilities with an allocated connection power equal to or less than 50 MVA and more than 1 MVA must pay the municipality(ies) where the generating station or storage facility is located a one-off, cash compensation in the amount of EUR 1500 per MVA of allocated connection power.¹⁰

It should also be noted, in obedience to the principle of legal certainty, that the new regime of assignments, whose main features we have listed above, determines that no other consideration or assignment may be demanded from the owners of renewable source generating stations or storage facilities other than those established in the

⁹ See Article 49(6). This precept gives the owners of renewable electricity generating plants or storage facilities the guarantee that the obtaining of the operating license will not be affected by the lack of agreement with the municipality on the type of transfer to be promoted.

¹⁰ See Article 49(2) and (3).

law in question,¹¹ thus contributing to the protection of their legitimate expectations.

C. The system of concessions as an instrument of energy policy

In addition to seeking to establish a regulatory framework with a view to introducing a stability and predictability factor in the installation of electricity generation centers, the institute of transfers now provided for in DL 15/2022 is presented as an instrument for the promotion of decarbonisation policies: (i) in the residential sector and in public buildings; and (ii) in the mobility sector, under Article 39 of [Law no. 98/2021, of 31 December](#).

This is true for the two types of allowances provided for by the legislator, CCUs and charging stations, where the former are intended to promote decarbonisation in the residential sector and in public buildings by promoting increased energy efficiency in buildings, and the latter decarbonisation in the mobility sector by promoting electric mobility.

With regard to monetary compensation, these are, by legal requirement,

¹¹ See Article 49(9).

channelled to increase energy efficiency and improve thermal comfort in municipal buildings, equipment for collective use or residential buildings, through the adoption of the following list of actions: (i) replacement of inefficient windows with efficient windows, of energy class “A+” or higher; (ii) application or replacement of thermal insulation in roofs, walls or floors, using natural-based materials or incorporating recycled materials, as well as the replacement of entrance doors; (iii) heating and/or cooling systems and/or domestic hot water using renewable energy, of energy class “A+” or higher; (iv) storage systems; (v) interventions aimed at water efficiency; and (vi) interventions to incorporate bioclimatic architecture solutions, involving the installation or adaptation of fixed building elements such as shading, greenhouses and green roofs or facades, favouring natural-based solutions.¹²

II. The articulation with RJUE

A. the prior favourable information

An important new feature of DL 15/2022 is the use of the institutes set out in the

¹² See Article 49(4).

RJUE, as can be seen in the details of the application for a production license. Specifically, DL 15/2022 replaced the obligation to submit: (i) a favourable opinion on the location of the generating plant issued by the municipal council; and (ii) a location opinion issued by the territorially competent CCDR – whenever the project is not subject to an AIA or an AIncA¹³ – with the submission of **favourable prior information** issued by the municipal council whenever the project is not subject to an AIA or an AIncA.¹⁴

The solution introduced by DL 15/2022 has the potential to reconduct the decision to be issued by the municipal council to a legal figure widely consolidated in the legal system, particularly in the RJUE, thus contributing to the predictability and stability of the system and to the protection of the legitimate expectations of the promoters of electricity generation centers or storage facilities.

In fact, contrary to what occurred under the legislation previously in force, which left to the discretion of

the municipalities the definition not only of the elements to be delivered by the promoters and the order for the issue of a favourable opinion as to the location, but also the concrete content of that opinion, leading to disparate understandings between municipalities. The use of prior information now has the virtue of making it clear that the elements to be delivered by the promoter to the municipal council and, also, to be assessed by the latter, are those listed in point II of Annex I of [Ordinance no. 113/2015, of 22 April](#). In addition, the content of the assessment by the municipal council and the decision to be taken has its own legal framework, with the consequences set out in the law, particularly as regards the one year period during which the favourable prior information is in force as an act constituting rights and binding on the municipality for the decision on the urban planning operation.

B. Works of little urban relevance

In articulation with the RJUE, DL 15/2022 has also extended the list of operations involving the installation of solar photovoltaic panels which constitute works of little urban relevance and which, as such, are exempt from prior urban planning control. In this regard, it is worth

recalling paragraph *g)* of paragraph 1 of Article 6A of the RJUE, which already included within the concept of works of low urban relevance the installation of solar photovoltaic panels “[...] associated with the main building [...] which do not exceed [...] the coverage area of the building and the height of the building in 1 m [...]”.

Pursuant to paragraph 1 of Article 48, DL 15/2022 also classifies as works of little urban relevance the installation of solar photovoltaic panels “on pre-existing built structures which do not constitute buildings or are directly implanted on the ground in delimited areas, namely shopping complexes, large commercial surfaces, industrial parks or lots, logistics platforms, camping parks and car parks”.

In essence, while the RJUE classifies the installation of photovoltaic panels on the roof of buildings as works of little urban relevance, DL 15/2022 intended to enshrine the installation of photovoltaic panels outside buildings as works exempt from prior urban planning control provided that they are inserted in a delimited area serving and acting as an auxiliary to a main use. This is the case, for example, of the installation of photovoltaic panels in areas usually

dedicated to outdoor parking within the catchment area of a commercial area.

However, similarly to what also occurs with the RJUE, the exemption from municipal prior control does not apply whenever the installation of the above-mentioned panels occurs in classified real estate or real estate in the process of classification, or in real estate inserted in classified groups or real estate in the process of classification, or in real estate located in the protection zones of classified real estate or real estate in the process of classification.

It should also be noted that the installation of photovoltaic solar panels, even if exempt from prior urban planning control, must be preceded by notification, for information, to the competent municipal council.¹⁵

¹⁵ See Article 48(4).

¹³ Item *j)* of Annex I of DL 172/2006, in the version in force before the entry into force of DL 15/2022.

¹⁴ Cf. paragraph *j)* of Annex I to DL 15/2022.

RECOGNITION OF PUBLIC INTEREST AND PUBLIC UTILITY: ARTICLES 22(13), 54(2), AND 112 OF DECREE-LAW NO. 15/2022, OF 14 JANUARY

MIGUEL NOGUEIRA DE BRITO

I. Introduction: a paradigm shift in the recognition of the public interest and utility of power plants and RESP facilities

DL 15/2022 regulates in innovative terms the question of the public interest and public utility of the installation of power plants and also of the installations of the RESP, putting an end to a certain ambiguity and vagueness of the previous regime in this regard.

In addition to the necessary clarification of the public interest and public utility regime for electricity facilities, DL 15/2022 also operates a paradigm shift in this matter. Thus, the previous system made, in several cases, the recognition of the public interest and utility dependent on a declaration

to this effect (as is the case in the RLIE). The new law makes the recognition of public interest and utility dependent on obtaining a title for reserve capacity for injection into the RESP under a competitive procedure, for the installation of generating plants, including hybrid or hybridized generating plants, storage facilities and the respective connection lines up to the point of interconnection (see Article 22(13)). Furthermore, the recognition of public utility is also made dependent upon the approval of the relevant projects pursuant to DL 15/2022, in the case of the connection from the reception point for the connection of the generating plant, UPAC or storage facility to the interconnection point (Article 54(2)).

The installations of the RESP, that is, the public service installations for the transport and distribution of electricity that make up the RNT, the RND and the LV distribution networks (Article 3 (ggg)) continue to be considered public utility for all purposes (Article 112(1)).

In the subsequent exposition the following issues are addressed: (i) the recognition of public interest and public utility for the purposes of Article 22(13); (ii) the public utility of the RESP facilities and its extension to the connection between the reception point and the interconnection point; (iii) the distinction between public interest and public utility.

II. Recognition of public interest and public utility for the purposes of Article 22(13)

According to Article 22(13) of DL 15/2022, all the installations of generating plants, including hybrid or hybridized generating plants, storage facilities and their connection lines to the interconnection point that have obtained the title of reserve injection capacity in the RESP under a competitive procedure, are recognized as being of public interest and public

utility for all legal and regulatory purposes.

This means that if the facilities in question have obtained title to reserve injection capacity in the RESP under a competitive procedure, the respective public interest and public utility is recognized, as expressly recognized in the aforementioned provision, not only for the purposes of constituting public utility easements and expropriations, but also for the purposes of any laws or regulations requiring recognition of the aforementioned public interest and public utility.

Such regulations must include the PDM of the municipalities in force, namely the respective provisions establishing that construction in agricultural or forestry areas, for example, is only permitted when facilities of recognised public interest are involved. In fact, for the purposes of such regulatory provisions, facilities recognized as being of public interest or utility under Article 22 (13) of DL 15/2022 are relevant without being necessary any further acts of recognition from the municipalities.

But this solution would not, strictly speaking, be any different if there were PDM rules requiring the recognition

of public interest or public utility by resolution of the municipal assembly. Even in this case, given that the rule in Article 22(13) of DL 15/2022, is a legislative act and the PDM rules are merely regulatory in nature,¹ the recognition of public interest or public utility directly resulting from the law would have the effect of exempting the respective recognition by resolution of the municipal assembly.

Moreover, given the breadth of the wording in the aforementioned Article 22(13), it must be understood that even the regularisation procedure provided for in Article 5 of [Decree-Law no. 165/2014, of 5 November](#), if applicable, would no longer require a reasoned decision recognising the municipal public interest in the regularisation of the establishment or facility, issued by the municipal assembly, on the proposal of the municipal council. Thus, if the installation in question were an extension of an electricity generation plant which had obtained a title to

¹ As, incidentally, Article 2(1) does not fail to emphasize, by establishing that “[a]ll public or private intervention actions involving changes in land use to be carried out in the PDM intervention area must comply with the provisions of this Regulation, the conditioning plan and the development plan, without prejudice to what is defined in other higher hierarchy rules.”

reserve injection capacity in the RESP under a competitive procedure, the recognition of the public interest arising from the provisions of Article 22 (13) of DL 15/2022, would be valid for the purposes of the provisions of the aforementioned Article 5.

III. The public utility of the RESP facilities and their extension to the connection between the reception point and the interconnection point

The scope of the recognition of the public utility of the RESP’s facilities contained in Article 112(1) of the same law seems to be different.

When Article 112(1) states that the facilities of the RESP are considered to be of public utility for all purposes, it should be understood that this means, as clarified in paragraph 3 of the same provision: *(i)* the use of property in the public or private domain of the State and municipalities for the establishment or passage of the integral parts of the RESP; *(ii)* to request the expropriation, for public and urgent utility, of the property necessary for the establishment of the integral parts of the RESP; *(iii)* to request the establishment of

administrative easements over the integral parts of the RESP.

In addition, the recognition of public utility contained in the aforementioned provision also results in the application of the provisions of Article 56 of RLIE. The owners or lessees of land or buildings which must be crossed by overhead or underground lines of a facility declared to be of public utility shall be obliged, as soon as they are informed to do so by the respective concessionaires, to allow entry to their properties to persons in charge of studies, construction, repair or surveillance of these lines and to support the occupation of their properties for the duration of the work requiring it, without prejudice to the provisions of Article 55 regarding the compensation due to them.

The facilities of the RESP, according to the provisions of Article 3 (*ggg*) refer to the set of public service facilities for the transmission and distribution of electricity that integrate the RNT, the RND and the LV distribution networks.

However, in addition to the concessionaires of these public service networks, the provisions of Article

112 also apply to the holders of the production license who have to pay for and build the connection from the reception point for connecting the generating plant, the UPAC or the storage facility to the interconnection point, in accordance with the provisions of Article 53(1)(b) and 54(2).

IV. The distinction between public interest and public utility

Finally, a brief reference should be made to the distinction between the concepts of public interest and public utility. Article 22(13) covers both realities, while Article 112 refers only to public utility.

In principle, it should be understood that recognition of public utility produces effects at the level of the regimes of expropriation for public utility and administrative easements; recognition of public interest, on the other hand, has a potentially broader scope, producing effects in the sense of considering such recognition as verified with respect to any laws or regulations that specifically may require it.

In summary:

- a) The facilities of electricity generating plants, including hybrid or hybridized generating plants, storage facilities and their respective connection lines up to the interconnection point that have obtained the title of reserve injection capacity into the RESP under a competitive bidding procedure are recognized as being of public interest and public utility for all legal and regulatory purposes, namely for the creation of public utility easements and expropriation (Article 22(13));
- b) The connection from the reception point for the connection of the generating plant, UPAC or storage facility, to the interconnection point is considered to be of public utility for the purposes of constituting public utility easements and expropriation (Article 54(2));
- c) The facilities of the RESP, that is, all the public service facilities for the transmission and distribution of electricity that make up the RNT, the RND and the LV distribution networks, are considered to be of public utility for the purposes of constituting public easements and expropriation of public utility (Article 112);
- d) The recognition of public utility produces effects at the level of the regimes of expropriation and administrative easements, whereas recognition of public interest has a potentially broader scope.

OVERPOWERING (*SOBREEQUIPAMENTO*) AND REPOWERING (*REEQUIPAMENTO*)

HELDER M. MOURATO
MARIANA PINTOR

I. Introduction

The entry into force of [DL 15/2022](#) not only consolidated the regime of overpowering in a single diploma (thus revoking [Decree-Law no. 94/2014, of 24 June](#)) and established the application of such regime to all electricity generating centres from renewable energy sources, but it also sets out the new regime for repowering of such generation centers allowing (on a transitional basis and until the goals indicated in PNEC 2030 for the respective primary source are achieved) the increase of the connection power up to a maximum of 20% of the connection power initially allocated.

Both cases, overpowering and repowering, constitute a non-substantial change to the pre-existing prior control title, and must therefore follow the

procedure established for the respective change.

With regard to overpowering, the new diploma also brings news in respect of remuneration, since remuneration will now be made (without prejudice to the remuneration systems already in place prior to the entry into force of this legal diploma) through market price or by the price that is established by the parties pursuant to a bilateral agreement.

The several changes offered by this new diploma, briefly identified below, seem to consubstantiate interesting land use policy instruments, mainly aiming at balancing the promotion of energy generation using renewable sources and the implications that such generation may have on land use.

II. Analysis

DL 15/2022 brought some news regarding replacement and changes to the equipment initially existing in electricity generating centers from renewable energy sources.

Indeed, in what concerns, on the one hand, overpowering (*i.e.* changes to the generating plant consisting in an increase of the installed power¹ through the installation of more generating equipment or inverters, up to a limit of 20% of the connection power² allocated to the power plant center in the initial generation license [*licença de produção inicial*]), the respective regime is no longer subject to autonomous regulation (revoking Decree-Law no. 94/2014, of 24 June)³ and will now apply to all

renewable energy generating centers (except hydroelectric plants with a connection capacity greater than 10 MVA)⁴ and not only to onshore wind generating centers with guaranteed remuneration (*remuneração garantida*), as before.

