



CUATRECASAS

ENVIRONMENTAL SIMPLEX

Industry, water and waste
Real estate development
Energy

Decree-Law 11/2023

MARCH 2023

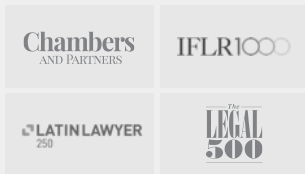
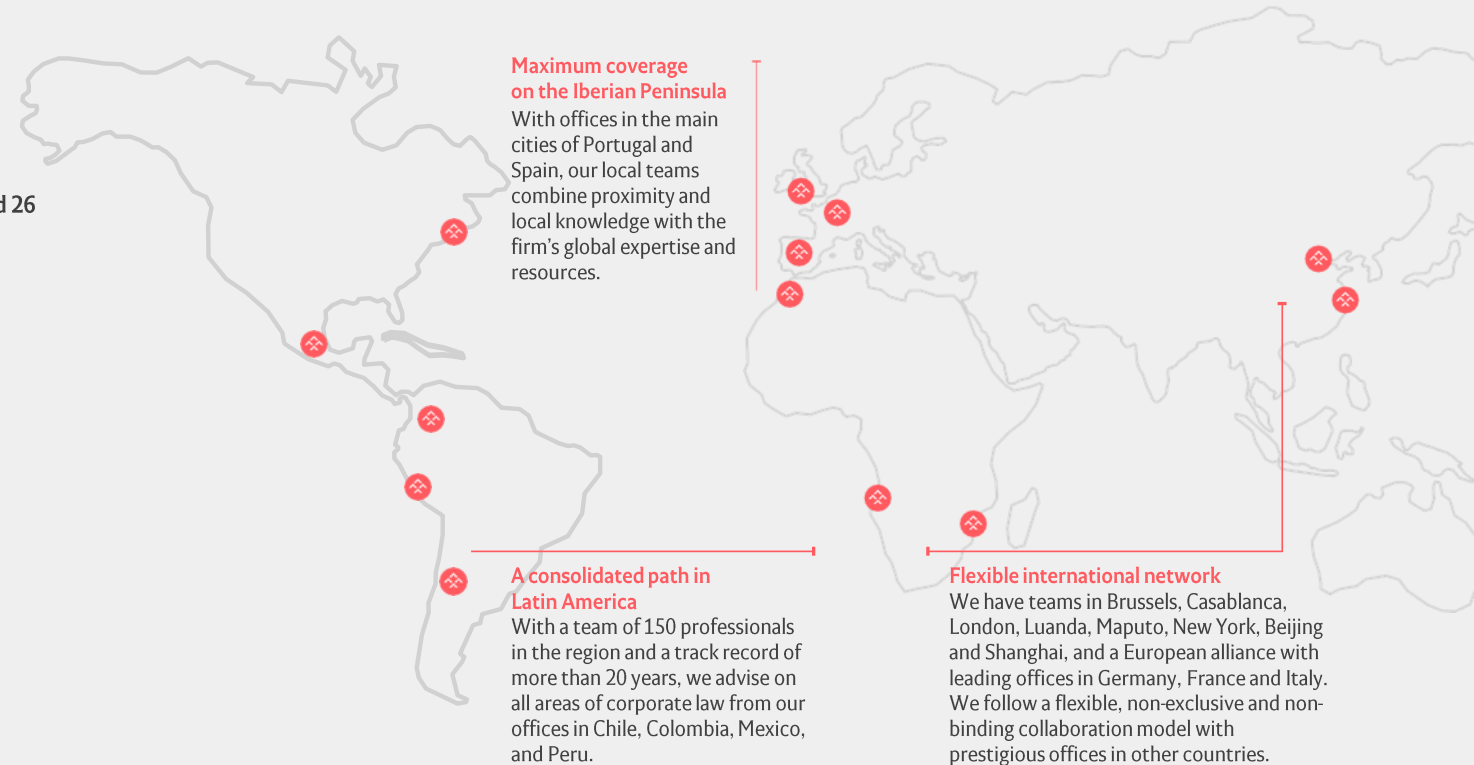


What we offer

Cuatrecasas advises on all areas of corporate law and brings with it the experience and knowledge of highly specialized teams. We can provide support for our clients, no matter how complex the issue and whatever the location.



We have a network of 27 offices in 13 countries and a strong presence in Spain, Portugal, and Latin America. We provide the team that is best suited to the specific needs of each client and situation.



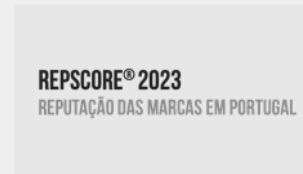
Recommended firm in the main areas of law in Europe and Latin America



European firm of the year in 2022 and Iberian firm of the year in 2022 and 2020



Europe's most innovative firm in the "Using data" category in 2022



Top legal no. 2 - Portugal. OnStrategy

We comply with environmental, social and good governance (ESG) criteria in providing our services and in our internal management.

[Click here](#) for details of the key metrics we use to measure our ESG performance. See also our latest [Corporate Report](#).



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11. Transitory provisions and entry into force

1. ENVIRONMENTAL SIMPLEX OBJECTIVES AND FRAMEWORK

Context | Why now?

PRR (Efficient Justice and Business Environment, component 18)

Aimed at generating more efficient relationships between citizens and companies with the state, reducing unjustified sectorial obstacles to licensing

Energy crisis

Drought and climate change

Promoting renewables as a major driver

Harnessing water

Circular economy requires the simplification of waste reuse.

Objectives [Decree-Law 11/2023 of February 10](#)

Promote the elimination of unnecessary licenses, permits, acts and procedures without affecting environmental protection and with the public administration taking on a special role in enforcement.



PUBLIC ADMINISTRATION GENERAL SIMPLIFICATION

Greater speed:

- Avoiding suspension of decision deadlines
- Preventing opinions from being issued after time limit expires

Creating an electronic certification mechanism for tacit approvals



ATTRACT INVESTMENT



CUTTING RED TAPE

Reducing the obligation to obtain environmental impact assessments (EIA)

Reducing duplication of procedures, permits and opinions

Creating the single environmental report (SER)

Eliminating environmental license renewals



REDUCE CORPORATE COSTS



CIRCULAR ECONOMY

Simplifying procedures for reusing water

Eliminating formalities for the use of waste in industrial activities

2. GENERAL ADMINISTRATIVE PROCEDURES | Opinions and suspension of time limits

OPINIONS

REDUCING THE TIME LIMIT FOR ISSUING OPINIONS

General time period of 15 business days to issue opinions

Previously: 20 days

OPINIONS NOT ISSUED

If an opinion is not issued within the time limit, the procedure continues. The responsible entity is obliged to proceed as soon as the time limit for issuing the opinion elapses.

