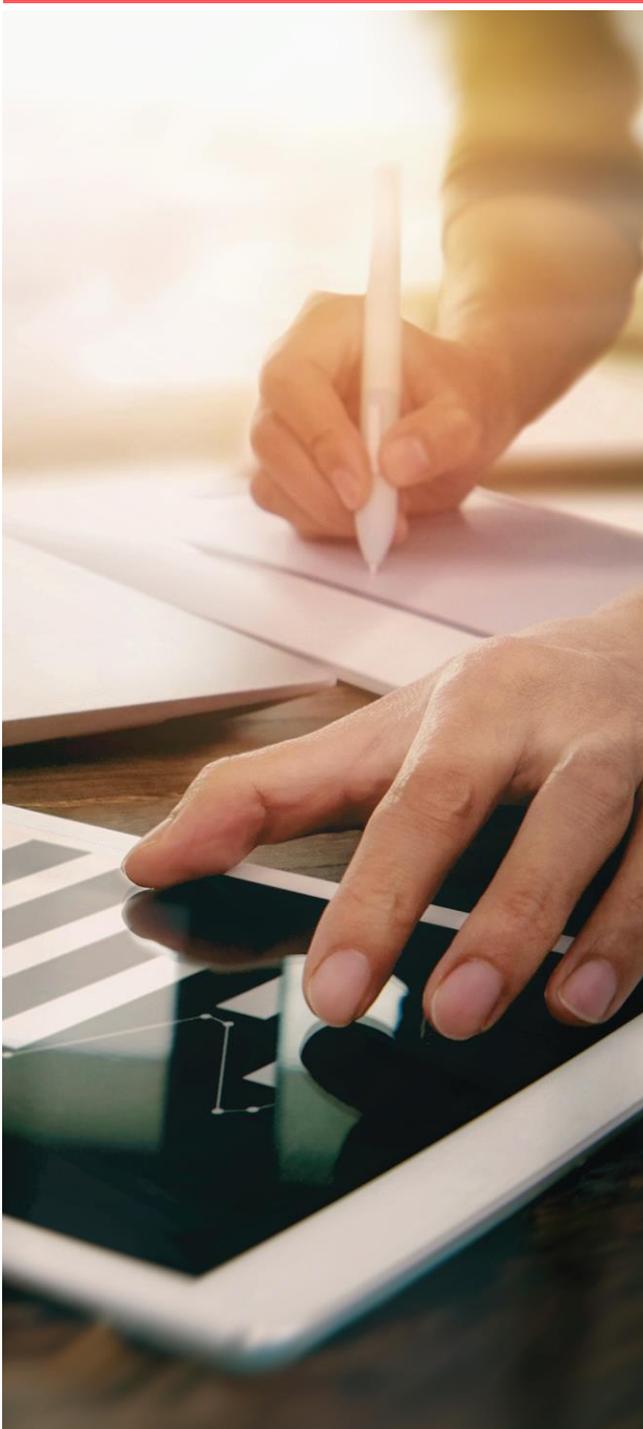


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# Public Law

Newsletter | Portugal

2<sup>nd</sup> Quarter 2019



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## I. New rules applicable to the access to electricity production

On June 4, 2019, Decree-Law No. 76/2019 of June 3, which amended the legal regime applicable to the exercise of production, transportation, distribution and marketing activities and the organization of markets of electricity, entered in force.

This Decree-Law introduced several amendments to Decree-Law no. 172/2006, which develops the general principles regarding the organization and operation of the National Electric System ("SEN"), approved by Decree-Law No. 29 / 2006, of February 15, which regulates the legal regime applicable to the exercise of the activities of production, transportation, distribution and commercialization of electricity and to the organization of electricity markets. Of the several changes promoted by Decree-Law no. 76/2019, the following are highlighted:

- A new configuration and processing of the procedure for obtaining the title of reserve of injection capacity in the Public Service Electric Network ("RESP") and the subsequent acquisition of production license;
- The "return" to the guaranteed remuneration regime for certain models of remuneration of electricity production;
- New administrative procure for the production of electricity from renewable sources based on a single production technology, with a maximum installed capacity of up to 1MW and intended for the total sale of energy in the RESP
- Opening of the possibility of low voltage electricity distribution concessions to integrate the public lighting network of the granting municipalities.