On the other hand, regarding the repowering regime (*i.e.* the total or partial replacement of the generating equipment of the renewable primary source power plant, “without changing the location polygon” of the pre-existing power plant), the legislator created a new regime, albeit transitional in nature – in fact, the possibility of repowering a power plant ceases, for power plants of each primary source, when the targets set out in PNEC 2030⁵ are reached for the primary source in question.⁶

Overpowering and repowering are mainly regulated in Section XI of Chapter II (“Electricity generation and storage”) of DL 15/2022, in Articles 62 to 73 of said law. Also relevant to these matters are the provisions of Article 92 (“Counting the energy

of overpowering”) and Article 278 (“Guaranteed remuneration schemes or other subsidized remuneration support schemes”).

Both cases – overpowering and repowering – constitute a “non-substantial amendment” of the pre-existing prior control title (*título de registo prévio*), so the regime for amendments to the same should be applicable.⁷ Thus, for electricity generation centers subject to a generation license, the respective overpowering and repowering require authorization from the licensing entity.⁸ In the case of electricity generation centers subject to prior registration, overpowering and repowering are exempt from new registration, being subject to mere registration.⁹ Also in respect of generating centers subject to prior notification, it is only necessary to proceed to the relevant endorsement.¹⁰

With specific focus on overpowering, the regime established in DL 15/2022 is substantially identical to the previous

one, although the following should be noted:

- (i) The possibility of injecting additional energy is maintained,¹¹ and the technical conditions to which it is subject are defined in a “connection agreement” with the grid operator to which the power plant is connected, in coordination with the global SEN manager;¹²
- (ii) In the previous regime, overpowering was always preceded by an authorization from the licensing entity, however, under DL 15/2022, the procedure to be followed now depends on the applicable prior control title, as mentioned above;
- (iii) Without prejudice to the remuneration schemes previously granted and that, naturally, remain in force,¹³ the energy from overpowering is remunerated at

¹ For this purpose and under Article 3 (*fff*) of DL 15/2022, the concept of “installed power” is defined as “the active and apparent power, in kW and kVA, of the electricity generation equipment or autonomous storage facility, considering, in the case of solar electricity generation centers or autonomous storage using batteries, the nominal output power of the inverters in kW and kVA and respective inverters, established in the prior control procedure”.

² Under Article 3 (*ddd*) of DL 15/2022, the concept of “connection power” for this purpose is defined as “the maximum authorised power for injection into the grid set in the prior control procedure”.

³ See Article 305 (*l*), of DL 15/2022.

⁴ See Article 64(1) of DL 15/2022.

⁵ Approved by the [Council of Ministers Resolution no. 53/2020, of 10 July](#).

⁶ Cf. Article 7(5) of DL 15/2022.

⁷ Cf. Article 62(1) of DL 15/2022.

⁸ Cf. Article 3(1) of DL 15/2022.

⁹ Cf. Article 55(6) and (8) of DL 15/2022.

¹⁰ Cf. Article 5(9) of DL 15/2022.

¹¹ In accordance with Article 3, paragraph *ε*), of DL 15/2022, the concept of “additional energy” is defined as “the active energy resulting from the use of the additional power, excluding the energy of the over-equipment, if any”.

¹² Cf. Article 6(2) of DL 15/2022.

¹³ Cf. Article 278(2) and (3) of DL 15/2022.

market price (or through bilateral agreement);¹⁴

(iv) The possibility of legal separation between overpowering and the pre-existing generating center is maintained, however, it is no longer required that the relationship between the legal entity that owns the overpowering and the legal entity that owns the pre-existing generation center is one of “total control”, and only “control” is now required;¹⁵

(v) The non-transferability of the overpowering autonomously from the pre-existing generating center is also maintained, with an exception, however, for situations of transfer *within the* framework of intra-group restructurings, without a change in the ultimate beneficiary;¹⁶

(vi) Whenever it is necessary to interrupt the injection of additional energy or of energy from overpowering, the instructions for this purpose should now only be given by the global SEN

manager¹⁷ (*i.e.*, the grid operator to which the power plant is connected no longer has the authority to give such instructions);

(vii) The dialogue with the several entities should be ensured primarily by the owner of the pre-existing power plant.¹⁸

Regarding the repowering regime – one of the novelties of DL 15/2022 – it should first be noted that all renewable energy generating centers, without exception (including those benefiting from a guaranteed remuneration regime), may be repowered¹⁹.

With the total repowering of the generating center the connection power is increased, on a one-time basis, up to a maximum of 20% of the initially allocated connection power (with exception of hydroelectric plants with a connection power exceeding 10 MVA).²⁰

Still on the increase in connection power following repowering, it seems that it may be argued that the somewhat

obscure rule established in Article 71(3) of DL 15/2022²¹ means that, in cases where the minimum power of the generating equipment existing in the market exceeds the value of the initial connection power plus a maximum of 20%,²² then the increase in the connection power following repowering may be determined from one of two alternatives (the choice between one and the other is not the responsibility of the holder of generating center, but rather the responsibility of the competent RESP operator, who must indicate the alternative most appropriate to guarantee the safety and reliability of the system).²³

²¹ “In cases in which the minimum power of the generating equipment existing in the market exceeds the value of the initial connection power plus a maximum of 20%, defined in accordance with the previous number, this increase corresponds to the minimum value of the minimum power of the generating equipment or, alternatively, is measured as a function of the aggregation of the generating plants of the same holder located in the same network area and is carried out at the point of connection to the RESP, from among those to which the aggregated generating plants connect, which has the best technical conditions for the injection of the allocated capacity”.

²² In other words, the equipment on the market is already so sophisticated that it is not possible to comply with the addition brought to the connection power by less than 20%.

²³ See Article 71(4) of DL 15/2022.

The first alternative seems to be that the addition to the connection power following the repowering will be greater than the initial power plus 20% and should be the minimum possible allowed by the new equipment.

In the second alternative, applicable only in cases where the holder of the generating center owns other generating center(s) located in the same network area, the increase may be determined by reference to all of these generating centers, considered in aggregate and taking into account the technical conditions of the grid connection points to which they effectively connect. This alternative seems to allow the operator of the RESP the possibility of “playing” with the connection powers of each of the electricity generation centers in question and with the technical capacity of the respective connection points to the RESP, in order to, as an example, reduce the connection power of an electricity generation center to the extent of the increase in connection power of the re-equipped electricity generation center to a connection power beyond the initial one plus 20%.

Also worthy of note is the provision of Article 62(3) of DL 15/2022, pursuant to which the repowering of solar or

¹⁴ Cf. Article 66 of DL 15/2022.

¹⁵ Cf. Article 69(1) of DL 15/2022.

¹⁶ Cf. Article 70 of DL 15/2022.

¹⁷ Cf. Article 65(1) of DL 15/2022.

¹⁸ Cf. Article 69(6) of DL 15/2022.

¹⁹ Cf. Article 71(1) of DL 15/2022.

²⁰ Cf. Article 71(2) of DL 15/2022.

wind power generating centers is not subject to AIA, regardless of whether or not the initial generating center has been subject to that procedure (with exception of the repowering of wind power generating centers where there is an increase in the number of towers).

The regime for interrupting the injection of energy from the repower into the grid largely follows the provisions for the overpower²⁴, although it should be noted that the energy corresponding to the increase in connection power resulting from the repower mandatorily participates in the market for resolving technical constraints after the daily market and is placed on the downstream offer curve of the replacement reserve market and the regulation reserve market, or the market that will replace it, with a price no lower than zero.²⁵

The energy corresponding to the additional connection power is remunerated at market price (or through a bilateral agreement)²⁶. In cases where the electricity generation center benefits from a guaranteed remuneration

²⁴ Cf. Article 72 of DL 15/2022.

²⁵ Cf. Article 72(3) of DL 15/2022.

²⁶ Cf. Article 73(1) of DL 15/2022.

scheme or another subsidized remuneration support scheme, this scheme is applicable to the electricity injected into the RESP corresponding to the initial connection power.²⁷

Taking into account not only the demanding goals outlined in the PNEC 2030 – *Plano Nacional Energia e Clima 2021-2030* (which fall under the European strategy of decarbonization and reduction of energy dependence), but also the foreseeable increase in demand for electricity from renewable sources that the advent of “green hydrogen” (another focus of that European strategy) will predictably bring, and also the movements commonly referred to as “*not in my backyard*” that have accompanied the development of electricity production using renewable sources, it seems that the extension of the scope of the regime overpower and the novelty of the repower regime thus consubstantiate interesting energy policy instruments from the point of view of balancing the needs of territorial planning and promoting the generation of electricity from renewable sources, since those instruments allow for an increase in installed capacity for the generation

²⁷ Cf. Article 73(2) of DL 15/2022.

of electricity from renewable sources, without implications for territorial occupation and without increased environmental and landscape impact.

In the context of exceptional measures to ensure the simplification of procedures for the generation of energy from renewable energy sources, approved by Decree-Law no. 30-A/2022, of 18 April, implemented and adopted with the aim of accelerating the ecological transition, it is also important to highlight the provisions of Article 8 of said legal diploma, which determines that “the wind power generating centers may inject energy into the RESP above the allocated connection power”. In these cases, the repower regime will apply, with the necessary adjustments, regarding the interruption of injection of energy and remuneration of energy, without prejudice to the applicable regime to the additional energy produced by the wind power plant in question and, in particular, the provisions of Article 65 of DL 15/2022.

HYBRID POWER PLANTS AND THE HYBRIDIZATION OF POWER PLANTS – THE SIMULTANEOUS USE OF DIFFERENT RENEWABLE PRIMARY ENERGY SOURCES IN ELECTRICITY GENERATION PROJECTS

RICARDO ANDRADE AMARO
JOANA ALVES DE ABREU

I. Introduction

The possibility of installing electricity generation units in pre-existing power plants, using a different primary source, was introduced in our legal system with the approval of DL 76/2019, which amended DL 172/2006. This law determined¹ that such installation was subject to obtaining autonomous generation and operation licenses, endorsed to the licenses of the referred power plants, even if the initially attributed injection power remained unchanged.

¹ Cf. paragraph 3 of Article 4 of DL 172/2006.

The PNEC 2030² identifies the promotion of the dissemination of hybrid systems based on renewable technologies as one of the measures to accelerate the generation of electricity from renewable energy sources, as they are systems that allow the complementarity between primary energies, which ensures “greater flexibility and better use of resources (...)” and, consequently, the possibility of minimizing generation costs (...), maximizing, on the other hand, the capacity of connection to the grid by

² Approved by the Council of Ministers Resolution no. 53/2020, of 10 July.

increasing capacity without additional investment in the network”. The starting point for this objective would be the development of the legal framework and technical criteria applicable to this type of system.

II. The new legal framework applicable to hybrid power plants and to the hybridization of power plants

DL 15/2022 now provides for two ways of combining power plants with renewable primary energy from different sources: the hybridization of existing plants, through the addition of new generation units that use several primary renewable energy sources, without changing the injection capacity of those or the pre-existing UPACs, which the law calls hybridization;³ and the original hybridization, *i.e.*, the cases in which plants (including UPACs) present, simultaneously, since the beginning of the prior control procedure, more than one generation unit that use several renewable energy sources, which the law calls hybrids.⁴ In both cases there is

³ Cf. paragraph *mm*) of Article 3 of DL 15/2022, which defines Hybridization.

⁴ Cf. paragraph *oo*) of Article 4 of DL 15/2022, which defines Hybrids.

a sharing of the reception point at the RESP.

Hybridization presupposes the pre-existence of a power plant, and it is not clear whether this power plant should be considered to include, in addition to the point of injection into the grid, also the occupied land and whether, as such, the new units should be limited to the limits of this land. It seems to us that this understanding is not acceptable, under penalty of making hybridization projects unviable, when, according to the legislator, the advantage of these projects is *system optimization*, to the extent that they *do not require an increase in injection capacity in the RESP, thus ensuring greater generation based on the same infrastructure without burdening consumers with new investments in network infrastructure*.⁵

Under the provisions of Article 74 of DL 15/2022, both hybrids and hybridization are subject to prior control procedures, applicable according to their installed capacity or their subjection to the AIA or AInCA procedure. On the other hand, it is required, in both cases, that the respective owners implement measurement and telemetering systems

⁵ Cf. preamble of DL 76/2019.

to determine the amount of electricity generated by each of the power plants.

Moreover, the law is more concerned with the specifics of hybridization, and the framework for hybrids is similar to that for other power plants, particularly with regard to the prior control procedure and the transmission and validity of the corresponding title.

When hybridization is in question, the instructional elements submitted within the scope of the first licensing procedure and which remain valid are used and the prior control title relative to the new generation unit identifies the injection capacity allocated to it, with the DGEG or the grid operator, as applicable, proceeding to change the pre-existing TRC. Under Article 11, which establishes the prior control procedures applicable to the generation activity, the installation of new generation units in an existing generating plant is subject to the procedure applicable to them, and the respective titles are added to the pre-existing ones.

Paragraph 3 of Article 74 allows for the dissociation of the prior control title of the new generation unit in relation to the title of the pre-existing plant, even in the hypothesis of the latter expiring

due to the expiration of the term of the title of private use of water resources. For this to happen, it is necessary that the new generation unit and the power plant share only the injection point.

Article 74 paragraph 4 introduces a different rule for cases where the new generation unit, in addition to sharing the point of injection with the pre-existing generation unit, uses together with the latter the assets of the private use concession on which one of the generation units to be hybridized is based. If this is the case, the expiry of the private use title, due to the expiry of the term, also implies the expiry of the subsequent generation license which needs the concession assets.

Article 76 also clarifies that when the pre-existing title expires, the injection capacity identified in the subsequent license is assured, and the DGEG must issue the competent TRC, and the remaining capacity is available for new allocation.

On the other hand, when the subsequent previous control title is terminated, this is annotated to the pre-existing previous control title, which keeps the respective TRC.

This does not happen in the case of a hybrid power plant, insofar as the licensing is unique and the prior control title expires with the extinction of the title for the use of water resources or the title for the use of maritime space, even if only one of the generation units depends on it. This being so, it is accepted that, in cases where only one of the primary energies requires obtaining this type of title, there may be an advantage in hybridizing an existing generating plant, as opposed to installing a hybrid one, to guarantee the possibility of continuing to operate the generating unit which does not depend on those titles.

Similarly to DL 172/2006, hybridization may be requested by a legal entity other than the one that holds the title of the pre-existing generating plant or UPAC, by referring to the regime of legal separation of over-equipment, set out in Article 69 of DL 15/2022. When this is the case, the application for a generation license for the subsequent unit must include the authorization of the holder of the pre-existing license, dispensing with the presentation of the TRC, as well as the agreement establishing the management of the injection of electricity from the RESP, under the terms of the draft approved

by the DGEG, after hearing the overall manager of the SEN.

Hybridization may also imply the coexistence of distinct remuneration schemes – especially when the hybridization of a pre-existing power plant licensed under previous legal regimes that allowed the attribution of a special remuneration scheme or whose rights were attributed under competitive procedures. When this is the case, the electricity generated by that power plant benefits from dispatch priority for all the energy it may produce, in accordance with the respective generation profile. The DGEG is responsible for approving, by order of the Director-General, the methodology and technical rules to implement this priority.⁶

Finally, the autonomous transfer of the prior control title of the subsequent generation unit follows the general rules set out in DL 15/2022, but requires the authorization of the pre-existing generating plant or UPAC.