Previously: If the opinion was binding, a prior request would be necessary before the procedure could go ahead.

OPINIONS ISSUED AFTER TIME LIMIT

Opinion cannot be issued after the time period elapses.

Previously: Opinion could be issued after time period elapsed.

Objective: Comply with legal time limits and avoid delays because of opinions not being issued on time
Already in force

SUSPENSION OF TIME LIMITS

Request for details

Requests for details, clarification, complementary items or information can only be made once and all at the same time. If a reply is received within 10 days, the decision period is not suspended.

Previously: The applicant could be asked for details several times.

PRIOR HEARING

Prior hearing does not suspend decision period

Previously: Prior hearing suspended decision period

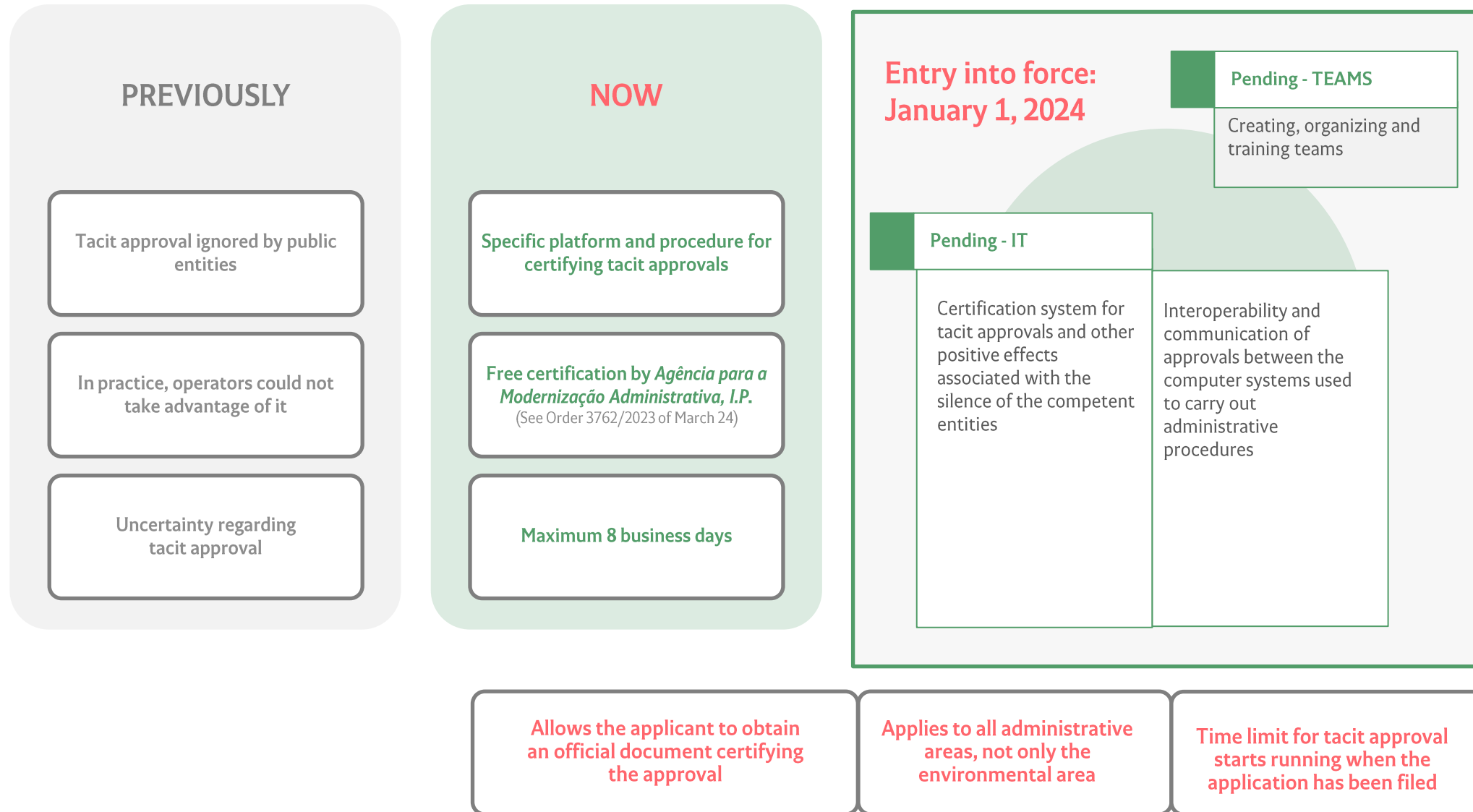
Fees

Failure to pay fees does not prevent tacit approval.

Previously: Entities could claim lack of payment to block tacit approval.

Objective: Avoid suspension of decision time limits
Already in force

2. GENERAL ADMINISTRATIVE PROCEDURES | Tacit approval certificates



3. ENVIRONMENTAL IMPACT ASSESSMENTS

Objectives: Reduce the requirement for environmental impact assessments (EIA), simplify procedures and avoid duplication of procedures

1. Cases excluded from compulsory EIA and case-by-case assessment

Alterations to and expansion of projects subject to EIA, and equipment replacement (with or without capacity change), are excluded if they:

- are not located in a sensitive area;
- are developed in the area covered by the Environmental Impact Declaration (EID);
- do not involve a change of activity; and
- meet the conditions of the EID.

Industry sector cases
[See pages 13 and 14](#)

Real estate development cases
[See page 15](#)

Energy sector cases
[See pages 16 to 20](#)

