
Legislative changes - The social electricity tariff

Change to the financing model for the social electricity tariff

Portugal - Legal Flash

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Key aspects

Decree-Law 104/2023 of November 17 approves the following changes to the financing model for the social electricity tariff provided in Decree-Law 15/2022 of January 14, which establishes the organization and functioning of the national electricity system:

- > New social electricity tariff contributors
- > New formula for determining how the social electricity tariff is financed
- > Exemptions from financing the social electricity tariff
- > New reporting obligation to the competent authorities
- > New process for calculating the financed amount of the social electricity tariff



New financing model for the social electricity tariff

On November 17, [Decree-Law 104/2023](#), approving the changes to the financing model for the social electricity tariff, was published.

The social electricity tariff stems from the implementation of the National Energy Strategy 2020, approved by Council of Ministers Resolution 29/2010 of April 15, and is regulated by [Decree-Law 15/2022](#) of January 14. The aim of this measure is to ensure that all consumers have access to the basic electricity supply service, regardless of the supplier company. Following the guidelines of European policies that reiterate state intervention in electricity prices, these measures must, whenever and wherever possible, (i) comply with the principle of proportionality and (ii) ensure equal access to consumers for companies in the European Union's electricity sector.

The new financing model for the social tariff (i) increases the number of contributing entities, (ii) establishes new criteria for determining each financing entity's contribution, (iii) implements a new process for calculating this financing, (iv) establishes exemptions and (v) approves reporting obligations to the overall manager of the national electricity system ("**SEN**") regarding the amounts concerned. The SEN will then send the consolidated annual data to the Energy Services Regulatory Authority ("**ERSE**") as requested.

Entry into force: The new financing model for the social electricity tariff has been in force since November 18, 2023.

Significant legislative changes

> New social electricity tariff contributors

The original wording of article 199 of [Decree-Law 15/2022](#) of January 14 established that the costs of the social electricity tariff and its financing would only affect the holders of (i) electricity plants with a non-renewable primary energy source and (ii) hydroelectric plants with a connection capacity (*potência de ligação*) of more than 10 MVA, in proportion to the installed capacity of each electricity plant, regardless of whether the power output to the grid was limited to 10 MVA.



The new wording of [Decree-Law 104/2023](#) sets out new financing entities for the social electricity tariff by extending the list of contributors to include (i) electricity suppliers and (ii) market agents involved in power consumption.¹

> **New formula for determining how the social electricity tariff is financed**

Under the new wording of article 199, holders of eligible electricity plants will individually bear the costs and financing of the social electricity tariff based on the connected load, i.e., based on the proportion of energy from the public service electricity grid ("**RESP**") used. In turn, article 199-B(2)(a) clarifies that the proportion of RESP energy used by electricity plants corresponds to the amount of energy injected by them, measured by the grid operators at the RESP connection point in the facilities of the electricity plant holders.

In addition, the amount deriving from the new financing formula for the social electricity tariff will be proportionally allocated to electricity plant holders based on (i) connected load minus 10 MVA and (ii) the period for which the plant has an operating license (whenever this period is not the entire year).

All the suppliers and other market agents will individually bear the costs and financing of the social electricity tariff based on the annual amount of active energy billed and the annual amount of active energy purchased, respectively.² Article 199-B(2)(b) clarifies that the proportion of RESP energy used by suppliers and other market agents corresponds to the amounts invoiced by suppliers and the amounts purchased by market agents, respectively, which are measured at the consumption delivery points.

Once again, it should be noted that the amount deriving from the new financing formula for the social electricity tariff will be proportionally allocated to the energy suppliers and other market agents based on the proportion of active energy that each one has billed or the proportion of active energy that each one has purchased.

Under the new article 199-E, the social tariff costs will be payable to the overall SEN manager, which will collect them using all the means at its disposal, including legal proceedings and debt-offsetting.³

¹ "Market agents involved in power consumption" are those that purchase electricity directly on the wholesale market as consumers or agents, without going through suppliers.

² For the purposes of measuring the annual amount of active energy billed and purchased, the amount of energy billed by suppliers that have purchased energy upstream from another supplier should not be considered to avoid these being included twice in the financing of the social electricity tariff.

³ Until the costs of financing the social electricity tariff have been paid by the financing entities, they will be provisionally borne by the national electricity distribution grid operator.



➤ Exemptions from financing the social electricity tariff

For the purposes of determining the costs of the social electricity tariff and of its financing borne by the holders of electricity plants, the following entities will be exempt, and the energy they inject into the grid will not be considered:

- a) Holders of electricity plants⁴ with a renewable, non-hydroelectric primary energy source which, up to December 31, 2023, will:
 - (i) benefit from guaranteed remuneration schemes;
 - (ii) benefit from subsidized remuneration support schemes; or
 - (iii) pay contributions to the SEN in return for a capacity reservation certificate granted under a tender;
- b) Holders of hydroelectric plants or plants with a renewable primary energy source with a connected load of no more than 10 MVA, as established in the prior check procedure;
- c) Holders of battery storage facilities for upstream injection into the grid, in accordance with the regulations to be approved by ERSE; and
- d) Holders of cogeneration facilities.

➤ Reporting obligations to the competent authorities

Under article 199-C of the new legal regime, the social tariff financing entities, as well as the grid operators, must report the figures each month to the overall SEN manager, which will send⁵ the consolidated annual data to ERSE as requested.

In cases of non-compliance with these reporting obligations, inconsistencies in the data received, or for forecasting purposes, ERSE will estimate the amount of energy billed based on the available information, without prejudice to subsequent corrections and final assessments.

Failure by the financing entities to comply with their reporting obligation constitutes a minor regulatory offense punishable by a fine determined in accordance with article 31 of [Act 9/2013](#) of January 28.

➤ New process for calculating the financed amount of the social electricity tariff

Under the new article 199-D, ERSE will make an annual estimate of the social electricity tariff financing amounts payable by the relevant financing entities based on the information available.

However, ERSE will calculate the actual financing amounts for the social electricity tariff in the year after its estimate based on real and audited figures. These figures consist of the difference between the

⁴ If the conditions now established for electricity plants change, the exemption will automatically end.

⁵ This report must be sent by April 30 of the following year.



estimate made in the previous year and the actual amount considered for the purposes of calculating the financed amount of the social electricity tariff.

The financing entities concerned will be able to see ERSE's calculation of the social electricity tariff on its website for a period of 30 consecutive days.

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