

Decree-Law no. 11/2023

Simplex: relevant news, mainly in the environmental and energy areas

February, 2023

Decree-Law 11/2023, of 10 February (**DL 11/2023**) was published on 10 February, approving measures to simplify existing licensing, namely through the elimination of authorisations, licences, dispensable or redundant acts and procedures in relation to the protection of environmental issues, thus facilitating economic activity without compromising environmental protection.

This diploma is structured in two parts. On the one hand, it enshrines provisions applicable to the generality of the administrative activity and the performance of public entities. On the other hand, it approves amendments in various environmental matters, contemplating a broad set of measures, particularly in the following areas: (i) environmental impact assessment; (ii) environmental licensing; (iii) water resources; and (iv) waste.

1. I. Administrative simplification

1.1 Tacit approval

- Recognising that the legislation often provides for cases of tacit approval (i.e. where the silence of the administration is considered to have a positive effect) that are of irrelevant benefit to private individuals, namely because there is no effective mechanism to prove it, the legislator approved a range of measures to ensure the effectiveness of tacit approvals.
- Examples of these measures as follows:

Amendments	Scope
Mechanism for certifying tacit approvals	<ul style="list-style-type: none"> ▪ A new mechanism for certifying tacit approval is established. ▪ If the legal requirements are met, an administrative entity will issue, free of charge, within 8 working days, a document proving the tacit approval. ▪ Also applicable in cases of prior notification with a deadline without a decision by the competent authority.
Other measures	<ul style="list-style-type: none"> ▪ In general terms, the lack of payment of fees or expenses does not prevent the formation of a tacit approval. ▪ As regards EIA, the time limits for tacit approval will start running as from the date of submission of the application (and not, as hitherto, from the date of the "duly completed" application). ▪ In the regime for the use of water resources, the tacit approval of authorisation requests is now formed when

Amendments	Scope
	<p>the legally established time limit has elapsed, except in certain situations.</p> <ul style="list-style-type: none"> ▪ As regards environmental licenses, the tacit deferment will now occur when the time limit has merely elapsed, without prejudice to compliance with legal obligations.

1. 2 Request for new elements and deadline for the decision

- The administrative entities may request new documents, clarifications, additional elements or information only once.
- The time limit for the decision will no longer be suspended when new elements are requested, provided that the requested elements are submitted within 10 working days. If this deadline is missed, the time limit for the decision will only be suspended from that date.

1. 3 Opinions

- The supplementary deadline for the issue of opinions by the competent authorities is reduced from 20 to 15 days, and can no longer be issued after this period has elapsed.
- Instead of insisting on requesting the opinion or continuing to wait for it to be issued, the administrative entity is required to move forward with the procedure once the deadline for issuing the opinion has elapsed.

2. Environmental Simplex

2. 1 Environmental Impact Assessment

- DL 11/2023 introduces substantial changes and updates in the environmental impact assessment ("EIA"), with a view to improving its application, without prejudice to the requirements imposed by environmental protection and sustainable development. These changes can be identified at three distinct levels:
 - i. Total elimination of the need to carry out EIA procedures, both the mandatory EIA and the "case-by-case assessment" (which implies a discretionary decision by the competent authorities);
 - ii. Reduction of the set of situations in which EIA is mandatory, maintaining, nevertheless, the possibility of a case-by-case analysis; and
 - iii. Reduction of the set of situations in which a case-by-case examination may take place.
- Examples of situations covered by this simplification as follows:

Amendment	Scope
<p>Complete elimination of the need for EIA (including case by case)</p>	<ul style="list-style-type: none"> ▪ Hydrogen production from renewable sources and water electrolysis; ▪ Modernization of railways; ▪ Amendments or extensions to projects authorized in the typologies of the energy industry, production and transformation of metals, mineral, chemical, food, textile, tanning, wood, paper or rubber industries, provided that certain requirements are met; ▪ Amendments to projects that have obtained a favourable or conditioned favourable Environmental Impact Statement ("EIS"), which result from the substitution of equipment, in the abovementioned typologies, provided that certain requirements are observed.
<p>Elimination of mandatory EIA (maintaining the possibility of case by case)</p>	<ul style="list-style-type: none"> ▪ Projects for solar electricity generating centres when the area occupied by solar panels and inverters is less than 100 hectares; ▪ Wind farms when: (i) they have less than 20 towers; or (ii) the distance to other similar farms is greater than 2 km, provided that the total number of towers is less than 20; ▪ Over-equipment of pre-existing wind farms, provided that certain conditions are met; ▪ Industrial installations for the transmission of electrical energy, by overhead cables, with a voltage of less than 110 kV and a total length of less than 20 km <i>(Provided they are located outside sensitive areas)</i>
<p>Elimination of the need for a case by case</p>	<ul style="list-style-type: none"> ▪ Production of energy from a solar source when, simultaneously: (i) the installed area is less than 15 hectares; (ii) it is not located less than 2 km from other photovoltaic plants with more than 1 MW, when together they do not result in an occupation area equal to or greater than 15 hectares; and (iii) the connection of the switching station(s) to the Public Service Electricity Network ("RESP") is made by a voltage line not exceeding 60 kV and with a total length of less than 10 km; ▪ Production of electrical energy from wind sources, when only 1 tower located at a distance of more than 2 km from another tower or wind farms is involved; ▪ Area lines for electricity transmission with a voltage not exceeding 30 kV and a total length of less than 10 km; ▪ Implementation of complementary sludge treatment in existing wastewater treatment plants, which adopt one of the following treatment typologies: (i) hydrolysis

Amendment	Scope
	<p>(thermal or biological); (ii) solar drying; or (iii) composting;</p> <ul style="list-style-type: none"> ▪ Food, textile, tanning, wood, paper and rubber industries, when simultaneously: (i) located in industrial parks or poles; (ii) more than 500 m away from residential areas and (iii) occupying an area smaller than 1 hectare; ▪ Urban allotment operations in consolidated urban areas or occupying an area of less than 2 hectares; ▪ Intensive fish farming projects located in former salt pans.

- In the case of industrial development parks or poles and logistics platforms, the EIA is waived when a strategic environmental assessment has been conducted for them;
- A procedure for environmental analysis of alternatives of linear infrastructure corridors is created, applicable to public service infrastructure projects that involve "corridors" (e.g. transport and distribution of electricity, natural gas or gases from renewable sources, public transport in its own corridor and electronic communications infrastructures), which allows the EIA to be carried out in the execution project phase;
- The need to carry out procedures and obtain permissive acts is eliminated, in cases where the issues have been made possible through favourable or conditioned favourable DIA, namely: (i) prior communication to the commission of coordination and regional development regarding projects located in National Ecological Reserve areas; (ii) authorization for the felling or grubbing up of cork oaks, holm oaks and olive trees; (iii) the opinion for non-agricultural uses in National Agricultural Reserve areas; (iv) the authorizations and opinions provided for in the general regime for the protection of nature and biodiversity; and (v) the reports and authorizations of the entities competent in matters of cultural heritage.

2. 2 Industrial emissions

- The environmental licence has no longer to be renewed after 10 years;
- However, it is still necessary to carry out the procedure to amend the environmental permit when: (i) there are substantial changes to the industrial installation or (ii) it is necessary to update the environmental permit in accordance with the evolution of the best available techniques and in other cases provided for by law;
- Clarification that, for the purposes of obtaining an environmental permit for certain installations in the chemical sector, the following are not industrial scale: (i) experimentation with a new technology; (ii) final preparation of products in a shop; (iii) production in commercial establishments; (iv) production in a retail shop; and (v) small craft manufacturing activities;
- Accredited entities do no longer participate in the instruction of licensing procedures for obtaining an environmental permit and clarification that the use of accredited verifiers for reporting information by operators of installations subject to the integrated pollution prevention and control regime is merely optional;
- It is no longer required to obtain an air emissions permit, in certain situations;

- The environmental permit can now be issued before approval of the livestock effluent management plan is obtained.