2. Reduce situations where case-by-case analysis is required to confirm need for EIA

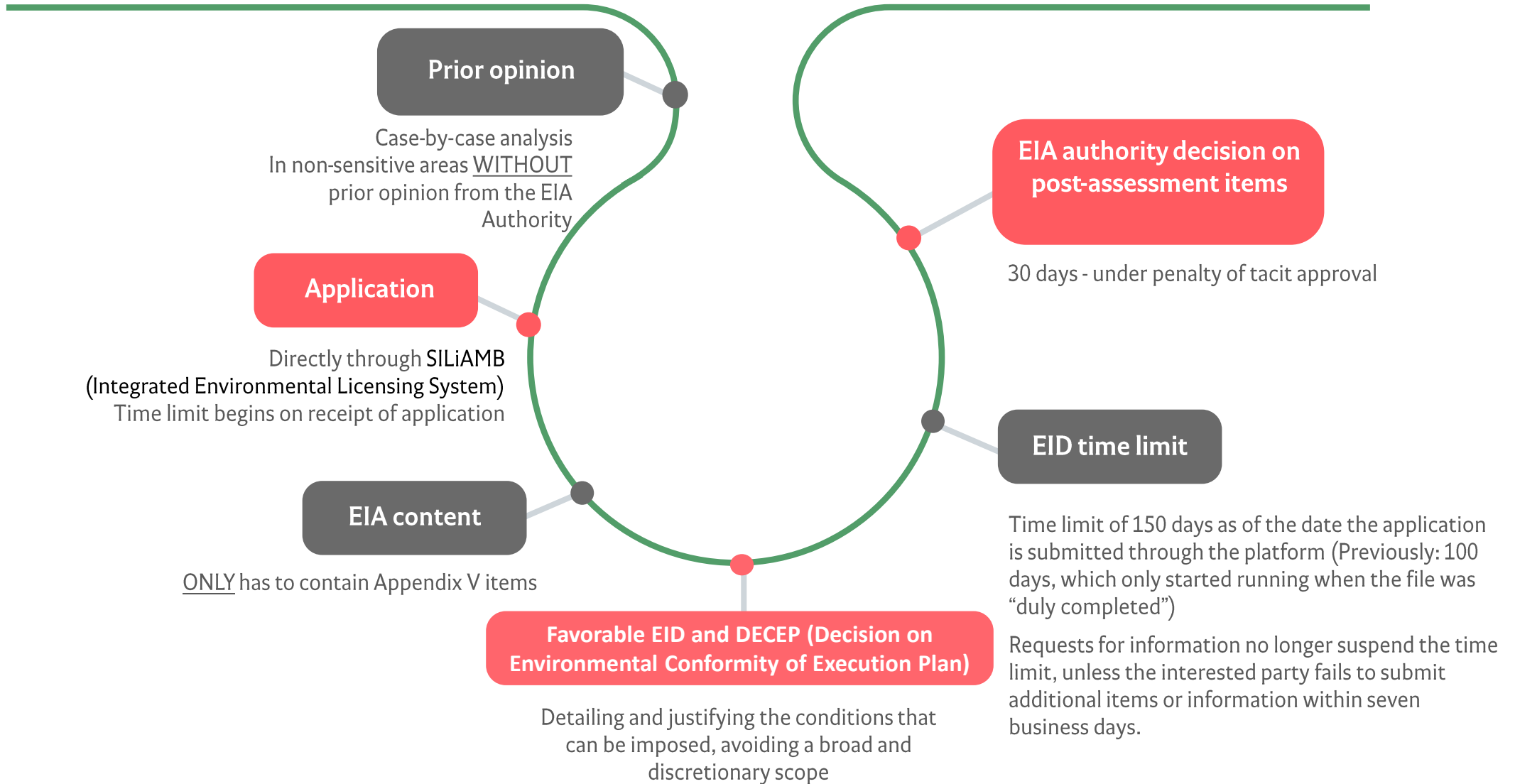
For projects not located in sensitive areas

3. Reduce compulsory EIA cases (with case-by-case analysis)



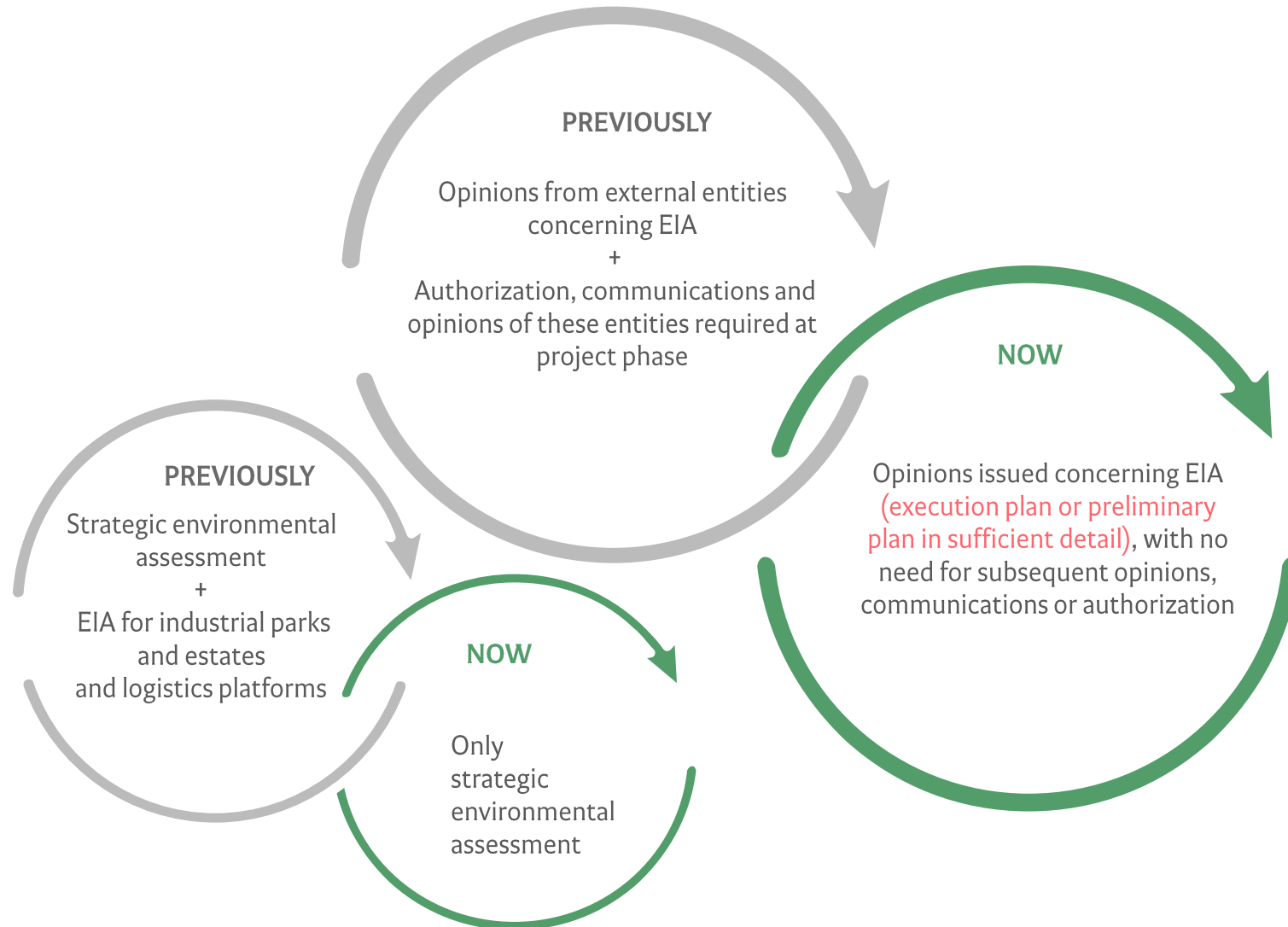
3. ENVIRONMENTAL IMPACT ASSESSMENTS

PROCEDURAL CHANGES



3. ENVIRONMENTAL IMPACT ASSESSMENTS

Eliminating duplication: Reduce duplication if issues have already been analyzed based on a project and approved in an EID