⁶ Similarly to Order no. 13/DG/2021, of 29 June, which approved the technical rules for the implementation of hybrid plants associated with solar photovoltaic plants arising from competitive procedures.

SELF-CONSUMPTION AND ENERGY COMMUNITIES

RUI DE OLIVEIRA NEVES
MARGARIDA MESQUITA MACHADO

I. Introduction

DL 15/2022 has stated as one of its main guidelines a focus on consumers and the role they may come to play in the SEN, assuming a paradigm shift in the treatment of consumers who are no longer merely passive subjects but active agents in the SEN in line with the logic of *prosumers* that has been developed internationally.

In this context, the regulation of selfconsumption, which was previously established by the revoked Decree-Law no. 162/2019, of October 25, has been largely incorporated into DL 15/2022, maintaining the economic benefits recognized for this model of activity, in particular, concerning the reduction in access tariffs and general system costs.

It is, therefore, worth highlighting some innovations and clarifications introduced in the legal regime both at

the self-consumption level and at the renewable energy communities (CERs) and citizens' energy communities (CCEs) level.

II. Prior control procedures

In line with the regulation of other electricity generation activities, DL 15/2022 imposes prior control procedures on self-consumption generation, whether it is individual or collective. However, there have been significant reductions in the deadlines for submitting requests for the issuance of generation and operating licenses, as well as for formalizing requests for the issuance of the operating certificate.

The most important innovation is the capability to grant the generation license to the UPAC without relying on the prior existence of the user facility. Currently, it is only required for the use

facility to have the delivery point code at the time of granting the operation license or operation certificate for the UPAC, as applicable. This provision facilitates the development of new industrial or commercial projects that adopt the self-consumption regime.

III. Electrical Proximity

One of the main innovations of DL 15/2022 is the establishment of the concept of electrical proximity, aiming to provide a broader scope and enhanced legal certainty in the development of the self-consumption activity¹.

The new law sets forth specific metrics that determine the proximity requirements between the UPAC and the respective user facility for accessing the self-consumption activity. These metrics vary depending on the type of electrical connection involved.

Thus, installations connected by direct or internal line can be eligible for the self-consumption regime, regardless of the distance between the UPAC and the user facility. However, UPACs operating through the RESP at different voltage

levels can only fall under the self-consumption regime in the following cases:

- (i) When a UPAC is connected to the RESP at low voltage, the user facility and the UPAC must be located within a distance of less than 2 km or be connected to the same transformation point; or
- (ii) When a UPAC is connected to the RESP at a voltage other than low voltage, the user facility and the UPAC must be located within a distance of less than 4 km for a medium voltage connection, 10 km for a high voltage connection, or 20 km for a very high voltage connection.

In addition to the aforementioned cases, DL 15/2022 grants DGEG some space for technical discretion by allowing it to assess the existence of electrical proximity on a *case-by-case* basis. This assessment can be based on technical considerations or on energy optimization criteria, the provision of essential public services or the development of territorial strategies at the municipal or regional level.

¹ Cf. preamble of DL 15/2022.

IV. Condominiums

The rules regarding the installation of UPACs in common areas of buildings have been revised to streamline the approval procedures in condominiums.

Specifically, DL 15/2022 introduces a special regime for convening and passing resolutions in condominiums concerning the use of common areas of buildings for the installation of UPACs, deviating from the general provisions of the Civil Code². Under this special regime, self-consumers planning to install a UPAC in a common area of a building are required to provide a prior notice to the condominium administrator, as well as to the property owner in cases where the self-consumer is a tenant, at least 60 days in advance. It is important to note that this notification must include all the necessary information to ensure a complete understanding of the project³.

In addition, aiming to facilitate the installation of UPACs in common areas of buildings, the Portuguese legislator has limited the grounds for opposition that can be raised by the condominium administrator to the

² Cf. Articles 1425 and 1426 of the Civil Code.

³ Cf. Article 85 paragraphs 2 and 3 of DL 15/2022.

following: *(i)* disruption of the building's architectural line; *(ii)* disproportionate limitations on the rights of other unit owners; *(iii)* impediment of access to other equipment; or *(iv)* potential risks to the safety of individuals and property⁴.

V. Regulation of Collective Self-consumption

The internal regulations, to be approved in the context of collective selfconsumption activity, can now be communicated to the DGEG within three months after the commencement of UPAC operation⁵. As a result, there is no longer a requirement to submit internal regulations to DGEG as instructive elements for the registration of the collective selfconsumption activity in the Self-Consumption Portal is no longer required, thereby speeding up the registration process.

VI. Energy Sharing and Billing

Furthermore, it is worth highlighting the introduction of new regulations

⁴ Cf. Article 85 paragraph 4 of DL 15/2022.

⁵ Cf. Article 86 paragraph 1 of DL 15/2022.

regarding energy sharing in the context of collective selfconsumption. These regulations now allow entities other than the network operators to engage in energy sharing. This is made possible through specific dynamic management systems that enable real-time monitoring, control, and optimization of energy flows. Such provisions significantly contribute to the operation of collective selfconsumption and, in particular, to renewable energy communities (CERs) and the communities of citizens for energy (CCEs).

In the case of self-consumption from UPACs with an installed capacity of up to 1 MW, the supplier or aggregator purchasing the surplus electricity is required to offer the self-consumer the choice of self-billing for the energy transactions⁶, along with the corresponding information obligations as outlined in [Decree-Law no. 198/2012, of August 24](#), in its current version.

⁶ In accordance with Article 36 paragraph 11, of the [Value Added Tax Code](#).

VII. Renewable Energy Communities (CER)

The main new features of the new CER regime are as follows:

1. It is specified that the CERs must be constituted as legal persons in any form, and their shares can be owned by any natural or legal persons, of public or private nature;
2. The UPACs forming part of the CERs can be owned and developed by third parties, thereby facilitating the entry of new investors in this market segment;
3. The possibility for CERs to trade renewable energy among their members or with third parties is legally recognized. This clarification aligns with the previous regime and fully transposes the REDII.

VIII. Citizens' Energy Communities (CCE)

Portuguese law will also incorporate the regime of CCE, established in [Directive \(EU\) 2019/944 of the European Parliament and of the Council of 5 June 2019](#), allowing the aggregation

of citizens into communities that are intended to produce, distribute, market, consume, aggregate or store electricity, even if not from renewable sources, or that are dedicated to managing a closed distribution network for the benefit of its participants.

These communities have been granted the same rights and are bounded to the same duties as CERs. The purposes of such communities are to provide an alternative for fulfilling the needs and expectations of consumers regarding the access to energy sources and services.

MANAGEMENT OF DISTRIBUTION NETWORKS: ARTICLES 107 TO 109 AND 284 OF DECREE-LAW NO. 15/2022, OF 14 JANUARY

MIGUEL NOGUEIRA DE BRITO

I. Introduction: an *ad hoc* and operative entity?

One of the great innovations of the recent [DL 15/2022](#), consists, without a doubt, in the creation of the figure of the integrated manager of the distribution networks (GID), which is defined in Article 3 paragraph kk), as “the natural or legal person who holds the concession under which is authorized to exercise the activity of technical management of electricity distribution networks in high voltage (HV), medium voltage (MV) and low voltage (LV)”.

The preamble of the diploma refers to this new figure in the following terms:

“From the standpoint of the structural organization of the SEN, an integrated

manager of the high-voltage, medium-voltage and low-voltage distribution networks has been created, which will exercise the activity under a concession regime awarded after a prior competitive procedure.

In light of the future award of municipal LV distribution concessions, the creation of this figure guarantees the technical management of all distribution network concessions, ensuring efficiency and consistency of action in a single entity, thereby safeguarding supply, which is the main mission of the SEN. Given the technical complexity involved, the expected time required for the full operation of the new concessions and the ongoing energy transition period, which recommends a robust implementation of the model, the coordination of the operation of

distribution networks will continue to be ensured under the terms of the current concessions until this new entity starts operating.”

These words from the legislator reveal well what motivated the creation of this new figure and the respective objective: since the LV electricity distribution contracts are about to expire and this expiry will most probably determine the end of the integrated management of the various electricity distribution concessions, currently attributed to E-REDES – Distribuição de Eletricidade, S. A., it is essential to ensure the necessary integration of the activity of future concessionaires among themselves and between these and the RND (national distribution grid) concessionaire.

In this context, it is not risky to hypothesize that the creation of this figure aims to solve a conjunctural problem: the need to harmonize the performance of the future municipal electricity distribution concessionaires, at this time of still undefined number, both among themselves and with the RND.

Simply put, the need to solve this conjunctural problem led the legislator

to create a figure without worrying, however, as one would expect, about densifying with a minimum of completeness the respective legal regime.

In fact, as we will see below, most of the legal provisions regarding the GID “allude” to this new figure, rather than “regulate” it.

The following issues are addressed in the subsequent presentation: *(i)* first, the provisions of DL 15/2022 dealing with the GID are listed, with a view to delimiting the scope of this figure; *(ii)* then, an attempt is made to establish a correspondence between the GID, as provided for in said decree-law, and the regime of [Directive 2019/944 of the European Parliament and of the Council, of 5 June 2019](#), moreover transposed into the domestic order by DL 15/2022; *(iii)* finally, the issue of awarding the concession of the integrated management activity of distribution networks and its implications for the execution of the current concession contracts is addressed.

II. The provisions of DL 15/2022 on GID

In addition to the legal definition already mentioned, and the considerations contained in the preamble of DL 15/2022, the following aspects should be mentioned:

- (i)* Article 3 paragraph ppp) refers to the GID in the context of the definition of “non-frequency ancillary service” as “a service used by the overall SEN manager or the integrated distribution network manager for steady state voltage control, fast reactive current injections, inertia for local network stability, short circuit current, autonomous start-up capability and isolated operation capability”. As will be seen below, this seems to be, in fact, one of the few GID functions that is unparalleled in the current duties of the RND concessionaire;
- (ii)* Under Article 8, paragraph 1, subparagraph *c)*, the GID is considered to be one of the actors in the SEN and is therefore subject to the public service obligations listed in Article 9;
- (iii)* In turn, Article 20 paragraph 7, under the title “Reserve injection capacity title at the RESP in the form of an agreement between the interested party and the operator of the RESP”, foresees that the system operator, after articulation with the GID, proceeds to hierarchize the requests for agreement for the injection of power into the RESP in accordance with the criteria established under the terms of the referred article, proposing the approval of the provisional list with the accepted and excluded requests, including the respective justification and respecting the limit defined under the terms of paragraph 2 of the aforementioned Article 20;
- (iv)* Article 52, paragraph 2, states that the operators of the RESP, in coordination with the overall SEN manager and the GID, must take appropriate operational measures to prevent or minimize limitations to the transmission and distribution of electricity;
- (v)* Article 108, after providing, in paragraphs 1 and 2, that the technical management of the distribution networks in HV and MV is, under the terms of

the concession contract, the responsibility of the RND operator and that the technical management of the LV distribution networks is, under the terms of the concession contracts, the responsibility of the concessionaires, states in paragraph 3 that the technical management of the networks referred to in the previous paragraphs is unified in the GID;

(vi) Article 246, paragraph 2, establishes that the Network Regulation is approved by an ordinance of the member of the Government responsible for the energy area, based on a proposal from DGEG and preceded by consultation with the concessionary entities, the overall manager of the SEN, the GID, and ERSE with respect to the methodologies for calculating the reception capacity at the RESP to be made available with restrictions;

(vii) Article 284, paragraph 2, provides that until the GID starts its activities, the concessionaire of RND will continue to exercise the activities under the terms foreseen in the respective concession contract and ensure the coordination of the operation

of distribution networks; in turn, paragraph 3 of the same article states that “the unification of the technical management of distribution networks foreseen in paragraph 3 of Article 108 implies the amendment of the concession contracts in force, ensuring the respective economic and financial balance”;

(viii) Article 303, under the heading “Standardization of equipment”, provides that for the purpose of approving technical standards for the certification of materials, appliances, metering and sensing systems and electrical equipment, the DGEG consults the GID, as well as the concessionaire.

Finally, it is also important to mention the provisions of the Bases for the concession of the National Electricity Distribution Network in Medium and High Voltage, included in Annex III of the diploma, which mention the GID.

Thus, Base V, on “Principles applicable to relations with the concessionaire of the National Electricity Transmission Grid, producers, low-voltage distributors, suppliers and other network users”, provides, in its paragraph 1, that “[the]

concessionaire may not establish differences of treatment in its relations with producers, LV distributors, suppliers, the integrated manager of distribution networks and other users of its network which do not result from legal or regulatory constraints or from the application of criteria arising from a convenient and adequate technical management of the SEN, as well as constraints of a contractual nature, provided that these are sanctioned by the DGEG and ERSE in accordance with their competences”.

In turn, Base XL, on “Disputes between the concessionaire and users of the distribution network”, provides in paragraph 1 that “[the] concessionaire, the producers, the distributor in HV and MV, the integrated manager of the distribution networks, the suppliers of electricity and the consumers, as well as other entities that are connected to the network under concession, may enter into arbitration agreements to resolve disputes arising from their contracts or join arbitration processes, under the terms provided for in the Commercial Relations Regulation”.

The mere enumeration of the legal provisions that allude to the GID allows us to conclude the following:

(i) First of all, the provisions contained in Articles 107 to 109, which make up Section II, under the heading “Management of distribution networks”, where it would be natural to find the regime for exercising the GID and its functions, apparently refer first and foremost to the technical management of the HV, MV and LV distribution networks, entrusted to the respective concessionaires. In fact, the only specific reference to the GID in these provisions is in Article 108, paragraph 3, regarding the unification of the technical management of the various networks in the GID;

(ii) The legal provisions concerning this new figure are so exiguous that it is even difficult to understand the exact terms of its legal design. Thus, the combined reading of Articles 107, on the one hand, and 110 and 115, on the other, seems to lead to the conclusion that the legislator has separated the management of distribution networks, referred to in Article 107, and the respective operation, referred to in Articles 110 and 115.

And, in fact, while the management of the distribution networks is awarded by

concession with a maximum term of 30 years, according to Article 107, paragraph 2, the exploration of the RND is awarded by concession with a maximum term of 35 years (Article 11, paragraph 3) and the exploration of the municipal distribution networks is awarded by concession with a maximum term of 20 years (Article 116, paragraph 2).

Notwithstanding, the solution that seems more reasonable is to reconcile the provisions on network management and operation, saying that the former, contained in Articles 107 to 109, concern the technical management of distribution networks unified in the GID.

To complicate matters, Article 108, in paragraphs 1 and 2, establishes that the technical management of the HV and MV distribution grids is entrusted to the RND operator, while the technical management of the municipal grids is assigned to the respective concessionaires (one could ask here: are the latter the concessionaires for operation, or specifically for technical management? The parallelism with the solution found for the technical management of the RND seems to point in the first direction).