The new configuration of the procedure for assigning Production and Operation Licenses requires prior presentation of a title of reserve of injection capacity in accordance with the provisions of article 5-A of Decree-Law no. 172/2006, to be attributed in one of the following ways:

- issuance by the RESP operator with a reservation of injection capacity in the electrical grid on behalf of the applicant;
- agreement between the applicant and the RESP operator, with its the assumption of the financial charges arising from the construction or upgrade of the electrical grid required for the reception of the energy produced by the power plant, with identification of the capacity to be allocated;
- issuance by the RESP operator of the terms communicated by the responsible entity of the competitive procedure for allocation of reserve of injection capacity in the network, opened by order of the member of the government responsible for the energy area.



The competitive procedure provided for in Article 5-B “*shall allow the allocation of a better electricity production price, the payment of compensation which will revert to costs of general economic interest (CIEG) or others*”. The competitive procedure is carried out by electronic auction, which may include general compensation or guaranteed remuneration. Pursuant to Article 5-B, the opening of a procedure has the potential to invalidate the pending procedures for allocating reserve capacity of injection capacity for the receiving points to be integrated into the network.

In order to prevent speculation and to increase investment on the electrical grid, the legislator determined the non-transferability of the reserve capacity of injection capacity until the issuance of the operating license, which is materialized by altering the ownership of the production license, in accordance with the provisions of paragraph 17 of Article 5-A.

We note that these amendments were intended to accommodate, within the legal framework, the “*Competitive Procedure for the allocation of title of reserve of injection capacity in the electric utility public service for photovoltaic energy*”, the opening of which was determined by Order No. 5532-B / 2019 of June 6, concerning the allocation of 1400 megawatts of receiving capacity in RESP.

This Decree-Law has revoked Article 33-G of Decree-Law no. 172/2006, which regulates the remuneration regimes of the activity of electricity production under special regime. In its replacement, Article 4-A was added to Decree-Law 172/2006, which establishes that the exercise of the electricity production activity is subject to the following remuneration schemes:

- General remuneration scheme, in which producers sell the electricity produced at a market price; or
- Guaranteed remuneration scheme in which producers sell the electricity produced at a guaranteed price in a given period, the price being fixed or indexed to a reference, with or without setting minimum and/or maximum thresholds.

It should be noted that under the provisions of article 4-A of Decree-Law no. 172/2006, the attribution of guaranteed remuneration can only be made in one of following circumstances:

- In the context of the competitive procedure, including electronic auction, provided for in Article 5-B;
- For power plants with installed capacity up to 1 MW, up to the limit defined annually by the member of the Government responsible for the area of energy;



- › For situations of over-equipment or production units to be installed in existing power plants that use a different primary source, even if the injection power in the network allocated in the pre-existing production license.

It should also be noted that section c) of article 10 of Decree-Law no. 76/2019 revokes the provisions of Decree-Law no. 153/2004, of October 20, applicable to the production of electricity through units based on a single production technology with a net power of 250 kW or less, for the total sale of energy to the grid.

In accordance with the provisions of article 27-B of Decree-Law no. 172/2006, it is now stated that access to the production of electricity from renewable energy sources based on a single production technology and with maximum capacity installed up to 1 MW and destined to the total sale of energy in RESP, is subject to prior registration in obtaining a certificate of exploration through a procedure to be instructed with the General Direction of Energy and Geology. It should be noted that prior registration can be refused within 30 days when there is a failure to comply with legal and regulatory requirements for the exercise of the activity.

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## II. Legislation

### › Energy

**Decree-Law no. 48/2019 - Official Gazette no. 73/2019, Series I of 2019-04-12  
Energy Services Regulatory Authority (ERSE)**

Amends measures to promote the production and use of forest biomass.

**Decree-Law no. 76/2019 - Official Gazette no. 106/2019, Series I of 2019-06-03**

Amends the legal regime applicable to the exercise of the activities of production, transportation, distribution and commercialization of electricity and to the organization of the electricity markets.

