

LEGAL ALERT

NEW LEGAL FRAMEWORK FOR THE ORGANIZATION OF THE NATIONAL ELECTRIC SYSTEM

[Decree-Law no. 15/2022, of 14 January](#), establishes the rules concerning the organization and functioning of the National Electric System (*Sistema Eléctrico Nacional* or “SEN”) and transposes [Directive \(EU\) 2019/944 of the European Parliament and of the Council, of 5 June 2019](#), on common rules for the internal market for electricity and partially transposes [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. This legal alert is intended to briefly highlight some of the main aspects of the new legal framework.

This legislation regulates a number of issues that were previously dispersed in several decree-laws, including the activities within the SEN, self-consumption, overpowering, social tariff, fraudulent consumption of electricity, recovery and transfer of tariff deficit and tariff adjustments, extinction of the regulated electricity tariffs applicable to end customers and switching, thus revoking such decree-laws, in particular [Decree-Law no. 29/2006, of 15 February](#), and [Decree-Law no. 172/2006, of 23 August](#).

Additionally, the SEN now includes the activities of technical management of distribution networks (carried out as a public service concession), electricity storage and electricity aggregation (both carried out under a free access regime), last resort aggregation, risk management and guarantees and issuance of guarantees of origin (carried out by means of exclusive licenses).

With regard to the activity of electricity generation, we would highlight the amendments concerning the deadlines of the licensing procedures, the remuneration scheme, the transfer of licenses (or other titles), the decommissioning of power plants, the amendment of the environmental impact

assessment procedure, of the urban planning licensing procedure and of the use of areas included in the national agricultural reserve, the location of power plants subject to a previous registration, the overpowering and repowering, the hybridization of power plants and the trade-offs to be given to the municipalities by the holder of a power plant or of a storage unit.

Even though the previous legal framework for self-consumption has remained significantly unaffected, Decree-Law no. 15/2022 now establishes a proximity concept to access the activity, depending on whether the power plant is connected to the consumption facility by a direct or internal line, or to the national distribution network or to the municipal distribution network. Additionally, the procedures previously established for the approval of the use of the buildings' common areas and the rules concerning energy sharing and invoicing of the traded electricity have been detailed.

As mentioned above, the System will have an aggregator – responsible for combining the consumption flexibility and electricity that has been stored, generated or consumed, to purchase or sell in electricity markets and/or through bilateral agreements.

The aggregator of last resort is legally required to purchase, on a subsidiary basis, the electricity generated by renewable energy producers and self-consumers that inject surplus electricity into the grid, as well as to purchase the electricity generated by producers that benefit from a guaranteed remuneration scheme or other support schemes.

The switching of electricity supplier and/or aggregator, by the producer, the customer or operator of storage facility or the self-consumer, is the responsibility of the logistical operator for the change of supplier and aggregator (“OLMCA”), whose functions will continue to be performed by ADENE and the overall SEN manager until the OLMCA license is granted.

We also note the possibility of implementing capacity mechanisms when these are necessary to guarantee the safety of the supply and an adequate degree of coverage of electricity demand, as well as the densification of the rules regarding the provision of system services and the licensing and operation of closed distribution networks.

The Decree-Law no. 15/2022 also establishes three technological free zones (the so-called ZLT, also known as regulatory sandboxes), managed by the Directorate-General of Energy and Geology, located: in Viana do Castelo (intended for pilot projects for research and development of electricity from oceanic sources or locations); in the municipality of Abrantes (intended 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 decommissioning process of the Pego thermoelectric plant); and in the Mira Irrigation Perimeter (for the establishment of innovation and development projects within the scope of the compatibility of land use for agricultural activities and electricity production). These areas will be delimited by a ministerial ordinance.

This diploma also establishes the new regime for misappropriation of energy, defining the operational and sanctioning rules applicable to the illicit capture of electricity. The application of this regime does not depend on the existence of an electricity supply contract, being sufficient the existence of the capture of energy disassociated from power or consumption measurements or control equipment, the misuse or disturbance of the operation of this equipment or the verification of a fraudulent situation in the activities carried out by any of the SEN players.

We also highlight the creation of the electro-intensive customer statute, which will be subject to a set of obligations and will benefit from support measures aimed at ensuring that the respective installations enjoy similar conditions in terms of competition *vis-à-vis* installations of the same nature operating in other Member States, by reducing the final prices paid for electricity and access to energy under more competitive conditions and thus benefiting several industries which may assume this regime.

Finally, Decree Law no. 15/2022, approves a set of transitory rules, which are intended to safeguard prior control procedures in progress – namely, requests for allocation of reception capacity made following an auction or requests to enter into an agreement with the grid operator, which will be maintained –, rights granted before its entry into force (this is the case of guaranteed remuneration schemes or other subsidized remuneration support schemes granted, maintained or extended at an earlier date), or cases in which the titles entitling the exercise of a given activity have not yet been granted (for example, the last resort aggregator license).

Morais Leitão's energy and natural resources team is entirely available for any further clarifications.

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