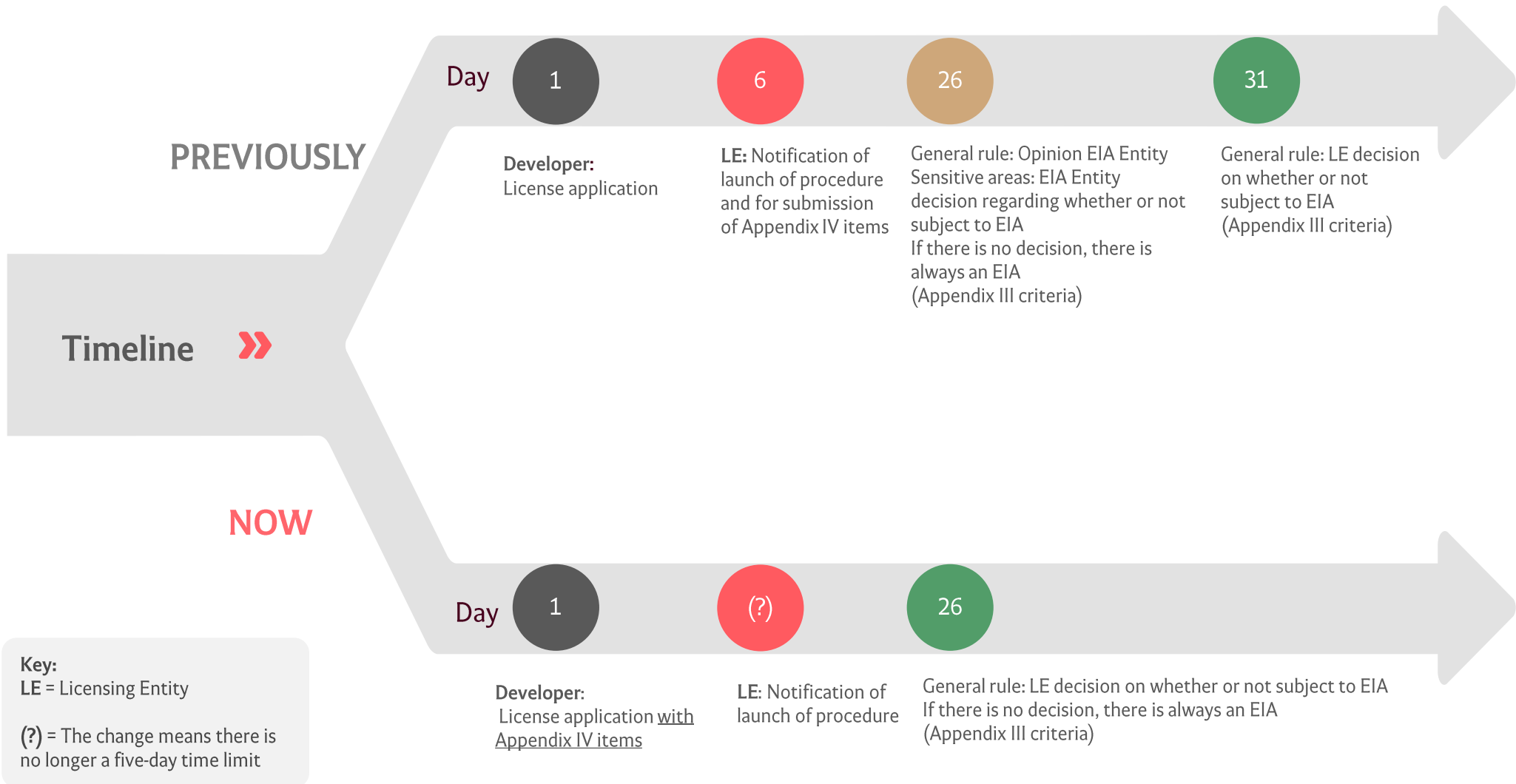


Favorable EID now includes:

- prior communication to RDCC (Regional Development and Coordination Commission) regarding projects in NER (National Ecological Reserve) areas;
- authorization for lopping or felling cork oaks or holly oaks;
- opinion for non-agricultural uses in NAR (National Agricultural Reserve) areas;
- authorizations/opinions required under the general regime on nature and biodiversity protection; and
- prior report and inspection by competent entities for cultural heritage.