**Regional Legislative Decree no. 14/2019/A – Official Gazette no. 112/2019, Series I of 2019-06-12**

Second amendment to Regional Legislative Decree No. 5/2010 / A, of February 23, which establishes the system of incentives for the production of energy from renewable sources of the Autonomous Region of the Azores - PROENERGIA.

**Ministerial Order no. 192/2019 - Official Gazette no. 119/2019, Series I of 2019-06-25  
State Secretary of Energy**

Approves the specific requirements of certification of the training entities to provide adequate training to obtain the professional qualification of gas technician, installer of gas facilities and of networks and branches of distribution of gas, installer of gas appliances and welder of steel by fusion in the area of the gas.



**Ministerial Order no. 98/2019 - Official Gazette no. 65/2019, Series I of 2019-04-02**

**State Secretary of Energy**

Third amendment to Ministerial Order no. 349-B/2013, of November 29, previously amended by Ministerial Order no. 379-A/2015, of October 22, and by Ministerial Order no. 310/2016, of December 15, which defines the methodology for determining the energy performance class for the SCE pre-certificates and certificates, as well as the technical and efficiency behavior requirements of the technical systems of new buildings and buildings subject to major intervention.

**Ministerial Order no. 115/2019 - Official Gazette no. 74/2019, Series I of 2019-04-15**

**State Secretary of Energy**

Fixes the reference tariff provided for in Article 31 (1) of Decree-Law no. 153/2014, of October 20, and determines the percentages to be applied to the reference tariff, depending on the type of primary energy used by the units of small production.

**Ministerial Order no. 167/2019 - Official Gazette no. 103/2019, Series I of 2019-05-29**

**State Secretary of Energy**

First amendment to the Ministerial Order no. 240/2018, of August 29, which approves the pilot project of applying the liquefied petroleum gas (LPG) tariff economically vulnerable consumers.

**Directive no. 8/2019 - Official Gazette no. 67/2019, Series II of 2019-04-04**

**Energy Services Regulatory Authority (ERSE)**

Approves of the methodology for determining the tariff reference prices for the use of the natural gas transmission network.

**Directive no. 9/2019 - Official Gazette no. 71/2019, Series II of 2019-04-10**

**Energy Services Regulatory Authority (ERSE)**

Approves of the General Conditions of the Agreement for Adherence to the Market of System Services within the scope of the Pilot Project of consumption participation in the regulatory reserve market.

**Directive no. 10/2019 Official Gazette no. 78/2019, Series II of 2019-04-22**

**Energy Services Regulatory Authority (ERSE)**

Approves the parameters related to the connections to the electricity networks and repeals Directive no. 18/2012, of November 8.

**Directive no. 11/2019 - Official Gazette no. 86/2019, Series II of 2019-05-06**

**Energy Services Regulatory Authority (ERSE)**

Establishes the terms and conditions of placement Auctions related to producer in special regime (PRE).

**Regulation no. 361/2019 - Official Gazette no. 79/2019, Series II of 2019-04-23**

**Energy Services Regulatory Authority (ERSE)**

Approves the Tariff Regulation of the natural gas sector.



**Regulation no. 362/2019 - Official Gazette no. 79/2019, Series II of 2019-04-23  
Energy Services Regulatory Authority (ERSE)**

Amendment to the Regulation on Access to Networks, Infrastructures and Natural Gas Interconnections.

**Regulation no. 365/2019 - Official Gazette no. 80/2019, Series II of 2019-04-24  
Energy Services Regulatory Authority (ERSE)**

Second amendment to the Regulation of Commercial Relations of the Natural Gas Sector.

**Decision no. 4343/2019 - Official Gazette no. 81/2019, Series II of 2019-04-26  
Energy Services Regulatory Authority (ERSE)**

Defines the conversion factor for urban networks of cold and heat fed by cogeneration or trigeneration systems.

**Order n.º 5532-B/2019 - Official Gazette no. 109/2019, 1<sup>st</sup> Supplement, Series II of 2019-06-06**

**State Secretary of Energy**

Determines the opening of a competitive procedure, in the form of an electronic auction, to allocate reserve of injection capacity at points of connection to the Public Utility Electricity Network (RESP) for photovoltaic solar energy, produced at the power plant.

