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VITO
RINO

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HYBRIDS AND HYBRIDIZATION

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ABOUT US

WHO WE ARE & WHAT WE DO

ABOUT US

MACEDO VITORINO is a leading Portuguese law firm. We advise domestic and foreign clients in a wide range of business sectors, including banking, distribution, industry, energy, TMT and projects. We are known for our professional and client oriented approach to complex and difficult matters.

Since the foundation of our firm in 1996 we have been involved in several high profile transactions in all of the firm's fields of practice, including banking and finance, capital markets, corporate and M&A, etc.. We have also acted on many complex disputes and restructurings.

We have strong relationships with many of the leading international firms in Europe, Asia and the Americas, which enable us to handle cross-border transactions effectively.

The firm recognised by The European Legal 500, IFLR 1000 and Chambers and Partners for its work in its main practice areas.

Our team is committed, hard working, accessible and friendly. We believe in collegiality, teamwork, trust and loyalty. Clients value our team approach, the good management of time and our focus on their business goals.

We advise:

- NATIONAL AND MULTINATIONAL COMPANIES
- BANKS AND OTHER FINANCIAL INSTITUTIONS
- FUNDS
- BUSINESS AND SCIENTIFIC ASSOCIATIONS
- FOREIGN EMBASSIES
- INDIVIDUAL ENTREPRENEURS
- PRIVATE EQUITIES
- START-UPS
- PRIVATE CLIENTS

NEW FEATURES

The National Electricity System (*Sistema Elétrico Nacional* - **SEN**), brought by [Decree-Law no. 15/2022](#) of 14 January, establishes new sets of rules that were not yet available or were poorly implemented in previous regulations.

Achieving the national energy transition goals focusing on solutions to circumvent the current grid capacity shortage is **SEN**'s purpose: countering the grid's inactivity and maximizing the reception potential of the Public Service Electricity Grid (*Rede Elétrica de Serviço Público* - **RESP**).

Two of the most important new features are new hybrid power production and hybridization of existing plants:

- **Hybridization** is adding to an existing power plant or self-consumption production unit (*unidade de produção de autoconsumo* - **UPAC**) of new production units that use several primary renewable energy sources, without changing pre-existing injection capacity of the power plant or **UPAC**; and
- **Hybrid** new plants or **UPAC** are those that, for the prior control procedure, simultaneously present more than one production unit using several primary renewable energy sources.

The new framework simplifies and promotes the use of the same injection point in **RESP** by several technological tools with a different primary source. It allows hybrid generation systems to be set up *ab initio* or later through a very straightforward prior control procedure to amend the production license.

Renewable power generating plants can carry out a hybridization project; but solar and wind energy hybridized plants have specific daily and intra-annual cycles that leverage their complementarity and allow maximizing the reception point at **RESP**.

The scale of wind energy generation in **SEN**, makes the opening for hybridization become clearer. In the last 5 years, wind-generated electricity corresponded, on average, to 24% of mainland electricity consumption, with an installed capacity in 2021 of 5,628,00 MW and representing a production share within renewable energies of 55.71%.

PRIOR CONTROL - I

Installation of a hybrid power plant or **UPAC** or the Hybridization of an existing power plant or **UPAC** are subject to prior control under the following terms:

- **Production and Operation License:** installed capacity greater than 1 MW.
- **Prior Registration and Operating Certificate:** installed capacity greater than 30 kW and equal to or less than 1 MW.
- **Prior Notice:** installed capacity greater than 700 kW and equal to or less than 30 kW
- Projects with an installed capacity of 700 W or less are exempt from prior control.

The award of a Production License is dependent on the prior issue of a grid capacity reservation title into **RESP** (*título de reserva de capacidade - TRC*).

Hybridization does not require a **TRC** as there is no increase in the injection capacity of the existing power plant or **UPAC**.

TRC can be acquired in one of three ways:

- **General Access:** Applicable if there is reception capacity at **RESP**. It is subject to the payment of a deposit of EUR10,000.00/MVA to **DGEG** for a minimum period of 30 months, or until the power or **UPAC** reaches commissioning.
- **Agreement with RESP operator:** Applicable if there is no reception capacity at **RESP** and the maximum annual injection capacity for this modality has been established by the Government until 15 January of each year. Subject to the payment of a deposit to **RESP** operator in the amount of EUR15,000.00/MVA for a minimum period of 24 months. After the agreement is executed, the deposit is refunded, and a new deposit shall be provided under the terms of the General Access.
- **Competitive Procedure:** Applicable if the Government set up a competitive procedure for the award of **TRC**. The terms and conditions for the award of **TRC** and the provision of the deposit are established in the documents regarding the procedure.

PRIOR CONTROL - II

In hybridization, new prior control titles explicitly identify the injection capacity in **RESP** allocated to the new production unit and entail an amendment to the pre-existing **TRC**, performed by **DGEG** or, when there is an agreement with the operator of **RESP**, by the relevant operator.

In a prior control procedure, **DGEG** notifies the applicant of the elements initially submitted and that remain valid.

When hybridization takes place in a power plant or **UPAC** that has been awarded with a water resources title or a title for the use of maritime space, the new prior control title and pre-existing prior control title may subsist autonomously even if water use titles are terminated, if priority of injection to the pre-existing power plant is ensured.