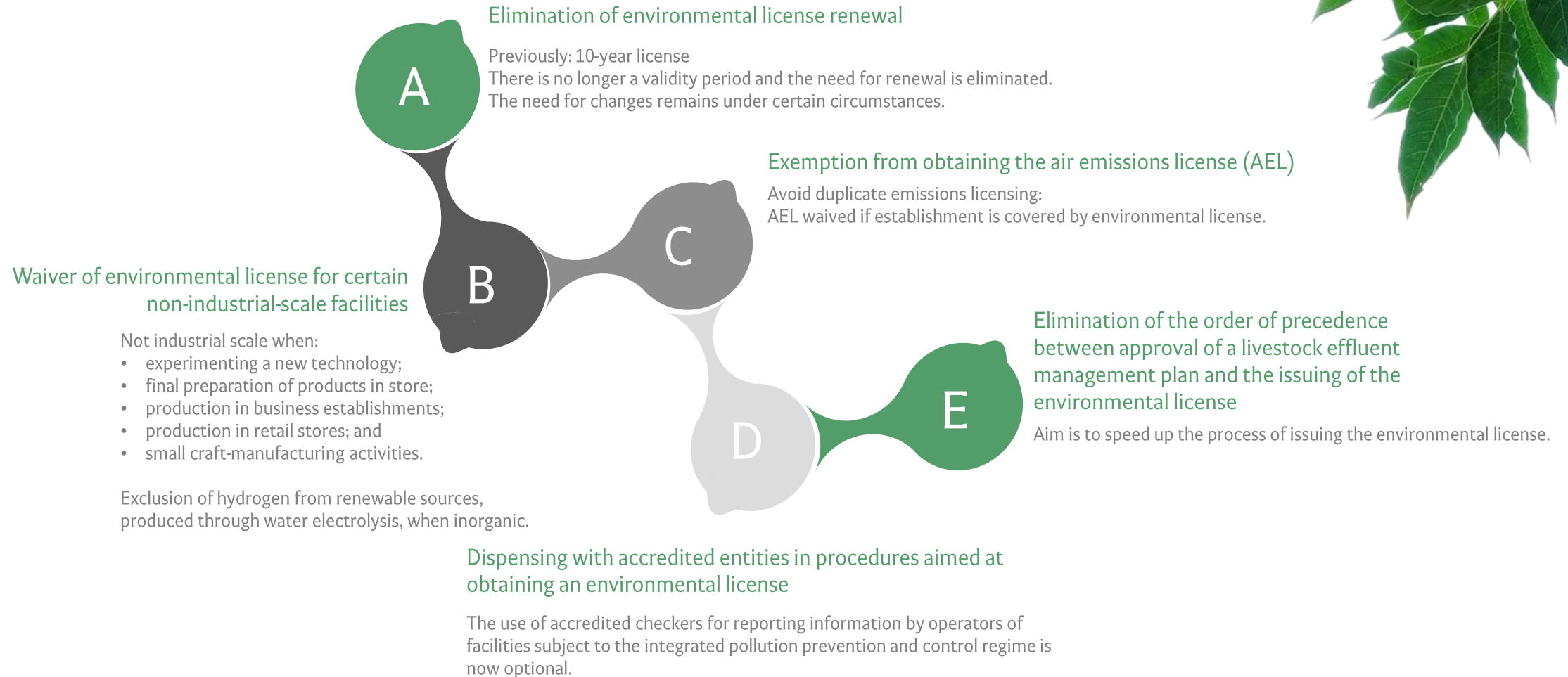
3. ENVIRONMENTAL IMPACT ASSESSMENTS

Case-by-case analysis procedure



4. ENVIRONMENTAL LICENSES

Simplifying procedures | Avoiding duplication



5. SINGLE ENVIRONMENTAL REPORTS

Simplifying procedures | Avoiding duplication



PREVIOUSLY

Multiple reports - one for each environmental regime:
CIRVER;
Volatile Organic Compounds;
Disposal of used PCBs; Water Resources; European Pollutant Release and Transfer Register;
Environmental Liability;
Greenhouse Gas Emission Trading; Fluorinated Greenhouse Gases; Industrial Emissions; EIA;
Prevention of major accidents involving hazardous substances; Waste Management; Prevention and control of air pollutant emissions, etc.

NOW

SINGLE ENVIRONMENTAL REPORT

- Includes all environmental reports to be made to APA (Portuguese Environment Agency) and RDCCs (Regional Development and Coordination Commission)
- Through SILiAmb (Integrated Environmental Licensing System)
- Submitting a report feeds other reports
- Automated completion

Entry into force:
January 1, 2024

6. INDUSTRY

Total elimination of the need for EIA:

Excluded: no compulsory EIA or case-by-case analysis
(except for sensitive areas)

- Alterations or expansions in certain industries (production and transformation of metals, minerals, chemicals, food, textiles, tanning, wood, paper and rubber, and energy)

Note: previously subject to EIA or case-by-case analysis

- Replacement of equipment with or without a change in installed capacity

Note: previously subject to EIA or case-by-case analysis

- Chemical industry: hydrogen production

Note: previously subject to EIA

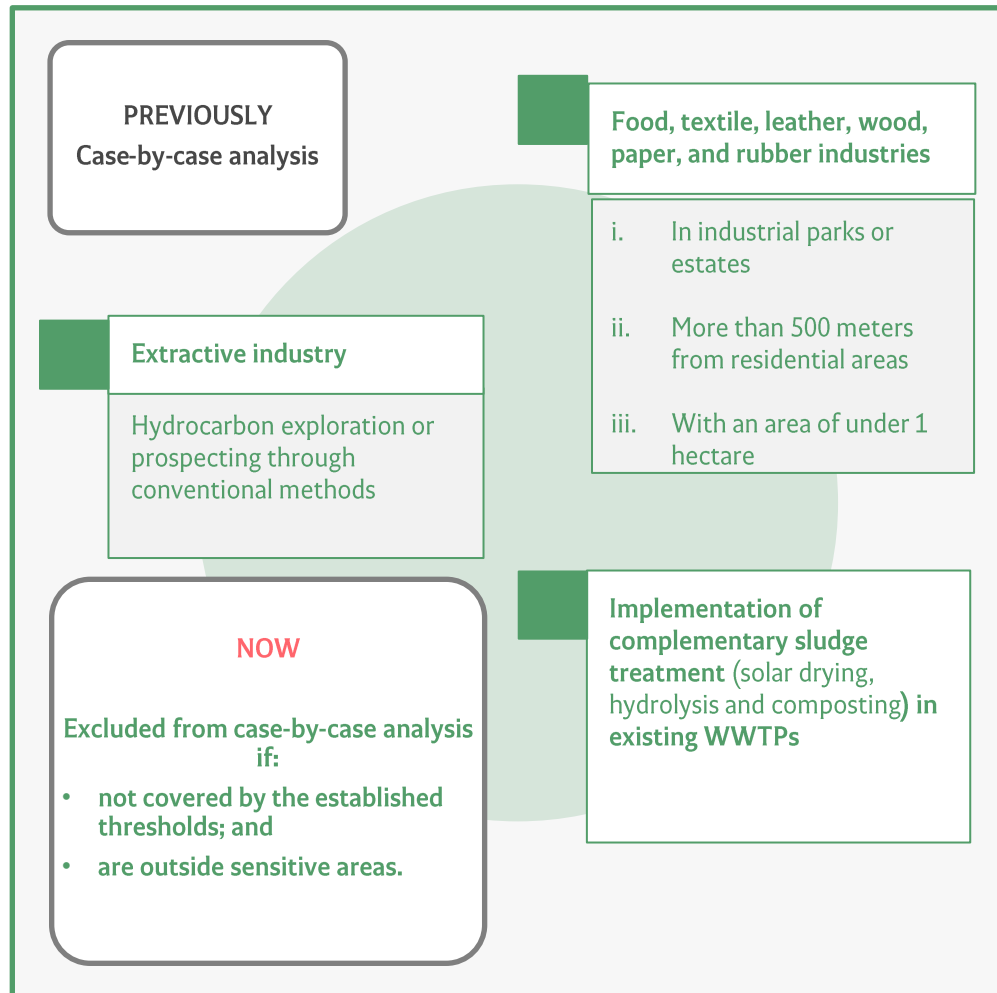
Cumulative requirements for exclusion in authorized projects with an EIA that:

- are not located in a sensitive area;
- are in a project area with an EID;
- are without a change of activity or substances and mixtures; and
- do not include a component of another type (for alterations or extensions only)



6. INDUSTRY

Subject to EIA | Reduction of case-by-case analysis situations



Reduction of the scope of the legal regime for prevention and control of polluting emissions into the air (PEAR)

The scope of the PEAR no longer covers:

- combustion plants, process furnaces and dryers with a rated thermal input of less than 1 MW;
- combustion plants that burn refinery fuels, alone or together with other fuels, for energy production within oil and gas refineries; or
- industrial furnaces and burners with a thermal input greater than or equal to 1 MW or under 50 MW.

