Informative Note

Developments in the Valencian Decree Law on the acceleration of the implementation of installations for the harnessing of renewable energies

4th September 2020

Regarding Decree Law 14/2020 of 7th August, published in the Diario Oficial de la Generalitat Valenciana (Valencian Government Official Gazette)

On 28th August 2020, the Valencian Government Official Gazette published the Council's Decree Law 14/2020 of 7th August on measures to accelerate the implementation of facilities for the harnessing of renewable energy due to the climate emergency and the need for urgent economic recovery (the "**Renewables Decree Law**").

The aim of the Decree-Law is to accelerate the penetration of renewable energies in the Valencian Community, with the objective of increasing from 364 MW of photovoltaic and 1,255 MW of wind power currently installed to 6,000 MW and 4,000 MW, respectively.

The Decree-Law revolves around the following lines:

A) *Declaration as investments of strategic interest*

Article 3 of the Decree Law declares photovoltaic and wind projects to be *investments of strategic interest*, giving them preferential promotion before anybody of the Generalitat (Valencian Government) or local administration. Within this preferential promotion, the Decree-Law gives priority in the processing of those projects that are selected in the competitive procedures for the granting of a specific remuneration system or alternatives to it.

B) *Modification of the priority rule for environmental authorisation and promotion of industrial self-consumption*

Article 4 of the Decree-Law modifies Law 6/2014 of 25th July of the Generalitat on the prevention, quality and environmental control of activities in the Valencian Community. With this change, the environmental authorisation prior to the substantive authorisation is replaced by the declaration of responsibility for those activities referred to in the last paragraph of section 13 of Annex II of this Law.

Furthermore, modifications to industrial installations (i.e. installations not intended for generation) are declared as non-substantial modifications, for environmental purposes, when these modifications are intended *(i)* to generate energy from solar radiation (independently of the installed capacity) or *(ii)* to generate wind energy with a maximum limit, in this case, of 3 MW, provided that these generation activities are carried out on the same site where the main activity takes place.

C) *Criteria for the implementation of photovoltaic and wind energy facilities*

Preference for their implementation on rooftops over land occupation or preference for the prior civil availability of the land for production facility over declaration of public utility).

Article 9 establishes specific criteria for their implementation in areas subject to environmental protection.

The Decree Law establishes different levels of compatibility between environmental protection figures and the implementation of photovoltaic plants, and incorporates a plan - for information purposes - of the different areas:

- *Compatible*: Category D zoning of ZEC (Canary Islands Special Zone) and ZEPA (Special Protection Area) areas with an approved management standard;
- *Compatible subject to the application of sectoral regulations: (i)* category C zones for ZECs and ZEPAs with approved management standards zoning; *(ii)* LIC (Site of Community Importance) and ZEPA spaces without management standards; *(iii)* habitats protected by decree 70/2009; and *(iv)* listed mountains of public utility.
- *Compatible subject to case analysis: (i)* buffer zones of natural areas; *(ii)* municipal nature sites in accordance with the Plan provisions; y *(iii)* hunting reserves and wildlife refuges.
- *Incompatible*: *(i)* areas with ZEC category A and B and ZEPAs with an approved management standard; *(ii)* in the following natural areas: nature reserves, natural parks, protected landscapes, natural monuments and wetlands, without prejudice to the provisions of Article 13.4 of the Decree-Law (which provides for the possibility of implementing photovoltaic uses on urban and developable land included in a protected natural area); and (iii) livestock trails, fauna reserves and flora micro-reserves.
- Article 10 of the Decree Law establishes specific territorial and landscape criteria (e.g. distances to landscape resources - 500 metres -, limitation on land occupation, no foundations, etc.). The criteria for the location of wind farms are determined by the Valencian Community Wind Power Plan ("**PECV**") as clarified in Article 12.1.
- The Decree Law also establishes rules for the implementation of photovoltaic installations on urban and developable land.

- Article 13 declares that photovoltaic plants are compatible *ex lege*, without the need to modify current planning, when they are located on existing buildings, on urban land that is not built on or on urban land that can be built on without an approved programme. It also provides that no report from the competent body on natural areas will be required when the plant and its drainage infrastructure are located on urbanised or developable land, integrated into the delimitation of a natural area.