Thus, taking into account the various legal provisions listed, one would be led to conclude that the new law has in fact consecrated three types of concessions over distribution grids: (a) the concessions of the exploration of the RND and the municipal distribution networks (Articles 110 and 115); (b) the concessions of the technical management of the RND and the municipal networks, attributed to the same entities as the previous ones (Article 108, paragraphs 1 and 2); (c) the concession of the unified technical management of all the distribution networks, attributed to the GID (Article 108, paragraph 3).

This solution is obviously not reasonable. What seems to make sense is to understand that the management of distribution networks is committed to the concessionaires of the respective operation, except insofar as the functions foreseen in Article 109 are concerned, which would be committed to the GID. However, one must acknowledge that the new legal regime is not clear on this point.

III. The GID and Directive 2019/944 of 5 June 2019

The figure of the GID does not find correspondence in any of the provisions of Directive 2019/944, it being certain that the latter seems to admit that all the technical management functions of the distribution networks, as provided for in DL 15/2022, are carried out by the distribution network operators.

The functions of the technical management of the distribution networks, under the terms of the various paragraphs of Article 109, paragraph 2, of the diploma, are essentially concerned with ensuring the capacity and reliability of the electricity distribution networks and the contracting of system services.

However, these same functions are also provided for, in very similar terms, as functions of distribution system operators in Article 31, paragraph 1, of Directive 2019/944, including the provision of non-frequency ancillary services, as is clear from paragraph 7 of that article.

On the contrary, under the DL 15/2022 regime, the provision of system services not associated with frequency is exclusively attributed to the GID

[Article 3, paragraph *ppp*), and Article 109, paragraph 2, subparagraph *c*)].

It is noted, however, that although the GID is assigned functions that, according to Directive 2019/944, must be carried out by the distribution system operators, there is not a single word in the law about possible legal unbundling requirements that should fall to that entity, as happens with the latter.

In effect, distribution system operators are subject to strict criteria of legal unbundling under the terms of Article 35 of Directive 2019/944, which are further detailed in Article 233, paragraphs 4 and 5, of DL 15/2022.

However, nothing similar is foreseen in relation to the GID, and it is certain that the unbundling requirements also apply, as to their basis, in relation to this entity, given the identity between the functions it performs and those that the Directive attributes to the distribution system operators.

Thus, by making the distribution system operator's own functions autonomous, as set out in Directive 2019/944, and entrusting them to a separate entity, the GID, without any unbundling requirements similar to those applicable

to the referred operator, there is a clearly deficient and incorrect transposition of that directive, which is likely to give rise to an infringement action to be brought by the European Commission against the Portuguese State, under the terms of Articles 258 and 259 of the TFEU.¹

One would think that the objection to the absence in DL 15/2022 of provisions on GID legal unbundling requirements could be easily overcome by the introduction of some provision prohibiting vertically integrated groups from carrying out their activity.

Simply put, this solution would be clearly contrary to the constitutional protection of legitimate expectations, private property, and the prohibition of excess itself, as well as contrary to the provisions of Article 35 of Directive 2019/944.

In effect, although it may be required that a vertically integrated company may only exercise the activity of distribution system operator, including the activity of integrated management of the same networks, by complying with the requirements of legal separation of this

same activity, such as those resulting from the mentioned Article 35 and those of Article 233 of DL 15/2022, it would already be clearly excessive to prohibit, *tout court*, vertically integrated companies from exercising such activity.

In other words, if the objectives of independence and impartiality are achieved by providing for legal unbundling requirements, as evidenced by the aforementioned Article 35 of Directive 2019/944, the pursuit of these constitutional principles would be clearly undermined by a prohibition of vertically integrated companies from engaging in LRM activity.

IV. The GID and Decree-Laws no. 29/2006, of 15 February, and no. 172/2006, of 23 August, as amended

DL 15/2022 aims to repeal not only Decree-Law no. 172/2006, of 23 August, as amended by Decree-Law no. 215-B/2012, of 8 October, Decree-Law no. 76/2019, of 4 June, but also Decree-Law no. 29/2006, of 15 February, as amended by Decree-Law no. 215-A/2012, of 8 October.

The distribution system operator's duties were foreseen in Article 35, paragraph 2, of Decree-Law no. 29/2006, of 15 February.

It is important, therefore, to compare these “duties” of the distribution network operator with the “functions” that are now to be assigned to the GID.

Thus:

(i) The function of “managing electricity flows in distribution networks, ensuring their interoperability with the networks to which it is connected and with the installations of network users, within the framework of the overall technical management of the SEN” [Article 109, paragraph 2, subparagraph *a)* of DL 15/2022] corresponds to the concessionaire's duty to “manage the flows of electricity in the network, ensuring their interoperability with the networks to which it is connected and with the installations of network users, within the framework of the overall technical management of the SEN” [Article 35, paragraph 2, subparagraph *c)*, of Decree-Law no. 29/2006];

(ii) The duty to “cooperate with the overall SEN manager for the purposes of effective participation of grid users in the electricity markets” [Article 109 paragraph 2 subparagraph *b)* of DL 15/2022] corresponds to the duties set out in Article 35, paragraph 2, subparagraphs *e)*, *f)*, *g)* and *h)*, of Decree-Law no. 29/2006;

(iii) The task of “ensuring the capacity and reliability of their electricity distribution systems, contributing to security of supply” [Article 109 paragraph 2 subparagraph *e)* of DL 15/2022] corresponds to the concessionaire's duties to “ensure the long-term ability of the system to meet reasonable demands” and to “ensure the long-term ability of the system to meet reasonable demands”. [Article 35, paragraph 2, subparagraphs *a)* and *d)*, of Decree-Law no. 29/2006].

(iv) Finally, the functions of contracting system services not associated with frequency and contracting system services in markets of regional scope [Article 109, paragraph 2, subparagraphs *c)* and *d)*, of DL 15/2022] were not provided for

¹ Manuel Lopes Porto and Gonçalo Anastácio (coords.), *Treaty of Lisbon, Annotated and Commented*, Coimbra, Almedina, 2012, pp. 929-933.

in the 2006 decree-law,² but find correspondence in Article 31, paragraphs 6 and 7, of Directive 2019/944, as already mentioned.

In turn, the bases for the RND concession published as an annex to Decree-Law no. 172/2006 referred to the aforementioned Decree-Law no. 29/2006 as far as the obligations of the concessionaire are concerned.

In comparison with the aforementioned diplomas, DL 15/2022 substantially empties the functions of the concessionaire of the RND, now provided together with the functions attributed to the RNT concession holder (see Article 113 of the diploma), not even providing for specific functions of the RND concession holder, contrary to what happens with the RNT concession holder (see Article 114), to which the functions of overall management of the system are also attributed (see Article 105).

Thus, it can be concluded that the **GID's functions are established by**

² Nor, for that matter, in Article 25, on the functions of distribution system operators, of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009, establishing common rules for the internal market in electricity and repealing Directive 2003/54/EC.

transferring functions that previously, under the 2006 legislation, were or should be the responsibility of the RND concessionaire, under the terms of Directive 2019/944.

The **GID** has, however, notable advantages in relation to the concessionaires of the RND and municipal networks, in that not only is it not subject to the requirements of legal unbundling in relation to the exercise of other activities in the electricity sector, but also the regulation of its activity is scarce³.

Furthermore, since under the terms of Article 108, the technical management of the various distribution networks seems to be attributed to the respective operators, with only their unification being attributed to the **GID**, it remains to be clarified under what terms this unification will be carried out and which aspects of the technical management of each of the distribution networks will remain included in the activities of the respective concessionaires.

³ By comparison not only with the concessionaires of the transmission network and distribution networks, but with other figures, such as the guarantee manager, referred to in Articles 170 and following.

V. Method of awarding the concession for the integrated management activity of the distribution networks and its implications on the execution of the current concession contracts

A striking aspect of the legal framework of the **GID** statute consists in the fact that, although it must exercise its activity under a concession through a public tender (Article 107 of DL 15/2022), it is not specified in any bases of the respective concession, as happens with the RNT and distribution network concessions.

This means that all relevant aspects concerning the **GID** and its activity, including the term of its concession, will only be fixed in the tender documents to be drawn up under the [Public Procurement Code](#).

Since, according to Article 107 paragraph 2 of DL 15/2022, the public tender for the award of the concession for the integrated management of the distribution networks follows the provisions of Article 111, the provisions of the respective paragraph 2 should apply, according to which “[t]he decision to open the procedures referred to in the previous paragraph, the approval of

the parts of the procedures, the award decision, the approval of the draft concession contract and the respective signature shall be incumbent upon the member of the Government responsible for the energy area”.

In other words, the substantial aspects of the status of the **GID** and its activity will only be known when the respective tender is launched.

Notwithstanding the silence of the law regarding this aspect, a public service concession is certainly at stake, and consequently the provisions of Article 407 paragraph 2 of the PPC apply, according to which “a public service concession is the contract whereby the co-contractor undertakes to manage, on its own behalf and under its own responsibility, a public service activity, for a certain period, being remunerated for the financial results of this management or, directly, by the public contracting party”.

In this regard, it is important to bear in mind the provisions of Article 284, paragraph 3, according to which “[t]he unification of the technical management of distribution networks provided for in Article 108, paragraph 3, implies the amendment of the concession contracts

in force, ensuring their economic and financial balance”.

In fact, although the grantor may unilaterally change the object of the concession, as provided for in Base XXXII of the RND Concession Bases, which constitute Annex III of DL 15/2022, this change cannot simply consist in a partial amputation of the concession object, without safeguarding the principle of economic and financial balance, for the same reason that a partial revamping of the concession is not foreseen (cf. Base XXXV).

The GID is, therefore, a clear example of a new legal figure in which (almost) everything was left unsaid, in particular: *a)* the delimitation between the technical management functions of each of the distribution networks and the respective integrated management, committed to the GID; *b)* the explanation for providing bases for all the concessions to be awarded under DL 15/2022, with the exception of the GID concession, to be awarded under the general terms of the PPC; *c)* an explanation of why there are no obligations of legal unbundling for the GID, contrary to what happens with the distribution network operators; *e)* an indication of the criteria that

should govern the remuneration of the GID; *f)* an indication of the reasons for understanding why the GID’s functions have not been attributed to the overall system manager, or to the concessionaire of the National Transmission Network, in parallel with the attribution of the overall technical management of the system to the RNT concessionaire.

In summary, if the short/medium term attribution (but with a tendency to become longer, given the persistent lack of definition of the new model for LV distribution network concessions) of new municipal concessions somehow justifies the GID figure, the truth is that this new legal figure is not yet conveniently densified, which makes it difficult to make a judgment on the appropriateness of its creation.

CONCESSIONS FOR THE OPERATION OF ELECTRICITY TRANSMISSION AND DISTRIBUTION NETWORKS: A COMPARISON BETWEEN THE BASES OF CONCESSIONS AND THE PUBLIC CONTRACTS CODE

MARGARIDA OLAZABAL CABRAL
ALESSANDRO AZEVEDO

I. Introduction

Chapter IV of DL 15/2022 regulates the operation of the electricity transmission and distribution networks.

From this regime results, among other things: *(i)* that the exploration of the RNT and RND is carried out through a concession contract (see Article 110(1)); *(ii)* that the exploration of the LV electricity distribution is carried out under a direct exploration regime or through a concession contract (see Article 115(1)); and *(iii)* that the award of each concession is “preceded by a

public tender or any other procedure provided for this purpose in the Public Contracts Code” (Article 115(1)); and *(iii)* that the award of each of the concessions is “preceded by a public tender or the performance of any of the procedures provided for this purpose in the Public Contracts Code”, in what concerns the exploration concessions of the National Transmission Network and the National Transmission Network (see Article 111(1)), and preceded by a public tender, in the case of the exploration concessions of low voltage distribution (see Article 116(1)).

Using an expedient common in a time before the approval of the Public Procurement Code (PPC), the bases of each of the concessions in question are approved in an annex to DL 15/2022 (c. Articles 110(3) and 115(3)): annex II approves the bases of the national electricity transmission network concession; annex III approves the bases of the national medium and high voltage electricity distribution network concession; and annex IV approves the bases of the low voltage electricity distribution concessions.

Before continuing, and although this is not the proper place to develop the subject, it is important to leave a very brief note on the fact that the legislator has wasted this opportunity to make a serious reflection on the exploitation of LV distribution¹ and to clarify, and even correct, some aspects pronounced on by doctrine. One of them is the false alternative contained in this diploma for LV exploitation, between “direct exploitation” and “concession contract”, since municipalities have at their disposal other alternatives, such as the delegated management in municipal

¹ Firstly, because almost five years had passed since the publication of Law no. 31/2017, of 31 May, without having managed to implement what was foreseen in it.

companies and even in municipal companies with private capital. Another error, the reproduction of which is not understandable, is that of providing that the award of concessions is “preceded by a public tender”, when the legislator should rather refer to the procedures applicable under the PPC (as it did for the RND and the RNT). Moreover, [Law no. 31/2017, of 31 May](#), also always and only refers to public tender, leaving the question of whether this designation should be considered improperly used, also including the restricted tender with prior qualification (which may prove to be the most appropriate procedure for awarding these concessions).

The bases of concessions approved as annex to DL 15/2022 present, in substance, relevant similarities between them. However, they result in significantly different solutions from those which would emerge from the application of part III of the PPC. This part would be the regulation applicable to the execution of the concession contracts to be entered into (taking into account that, pursuant to Article 280(1) (c) and (d), these contracts would be qualified as administrative contracts), and would therefore be ruled out by the approval of the aforementioned

concession bases.² DL 15/2022 does not provide for the supplementary or subsidiary application of part III of the PPC (or civil law) to the execution of the concession contracts at issue here, but it seems to us that, in the case of silence of the contracts hereon, the subsidiary application of the PPC must be concluded, taking into account the referred nature of the concession contracts.

Before briefly analysing them, it is important to clarify that, unlike the case of [Decree-Law 172/2006, of 28 August](#) – which determined that the concession contracts in force should be modified in all that contravened its provisions – DL 15/2022 safeguards the “concessions granted by decree-law, which are maintained under the terms and periods established in the respective concession contracts” (Article 284(1)). This means that the concession bases approved by DL 15/2022 apply only to future concessions.

² In fact, also the articles of Part II of the CCP relating to the fixing of the value and the method of provision of the bond (Articles 89 and 90) are set aside by the special regulation contained in the bases of the concessions, which, from the outset, make the provision of the bond subject to a decision of the member of the government responsible for the energy sector (Base XXXIII of the bases of the concession of the transmission network).

The bases of concessions approved as an annex to DL 15/2022 regulate, in their first provisions, specific aspects of the relations to be established: objects, scope, principles applicable to relations with operators, concession assets, remuneration, etc. For these matters, part III of the PPC would, of course, always be insufficient regulation. As regards these matters, either the legal framework left it up to the grantor to define each of the matters in the procedural documents (with a consequent reflection in the text of the contract), or the legal framework already provided a detailed regulation of the matters. DL 15/2022 opted for the latter solution.³

II. Confrontation between Part III of the Public Contracts Code and the bases of concessions

The comparison between Part III of the PPC and the bases of concessions concerns aspects common to the performance of all concession contracts, such as deadlines, object and shares of the concessionaire, contractual

³ It is certain that, in the case of LV concessions, this option has meant not recognising municipalities’ competences to decide on these matters.

penalties, sequestration, amendment and termination of the contract, etc.