› **Territorial Planning and Urbanism**

**Decree-Law no. 66/2019 - Official Gazette no. 97/2019, Series I of 2019-05-21**

Changes the rules applicable to the administrative order for the execution of works of maintenance, rehabilitation or demolition and their coercive enforcement.

**Resolution of the Council of Minister no. 86/2019 - Official Gazette no. 106/2019, Series I of 2019-06-03**

Determines the partial suspension of the Municipal Territorial Plans of Boticas, Cabeceiras de Basto, Chaves, Ribeira of Pena and Vila Pouca of Aguiar, in the area intended for the implementation of the Tâmega Power System, and establishes the respective preventive measures.

**Resolution of the Council of Ministers no. 62/2019 - Official Gazette no. 64/2019, Series I of 2019-04-01**

Amends the Resolution of the Council of Ministers no. 167/2017, of November 2, which approved the structural fire prevention and restoration projects in the Nature Park of Douro Internacional, Montesinho and Tagus International, in the Serra of Malcata Nature Reserve and in the Portas de Ródão Natural Monument.



### **Resolution of the Council of Ministers no. 86/2019 - Official Gazette no. 106/2019, Series I of 2019-06-03**

It determines the partial suspension of the Municipal Director Plans of Boticas, Cabeceiras de Basto, Chaves, Ribeira de Pena and Vila Pouca de Aguiar, in the area intended for the implementation of the Tâmega Electroproduction System, and establishes the respective preventive measures.

#### **› Environment**

### **Law no. 40/2019 - Official Gazette no. 117/2019, Series I of 2019-06-21**

Attributes to environmental health technicians the legal power to harvest samples of water and biofilms in situations of cluster or outbreak, proceeding to the first amendment to Law no. 52/2018, of 20 of August (establishes the regime of prevention and control of Legionnaires 'disease).

### **Decree-Law no. 50/2019 - Official Gazette no. 75/2019, Series I of 2019-04-16**

Ensures the implementation, in national law, of Regulation (EU) 2016/1628 laying down the requirements for emission limits for gaseous and particle pollutants and for the approval of engines of internal combustion for non-road mobile machinery.

### **Directive (EU) 2019/904 of the European Parliament and Council – Official Journal of the European Union no. L.155 of June 12, 2019**

Directive on the reduction of the impact of certain plastic products on the environment.

### **Regional Legislative Decree no. 12/2019/A - Official Gazette no. 104/2019, Series I of 2019-05-30**

First amendment to Regional Legislative Decree no. 19/2010/A, of May 25, which regulates the preparation and availability of reports and public information on the state of the environment, regulates the support to non-governmental organizations of environment and changes the composition of the Regional Council of Environment and Sustainable Development (CRADS).

### **Ministerial Order no. 166/2019 - Official Gazette no. 103/2019, Series I of 2019-05-29**

**Ministry of Finances, Ministry of the Environment and Energy Transition  
Ministry of Agriculture, Forests and Rural Development**

Approves the statutes of the Institute for the Conservation of Nature and Forests, I. P.

### **Ministerial Order no. 170/2019 - Official Gazette no. 105/2019, Series I of 2019-05-31**

**Ministry of Finances and Ministry of the Environment and Energy Transition**

First amendment to the Statutes of the Portuguese Environment Agency, I. P., approved by Ministerial Order no. 108/2013, of March 15.

### **Resolution of the Council of Ministers no. 63/2019 - Official Gazette no. 64/2019, Series I of 2019-04-01**

Appoints members of the National Council for Environment and Sustainable Development



**Notice no. 10710/2019 – Official Gazette no. 122/2019, Series II of 2019-06-28**

Modification of the delimitation of the National Ecological Reserve (REN) of the municipality of Lisbon.

› **Public Finances**

**Organic Law no. 2/2019 – Official Gazette no. 114/2019, Series I of 2019-06-17**

Approves the military appropriation bill and repeals Organic Law No. 7/2015, of May 18.