- Article 14 requires the installation of photovoltaic modules for electricity production with a minimum power of 15 kW in new buildings for residential, public, industrial or tertiary use, those that are refurbished or changed of use, as well as car parks on urban land that have a roof, whether publicly or privately owned, occupying a total built area of more than 1,000 square meters. Authorisations for its implementation in existing buildings (where it will be encouraged, although not compulsory) will be subject to a declaration of responsibility.

- Articles 15 and 16 require public administrations to promote the implementation of photovoltaic installations on plots not built on developed land, on urban land or land that can be developed without programming, until they are used for the purpose intended in the planning.

- Article 17 states that the authorities shall encourage the establishment of photovoltaic plants on land intended for public facilities and equipment for as long as their implementation is not planned. The provision states that the concession must provide for a reversionary regime for those cases where the general interest requires the execution of the public provision or equipment. This article also allows public administrations to constitute a right of superficies on their land of a patrimonial nature by means of a public tender reserved for cooperatives or renewable energy communities. Finally, the precept allows local councils to allocate up to 50% of open spaces and green areas to the implementation of renewable energy facilities in industrial estates.

D) *New accepted procedure for the authorisation of photovoltaic generation installations on undeveloped land and wind power generation*

The Decree Law establishes an accepted procedure for the authorisation of photovoltaic installations on undeveloped land and wind farms. The procedure can be summarised as follows (Articles 19 to 33):

i. Obtaining the certificate of municipal town-planning compatibility and, where appropriate, authorisation to carry out archaeological prospecting if necessary. The Town Hall can only declare the use of photovoltaic installations for the generation of electricity

incompatible when it is expressly prohibited in the urban planning. If the certificate is not issued within 1 month, the promoter may continue with the procedure.

ii. On an optional basis, the developer may consult the competent energy body if the project is viable and obtain a scoping document if the project is subject to an environmental impact assessment. The Decree-Law configures the non-viability of the installation as a cause for exoneration for the purpose of executing the economic guarantee deposited to process requests for access and connection to the transport or distribution networks.

iii. Joint application for prior administrative authorisation and construction permit. The granting of this authorisation implies the authorisation of installation on land that cannot be developed, except in cases where this is not required in accordance with town planning regulations. This application must be accompanied by the documentation required by the different sectorial regulations, as well as that included in Annex III which, among other documents, includes the application for access and connection permits presented to the distribution system managers, documentation accrediting the economic and financial capacity of the developer and the availability of up to 25% of the land on which the installation is located.

iv. Formal verification by the substantive body of the application and, after a request for correction for 15 days if appropriate, admission or refusal to process.

v. Public information for a period of 30 days, which will also cover the publication of the rights affected for the declaration of public utility for expropriation purposes, as well as the occupation of forests, where applicable. At the same time, the processing of reports will be carried out and the public administrations and public service companies will be notified. Failure to make a statement within the period granted will mean that there are no objections to the authorisations, except in the case of binding reports. This procedure may be waived if the developer already has such reports. During this phase, the competent regional planning authority will issue its mandatory and binding report within 30 days (on the implementation of the use on undeveloped land and the dismantling plan).

vi. Transfer of relevant documentation to the environmental body if the project is subject to environmental impact assessment. The environmental impact declaration must be made within 45 days and will also refer to the dismantling and restoration plan.

vii. The competent energy body will have a period of 10 months to decide. Once this period has elapsed, the application shall be deemed to have been rejected. The resolution of the procedure will, among other things, set the amount of the dismantling guarantee and the deadline for applying for the operating permit. The resolution will *(i)* grant the

authorisation for the implementation of the project on undeveloped land with a maximum period of up to 30 years, *(ii)* grant the prior administrative authorisation, *(iii)* declare public utility, *(iv)* grant the administrative construction authorisation and *(v)* approve the dismantling and restoration plan. The resolution will be published in the Diario Oficial de la Generalitat Valenciana, in the official province gazettes and will be incorporated into the Valencian Community mapping system.

viii. Once the installation has been completed, the licensee must obtain the operating permit.