It is important here to analyse the most relevant ones.

The first issue where there is different regulation between Part III of the PPC and the bases of concessions approved in annex to DL 15/2022 concerns the term of the concessions. While, in the former, the grantor is responsible for setting the term of the concession contracts, which is set in accordance with the period necessary to amortise and remunerate the invested capital, and is considered to be 30 years in the absence of contractual provisions (Article 410), the bases of the concessions establish maximum terms of 50 years in the case of the NTG concession (Base III), 30 years in the case of the NND concession (Base III) and 20 years in the case of LV distribution concessions. Renewal is allowed if justified by public interest, a provision which, by granting a large margin of freedom, raises some doubts in the light of European Union law.

Despite the respective wording, the time limits defined in the bases of the concessions cannot but be seen as maximum limits (as, moreover, is clear from Base III of the LV electricity

distribution concessions), bearing in mind that the text of the decree-law clearly states that “the term of the concessions is determined by the grantor in the procedure documents, not exceeding 50 years in the case of NTG and 35 years in the case of NDC, counted from the date of execution of the concession contract” (see Article 111(3)). It is clear that, in addition to this interpretative exercise, another more difficult one will be required to articulate the maximum periods for the concession of RND, since it is set at 35 years in the text of the diploma and 30 years in the basis of the respective concession (this contradiction was not resolved in the [Rectification Statement no. 11-A/2022, of 14 March](#)).

The subject of **contractual fines** is developed in the framework of the bases of concessions (Basis XXXV, Basis XXX and Basis XXXII). A maximum value per penalty is set (and no longer a maximum value for all contractual fines, as in the PPC – see Article 29). For the rest, the regulation of the application of contractual penalties is not exceptionally different from the common general regulation.

There is also a relevant difference regarding the **corporate object of the**

cessionnaire: while the PPC requires the concessionaire to have as exclusive corporate object the activities that are part of the concession, it may engage in other complementary or accessory activities, subject to the grantor’s authorization and certain conditions (see. Articles 411(2) and 412), the RNT concession basis admits that the concessionaire has the activities integrated in the concession as its “main” corporate object, being able to include in its corporate object the exercise of other activities and participate in the share capital of other companies (Basis XIV).

A particularly relevant matter concerns the **amendment of the concession contract by mutual agreement**, since the bases of the RNT and RND exploration concessions allow the amendment of the concession contract “by mutual agreement of the parties” (Base XXXVII and Base XXXII, respectively), with express mention to Articles 311 to 315 of the PPC (grounds, limits, consequences and publicity of objective modifications) only in the case of the base of the LV distribution exploration concessions. The free modifiability of the contract in the case of the RNT and RND operating concessions is problematic

from the point of view of competition protection, which guides the formation of concession contracts, and in relation to European public procurement law, and it seems that there will be a need to interpret these concession bases in accordance with that law, recognising the subjection of these contracts to the limits on modification set out in [Directive 2014/23/EU of the European Parliament and of the Council, of 26 February 2014](#).

In the case of the **amendment of the concession contract by act of the public contracting entity**, the differences are also relevant (here, regarding the three bases approved as annex to DL 15/2022), since the concession bases restrict the right to the restoration of the contractual balance to the cases in which the concessionaire proves it cannot provide such restoration “using the means resulting from a correct and prudent financial management” (Basis XXXVII, paragraph 3. This leaves aside the apparently more generous solution of the PPC, which imposes replacement in all cases in which the modification of the contract, taking into account the distribution of risk between the parties, changes the assumptions on which the parties determined the services they were obliged to perform (see Articles

314(1)(b) and 282(2)). This difference, which already existed in the bases which they repeal, essentially results from the fact that the concessions in question are regulated concessions, so that balance, even in the event of unilateral alterations, is not ensured by the grantor but by the regulatory mechanisms.

As is inherent to the regulation of concession contracts, the bases also provide for the subject of **sequestration of the concession** (Basis XXXVI, Basis XXXI and Basis XXXIII). According to the CPC (see Article 421), forfeiture of concessions can occur in case of imminent non-performance of obligations by the concessionaire, whereas the bases of concessions seem to allow for forfeiture only in case of actual non-performance. Furthermore, the limit of one year provided for in the PPC as the maximum duration of sequestration is not set out in the concession bases.

Similarly, the bases of concessions also provide for the **redemption of the concession**. In this respect, the substantial differences concern the shorter deadlines for exercising the redemption and the method for fixing the compensation.

The regulation of the redemption of the concession is part of a vast chapter that regulates **the termination of the concession contract which**, in general terms, may occur by revocation (“mutual agreement”), termination for non-performance and the already mentioned redemption. The same extinction will occur, inevitably, by the expiry of the term of the contract.

With regard to **termination for non-fulfilment** (Basis XXXIX, Basis XXXIV and Basis XXXVI), it should be noted that the list of grounds for termination in relation to the list in Article 423 of the PPC has been considerably expanded.

The bases of concessions also allow for termination by the concessionaires “for serious breach of the grantor’s obligations”, in a relevant specificity in light of the general public procurement regime.

In the event of **termination due to expiry of the term**, the bases of concessions provide for the “transfer of concessions” to the grantor, recognizing the right of the concessionaire to be compensated for the amount corresponding to the book value of the assets allocated to the concession, with

reference to the last approved balance sheet (Basis XLI, Basis XXXVI and Basis XXXVIII). Three differences are to be noted in relation to the general regime, provided for in the PPC (see Article 425): (i) the first relates to the absence of regulation of the transfer of intellectual property rights on studies, projects, plans, blueprints and other documents developed specifically for the activities of the concession, thus remaining doubts about the transfer of these elements, in a scenario in which the termination of any of the concessions occurs by expiration of the respective term; (ii) in a wording that is not free of doubts (“rights held by the concession holder over third parties”), the bases of the RNT concession indicate the transfer of contractual positions in contracts concluded between the concession holders and third parties, which is different from the solution in the public procurement legislation; (iii) the transfer of assets gives the concession holders the right to compensation, a solution that is contrary to the gratuitousness provided for in the PPC.

Finally, it should be noted that the three bases of the concession admit that grantors and concessionaires enter into **arbitration agreements** to settle

disputes arising from the execution of each of the contracts, also allowing the parties that such clauses provide for the recourse of disputes to be settled by equity. This solution will prove to be problematic in articulation with the limits to judgement according to equity, imposed by the administrative procedural legislation (see Article 185(2) of the CPAC), and it may be debated whether it derogates them or whether it should be interpreted in conformity with them.

CLOSED NETWORKS OPEN TO ELECTRICITY SUPPLIER CHOICE AND FREEDOM OF SUPPLY

FILIPE MATIAS SANTOS¹

I. Introduction

Closed networks, being historically shrouded in some nebulosity, in light of the case law of the Court of Justice of the European Union and the new [DL 15/2022](#), must allow third-party access, allowing the freedom of choice of the electricity supplier and the freedom of supply of suppliers.

II. The legal framework of closed networks

Closed networks were first introduced in the Portuguese legal system more than

ten years ago,² in connection with the transposition of [Directive 2009/72/EC](#), which was part of the so-called “third package” of electricity,³ which enabled and cut the terms of its possible institution.

A network which distributes electricity within a geographically confined industrial, commercial or shared services site and does not supply household customers could since then be classified as such,⁴ if, as the case may be, the operations or the production process of

² Cf. [Decree-Law no. 78/2011, of 20 June](#), which amends [Decree-Law no. 29/2006, of 15 February](#).

³ On the historical evolution of the sector and, in particular, regarding the “third package”, see Filipe MATIAS SANTOS, *Reflexões de Direito da Energia*, ERSE, 2021, pp. 24 to 26.

⁴ This requirement, although not included in Article 41-A of [Decree-Law no. 29/2006, of 15 February](#), was guided by Article 28 of [Directive no. 2009/72/EC](#), which only allowed accessory use by a small number of households associated with the owner of the distribution system by employment

the users of that network are integrated for specific technical or safety reasons, or if that network distributes electricity primarily to the owner or operator of the network or to companies affiliated with them.

The conceptualization of closed networks arose to accommodate the somewhat heterogeneous realities existing in the different Member States, which include geographically circumscribed private networks, exempting them from administrative burdens deemed unnecessary due to the particular nature of the relationship between the closed distribution network operator and its users. In this context, it was understood that it was not justifiable that closed networks, unlike public network operators, had to be subject to a third party access system based on tariffs published *ex ante* (regulated access).

This possibility has always appeared, albeit for specific and circumscribed realities, as a deviation from the general rule according to which the electricity sector, following the doctrine of *essential facilities*, must be based not only on

or other relationships and located within the area served by a closed distribution network.

the *unbundling* of activities (*unbundling*) but also on the right of access by third parties to the⁵ networks, which must be subject to hetero-regulation through the *ex ante* setting of network access tariffs (regulated access).

In Portugal, the law stated that the closed network had to be excluded from the scope of municipal electricity distribution concessions, and took as examples railroads, ports, airports and campgrounds. However, the terms of the classification and establishment of a closed distribution network and the discipline of its operation depended on a joint ordinance, which was never published.

In any case, the subject of closed networks has always remained, a bit all over Europe, shrouded in some nebulosity regarding its concrete contours, having often remained as

⁵ Sally HUNT, Graham SHUTTLEWORTH, *Competition and Choice in Electricity*, Wiley, 1996, Peter CAMERON, *Competition in Energy Markets, Law and Regulation in the European Union*, Oxford, 2002, pp. 3-34, Pedro COSTA GONÇALVES, *Regulação, Eletricidade e Telecomunicações*, Coimbra Editora, 2008, pp. 98-99, Suzana TAVARES DA SILVA, *Direito da Energia*, Coimbra Editora, 2011, pp. 73-134, 159-180, 187-204, Filipe MATIAS SANTOS, *Reflexões de Direito da Energia*, ERSE, 2021, pp. 22-26, 33-35, 37-62, 121-122 et seq, Jean-Michel GLACHANT, Paul L. JOSKOW, Michael G. POLLITT, *Handbook on Electricity Markets*, Edward Elgar, 2021, pp. 1-35, 111-155.

something marginal to the rules of the electrical systems.

DL 15/2022, which replaces the diplomas that established the organization and operation of the Electricity System, has recovered and densified the subject of closed networks, adjusting the concept of networks to the new Electricity Directive ([Directive \(EU\) 2019/944](#)), as well as to the new Directive on the promotion of the use of energy from renewable sources (the so-called “REDII”)⁶ and taking into account the relevant case law development that, in the meantime, the subject has experienced.

Indeed, the Court of Justice of the European Union (CJEU) has ruled on the permissible contours of closed networks, having done so at least in the Judgment of 22 May 2008, *Citiworks*, C-439/06, [EU:C:2008:298](#); in the Judgment of 9 October 2008, *Sabatauskas and Others*, C-239/07, [EU:C:2008:551](#), in Judgments no. 31, 33 and 46, and of 29 September 2016, *Essent Belgium*, C-492/14, [EU:C:2016:732](#), paragraph 76 and in Judgment of 28 November, 2018, *Solvay*

⁶ *Renewable Energy Directive II* (REDII), which recasts Directive 2009/28/EC of the European Parliament and the Council.

Chimica Italia SpA and others, Joined Cases C262/17, C263/17 and C273/17, [EU:C:2018:961](#).

The case law produced was clear, *inter alia*, in stating that Union law, in the light of the “third package”, only allows Member States to exempt closed networks from two specific obligations: (i) to source the energy it uses to cover energy losses and to maintain reserve capacity in its network according to transparent, non-discriminatory and market-based processes; and (ii) to ensure that tariffs or their calculation methods are approved by the national regulatory authority prior to their entry into force, without prejudice to users being able to request the regulatory authority to analyse and approve these tariffs and calculation methods.

Moreover, in general terms, according to those decisions, there is nothing to prevent a closed distribution network from cumulatively benefiting, in another capacity, from additional exemptions provided by Directive 2009/72/EC, namely, because it supplies less than 100,000 customers, such as from the obligations of legal and functional unbundling (and corresponding image unbundling).

However, also according to the CJEU, closed networks have an obligation to apply, to all eligible customers, a system of third party access to the transmission and distribution networks with a view to the completion of the internal energy market, allowing all consumers a free choice of suppliers and all suppliers free supply to their customers.

Thus, while a closed distribution system may be exempt from the obligation to have its tariffs or calculation methods approved in advance, it cannot, however, be exempt from the obligation of free third-party access.

According to the Court, respecting the principle of proportionality, users of closed networks may even have to assume charges that are also borne by other users of the public network, to which they are also connected, when they are in the same situation as those users.

The new Electricity Directive, in line with this CJEU case law, has clarified that closed distribution systems⁷ are to

⁷ On another level, the potential exemptions attributable to closed networks were extended to new obligations and prohibitions that, under the new Directive, became applicable to other network operators regarding the contracting of plan-based flexibility and development services,

be considered distribution systems⁸ and that the exemption for third party access is restricted to the “regulated access” regime (*ex ante* tariff fixing).⁹

On the other hand, the same Directive allows that, provided they are subject to the same obligations, the communities of citizens for energy¹⁰ may become distribution system operators under the general regime or as a closed distribution system operator.¹¹ The European legislator has even taken care to make it explicit that third party access is applicable even to the communities of citizens for energy that manage distribution networks.¹²

This concept of closed networks was transposed to the Portuguese legal

the prohibition to own, develop, manage or operate charging points for electric vehicles, as well as energy storage facilities.

⁸ Article 38(2), first part, of the new Electricity Directive.

⁹ Article 38(2)(b) of the new Electricity Directive.

¹⁰ On energy communities Filipe MATIAS SANTOS – “Recent trends in energy administrative law: the regulation of energy communities (and collective self-consumption) and the decarbonization of the natural gas sector”, *E-Pública*, Vol. 8, no. 1, April 2021.

¹¹ Recital 47 and Article 16 of the new Electricity Directive.

¹² Article 6(3) of the new Electricity Directive.

system, as already mentioned, through the new DL 15/2022. This created an administrative control procedure under the responsibility of the Directorate-General for Energy¹³ – which is also responsible for setting the applicable accreditation criteria¹⁴ – and provides that, without prejudice to others, self-consumers and communities of citizens for energy may also operate closed networks.¹⁵

In this framework, the duty of the closed network operators to allow third party access to the¹⁶ network was expressly foreseen and, in turn, that the setting of tariffs for access – with the exception of those related to access, connections and auxiliary services – does not need to be

defined *ex ante*, but is subject to *ex post* control by ERSE.¹⁷

Operators of closed systems which have a prior control title, in addition to being responsible for operation, interconnection with the public electric grid and ensuring the guarantee of capacity of the closed distribution system, are authorized to carry out, cumulatively, the activity of production of electricity from renewable energy sources, to own, develop, manage or operate charging points for electric vehicles and energy storage facilities, as well as - when the closed systems are constituted in the form of a renewable energy community (REC)¹⁸ – the supply of electricity to their members.¹⁹

The framework of rights and duties of the closed network operators was defined, ensuring its adequate operation, as well as the obligation of the (public) network operator interconnected to the closed network to operate it on a supplementary basis (first

on a transitional basis and, if necessary, integrating the closed network into the concession)²⁰ in the event of revocation of the respective prior control title.

