



Meet the Law Newsletter

Energia / Energy

Regulation of the Portuguese Cogeneration Legal Framework Ministerial Order no. 173/2016 of 21 June

The Portuguese cogeneration legal framework approved by the Decree-Law no. 23/2010 of 25th of March with the last amendment introduced by Decree-Law no. 68-A/2015 of 30th April foresees that some aspects must be separately regulated as the terms and conditions of award of reception point and the terms of remuneration applicable to the special remuneration scheme.

The Ministerial Order no. 173/2016 of 21 June published recently on the Portuguese Official Gazette (that can be found clicking [here](#)) foresees the terms and conditions of award of reception and also the following aspects:

a) SPECIAL REGIME - AWARD OF A RECEPTION POINT

According to the cogeneration legal framework, the cogeneration production may be associated to one remuneration scheme: the special remuneration scheme (applicable to plants which have 20MW or less injection power and which have obtained a license after the award of a reception point) and the general remuneration scheme (applicable to plants which do not fulfill the conditions of the special remuneration scheme). The new Ministerial Order foresees the terms and conditions of the award of the reception point, under the special remuneration scheme.

Request - the request of a reception point must be instructed by the promotor through an electronic platform (*Portal da Cogeração*) with the identification of several aspects related to the cogeneration unit. After validation and payment of the due fees, DGEG (Directorate General of Energy and Geology) may request to the network operator the issuance of an opinion, which must be issued within 44 or 88 days after such request.

Decision - the request of a reception point is decided by DGEG within 20 days after the registry at the platform or after the issuance of an opinion by the network operator. The decision is effective after the subscription of a deposit/guarantee (*caução*) on first demand for the benefit of the network operator of EUR 2,500.00 for each MW (up to 10MW) and when superior, with EUR 5,000.00 for each

additional MW. The caution/guarantee is released, within other reasons, when the promotor has presented to DGEG in due time the request in order to issue the production license or if the promotor withdraw the project in due time.

Time limit for requesting the production license - the promotor must request the issuance of a production license within 6 months after the due date to present a deposit/guarantee (*caução*), which may be extended for an additional 24 months period (when the project is subjected to a special procedure) or if justified, may be renewed. The non-presentation of the request of the production license determines the automatic expiration of the reception point awarded.

Transmission of the reception point - the new Ministerial Order foresees that the reception point shall not be transferable, except in a context of a corporate reconstruction process or between companies with a dominant or group relationship. The reception point is also transferable when it integrates the transmission of the respective license.

Management of the reception capacity of the RESP - the above mentioned Ministerial Order also foresees that, the member of the government responsible for the energy sector may define annual maximum quotes for the injection on the RESP or temporarily suspend the award of reception points or define special procedures, when is advisable considering "*the good management of the capacities of reception of the network*" and "*the good management of the requests of award of a reception point*".

b) PROCEDURES OF THE MICRO PRODUCTION AND COGENERATIONS OF SMALL DIMENSION

The above mentioned Ministerial Order also defines the procedures applicable to the installation of micro production and cogenerations of small dimension. The first are subjected to a registry procedure (*procedimento de registo*) and the second are subject to a previous communication procedure (*procedimento de comunicação prévia*). Since the registry is effective and the previous communication is accepted, the promotor must conclude the construction works within 36 months from the date of issuance of the registry/previous communication, and may be extended in justifiable situations. The exploration certificate of the installation is issued after the completion of the works.

c) GENERAL MODALITY - CONTRACT WITH THE SUPPLIER OF LAST RESOURCE

The cogeneration legal framework foresees that the cogeneration may be associated to one remuneration scheme, the special or the general remuneration scheme. The general remuneration scheme comprises two modalities, **submodality A** (includes the plants with 20MW or less injection power, which operate in a self-consumption mode and the non-consumed energy is delivery to the Supplier of Last Resource) and **submodality B** (which comprises the plants that operate on a sell scheme in a pool market or through bilateral contracts).

As per submodality A, the cogeneration legal framework foresees that the energy produced which is not consumed on the associated unit (the industrial, services or other unit which is supplied by the energy produced in self-consumption at the cogeneration plant) may be sell to a Supplier of Last Resource. The new Ministerial Order foresees the terms and conditions that must be included on such contracts (for example, the maximum term of the same is 10 years, with the possibility of renewal for maximum periods of 5 years). The Ministerial Order also foresees the formula in order to obtain the remuneration of the energy delivered to the Supplier of Last Resource.

d) ELECTRONIC PLATFORM

The Ministerial Order also foresees the terms and services available at the

electronic platform (*Portal da Cogeração*), as the access procedures. The terms will be complemented with an order to be issued by the General Director of DGEG, which will indicate the date in which the platform will be operating, which should be no more than 18 months since the approval of the present Ministerial Order.

**Para informação adicional, por favor contacte:
/ For further information please contact:**

Rui Pena | Partner
rui.pena@cms-rpa.com

Mónica Carneiro Pacheco | Partner
monica.carneir pacheco@cms-rpa.com

Bernardo Cunha Ferreira | Associate
bernardo.ferreira@cms-rpa.com

A CMS Rui Pena & Arnaut é membro da CMS, organização transnacional de sociedades de advogados com 60 escritórios em 34 jurisdições.

A CMS está presente nos seguintes países europeus:

Albânia, Alemanha, Áustria, Bélgica, Bósnia e Herzegovina, Bulgária, Croácia, Espanha, França, Holanda, Hungria, Itália, Luxemburgo, Montenegro, Polónia, Portugal, Reino Unido, República Checa, República da Eslovénia, República Eslováquia, Roménia, Rússia, Sérvia, Suíça, Turquia e Ucrânia

Fora da Europa a CMS está presente na Argélia, Brasil, China, Emirados Árabes Unidos, Irão, México, Marrocos e Omã.

CMS Rui Pena & Arnaut is a member of CMS an organisation of independent law firms with 60 offices in 34 countries around the world.

CMS Presence in europe:

Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, France, Germany, Hungary, Italy, Luxembourg, Montenegro, Netherlands, Poland, Portugal, Romania, Russia, Scotland, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, Ukraine and United Kingdom

CMS Presence Outside Europe:

Algeria, Brazil, Iran, China, Mexico, Morocco, Oman and United Arab Emirates

cms.law

Esta publicação não pode ser divulgada, copiada ou distribuída sem autorização prévia da Rui Pena, Arnaut & Associados - Sociedade de Advogados, RL. Este documento destina-se a clientes e colegas, contém informação genérica e não configura a prestação de assessoria jurídica que deve ser obtida para a resolução de casos concretos.