**Decree-Law no. 65/2019 - Official Gazette no. 96/2019, Series I of 2019-05-20**

Mitigates the effects of the earnings freeze that occurred between 2011 and 2017 related to careers, positions or categories in which the progression depends on a certain period of the course of a certain period of service rendering.

**Decree-Law no. 84/2019 - Official Gazette no. 122/2019, Series I of 2019-06-28**

Establishes the norms of execution of the State Budget for 2019.

**Ministerial Order no. 172/2019 - Official Gazette no. 106/2019, Series I of 2019-06-03**

**Ministry of Presidency and Administration Modernization and Ministry of Finances**

Establishes the System of Incentives to the Efficiency of the Public Expenditure (SIEF).

**Ministerial Order no. 186-A/2019 - Official Gazette no. 115/2019, 1<sup>st</sup> Supplement, Series I of 2019-06-18**

**Ministry of Finances**

Amends Article 9 of the Ministerial Order no. 343-A / 2017, of 10 November, relating to the procedure for granting State guarantees under Law no. 69/2017, of 11 of August.

**Resolution of the Council of Ministers no. 106/2019 - Official Gazette no. 121/2019, Series I of 2019-06-27**

Promotes the acquisition and leasing of vehicles of zero emissions by the state business sector, contributing to the decarbonization of the fleets of public enterprises.

› **Administrative Organization**

**Law no. 36/2019 - Official Gazette no. 103/2019, Series I of 2019-05-29**

Determines the cessation of decrees-laws published between the years of 1975 and 1980.

**Decree-Law no. 44/2019 - Official Gazette no. 64/2019, Series I of 2019-04-01**

Implements the framework of transfer of powers to municipal bodies in the field of civil protection.

**Decree-Law no. 45/2019 - Official Gazette no. 64/2019, Series I of 2019-04-01**

Approves the organic of the National Authority of Emergency and Civil Protection.

**Decree-Law no. 57/2019 - Official Gazette no. 83/2019, Series I of 2019-04-30**

Implements the transfer of legal powers from municipalities to parish organs.



**Decree-Law no. 58/2019 - Official Gazette no. 83/2019, Series I of 2019-04-30**

Implements the framework of transfer of competences for municipal bodies in the field of tourist transport of passengers and the public transport service of regular passengers on inland waterways.

**Decree-Law no. 72/2019 - Official Gazette no. 102/2019, Series I of 2019-05-28**

Implements the framework of transfer of competences for municipal bodies in the areas of port-maritime areas and urban areas of tourism and economic development not related to port activity.

**Decree-Law no. 78/2019 - Official Gazette no. 108/2019, Series I of 2019-06-05**

Approves the legal regime of autonomy of management of museums, monuments and palaces.

**Directive (EU) 2019/1024 of the European Parliament and Council – Official Journal of the European Union no. L.172 of June 26, 2019**

Directive on open data and the re-use of public sector information.

› **Regulatory**

**Law no. 35/2019 - Official Gazette no. 100/2019, Series I of 2019-05-24**

Changes the mandatory safety measures in establishments of catering or of drinks that have spaces or rooms destined to dance, making the first amendment to Decree-Law no. 135/2014, of 8 of September.

**Decree-Law no. 59/2019 - Official Gazette no. 88/2019, Series I of 2019-05-08**

Transposes several adaptive directives to technical progress in the field of toy safety, use of hazardous substances in electrical and electronic equipment, adjuvants of plant protection products and examination of plants.

**Decree-Law no. 63/2019 - Official Gazette no. 94/2019, Series I of 2019-05-16**

Establishes the legal regime of institutions engaged in scientific research and development.



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### III. Relevant Case Law

**Ruling by the Constitutional Court no. 229/2019, of April 23, 2019 (Case no. 742/19), available at [www.tribunalconstitucional.pt](http://www.tribunalconstitucional.pt)**

It does not deem unconstitutional the rule contained in paragraph g) of paragraph 1 of article 15 of Decree-Law no. 13/71, of January 23, in the wording introduced by Decree-Law no. 25/2004, of January 24, when interpreted in the sense that the fee provided thereon is due only if the construction of access to the national highway occurred after the beginning of the validity of that diploma, consequently excluding it in case of mere expansion of the facilities served by the national road.



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