In this framework, closed grids - exempt from *ex ante* access tariffs - should guarantee the right of third party access to the grid, respecting customers' freedom to choose their electricity supplier, as well as suppliers' freedom to supply.

¹³ Article 120 of DL 15/2022.

¹⁴ Article 286 of DL 15/2022.

¹⁵ Articles 88(c) and 191(2)(a) of DL 15/2022. The question of whether renewable energy communities may also operate closed networks may depend on the understanding that Article 190 constitutes a remission to Article 88 and, cumulatively, that this is not contradicted by the “specificity” introduced by Article 191(2)(a), which distinguishes citizen communities for energy from those.

¹⁶ Article 121(1) of DL 15/2022, which refers to Article 113, which, in turn, establishes access by third parties in subparagraph c) of paragraph 1. The same is a presupposition of Article 214 of the same law.

¹⁷ Article 214 of DL 15/2022.

¹⁸ Article 189 of DL 15/2022. This does not disqualify the possibility of low-voltage network operators with less than 100,000 customers cumulatively being suppliers (Article 233(9) of DL 15/2022).

¹⁹ Articles 120 and following of DL 15/2022.

²⁰ Articles 121 and 122 of DL 15/2022.

ELECTRO-INTENSIVE CONSUMER STATUTE – WHAT ARE THE MAIN NOVELTIES AND ADVANTAGES?

GISELA MORGADO DE ANDRADE
JORGE LÚCIO

I. Introduction: The new status of the Electro-intensive Consumer

DL 15/2022 allows the granting of the Statute of Electro-Intensive Consumer to consumers with facilities that have intensive electricity consumption and exposure to international trade and that meet certain requirements.

The underlying principle behind the creation of this figure is the need to “guarantee the respective installations a more level playing field in terms of competition in relation to installations of the same nature operating in other Member States of the European Union, by reducing the final prices paid for electricity and access to energy under more competitive conditions”.¹ Its purpose is thus to mitigate any

competitive disparities that may arise from externalities of production factors, and should be limited to sectors whose competitive situation is exposed to risk, such as the price of electricity in the Iberian Peninsula, which, due to limited interconnection capacity with the rest of Europe, still presents less competitive prices compared to other European countries.

Paragraphs 1 and 2 of Article 194 of DL 15/2022 establish the following cumulative requirements for obtaining the Electro-intensive Consumer Status:

- a) Integration into the business sectors identified in Annex 3 or Annex 5 of the [European Commission Communication 2014/C 200/01](#) on State Aid Guidelines for Environmental Protection and

Energy 2014-2020 (Communication 2014/C 200/01);

- b) The connection to the grid in VHV, HV or MV; and
- c) Compliance with the requirements under the European Emissions Trading Scheme or the Intensive Energy Consumption Management System, in accordance with the provisions of the respective legal regimes.

In this regard, it should be noted that Communication 2014/C 200/01, extended by the European Commission until 31 December 2021, has since been replaced by [European Commission Communication 2022/C 80/01](#), which sets out the new 2022 Guidelines for State aid for environmental protection and energy (Communication 2022/C 80/01). The latter innovates in its scope by including State aid granted to facilitate the development of economic activities in a manner which enhances environmental protection, as well as certain activities in the energy sector, among which “aid in the form of

reductions in electricity rates for energy-intensive users”.²

Similarly to what happened with Communication 2014/C 200/01, Communication 2022/C 80/01 establishes in its Annex I, although not exhaustively,³ the sectors and subsectors that should be considered for the purposes of satisfying the eligibility criteria for the status of Electro-intensive Consumer under DL 15/2022.

In addition to the requirements set out in the abovementioned DL 15/2022, the award of the Electro-intensive Consumer status presupposes compliance with the requirements set out in [Ordinance no. 112/2022, of 14 March](#) (Ordinance 112/2022), which regulates the Electro-intensive Consumer statute. In accordance with Ordinance 112/2022, the prerequisites for the respective qualification are: (i) an annual consumption of electricity equal

² See Section 2.2, paragraph 16, (i), of Communication 2022/C 80/01.

³ According to paragraph 406 of Communication 2022/C 80/01, “a sector or subsector not listed in Annex I shall be considered eligible if the eligibility criteria of paragraph 405 are fulfilled and if Member States demonstrate this with data that is representative for the Union sector or subsector”.

¹ Cf. paragraph 2 of Article 192 of DL 15/2022.

to or greater than 20 GWh and an annual consumption in the normal off-peak and super-peak periods equal to or greater than 40% of the annual consumption of energy in two of the last three years; and *(ii)* a degree of electro-intensity⁴ equal to or greater than 1 kWh/€ of gross added value, by the arithmetic average of the last three years.

The application for the Electro-intensive Consumer Statute is accompanied by the elements identified in Annex I of Ordinance 112/2022 and, after validation, the statute admission contract is signed, the draft of which was approved by [Order no. 5975-B/2022, of 13 May](#), from the Directorate General of Energy and Geology.

II. Support measures and cost relief mechanisms

Electro-intensive Consumers, when recognized as such, will benefit, pursuant to DL 15/2022 and the aforementioned ordinance, from a set of support measures and electricity

⁴ According to Article 3(*II*) of DL 15/2022, the electrointensity degree corresponds to “the indicator obtained by the quotient between the annual electricity consumption of an electricity consumer and the gross value added”.

cost relief mechanisms both in the consumption of electricity from the RESP and in the production of electricity for self-consumption.

With regard to the component of electricity consumption from the RESP, consumers who adhere to the Electro-intensive Consumer Statute benefit from a partial reduction in the charges corresponding to the CIEG, which are levied on the global use of the system tariff. According to Article 195(2)(a) of DL 15/2022, this partial reduction is limited to a minimum of 75% of the charges corresponding to the CIEG provided for in Article 208, which are levied on the global use of the system tariff, for the component of electricity consumption from the RESP.

For this purpose, and in accordance with the provisions of Article 9(2) of Ordinance 112/2022, electro-intensive consumers are exempted from paying the CIEG portion corresponding to the additional cost of PRE from renewable energy sources, under the terms to be operationalized by ERSE.⁵

⁵ Under Article 18 of [Decree-Law 29/2006, of 15 February](#), PRE corresponded to “the generation activity subject to special legal regimes, such as the generation of electricity through cogeneration and endogenous renewable and non-renewable resources, microproduction, miniproduction

With regard to self-consumption, consumers who adhere to this regime benefit, as in the case of collective self-consumption⁶, from a total exemption from CIEG charges passed on through the global use of the system tariff, under Article 10 of Ordinance 112/2022.

According to Article 208 of DL 15/2022, the CIEG correspond to the charges (borne, in different measures, by consumers) “resulting from the adoption of energy and environmental policy

and generation without injection of power into the grid, as well as the generation of electricity through endogenous renewable and non-renewable resources, not subject to a special legal regime”. Although the dichotomy between generation under the ordinary and special regimes was eliminated with the entry into force of DL 15/2022, the reference in Ordinance 112/2022 to the additional cost of the PRE continues to be relevant for tariff purposes, as it reflects the difference between the real costs incurred in the acquisition of energy produced by special regime electricity producers with guaranteed remuneration under the terms of the law and the real cost incurred in the other forms of electricity acquisition (cf. Article 55 of [Decree-Law 172/2006, of 23 August](#), revoked by DL 15/2022).

⁶ [Order no. 6453/2020, of 19 July](#), established a CIEG exemption regime for self-consumption facilities: *(i)* connected to the RESP; and *(ii)* that have obtained the necessary conditions for exercising their activity until the end of calendar year 2021, through which they will benefit, for a period of seven years from the beginning of operation of the power plant, from a 50% CIEG exemption, in the case of individual self-consumption, and 100% in the case of collective self-consumption.

measures” and include, namely: *(i)* the support associated with electricity generation, including the overcost of the PRE, the differential of the cost with the acquisition of energy under the energy acquisition contracts in force and the charges arising from the costs of maintaining contractual balance and the amounts related to capacity mechanisms; *(ii)* the support associated with the Autonomous Regions of Madeira and the Azores, namely those related to tariff convergence; *(iii)* support associated with energy efficiency; *(iv)* support associated with the liberalization of the electricity markets and its sustainability, as well as with the excess revenues resulting from the extinction of regulated or transitory tariffs; and *(v)* other support, including costs with rents paid to municipalities for the concessions of the LV electricity distribution activity.

Also, with regard to self-consumption by Electro-intensive Consumers, Ordinance 112/2022 establishes the exemption from the application of the proximity criteria between the UPAC and the location of the consumption facility. In effect, consumers with electro-intensive status will not be subject to the geographic proximity metrics set out in Article 83 of DL 15/2022, which

are required for most collective self-consumption installations⁷.

Additionally, we highlight the provision of a risk coverage mechanism in the acquisition of electricity from renewable energy sources through long-term contracts (the so-called *power purchase agreements* or PPA). In effect, Ordinance 112/2022 stipulated that the mentioned support translates into the provision of guarantees by the State⁸ to cover the risk of payment of the purchase price agreed in the context of these bilateral long-term contracts, which must have a minimum duration of five years and cover a minimum of 10% of the consumer's annual consumption.

⁷ In accordance with Article 83(2) of DL 15/2022. Pursuant to Article 83(2) of DL 15/2022, ACUs and usage facilities connected by direct line or internal network or, when operating through the RESP, facilities with a maximum distance of 2 km or connected to the same transformer station when the ACU is connected to the LV distribution network, or, in the case of ACUs connected to the national distribution network or national transmission network, facilities connected at the same substation, provided that the distance of 4 km, 10 km or 20 km is not exceeded, depending on whether the connection is in MV, HV or EHV.

⁸ Market risk hedging under the long-term power purchase agreements is provided by Banco Português de Fomento and is subject to compliance with applicable European rules on state aid.

Finally, it should be noted, on the one hand, that the verification of eligibility conditions to benefit from the Electro-intensive Consumer status is assessed by the DGEG on an annual basis, in accordance with Article 193(5) of DL 15/2022, which may lead to the loss of this statute depending on the evolution of the average annual energy consumption or the evolution of the degree of electro-intensiveness in case this is subject to changes, which in a disruptive context such as the current one may eventually occur.

III. Aspects for reflection and future improvement

The sustained evolution towards a competitive and ever-expanding electricity market has been making the attribution of guaranteed tariffs and incentives to the previously designated PRE unnecessary. The end of these tariffs may, therefore, not represent an effective support mechanism for Electro-intensive Consumers.

Today, as a result of the current situation of abnormally high market prices, the value of the CIEG is negative and the overcost of the PRE is very low when compared with previous years (in

fact, also negative if the adjustment resulting from the surplus generated in 2021 is considered), since the market price is higher than the average price of the guaranteed tariff that must be paid by the SEN to the special regime generators who benefit from it.

Bearing in mind the tariffs set for 2022, it can be seen that the positive surplus of the CIEG even allowed for the reduction of the tariff deficit, without, given the price escalation, this having an impact on consumers. In fact, the confirmation of the creation of significant tariff surpluses during the first semester of 2022, led ERSE to approve an extraordinary revision of the Access Tariffs for the second semester of 2022, in order to anticipate the return of this surplus to consumers.⁹

However, the reduction or eventual disappearance of the CIEG, particularly the overcost component of the PRE, means that the positive impacts associated with the reduction or exemption of the payment of this component may be limited or even non-existent for Electro-intensive Consumers. In fact, the electricity price hike that has been observed, which

⁹ [Communication from ERSE.](#)

affects all consumers including Electro-intensive Consumers, may not only lead to an increase in the prices of goods produced by these same consumers (generating an increase in inflation), but may even lead to situations of interruption or closure of factories and large industries, as has happened recently in some countries, not really being offset by the decrease associated with the exemption of the CIEG if these remain at the historically low levels now observed.

It is, therefore, imperative to think of other measures to mitigate the effects of the current situation that protect large energy consumers, responsible for the production of goods on a national level, namely those with a strong export component, which are more subject to competition due to energy costs.

Moreover, with regard to Ordinance 112/2022, it is questionable whether the exemption, being only partial and focusing only on the PRE overcost component (which for the moment, if we consider the adjustment resulting from the 2021 surplus, appears to be negative), will meet the requirement of a minimum 75% reduction of the charges corresponding to the CIEG provided for in DL 15/2022.

THE SYSTEM FOR FINANCING THE SOCIAL TARIFF UNDER EUROPEAN UNION LAW

LUÍS DO NASCIMENTO FERREIRA

I. Introduction

DL 15/2022 became the basic law governing the social electricity tariff, revoking [Decree-Law no. 138-A/2010, of 28 December](#) (DL 138-A/2010), which created this support measure for electricity consumers in a situation of socioeconomic need, also known as economically vulnerable consumers.

The general features of the characterisation and eligibility of the social tariff remained unchanged in relation to the 2010 legal framework.

Thus, it is confirmed in Article 196(1) of DL 15/2022 that vulnerable consumers have the right to access the essential service of electricity supply at adequate prices, through the application of the social electricity tariff.

For these purposes, paragraphs 2 to 6 of Article 196 of said diploma state that natural persons who find themselves in one of the following situations are considered economically vulnerable final consumers:

- (i) Benefit from the senior citizens solidarity supplement;
- (ii) Benefit from social insertion income;
- (iii) Benefit from unemployment benefits;
- (iv) Benefit from child benefits;
- (v) Benefit from a social disability pension under the special invalidity and disability protection scheme or a supplement to the social inclusion allowance;

- (vi) Benefit from a social old-age pension;
- (vii) Belong to a household with a total annual income equal to or less than EUR 5808, plus 50% for each member of the household with no income, including the final consumer himself, up to a maximum of 10.¹

According to Article 198 of DL 15/2022, the social tariff is calculated by applying a discount to the standard low voltage network access tariff, under the terms defined in the Tariff Regulation approved by ERSE, the value of this discount being determined annually by order of the member of the Government responsible for energy.

Currently and under [Order no. 9977/2021, of 6 October](#), the value of the discount in question is 33.8% on the transitory sales tariffs to final electricity consumers.

Finally, for what is relevant here, Article 199 of DL 15/2022 states that the costs

¹ This income threshold is set out in paragraph 2 of Article 3 of [Ordinance no. 311-D/2011, of 27 December](#) (in its current wording), and is revised annually with a view to adapting it to the situation prevailing in the SEN.

of the social tariff and its financing are levied on the owners of electricity generation centers with a non-renewable primary energy source and hydroelectric plants with power greater than 10 MVA, in proportion to the installed power of each electricity generation center.

