

New biomass legal regime introduced

August 14 2017 | Contributed by [Morais Leitão, Galvão Teles, Soares da Silva & Associados](#)

Introduction

Biomass plants

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Introduction

On June 12 2017 Decree-Law 64/2017 approved the special and extraordinary legal regime for the construction and operation by municipalities, inter-municipal associations and municipal associations of biomass plants for specific purposes, including:

- agricultural biomass;
- residual forest biomass; and
- biomass from energy crops.

Biomass plants

Fuel generation

Biomass plants are dedicated to the generation of electrical energy or electrical and thermal energy using biomass as fuel, whose ancillary and starter fuel comprises a maximum of 5% of fossil fuels.

The power attributable through this legal regime cannot exceed 60 megawatts (MW) and is limited to a maximum of 15 MW per power plant.

As the aim is to promote biomass plants in areas in which there is a higher risk of fires and, as such, where prevention and preservation in this regard are most needed, the biomass plants licensed under this legal regime must be located in municipalities selected by the government via a ministerial order. The selection of municipalities must consider:

- its proximity to fire risk zones or forest stands;
- the existence of grid capacity;
- its proximity to other biomass plants or forest sector industries which consume forest biomass; and
- the possibility to establish biomass plants on industrial, business or other sites that allow the use of thermal energy.

Construction and operation

Municipalities will undertake the construction and operation of power plants. Alternatively, municipalities, inter-municipal associations and municipal associations may transfer these rights to other public or private entities for specific purposes, as appropriate.

However, under this legal regime, the municipality must initiate the licensing procedure, which entails requesting grid connection points and generation licenses to the Directorate General for Energy and Geology (DGEG). Following the construction of a biomass plant, municipalities must submit a 30-day prior communication to the DGEG.

Inspection

The DGEG must undertake a power plant inspection within 30 business days. If this deadline is not

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complied with, the municipality may have its biomass plant inspected by an accredited entity and initiate operation after informing the DGEG and paying the relevant fees. This prior communication replaces the power plant's operation licence for all legal purposes.

Biomass plants licensed under this legal regime may benefit from government-approved support schemes. The acquisition of energy generated by biomass plants and the remuneration scheme to be approved by ministerial order should consider the following:

- The terms of energy acquisition must be set out by a power purchase agreement to be entered into by the operator and the last resort supplier (as the off-taker of the electrical energy generated by biomass power plants).
- The operator is entitled to sell thermal energy to third parties.
- The support scheme will have a defined duration.
- The power plant's depreciation period cannot be less than the support scheme's duration.

Comment

Although in force since the day following its publication, this special and extraordinary regime has not been fully implemented, as the government must decide on the terms of the licensing procedures (regarding the attribution of the grid connection, the issuance of the generation licence and prior communication subject to a deadline), as well as the remuneration of energy generated by biomass plants licensed under the new regime.

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