E) *Obligations on dismantling and restoring sites, fees for the use of undeveloped land and transparency*

Article 36 imposes an obligation to dismantle and restore land. This obligation is guaranteed by the guarantee set out in the PECV, in the case of wind farms and by the amount set by the ruling, in the case of photovoltaic farms. The guarantee must be greater than 5% of the PEM (Material Execution Budget), in accordance with the provisions of Article 37.

Article 38 establishes the obligation of the owner of the installation to pay the fee for the use and exploitation of land that cannot be developed. The Town Hall must set this at an amount equivalent to 2% of the costs of the building work and the work necessary to set up the facility. The local council may also set a reduction of up to 50%.

Finally, Articles 39 to 41 require distribution companies operating in the Valencian Community to publish investment plans, information on network capacity and information on the procedures for access to the distribution networks of installations located in the Community.

F) *Modification of the regional regulations on the authorisation of installations*

The Renewables Decree Law amends, with the safeguard of its regulatory status (First Final Provision), the Council's April Decree 88/2005, which establishes the procedures for the authorisation of installations for the production, transport and distribution of electricity ("**Decree 88/2005**"). Among other new features, the following are noteworthy:

i. Article 2.3 declares installations with specific authorisation procedures excluded from the procedures regulated by Decree 88/2005. The Decree shall not apply to photovoltaic installations on undeveloped land or to wind farms.

ii. An Article 2a is introduced, exempting installations for self-consumption with no surplus from the administrative authorisation system, irrespective of their capacity, isolated installations, generating sets intended to deal with interruptions in the supply of electricity to the grid and all other installations with a nominal voltage of less than 1 kV. In addition, the provision indicates the installations that will only require an operating permit prior to start-up, such as small-scale facilities and non-substantial modifications, among others.

iii. On an organisational level, the Decree-Law updates the classification of installations (Article 3) and the competent bodies (Article 4) for granting substantive authorisations, establishes rules for the processing of supra-provincial projects, and establishes coordination mechanisms (Article 9).

iv. A formal verification procedure is established (Article 5) which precedes the admission of the application. In it, the substantive body verifies the sufficiency and formal adequacy of the documentation. The body has a period of two months. Once this period has elapsed, the application may be deemed not to have been accepted for processing and appeals may be lodged.

v. Throughout its articles and specific rules, the legitimisation of the processing of installations to be or to be transferred to the network operators by the promoters are established.

vi. A maximum period of six months and three months is established for the first and second group facilities, respectively, from the date the application was accepted.

vii. The promoter must, as a requirement for the granting of the prior authorisation, prove *(i)* that it has the economic resources and financing necessary to carry out the specific project subject to authorisation, *(ii)* the availability of the land on which the installation is planned and *(iii)* the permits for access and connection to the transport or distribution networks (Article 10).

viii. The new wording of Decree 88/2005 makes it possible to abolish the report procedure if the developer submits a declaration accepting the condition of reports from administrations and public service or services of general economic interest companies with goods or rights in their charge affected by the electrical installation.

ix. The amendments declared as such by Royal Decree 23/2020 are declared non-substantial, and a procedure is established for their processing.

x. A procedure for the transmission of authorisations is established.

G) *Modification of the Valencian Community's Wind Energy Plan*

The Renewable Energies Law Decree modifies, with the safeguard of its regulatory status (First Final Provision), the PECV. The main modifications can be summarised as follows:

The Decree-Law excludes from the scope of application of the PECV wind power installations of 3 MW or less associated with self-consumption supply. Despite this exclusion, the PECV declares these wind power installations of 3 MW or less to be compatible *ex lege* with territorial and urban planning without the need to modify the instruments in force, provided that they are located on undeveloped land or urban land qualified for industrial use.

The PECV declares that wind farms may only be implemented on land classified as undeveloped or on land classified for development or urban use provided that it is classified as industrial use.

The Decree-Law abolishes the obligation to process special plans as a development of the PECV, although it maintains the validity of the existing special plans. The regulation imposes the provision of economic guarantees to ensure the corrective measures of the impact statement and the dismantling and restoration of the environment.

The PECV declares the compatibility of photovoltaic projects to be developed in areas with an approved special plan for hybridisation and allows the implementation of storage facilities without the need to revise the special plan.

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