II. The financing regime for the social tariff under EU law

As a result, the social tariff is supported by (i) part of the SEN value chain, specifically by the electricity generation segment and, within this segment, (ii) only by a specific group of generators, which own non-renewable power plants or hydro plants with an installed capacity exceeding 10 MVA.

The cost borne by these producers is equivalent to the imposition of a public service obligation, within the meaning of [Directive \(EU\) 2019/944 of the European Parliament and of the Council of 5 June 2019](#), concerning common rules for the internal market in electricity (Directive 2019/944) – a directive transposed into Portuguese law by DL 15/2022.

Indeed, Article 5(1) of Directive 2019/944 sets out the general principle

that suppliers are free to set the prices for the supply of electricity to consumers.

Paragraph 2 of the same provision stipulates that Member States shall ensure that vulnerable household consumers and consumers in energy poverty are protected by social policy measures or by means other than public intervention in the setting of electricity supply prices.

Exceptionally, and by way of derogation from the provisions referred to in the previous paragraphs, Article 5(3) and (4) and Article 9(2) provide for the possibility for Member States to impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations, in particular with regard to the pricing of supplies and, specifically, through public intervention measures setting the prices for the supply of electricity paid by vulnerable consumers or consumers in energy poverty.

Where Member States avail themselves of the imposition of these public service obligations in favour of vulnerable consumers or consumers suffering from energy poverty, they are obliged to respect the requirements imposed by

the abovementioned rules of Directive 2019/944 (Articles 5(3) and (4) and 9(2)). These include the need for public intervention measures:

- (i) to be clearly defined, transparent, non-discriminatory and verifiable;
- (ii) to not lead to additional costs for market participants in a discriminatory manner.

However, as we have already observed, what happens in the case of the social electricity tariff in Portugal is that its funding is only charged to one of the activities that make up the SEN (electricity generation) and, even there, it is only charged to a portion of producers depending on the characteristics of the power plants they own.

Where that is the case, there seems to be no doubt that the situation amounts to discriminatory treatment. Moreover, that is precisely what follows from the consistent case-law of the Union courts in similar and comparable cases.

By way of example, in a judgment handed down in October 2021, in response to a request for a referral from the Spanish Supreme Court in the

context of national disputes surrounding the financing of the *bono social* (the Spanish equivalent of the social tariff), the Court of Justice stated as follows:

“Article 3(2) of [Directive 2009/72/EC](#) concerning common rules for the internal market in electricity and repealing [Directive 2003/54/EC](#)² of the European Parliament and of the Council of 26 June 2003, must be interpreted as precluding the cost of a public service obligation consisting in the supply of electricity at a reduced rate to certain vulnerable consumers to be imposed only on the parent companies of groups of companies or, as the case may be, on companies which simultaneously carry on the activities of generation, distribution and supply of electricity, since that criterion, chosen by the national legislature to distinguish between companies which must bear that cost and those which are wholly exempted from it, leads to a difference in treatment which is not objectively justified between the

various companies operating on that market”.³

This line of case-law already resulted from previous decisions of the Union Courts.

For example, in its judgment in the *Federutility* case, the Court of Justice held that the cost arising from the setting of reference prices for the supply of natural gas in Italy had to be “applied identically to all undertakings supplying natural gas”, adding that such a measure would be considered discriminatory “if that intervention resulted in the financial burden resulting from it having to be borne mainly by certain undertakings”.⁴

In the same vein, the judgment of the Court of Justice in the *ANODE* case ruled as follows:

“Article 3(2) of [Directive 2009/73](#)⁵ allows public service obligations to be

³ Judgment of 14 October 2021, *Viesgo Infraestructuras Energéticas*, C-683/19, [EU:C:2021:847](#), § 53.

⁴ Judgment of 20 April 2010, *Federutility* and others, C-265/08, [EU:C:2010:205](#), §§ 44 to 46.

⁵ Article 3(2) of [Directive 2009/73/EC](#) (on the internal market in natural gas) has identical wording to Article 3(2) of [Directive 2009/72/EC](#), which in turn, as signalled above, has identical

² It should be recalled that Article 3(2) of [Directive 2009/72/EC](#) of the European Parliament and of the Council of 13 July 2019 (on the internal market in electricity) has identical wording to Article 5(4) and Article 9(2) of [Directive 2019/944](#), which repealed the aforementioned [Directive 2009/72/EC](#).

imposed on ‘undertakings operating in the gas sector’ in general and not on specific undertakings. Moreover, Article 3(1) of this Directive provides that Member States ‘shall not discriminate between [natural gas undertakings] as regards either rights or obligations’. In that context, the system for designating undertakings entrusted with public service obligations cannot exclude a priori any of the undertakings in the gas distribution sector (see, to that effect, judgment of 19 June 2008, *Commission v. France*, C-220/07, not published, [EU:C:2008:354](#), paragraph 31)”.⁶

III. Conclusion

In light of the foregoing considerations, no doubts appear to arise as to the incompatibility of the Portuguese scheme for financing the social electricity tariff with the prohibition on imposing public service obligations of a discriminatory nature resulting from Directive 2019/944.

wording to Article 5(4) and Article 9(2) of Directive 2019/944 .

⁶ Judgment of 7 September 2016, *ANODE*, C-121/15, [EU:C:2016:637](#), § 71.

An aspect that reinforces the inconsistency of the financing option of the existing social electricity tariff in Portugal is that the costs of the symmetric social gas tariff are financed by all natural gas consumers, in proportion to the energy consumed, as results from Article 4 of [Decree-Law no. 101/2011, of 30 September](#).

It is true that these situations are not new. The same problem already arose under DL 138-A/2010, by reference to Directive 2009/72/EC, which was in force at the time.

However, Directive 2019/944 clearly reinforces the exceptional nature of public intervention measures in the setting of electricity supply prices to be paid by economically vulnerable consumers, stating that the safeguarding of these consumers should come from social policies, notably in the framework of social security systems, or other options, such as support for energy efficiency improvements.⁷

The European Commission’s guidelines also point in the same direction:

⁷ See Article 5(2) and (3) and Article 28(2) of Directive 2019/944.

“Member States should propose a mechanism to protect vulnerable consumers, which could preferably be offered through the general social security system. If provided via the energy market, it could be implemented through schemes such as a solidarity tariff or discounts on energy bills. The cost of these schemes should be covered by non-eligible consumers at the collective level”.⁸

As well as being exceptional, public service obligations for electricity discounts for vulnerable consumers will need to be transitional and proportionate⁹.

Moreover, Portugal is obliged, pursuant to Article 5(8) and (9) of Directive 2019/944, to notify the European Commission of the public service obligations it adopts to safeguard economically vulnerable consumers (of which the social tariff is an example),

⁸ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank of 25 February 2015, ‘A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy’, COM(2015) 80 final, p. 13.

⁹ See Article 5(4)(a) and (d) of Directive 2019/944.

justifying these measures, among other things, in light of the requirements set out above regarding their non-discriminatory, exceptional, transitional and proportional nature.

Let us see if this monitoring of the financing scheme of the social electricity tariff leads to some change in the current national regime, to align it with the postulates of European legislation.

TECHNOLOGICAL FREE ZONES: ARTICLES 216 TO 225 OF DECREE-LAW NO. 15/2022, OF 14 JANUARY

VÍTOR PEREIRA DAS NEVES
NICOLE FORTUNATO

I. Introduction

Concerns with technological innovation and, in this context, the role that the so-called Technological Free Zones, or TFZs, as areas especially dedicated to experimenting with new technological solutions, are aspects to which more and more attention is being paid, especially in areas, of which energy is an example, where such innovation, due to the constant evolution of available solutions and the exponential growth in the number and nature of the challenges faced, can play a more relevant role.

In Portugal, there are already several legislative and regulatory initiatives that, over the last few years, have recognized the extreme relevance of these matters, following a trend that has been common in several other European states.

Therefore, it is not at all surprising that [DL 15/2022](#), which establishes the organization and functioning of the SEN, transposing [Directive \(EU\) 2019/944](#) and [Directive \(EU\) 2018/2001](#), has also assumed as one of the fundamental axes of the SEN to reform the “creation or densification of the legal framework of innovative realities and, as well, the establishment of an adequate legal framework for innovation and development pilot projects through the creation of three technological free zones”.

To this end, Articles 216 to 225 of DL 15/2022 follow and give effect to [Decree-Law 67/2021, of 30 July](#) (DL 67/2021), which establishes the regime and defines the governance model for the promotion of technology-based innovation through

the creation of the figure of TFZs, for the specific domain of the electricity sector (and, in particular, of the so-called renewable or clean energies) .

A complete evaluation of the solutions enshrined in this regard is not yet feasible, since there are many important aspects that were left for later regulation or even for the integrating function that, in the application of the established regime, must be assumed by the competent authorities, especially the DGEG.

It is, however, worth noting the innovation brought by the introduction, in Portuguese law, of a consolidated regime applicable to research and development initiatives, especially adapted to the particularities of the electricity sector.

II. Analysis

For the purposes of DL 15/2022, the TFZs therefore correspond to geographically delimited areas with the purpose of promoting and facilitating the installation of pilot projects aimed at carrying out research, demonstration and testing activities, in a real environment, of technologies, products, services,

processes, innovative models, concepts, business models or specific regulatory frameworks, within the scope of the activities of generation, storage, promotion of electric mobility and self-consumption of electricity.

Articles 217 and 218 of DL 15/2022 provide for the creation of three TFZs, as follows:

- (i) A first *offshore* and *nearshore* renewable energy TFZ, to be located in Viana do Castelo, aimed at establishing innovation and development projects for the production of electricity from renewable energy from an oceanic source or location;
- (ii) A second renewable energy TFZ, to be located in the municipality of Abrantes, for the establishment of innovation and development projects for the production, storage and self-consumption of electricity from renewable energy, to be developed within the scope of the decommissioning process of the existing coal-fired power plant there; and
- (iii) A third TFZ, to be located in the Mira Irrigation Perimeter, aimed at

the establishment of innovation and development projects in the scope of land use compatibility for both activities, agriculture and electricity production, which will allow the generation of synergies between both activities.

The final delimitation of each of these three TFZs will be made by administrative ruling of the members of the Government responsible for the area of energy and, when relevant, also for the other areas directly involved, such as the sea and agriculture.

Responsibility for managing TFZs is attributed to the DGEG, which may exercise it directly or through a concession awarded through a public tender to be organized for said purpose.

DL 15/2022 enumerates the principles that this management must obey:

- (i) Transparency and non-discrimination, whether regarding users or technologies and solutions under research, demonstration or testing; and
- (ii) The necessary publicity of the results achieved by the development of the projects to be installed, in

order to maximize the benefits arising from the dissemination and application of the knowledge thus acquired.

These principles are a direct consequence of the two main objectives that TFZs aim to pursue.

On the one hand, the fact that these TFZs are intended to establish a scheme that encourages promoters of innovative projects to be located in the TFZs, applying to them a scheme that tends to be more favourable than that applicable to projects developed in any other circumstances, requires that access to these TFZs (and, therefore, to that scheme tending to be more favourable) to be on transparent and non-discriminatory terms. On the other hand, the objective of allowing the development of innovative projects to be installed in the TFZs to effectively contribute to maximizing the use of the knowledge that these projects can bring requires that there is no discrimination, from the outset, of technologies and solutions to be tested and, also, that there is a commitment to the publication of the results achieved, the only way to achieve their proper dissemination and consequent application of the knowledge acquired as

a result of the innovations tried out and which have proven successful.

As mentioned above, DL 15/2022 reserves a more favorable regime for TFZs than that applicable to the promotion of projects not integrated in them. This particular regime includes, namely:

- (i) By reserving a quota of injection capacity in the RESP that will be made available exclusively to projects to be developed in the context of the TFZs, thereby ensuring that, to the extent of the aforementioned quota, the development of these projects is not ultimately rendered unfeasible by the absence of RESP capacity to receive the energy thus produced and/or stored, as applicable;
- (ii) Allocating to the grid operators the responsibility for the creation and costing of infrastructures for connection to the RESP and the branches of the installations to be installed in the TFZs (with the consequent consideration of the costs in question when setting the grid use tariffs), to the detriment of the general principle of allocating the responsibility in question to the

promoters who propose to use the same infrastructures or branches;

- (iii) The exemption of research and development projects framed within the TFZs that obtain prior registration from the payment of network access tariffs and other charges related to network sharing, providing for the establishment of a special regime, to be defined by ERSE, based on the payment of a fixed amount in euros per MW/day, with the amounts thus paid intended to cover the costs of investment and operation of the infrastructures required for the installation of the TFZs and borne by the RNT or RND operator, as mentioned above; and
- (iv) Subjecting the installation of research and development projects with installed capacity of less than 30 kW to the prior notification regime, reserving for projects with capacity over 30 kW a substantially simplified prior regime, within the scope of which the provision of a bond, the issue of an operating certificate, the necessary inspection and prior consultation with the overall manager of the SEN are dispensed with, leaving it solely

to the relevant RNT and RND operators to comment on the existence of technical conditions for connection to the grid and on compliance with the applicable regulations, respecting the sequential order of requests.

In view of the special objectives pursued by the projects installed in the TFZs, the principle of their necessary time limitation is assumed. Thus, the duration of the projects under consideration must be defined according to what is necessary to achieve the results in each specific case. In any case, without prejudice to this case-by-case evaluation, a maximum period is established for this duration. This period is six years as of the availability of the connection infrastructure to the RESP, without prejudice to the fact that, upon authorization from the DGEG, this period may be extended by half the initial period.

Notwithstanding the highly experimental nature of the projects to be installed in TFZs, nothing prevents them from being subject to pre-commercial operation, when this is compatible with the nature and characteristics of the projects in question. Thus, DL 15/2022 expressly

admits the possibility of marketing the energy produced by these projects and consequently injected into the grid. Moreover, at this level, no relevant differences can be identified between projects to be installed in TFZs and the regime that regulates the remuneration to be received by other projects. In effect, under Article 224 of DL 15/2022, the injection of electrical energy into the RESP within the scope of innovation and development projects in the testing or pre-commercial operation phase is remunerated at the price freely formed in organized markets or through bilateral contracts, with the costs inherent to market participation being charged to the holder of prior registration, including deviations from the schedule.

The TFZs do not, however, exhaust the areas in which the installation of research and development projects is permitted. Thus, Article 225 of DL 15/2022 refers specifically to the possibility of installing such projects in areas not covered by TFZs. According to this legal provision, the projects in question are subject to a hybrid regime. On the one hand, Article 225.1 affirms the general principle that these projects are subject to the terms applicable to all other projects. Thus, and as an example, the simplified prior registration regime

or the exemption from the payment of network access tariffs and other network sharing charges, as referred to above, do not apply in relation to the installation of these research and development projects installed outside the areas covered by TFZs. However, and in the opposite direction, other particularities of these projects for certain limited purposes are recognized, as is the case with:

- (i) The provision that pilot-projects installed in areas not covered by TFZs may still benefit, as in the case of projects installed in these areas, from a special tariff regime, to be defined by ERSE, based on the payment of an amount fixed in euros per MW/day; and
- (ii) The admission of the possibility that DGEG may regulate the prior control procedure for the installation of pilot projects installed in areas not covered by TFZs in simpler terms than those applicable to most other projects, including by waiving the need to comply with certain elements or stages of the same procedure.