7. REAL ESTATE DEVELOPMENT

Environmental Simplex developments that affect real estate development

1. General changes to administrative procedures -

Impact in terms of speeding up licensing processes under the urban development legislation (RJUE) (e.g., request for opinions). See [page 5](#)

2. Tacit approval certificate -

Applies to the various administrative regimes, including RJUE. Opportunity for tacit approval of administrative complaints, prior information requests, and licenses of use. See [page 6](#)

3. Eliminating duplication of procedures (e.g., NER (National Ecological Reserve), NAR (National Agricultural Reserve), and felling cork oaks). See [page 9](#)

4. Industrial development parks or estates and logistics platforms

Exclusion of EIA - when a Strategic Environmental Assessment has been carried out. Does not include Detailed Plans with registration effects. See [page 9](#)

5. Eliminating case-by-case analysis in certain property subdivisions – Applicable to subdivisions in consolidated urban areas or which occupy an area of less than two hectares.

Clarifies that Detailed Plans with registration effects are not subject to EIA.

6. End of compulsory gas installations in buildings - Merely optional.



8. ENERGY

Regulatory Framework - Main criteria before Environmental Simplex

[Decree-Law 15/2022](#)

- No requirement for APA (Portuguese Environment Agency) to issue a statement regarding changes to a production license that do not involve a change to the EID or the implantation area (non-sensitive areas)
- AlnCA (Environmental Incident Assessment Regime) applies to sensitive areas when not subject to EIA
- Re-equipping is not subject to EIA

[Joint Order of APA and DGE of March 15, 2022, regarding Small production Units with solar energy as primary source](#)

(max. 12 MW, distance 2 km, and connection not exceeding 30 kV and 10 km)

[Decree-Law 30-A/2022 of April 18 / Decree-Law 72/2022](#) (Transitional regime in force until April 19, 2024)

Outside sensitive areas and when thresholds are not exceeded, a case-by-case analysis will only be carried out if there are indications that the project is likely to cause substantial environmental impacts

[View post](#)



8. ENERGY

SOLAR ENERGY | Subject to EIA

	Excluded		Case-by-case analysis		Compulsory EIA	
	PREVIOUSLY	NOW	PREVIOUSLY	NOW	PREVIOUSLY	NOW
General	UPPS (Small Production Units) (max. 12 MW, distance 2 km and connection not exceeding 30 kV and 10 km)	UPPS (max. 12 MW, distance 2 km and connection not exceeding 30 kV and 10 km) + <ul style="list-style-type: none"> • Installed area < 15 hectares • Not located within 2 km of other power plants with more than 1 MW (set ≥ 15 hectares) • Connection by voltage line ≤ 60 kV with total length of 10 km 	Outside thresholds and sensitive areas, when determined by DGEG.	Outside thresholds, sensitive areas and exclusions, when determined by DGEG. Transitional regime: “may request a prior opinion from the EIA authority” if there are “indications that the project is likely to have substantial environmental impacts.”	≥ 50 MW	Area occupied by panels and inverters is ≥ 100 hectares
Sensitive areas	N/A	N/A	All those not covered by the thresholds.	All those not covered by the thresholds.	≥ 20 MW	Area ≥ 10 hectares



8. ENERGY

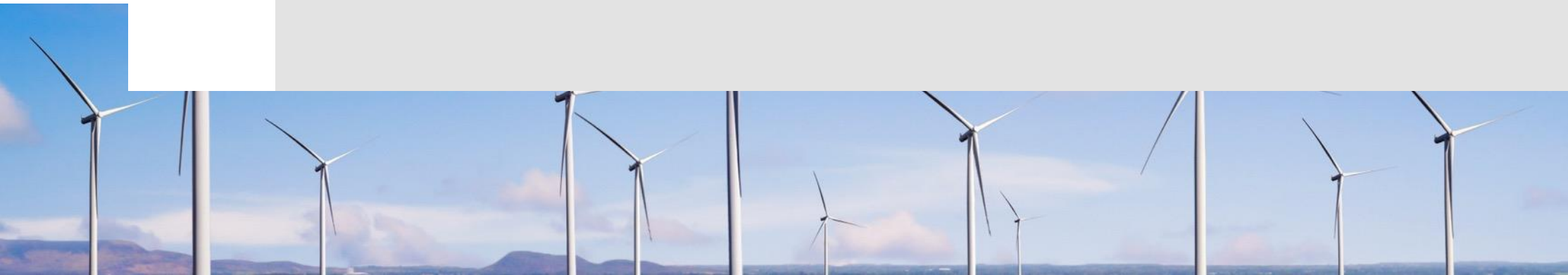
WIND ENERGY | Subject to EIA

Excluded

Case-by-case analysis

Compulsory EIA

	PREVIOUSLY	NOW	PREVIOUSLY	NOW	PREVIOUSLY	NOW
General	N/A	Excluded from the case-by-case analysis is 1 tower, if located more than 2 km away from another tower or wind farms.	Outside thresholds and sensitive areas, when determined by DGEG.	Outside thresholds, sensitive areas and exclusions, when determined by DGEG. Transitional regime: “may request a prior opinion from the EIA authority” if there are “indications that the project is likely to have substantial environmental impacts.”	≥ 20 towers or located < 2 km from other farms Over-equipment of farms that were not subject to EIA (final result: 20 or + towers)	≥ 20 towers or located < 2 km from other farms <u>when they have ≥ 20 towers</u> Over-equipment of farms that were not subject to EIA (final result: 20 or + towers) <u>when they have ≥ 20 towers</u> Over-equipment of farms, <u>outside their area</u> , that were subject to EIA (final result: 30 or + towers)
Sensitive areas			All those not covered by the thresholds.	All those not covered by the thresholds.	≥ 10 towers or located at < 2 km from other farms	≥ 10 towers or located < 2 km from other farms <u>when they have ≥ 10 towers</u>



8. ENERGY

GREEN HYDROGEN | Subject to EIA

	Excluded	Case-by-case analysis	Compulsory EIA
<i>General</i>	Hydrogen production from renewable sources and water electrolysis excluded from EIA and case-by-case analysis.	Outside thresholds and sensitive areas, when determined by DGEG. Transitional regime: “may request a prior opinion from the EIA authority.”	Integrated chemical facilities Manufacture of chemicals above the 7 tonne per year threshold. Production or installation area \geq 3 hectares Green hydrogen: Surface storage \geq 150 tonnes Underground storage \geq 50,000 tonnes
<i>Sensitive areas</i>	N/A		Thresholds established for general cases Surface storage \geq 150 tonnes Underground storage \geq 50,000 tonnes “Green” hydrogen: Surface storage \geq 75 tonnes Underground storage \geq 25,000 tonnes