2. 3 Water resources

Production and use of water for reuse

- In several cases, both production license and utilization license are no longer necessary for the use of water intended for reuse, namely in the following cases:
 - i. Reuse by the same natural or legal person or by entities included in the same group;
 - ii. Reuse of water in centralised systems, provided that the environmental receptors are the same as the discharge of treated wastewater from which it originates.

Use of water resources

- The obtaining of a license is replaced by a prior communication (subject to a deadline), in the following cases:
 - i. Construction of buildings within an urban network with a second-generation Municipal Master Plan;
 - ii. Recovery of existing structures without changing their initial characteristics.
- Only one water resources use title ("TURH") per operator will now be required when several applications concerning the same establishment are submitted simultaneously;
- Renewal of water resources use licences will now be automatic (if the legal requirements are maintained), abolishing the license renewal procedure;
- The deadlines for deciding on prior information requests and authorisations are reduced, as are the deadlines for consulting external bodies;
- The rules applicable to the transfer of water resources use titles held by legal persons, as per the following:

Title	Procedure
Private TURH	<ul style="list-style-type: none"> ▪ Prior communication; ▪ Minimum prior notice of 10 days in relation to the date of transfer; ▪ Requires the maintenance of the legal requirements and subrogation to the new holder.
Public domain TURH	<ul style="list-style-type: none"> ▪ Authorisation; ▪ Decision within 20 days; ▪ The omission of a decision gives leads to tacit approval; ▪ Requires the maintenance of the legal requirements and subrogation to the new holder;

Title	Procedure
	<ul style="list-style-type: none"> Also applicable in the case of the transfer of shareholdings, as long as keeping control of the company holding the TURH.

2.4 Waste

Responsible Industry System ("SIR")

- The substitution of raw materials by waste does not change the typology of the industrial establishment, as long as the process allows for the recovery of the waste.

Waste Management

- The management of waste arising from the exploitation of mineral deposits and mineral masses is excluded from the scope of application of the Legal Regime on Waste Management (approved in annex to Decree-Law 102-D/2020, of 10 December, in its current wording);
- The number of producers of hazardous waste subject to the obligation of presenting a waste minimisation plan is significantly reduced (threshold is increased from 100 tonnes/year to 1000 tonnes/year);
- An industrial establishment that has obtained a permit covered by the SIR, after a binding opinion has been issued by the competent authority for licensing waste treatment activities, is allowed to carry its industrial activity, whether the installations are intrinsic or extrinsic to the industrial activity.

Landfill of Waste

- Waste humidification by re-injection of leachate or concentrate from the advanced membrane treatment unit is allowed at landfills for non-hazardous waste, provided certain requirements are met;
- Some of the limit values applicable to landfills of non-hazardous waste have been eliminated, with the possibility of additional parameters being defined for certain types of waste by the National Waste Authority.

2.5 Other news

- A Single Environmental Report is instituted, which will make it possible to aggregate all environmental reports and reuse the data used to complete them.
- New buildings or buildings undergoing renovation are no longer required to have gas installations.

3. Entry into force and production of effects

- DL 11/2023 came into force on 11 February 2023.
- Most of the approved measures will take effect on 1 March 2023.

- The Single Environmental Report and the amendments to the Administrative Procedure Code will only be effective as from 1 January 2024.
- These legislative changes apply to ongoing procedures.

For any questions or further clarifications on this matter, please contact the Garrigues Public Law, Energy and Environment team.

The sole purpose of this newsletter is to provide relevant information in a general, summary and non-detailed manner, not aiming to provide legal advice of any kind. It does not exempt or replace consultation of the applicable legislation.

More information:

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