FINAL AND TRANSITORY PROVISIONS OF DECREE-LAW NO. 15/2022, OF 14 JANUARY: ARTICLES 275 TO 307

MIGUEL NOGUEIRA DE BRITO

I. Introduction

Chapter XXI, entitled “Final and transitory provisions”, of [DL 15/2022](#), spans over thirty-two Articles (275 to 307), thus introducing an unusual complexity in terms of the transitory rules normally associated with the creation, or alteration, of a legal regime.

The justification for this complexity stems fundamentally from the fact that the new electricity sector law concentrates in a single legal regime matters that were previously subject to separate treatment.

Thus, DL 15/2022 did not limit itself to concentrating in a single piece of legislation the systems of the previous Decree-Laws [29/2006, of 15 February](#), and [172/2006, of 23 August](#).

Among these matters previously subject to separate treatment the following should be mentioned: low voltage consumption and economically vulnerable customers ([Decree-Law no. 75/2012, of 26 March](#)); the guaranteed remuneration schemes ([Decree-Law no. 35/2013, of 28 February](#)); the over-equipment regime ([Decree-Law no. 94/2014, of 24 June](#)); the supplierswitching logistic operator regime ([Decree-Law no. 38/2017, of 31 March](#)); the self-consumption regime (see [Decree-Law no. 162/2019, of 25 October](#)). All the diplomas that dealt with these matters were, moreover, expressly revoked, as per Article 305 of DL 15/2022.

Only the production of electricity in cogeneration, the production of electricity from wave power, electric

mobility, and the production of electricity from nuclear power are now excluded, as stated in Article 2(2), of said law.

As one would expect, the final and transitory provisions cover a very large set of rules on succession of regimes and other aspects that are not possible to describe in detail here, at the risk of reproducing the very chapter in which these provisions are included.

Instead, it is particularly important to address some issues that are of special relevance.

II. General rule on the applicability of DL 15/2022

Among these issues, the first certainly concerns what can be considered the general rule on transitional provisions, enshrined in Article 276, under the heading “Pending cases”.

As is generally the case with the application in time of laws that modify rules of administrative procedure, paragraph 1 of that article establishes that the provisions of DL 15/2022 apply “to proceedings pending in the

DGEG, without prejudice to acts already performed”.

In addition, paragraph 2 of the same article states that in prior control procedures (which include procedures for obtaining production and operating licenses, procedures for prior registration and certification of operation, or prior notification procedures) the time limits in progress have the duration established in the legal system in force on the date they start, and the provisions of this decree-law apply to the subsequent stages of the procedure.

In addition to these general rules, Article 276 also includes a set of special rules regarding pending cases that must be kept in mind in order to avoid the dismissal of the case or the forfeiture of the claim.

Among these rules, Article 276(4) provides that in procedures that have obtained injection capacity in the RESP prior to the entry into force of Decree-Law no. 76/2019, of 3 June, have obtained a production or exploration license, or an operating registration or certificate, as the case may be, the respective applicants have a period of six months, after the date of entry into force of this Decree-Law, to submit the

respective application, under penalty of archiving the procedure, in which case the capacity remains available for a new assignment.

That provision could imply a substantial shortening of the time limits that would have applied in its absence. With the objective of obviating this effect, the new Decree-Law no. 30-A/2022, of 18 April, provides that the start-up of the generation plant, storage facility or UPAC takes place within the period established for the issuance of the exploration license or exploration certificate, under DL 15/2022, of 14 January, this being also applicable to procedures covered by paragraph 4 of Article 276 of DL 15/2022, of 14 January.

It is also worth mentioning the provision contained in Article 276, paragraph 9, according to which the regime of transfers to municipalities provided for in article 49 is not applicable to holders of an electricity generating plant from renewable sources or from storage facility that have obtained an injection capacity reservation title in the RESP before the entry into force of DL 15/2022. In the case of hybridization projects, this means that the regime of Article 49 will only apply when the title of reservation of injection capacity for

the holder of the pre-existing power plant is obtained after the entry into force of DL 15/2022.

III. Subsidized schemes

The second issue to be addressed concerns the subsidized remuneration support schemes, establishing the rule that the power plants benefiting from guaranteed remuneration schemes or other subsidized remuneration support schemes, attributed, maintained or extended by previous legislation, maintain the remuneration schemes under the conditions of attribution until the end of the respective periods, under the terms in which they were established (Article 278(1)).

The same rule is established, with the necessary adaptations, for the remuneration of the additional energy or the energy from the over-equipment of the generating centers (Article 278(2)(3)).

IV. Closure of power plants

An issue that seems to exceed the strict scope of transitional provisions is the one dealt with in Article 279(1). In accordance with this provision,

the last holder of a license to operate an electricity generating plant that ceased operation prior to the entry into force of this decree-law, or whoever succeeded them under the general terms of law, must submit to the DGEG a closure plan with a dismantling schedule appropriate to the respective characteristics, within six months of the entry into force of this decree-law.

What seems to be at issue is the application of the regime in Article 40 of the law to generating plants that have ceased operation prior to the entry into force of DL 15/2022.

Even if it is not considered to subject the owners of generating plants that have already ceased operation to the prior opinion of the operator of the RESP (provided for in Article 40(2)) attesting to the fact that these are unnecessary, the simple fact of requiring a closure plan not foreseen at the time of cessation of activity makes the regime of Article 279 problematic, especially in light of the protection of confidence.

V. Transportation and distribution networks

The questions of whether the revision and update of PDIRT and PDIRD follow the rules provided for in DL 15/2022 or the legal regime revoked by this diploma must be answered based on the provisions of Article 283 of that diploma, in conjunction with the respective Articles 126 and 130.

The new PDIRT and PDIRD, following proposals to be submitted under the new law by October 15 of this year, should only be review proposals, to be reviewed after five years from the year of the last review, to be measured by the respective approval under the law, without prejudice to updates in odd and even years, depending on whether they are, respectively, PDIRT or PDIRD.

Articles 284 and 285 deal, respectively, with the complex matter of activities subject to concession and the concessions of LV distribution networks.

Thus, Article 284 replaced the rule previously in force on this matter, according to which there was an obligation to adapt the concessions already granted to the new regime. This

was the rule provided for in Article 73(2) of Decree-Law 172/2006.

Instead, Article 284(1) provides that “the provisions of the present decree-law do not affect the concessions granted by decree-law, which are maintained under the terms and periods established in the respective concession contracts.”

In turn, in the special case of the activity of the integrated manager of the distribution networks, paragraph 2 of the same article states that, until the beginning of the respective activity, “the concessionaire of RND shall continue to exercise the activities under the terms foreseen in the respective concession contract and ensure the coordination of the operation of distribution networks”; in turn, paragraph 3 states that “the unification of the technical management of distribution networks foreseen in Article 108(3) implies the amendment of the concession contracts in force, safeguarding the respective economic and financial balance”. In turn, paragraph 3 states that “the unification of the technical management of distribution networks provided for in paragraph 3 of Article 108 implies the amendment of the concession contracts

in force, ensuring the respective economic and financial balance”.

With respect to LV distribution network concessions, and considering that the terms of the concessions in force have already expired, or are about to do so, Article 285(1), establishes the extension, without the need for further terms, of LV electricity distribution network concession contracts, including those for which their term has already expired.

This legal solution goes further than the one contained in Article 8 of [Law no. 31/2017, of 31 May](#), which only provided for the conclusion, between municipalities and the concessionaire, exceptionally and without further formalities, of a written agreement with the respective counterparts in the concession contract and the stipulation of an extension of the duration of the respective concessions until the entry into force of the new concession contracts.

In this diploma, the requirement of a written agreement appeared as an alternative to the municipalities’ option for direct management, which is now excluded, in terms that appear to be of dubious constitutionality in light of the

principle of constitutional protection of local autonomy.

Surely with the purpose of mitigating the risks of such an unconstitutionality, Article 285(4) establishes the possibility of amendments to the concession contracts in force in a sense that seems favourable to the interests of municipalities. Furthermore, paragraph 5 of the same article provides for the execution of an agreement between the LV distribution network concessionaire and the ANMP on the terms of the contractual amendments to be made under paragraph 4.

VI. Intertemporal transfer regime

Another rule deserving special reference is the one set out in Article 290, according to which, “in accordance with the intertemporal transfer regime established in Article 208, only tariff adjustments referring to over costs with production under guaranteed remuneration schemes or other subsidized remuneration support schemes occurring until 31 December, 2025, may be reflected in the revenue to be recovered by regulated companies”.

The problem this rule raises is that it is not really a provision intended to ensure the transition between two regimes, but rather to establish a temporal limitation to a rule of the new regime, in this case the one regarding the intertemporal transfer of income, provided for in Article 208 of DL 15/2022.

The questions that are not entirely clear are whether, on the one hand, the prohibition of passing on tariff adjustments referring to over costs applies to all the supports listed in Article 208(2) and, on the other hand, whether the prohibition of such passing on also means the prohibition of the overcosts involved themselves.

VII. Social tariff scheme

Finally, it is also worth mentioning the provision, in Article 293, for the characterization of the social tariff scheme and its financing, to be carried out by DGEG, in conjunction with ADENE and in consultation with ERSE, in the last six months of each four-year period as of the date of publication of DL 15/2022.

Under paragraph 2 of this provision, this characterization must be published

on the DGEG website and sent to the member of the Government responsible for the energy sector, presumably for the purpose of approval through an ordinance.

In this way, a relative stability of the social tariff scheme is ensured, which is certainly of the utmost importance for investors and operators in the electricity sector.

GLOSSARY

<p>ACC <i>(Autoconsumo Coletivo)</i> Collective self-consumption</p>	<p>CCDR <i>(Comissão de Coordenação e Desenvolvimento Regional)</i> Commission for Regional Coordination and Development</p>	<p>DL 15/2022 Decree-Law no. 15/2022, of 14 January, establishing the organization and functioning of the National Electricity System</p>
<p>AIA <i>(Avaliação de Impacte Ambiental)</i> Environmental Impact Assessment</p>	<p>CER <i>(Comunidades de energia renovável)</i> Renewable energy communities</p>	<p>EGAC <i>(Entidade Gestora do Autoconsumo Coletivo)</i> Collective self-consumption management entity</p>
<p>AincA <i>(Avaliação de Incidências Ambientais)</i> Environmental Incidence Assessment</p>	<p>CIEG <i>(Custos de interesse económico geral)</i> Costs of general economic interest</p>	<p>ERSE <i>(Entidade Reguladora dos Serviços Energéticos)</i> Regulatory Authority for Energy Services</p>
<p>ANMP <i>(Associação Nacional de Municípios Portugueses)</i> Nacional Association of the Portuguese Municipalities</p>	<p>CPAC Code of Procedure in Administrative Courts</p>	<p>GID <i>(Gestor Integrado das Redes de Distribuição)</i> Integrated Distribution System Manager</p>
<p>APA <i>(Agência Portuguesa do Ambiente)</i> Portuguese Environmental Agency</p>	<p>DGEG <i>(Direção Geral de Energia e Geologia)</i> Directorate-General for Energy and Geology</p>	<p>GWh Gigawatt-hour</p>
	<p>DInCA <i>(Decisão de Incidências Ambientais)</i> Environmental Incidence Decision</p>	<p>HV High Voltage</p>

kW Kilowatt	PDIRD <i>(Plano de Desenvolvimento e Investimento da Rede de Distribuição)</i> Development and Investment Plan for the Distribution Network	PRE <i>(Produção em regime especial)</i> Special regime generation	RJUE <i>(Regime Jurídico da Urbanização e Edificação)</i> Legal Regime of Urban Planning and Building	TFEU Treaty on the Functioning of the European Union	UPP (Unidades de pequena produção) Small-scale generation units (the power plants using renewable energy based on one single generation technology, with a maximum installed capacity of 1 MW, as defined under Decree-Law no. 172/2006, of 23 August, which was revoked by DL 15/2022. This is no longer a legal concept, but it is still commonly used among stakeholders to refer to such power plants)
kWh Kilowatt-hour		RAN <i>(Reserva Agrícola Nacional)</i> National Agricultural Reserve		TFZ Technological Free Zones	
LV Low Voltage		REDII Renewable Energy Directive II	RLIE <i>(Regulamento de Licenças para Instalações Elétricas)</i> Regulation of Licenses for Electrical Installations	TRC <i>(Título de reserva de capacidade de injeção na RESP)</i> Grid capacity reservation permit	
MIBEL <i>(Mercado Ibérico de Electricidade)</i> Electricity Iberian Market	PDIRT <i>(Plano de Desenvolvimento e Investimento da Rede de Transporte)</i> Development and Investment Plan for the Transmission Network	REN <i>(Reserva Ecológica Nacional)</i> National Ecological Reserve	RND <i>(Rede Nacional de Distribuição de Eletricidade)</i> National Electricity Distribution System	TSO Transmission System Operator	VHV Very High Voltage
MV Medium Voltage		RESP <i>(Rede Elétrica de Serviço Público)</i> Public Service Electricity Network	RNT <i>(Rede Nacional de Transporte de Eletricidade)</i> National Electricity Transmission System	UPAC <i>(Unidade de produção para autoconsumo)</i> Self-consumption generation unit	
MVA Megavolt-ampere	PDM <i>(Plano Diretor Municipal)</i> Municipal Master Plan	RJAIA <i>(Regime Jurídico da Avaliação de Impacte Ambiental)</i> Legal Regime of Environmental Impact Assessment	SEN <i>(Sistema Elétrico Nacional)</i> National Electricity System		
MW Megawatt	PNEC <i>(Plano Nacional de Energia e Clima)</i> National Energy and Climate Plan		SLR Supplier of last resort		
DSO Distribution System Operator	PPA Power purchase agreement				
NECP National Energy and Climate Plan	PPC Public Procurement Code				

Other Publications

Instituto Miguel Galvão Teles

IGUAL | DESIGUAL

Igualdade de Género & Igualdade no Ensino

Intervenções da conferência

TRIBUTO A MIGUEL GALVÃO TELES POR OCASIÃO DOS 15 ANOS DA INDEPENDÊNCIA DE TIMOR-LESTE

Intervenções da conferência

LIBERDADES DE IMPRENSA E DE EXPRESSÃO: QUE PAPÉIS, QUE EFEITOS, QUE FRONTEIRAS E LIMITES?

Intervenções da conferência

CRUZEIRO SEIXAS

Sessão de Homenagem

Intervenções da conferência

INTELIGÊNCIA ARTIFICIAL: DISRUPÇÃO E OPORTUNIDADE

Intervenções da conferência

INTEGRIDADE E RESPONSABILIDADE EMPRESARIAL

Intervenções da conferência

O FUTURO E A ESPERANÇA: OS DESAFIOS DA CIÊNCIA E O ENVOLVIMENTO DA SOCIEDADE

Intervenções da conferência



INSTITUTO
MIGUEL CALVÃO TELES