8. ENERGY

Other exemptions from EIA

No compulsory EIA or case-by-case analysis

- **ALTERATIONS OR EXTENSIONS**
(relationship with the “over-equipment” concept in Decree-Law 15/2022)

Note: previously subject to EIA or case-by-case analysis

- **REPLACING EQUIPMENT WITH OR WITHOUT A CHANGE IN INSTALLED CAPACITY**
(relationship with the “over-equipment” concept in Decree-Law 15/2022)

Note: EIA exemption for reequipping under Decree-Law 15/2022

- **SPECIAL AUTO-CONSUMPTION REGIME - Until April 19, 2024 (Decree-Law 30-A/2022)**
Electricity-generating plants for self-consumption using solar energy as primary source
Harmonization with the Decree-Law 15/2022 criteria for exemption from prior urban development checks

Cumulative requirements for exclusion in authorized projects with an EIA, which:

- are not located in a sensitive area;
- are in a project area with an EID;
- without a change in activity or substances and mixtures; and
- do not include a component from another type (for alterations or extensions only).

Exempt from EIA if installed in:

- constructed structures or buildings, except for buildings that are classified or in a classification process and their protection areas; and
- existing or future artificial areas such as shopping malls, large stores, industrial parks or developments, logistics platforms, camping parks, and parking lots, except on artificial water surfaces.



9. PRODUCTION OF WATER FOR REUSE

Extending exclusions

- Water for potable uses, which must be fit for human consumption
- Recirculation or recycling of water, when this is carried out in a closed circuit within one or more processes

+

- Reuse of water to support ecosystems and ensure minimum flows in bodies of water
- Reuse of water in centralized systems if the environmental receptors are the same
- Reuse for own use (natural or legal person and corporate group)

Objective: favor circular economy

Procedural simplification

PREVIOUSLY

Time limits: 15 days for consultations and 30 days to issue opinion

Fee charged

NOW

Time limits: shortened for external consultations (3 and 10 days)

