

New Licensing Code regulating RES production certificates takes effect

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[Introduction](#)

[Application procedure](#)

[Conditions for issuing certificates](#)

[Other provisions](#)

Introduction

On 1 December 2020 the new Licensing Code, which regulates renewable energy source (RES) production certificates, was published in the *Official Journal* (B' 5291/2020). The code aims to implement the new RES licensing procedure, as regulated by Law 4685/2020 (OJ A' 92/07.05.2020). The code was published on the day on which the first submission round for the issuance of these certificates started. This last-minute regulation caused uncertainty for interested applicants regarding the application procedure and the required documents and a sense of urgency with respect to collecting such documents. However, this was partially mitigated by the earlier public consultation on the draft code and the extension of the duration of the submission round by 10 days (it ultimately ran from 1 December 2020 to 21 December 2020).

Application procedure

The code regulates the conditions and procedure for the electronic submission of applications for production certificates for RES and high efficiency cogeneration of heat and power (HP CHP) plants other than special projects and production certificates for special projects (eg, hybrid, offshore wind, HP CHP above 35MW, geothermal energy and RES plants that are connected to the interconnected system through submarine cables). Applications for these certificates, as well as for their amendment, must be submitted via electronic form through the platform established for this purpose.

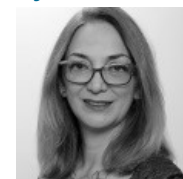
Conditions for issuing certificates

The conditions for issuing RES production certificates include the following:

- There must be no overlap of land plots in two or more applications which partly or completely prevent the implementation and operation of such plants. Unless one project has priority (eg, in case of projects of strategic interest or projects held by energy communities), the Regulatory Authority for Energy (RAE) will first instruct the applicants to find a solution themselves (eg, by introducing other land plots for the overlapping part of the project, reducing the diameter of blades in case of wind generators or reducing the project's capacity) within 30 days. If no solution is found, the RAE will communicate with the local authority regarding the possibility of extending the maximum installation capacity for wind generators in its territory in compliance with the Special Framework for Spatial Planning and Sustainable Development. If this solution is not applicable, the RAE will proceed with a comparative assessment of the two applications by applying the following criteria:
 - In regard to private land plots (including municipality land) or partly private and partly public land plots, the preferred applicant will be the one which has secured the legal titles (eg, ownership, lease and usufruct) on such land plots and provided, within 10 days, all necessary evidence of titles for the entire project (eg, public notary agreements, court decisions and extracts from registers).
 - If the applications are equal in this respect, the preferred application will be the one for which the applicant submits a solemn declaration that the project will receive no operational state aid.
 - If the applications are still equal, the preferred application will be the one which concerns the issuance of a production certificate for special projects.
 - If the applications are still equal, the next criterion is the applicants' financial strength.
 - In regard to small hydro power plants, the next criterion is the project's maturity.
 - The subsequent criterion for special projects is the level of energy efficiency.

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Finally, if there is no agreement and the above assessment does not lead to a preferred applicant, both applications will be rejected.

- The shareholders of an applicant (legal person) must be disclosed all the way up to the ultimate beneficiary (individual). This requirement does not apply to companies listed on stock exchanges or investment funds.
- In case of special projects, the RAE will assess:
 - the project's energy efficiency;
 - the project's financial technical efficiency and feasibility; and
 - the applicant's technical and financial ability to implement the project and secure the required financing.

Other provisions

Other provisions of the Licensing Code cover the following matters:

- Rights of owners or usufructuaries of land plots for which a production certificate has been issued to another applicant – in such cases, such owner or usufructuary cannot submit an application for a production certificate for a plant to be constructed on the disputed land plots and prove that it has the legal right in these land plots no later than in the next submission round following that in which the production certificate concerning its land plots was issued. Where the owner or usufructuary successfully submits such an application, the previous production certificate will be annulled, subject to the owner or usufructuary paying the RAE administrative fees for the issuance of the production certificate. The new production certificate will, at the applicant's request, be issued to the owner or usufructuary or to an individual or legal entity to which it has leased the land plots through a public notary act with a duration of at least four years.
- Saturated grids – by 30 September of each year, electricity system and network operators should propose that the RAE declare certain parts of the electricity system or network to be saturated. Following a public consultation, the RAE should, by 30 November of each year, decide which parts of the system or network are saturated and assess the maximum new capacities, determined per RES technology, which may be absorbed by the system or network. The RAE may further regulate that it will not accept any new applications for production certificates or that the number of applications for production certificates or binding offers will be limited.
- Renewing certificates – it is possible to renew production certificates on their expiration, but such renewal is subject to certain conditions and is gradual (ie, for five-year periods each time, up to a maximum of 25 years).
- Division of plants – the code has introduced the possibility to divide one plant into several plants belonging to the same certificate holder, which will then be granted a respective amendment of the initial production certificate.
- Merging certificates and licences – it is also possible to merge several production certificates and/or production licences of one holder if all of the plants are connected to the grid at the same point and they are all at approximately the same stage of the licensing procedure.

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