

## NEW LEGAL REGIME APPLICABLE TO THE GENERATION OF ELECTRICITY FOR SELF-CONSUMPTION AND THE SMALL GENERATION OF ELECTRICITY

### DECREE-LAW NO. 153/2014

On 20 October 2014 Decree-Law no. 153/2014 was published which repealed the legal regimes applicable to the mini and micro-generation of electricity, as approved by Decree-Law no. 34/2011, 8 March and Decree-Law no. 363/2007, 2 November, as amended, by merging these legal regimes into a new **single legal framework**<sup>1</sup> which will enter into force on January 18, 2015.

In accordance with Articles 1 and 2 of Decree-Law no. 153/2014, 20 October, the new legal regime covers:

- (i) the generation of electricity for **self-consumption** in the usage installation connected to the respective generation unit, with or without a connection to the public electric grid, based on renewable and non-renewable generation technologies (**UPAC**), whose surplus of energy can be injected into the public service's electric grid (**RESP**);
- (ii) the generation of electricity through **small generation units** from renewable energy sources (**UPP**), whose power connection to the grid is equal to or less than 250 kW and is entirely destined to be sold to the RESP.

The generation of electricity for self-consumption and the small generation of electricity are **free access** activities, although they may be subject to various types of prior control.

In fact, **the installation of a generation unit (UP), which may take the form of a UPAC or a UPP, is generally subject to prior registry and to the issuance of a certificate for entry into operation.** Whenever a UP is subject to prior registry<sup>2</sup>, the producer shall submit a request to the Electronic Registration System of UP (**SERUP**). Once the UP is registered, the producer shall install the UP by resorting to an installing

<sup>1</sup> In Article 7 of Decree-Law no. 25/2013, 19 February the need to review these legal regimes was already established.

<sup>2</sup> The requirements for access and to obtain the registry are established in Articles 5 and 6 of this decree-law. The procedure to obtain the registration and, where applicable, the procedure for the issuance of production and operation licenses, including the supporting elements of the request, procedure, extinction and change, are approved by order of the member of the government responsible for the energy sector.

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*The activities of the generation of electricity for self-consumption and small generation are free access activities and may be subject to several types of prior control*

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entity for generation units<sup>3</sup>. After the conclusion of the installation, an inspection of the UP shall be requested. In case the inspection report concludes that there are no defects or nonconformities, the operation certificate is issued and the respective UP's registry becomes definitive.

In regards to the UPACs the following rules shall be considered:

- (i) The UPACs whose installed capacity exceeds 1 MW are subject to the respective licenses for installation and for the entry into operation.
- (ii) The UPACs whose installed capacity is higher than 200 W and equal to or less than 1.5 kW, or whose electrical usage installation is not connected to the RESP<sup>4</sup>, are solely subject to a prior communication<sup>5</sup> of entry into operation to be addressed to the Directorate General for Energy and Geology (**DGEG**) through SERUP, not subject to registry. The receipt of submission of the declaration of prior communication constitutes adequate title to begin the operation of the UP.
- (iii) The UPACs whose installed capacity is equal to or less than a 1.5kW and whose holder aims to supply the electricity which is not consumed in the electrical usage installation (i.e., an electrical consumption installation, associated or not, to an electricity supply contract entered into with a supplier), are subject to prior registry and to the issuance of an operation certificate.
- (iv) Finally, the UPACs whose installed capacity is equal to or less than 200 W are exempt from any form of prior control.

**In what concerns UPACs**, the holders of these generation units which use renewable energy sources, with an installed capacity up to 1 MW and whose electrical usage installation is connected to the RESP, may enter into a **power purchase agreement** with the Last Recourse Supplier (**CUR**) to sell their electricity surplus<sup>6</sup>. Said agreements are subject to a maximum term of 10 years and may be renewed for periods of 5 years in case none of the parties opposes to such renewal by written communication made with prior notice of at least 60 days.

The electricity generated by UPACs is remunerated in accordance with market prices<sup>7</sup>. The electricity **billing** is made with a minimum frequency of three months and payment to the producer is made through bank transfer<sup>8</sup>.

The holders of UPACs with an installed capacity over 1.5 kW and connected to the RESP are subject, during the first 10 years after the issuance of the operation

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*The power generated by UPACs is remunerated in accordance with market prices*

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<sup>3</sup> The installing entity ensures that the equipment to be installed is certified in accordance with Article 20 of Decree-Law no. 153/2014, 20 October, and that the UP is properly registered.

<sup>4</sup> Provided that the holders of such UPACs do not intend to trade guarantees of origin under the terms of number 9 of Article 4 of Decree-Law no. 153/2014, 20 October.

<sup>5</sup> The procedure of prior communication of entry into operation applicable to UPACs shall be regulated through ministerial order to be approved by the member of the government responsible for the energy sector.