However, termination of the water use titles will always result in the revocation of the new prior control title in cases where the hybridization requires the title for its operation.

Termination of pre-existing and/or new prior control titles is ruled by Decree-Law 15/2022 and can occur by expiration (art. 38) or by revocation (art. 39).

Termination of the prior control title leads to the automatic expiration of the operation license and/or operation certificate, as well as the expiration of the relevant capacity reservation title in to **RESP**.

The termination of the prior control title:

- **Pre-existing:** **DGEG** will issue a new **TRC** in the name of the holder of the new generating unit and the new prior control title shall continue to benefit from injection capacity. Injection capacity in **RESP** of the preexisting title will be available for new allocation.
- **New:** termination of the new title shall be annotated to the pre-existing title and the corresponding injection capacity remains assured in the preexisting title.

TRANSMISSION OF THE PRIOR CONTROL TITLE

The transfer of the prior control title is subject **DGEG's** consent and legal requirements must be complied with for its award. It also includes the transfer of all elements included in or attached to the transmitted title.

Transfer requests must be submitted by the title holder and must bring:

- Identification, technical and financial suitability details of the transferee; and
- Statement of acceptance of the transfer and of all the conditions of the prior control title.

Until 15 business days after receiving the request, **DGEG** will make a decision. **DGEG** can also request additional information, which the title holder must provide within 30 business days.

Permission entails the endorsement of the new holder to the initial prior control title.

Until the operation license or operation certificate is issued:

- Direct or indirect control change over the injection capacity title holder into **RESP** are considered an amendment to the prior control title, subject to **DGEG's** consent; and
- Requests for changing the holder of the prior control title are subject to reinforcement of the deposit in half of its value according to the relevant **TRC** modality.

The autonomous transfer of the new prior control title is subject to the preceding power plant or **UPAC** holder's consent and that includes the agreement and conditions established for the use of the injection capacity in **RESP** by the transferee.

The injection capacity title in **RESP** keeps on belonging to the holder of the pre-existing power plant or **UPAC** even if **DGEG** issues a new capacity reservation title in the new generating unit holder in the event of termination of the pre-existing prior control title.

LICENSING

Installing a power plant or Hybrid **UPAC** or the Hybridization of an existing power plant or **UPAC** - generally with an installed capacity of more than 1 MVA - follows a licensing process with several steps:

In particular:

- **Environmental assessment:** Projects with an installed capacity exceeding 50 MW, or with more than 20 MW but located in sensitive areas are subject to **EIA**, or to an environmental incidences assessment procedure if, regardless of installed capacity, they are in sensitive areas;
- **Production License:** The request should also include the elements referred in Annex I of Decree-Law no. 15/2022. For Hybridizations, **DGEG** notifies the applicant of the elements initially submitted and that remain valid;
- **Local Government Control:** The construction of a power plant or **UPAC** needs a building permit first. Installing photovoltaic panels that do not go beyond the roof of a building by one meter are exempt from local government control;
- **Connection to RESP:** The connection between infrastructures connecting to **RESP** is built at the promoter's expense. Promoters may request expropriation for public utility, as well as request easement rights regarding the properties required for the installation of the electricity infrastructures that will be part of **RESP**; and
- **Operation License:** Must be requested by the promotor until a year after the award of the Production License. Deadline can be extended, once, for another year maximum.

LICENSING

HYBRID



HIBRIDIZATION



LEGAL UNBUNDLING

Hybridization can be granted to non-holders of the power plant or **UPAC** that is going to be hybridized. In that case, the new prior control title would be issued on behalf of an entity other than the pre-existing prior control title holder, or the name of the new holder would be endorsed in the new prior control title.

The holder of the power plant must submit **DGEG** an agreement between themselves and the holder of the new power plant or **UPAC** that establishes:

- The terms and conditions of the legal unbundling of the hybridization;
- Rights and responsibilities of the parties regarding electricity generation;
- Injection of electricity into the grid;
- Metering and invoicing;
- Ownership over the facilities and equipment and sharing of information.

In any case, the holders of the new power plant and of the preceding power plant are jointly and severally liable before the licensing and supervisory entities, the grid operators and **SEN's** overall manager regarding compliance with all legal and regulatory rights and responsibilities arising from the new prior control title and resulting from the installation and operation of the new power plant and relevant grid connection.

If the legal unbundling agreement is terminated and the new power plant is not incorporated into the preceding power plant or transformed into an autonomous power plant within 30 days counting from the termination date, the new prior control certificate expires.

The incorporation of the new power plant into the pre-existing power plant or its transformation as an autonomous power plant constitute a change to the prior control title and that must follow a change procedure. If considered a transformation, a new capacity reservation title should be issued.

MACE
DO ■ ■
VITO
RINO

CONTACTS:

JOÃO DE MACEDO VITORINO

JVITORINO@MACEDOVITORINO.COM

FREDERICO VIDIGAL

FVIDIGAL@MACEDOVITORINO.COM

DIR. 351 213 241 911 - TM 935 241 911

RUA DO ALECRIM 26E - 1200-018 LISBOA PORTUGAL

MACEDOVITORINO.COM