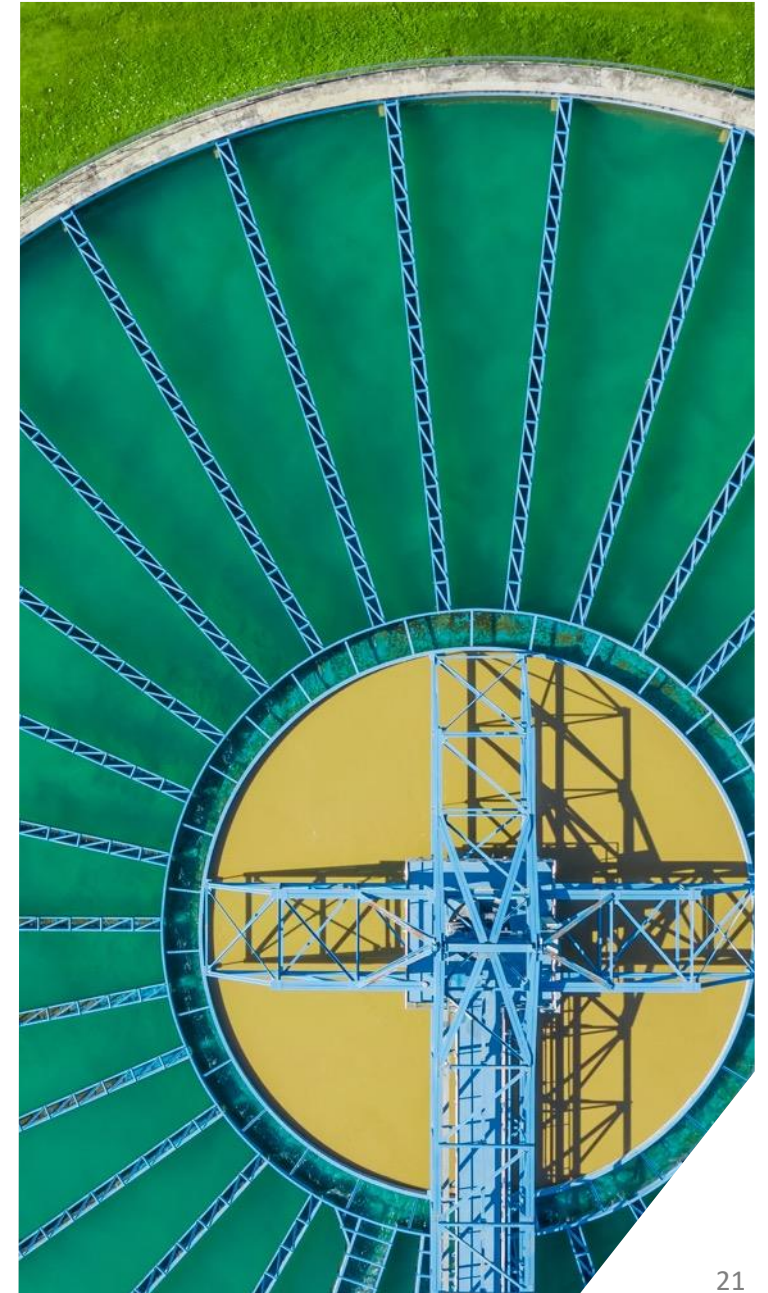
Free of charge

PREVIOUSLY

Production license + License of use

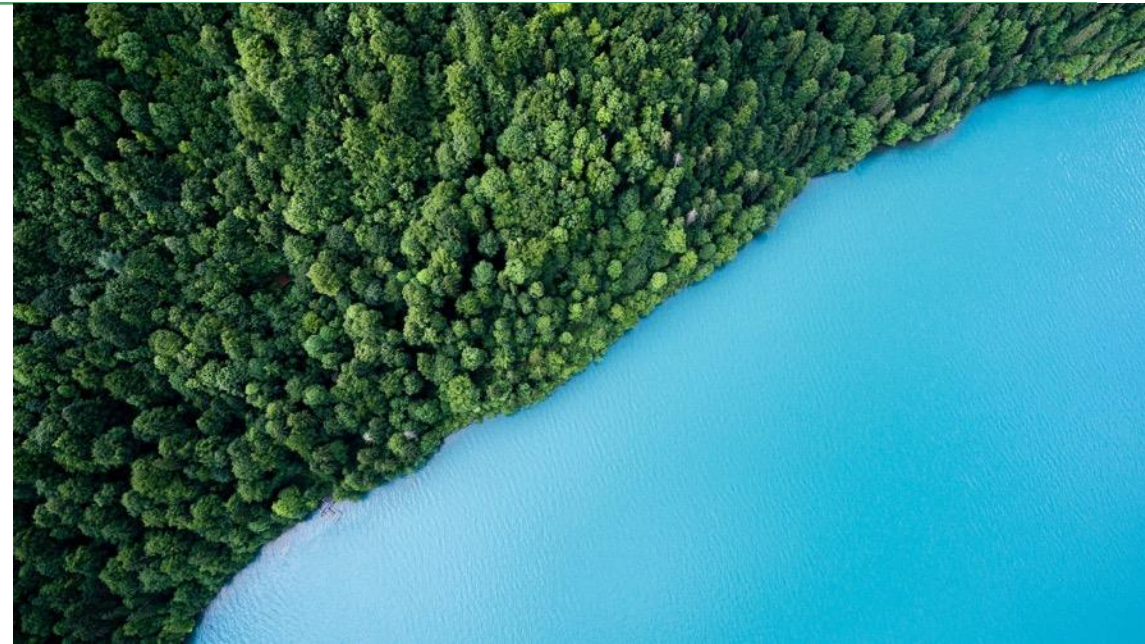
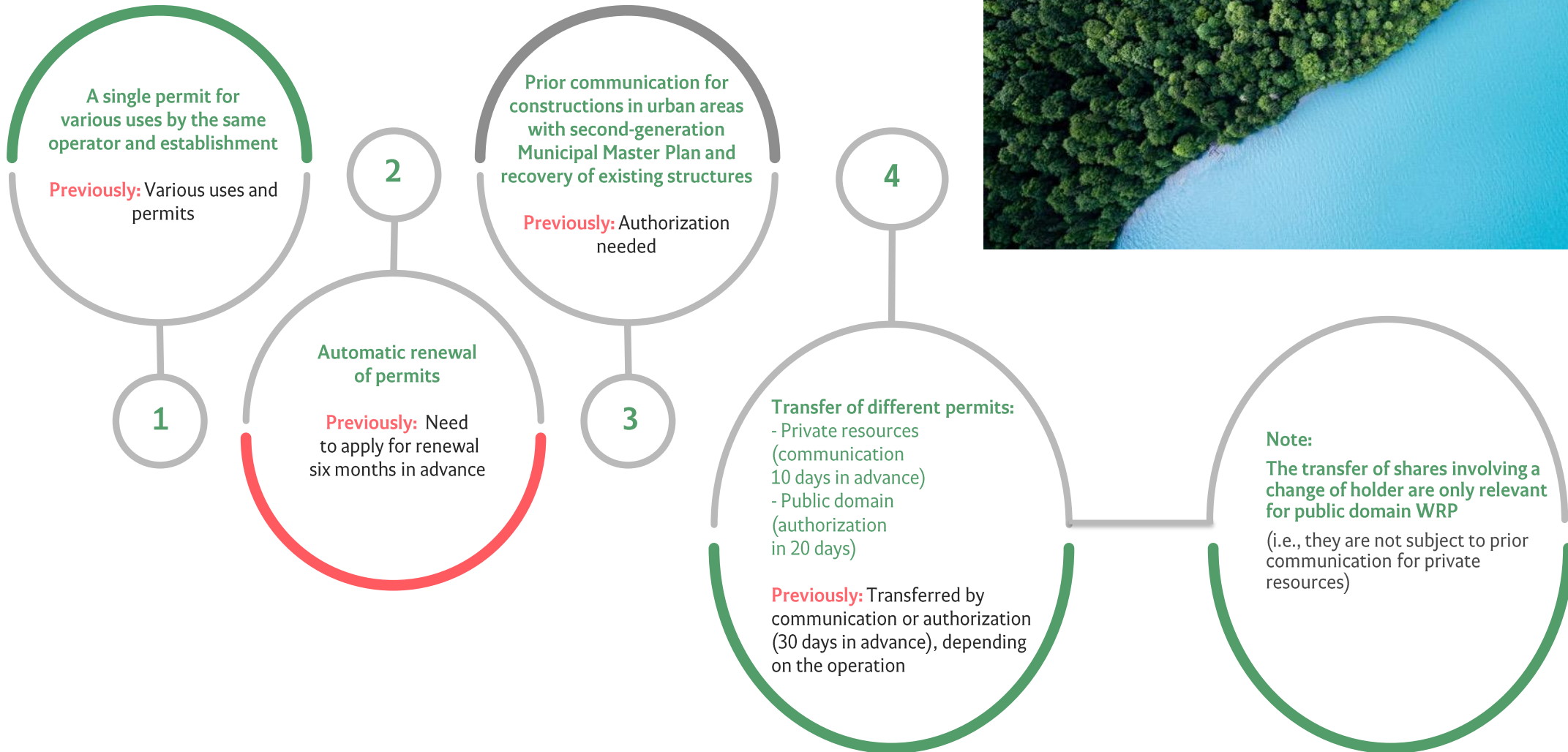
Prior notice with time limit (20 days):

- Centralized systems with production license - washing of urban roads, vehicles and waste equipment, fires, irrigation, non-closed-circuit cooling, and use in toilet flushing
- Production and use in decentralized systems if they do not receive wastewater from third parties, and WfR is for exclusive use in production facilities



10. WATER RESOURCES

Simplification - Water resource permits



11. Transitory provisions and entry into force

Effective from:

In force since March 1

As of January 1, 2024

Current procedures

Measures dependent on adaptation of computer systems

- Tacit approval certificates
- Single environmental report

Transitory provisions

When the result of the legislative amendments made by Decree-Law 11/2023 is that a project is no longer subject to a compulsory EIA or case-by-case analysis, the following apply to pending procedures:

EID not yet issued - pending procedures come to an end without any need for a declaration

EIS issued for a project at the preliminary design phase - no longer necessary to obtain a declaration of verification of environmental conformity for the execution plan, and the project can be approved by the licensing or authorizing entity without complying with the EID

EIS or declaration of verification of environmental conformity issued for a project that is at the execution phase - the project can be approved by the licensing or competent entity for authorizing the project without having to fulfill the conditions in the EID or declaration of verification.

In these situations, when the project is no longer subject to a compulsory EIA, but a case-by-case analysis is compulsory, **the developer can choose to use the EID or declaration of verification of environmental conformity issued for the execution plan**. In these cases, the project must comply with the conditions contained in the EID or declaration of verification.



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Este documento es meramente expositivo y debe ser interpretado conjuntamente con las explicaciones y, en su caso, con el informe elaborado por Cuatrecasas sobre esta cuestión.

This document is merely a presentation and must be interpreted together with any explanations and opinions drafted by Cuatrecasas on this subject.

Este documento é uma mera exposição, devendo ser interpretado em conjunto com as explicações e quando seja o caso, com o relatório/parecer elaborado pela Cuatrecasas sobre esta questão.