<sup>6</sup> Alternatively, the UPAC holders may opt to sell their power through organised markets or bilateral agreements.

<sup>7</sup> The remuneration is calculated in accordance with the formula set out in Article 24 of Decree-Law no. 153/2014, 20 October.

<sup>8</sup> If the producers entered into a financing agreement for the acquisition of the UPACs, they may choose that the CUR delivers the amount due for the power supplied by such UPAC directly to the financing entity in order to amortise the financing, provided that the financing entity renders its written consent for such purpose.

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*The remuneration of electricity generated by UPPs is determined through a bidding system where the producers are required to bid a discount to the benchmark tariff*

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certificate, to pay a **fixed monthly compensation** intended to recover a part of the costs arising out of measures on energy policy, sustainability or of general economic interest. The billing of such compensation is ascertained by the distribution network operator and is included in the billing made by the CUR or by the supplier associated with the consumption facility.

**Regarding UPPs**, it should be noted that the connection capacity that may be attributed each year to UPPs cannot exceed 20 MW, in accordance with the programme established each year through the Order of the General-Director of DGE and published on SERUP.

Furthermore, UPP holders also have the right to enter into power purchase agreements with the CUR in order to sell the electricity they generate.

The remuneration of electricity generated by UPPs is determined through a bidding system. The bidding is made by discounts offered by the producers to a benchmark tariff which is annually set by the government. After the bidding, the amount of the applicable tariff to each UPP corresponds to the highest amount resulting from the highest discounts offered to the benchmark tariff. The remuneration tariff shall vary depending on the primary energy used, being determined through the application of certain percentages to the benchmark tariff<sup>9</sup>. The applicable remuneration tariff shall remain in force during a period of 15 years after the date on which the producer started supplying electricity to the RESP and cannot be cumulated with other kinds of incentives<sup>10</sup>.

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*The holders of UPACs with an installed capacity over 1.5 kW and connected to the RESP are subject, during the first 10 years after the issuance of the operation certificate, to pay a fixed monthly compensation destined to recover a part of the costs arising out of measures on energy policy, sustainability or of general economic interest*

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The recognition of the costs incurred by the CUR (i) with the acquisition of power generated by the UPs is made in accordance with Article 55 of Decree-Law no. 172/2006, 23 August, and (ii) with the implementation or adaptation of billing systems and other systems which are necessary for the execution of Decree-Law no. 153/2014, 20 October, is made in accordance with Article 62 of Decree-Law no. 172/2006, 23 August.

The holders of the generation units for self-consumption in operation under the Regulation for the Licensing of Electrical Facilities<sup>11</sup> and the Ministerial Order no. 237/2013, 24 July, are now governed by Decree-Law no. 153/2014, 20 October, being also obliged, notably, to start paying the above referred compensation within three months as of the entry into force of Decree-Law no. 153/2014, October 20<sup>12</sup>.

<sup>9</sup> The benchmark tariff and the applicable percentages are set through Ministerial Order of the member of the government responsible for the energy sector and must be published by 15 December each year.

<sup>10</sup> During the referred period of 15 years the producer is also prevented from adhering to other remuneration regimes, without prejudice of the right to, at any time, waive to the tariff initially attributed. Upon the term of the applicable tariff the producer may sell its electricity, under the terms applicable to generation under an ordinary regime, on organised markets or by entering into bilateral agreements, including with the market facilitator or other supplier which aggregates generation.

<sup>11</sup> Approved by Decree-Law no. 26852, 30 July 1936, as amended.

<sup>12</sup> Besides this obligation said producers shall also have to install power metering equipment under the terms provided in this decree-law and to enter into insurance agreements which cover the remediation of personal injuries or material damages caused while exercising the activities of generation for self-consumption or small generation, and, if applicable, to enter into the power purchase agreement with the CUR when the generation unit is connected to the RESP and injects or is intended to inject electricity to the grid.

*The connection capacity which can be attributed each year to UPPs cannot exceed 20 MW*

Finally, it is also **noteworthy that the remuneration regimes applicable to the micro and mini generation units already in operation shall remain in force until (i) the end of the respective legal term, in the case of the subsidised remuneration regime, and until (ii) 15 years after the issuance of the operation certificate, in case of the general remuneration regime**<sup>13</sup>. After such term(s), the electricity shall be remunerated under the general regime applicable to special generation pursuant to paragraph a), paragraph 1 of Article 33-G of Decree-Law no. 172/2006, 23 August.

<sup>13</sup> Regardless of the applicable remuneration regimes under the micro and mini generation legal frameworks, the holders of the respective registries may opt for their inclusion in the legal framework for generation for self-consumption. The exercise of this option implies the definitive termination of the remuneration regime from which the producer benefited under the previous legal framework it was subject to.

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