

Law 4685/2020 | Modernising the rules of environmental and RES licencing process

On 5 May 2020 the Greek Government has adopted long awaited law 4685/2020 (the “Law”) on the reform of the environmental legislation and the RES licencing process. The Law aims to simplify and expedite the environmental licencing process. It also constitutes the first set of measures adopted by the Greek Government aiming to accelerate and to rationalise the RES licencing process. The second set of measures touching upon the installation and operation licence is to be issued within the course of summer 2020. Together with the new Law, said initiative is expected to radically reform the RES licencing process and change the regulatory landscape for what is currently considered one of the most dynamic sectors of the Greek economy.

A. RES licencing reform

From the production licence to the producer’s certificate

The key pillar of the new law is the replacement of the production licence with the so called “*Producer’s Certificate*” (the “**Certificate**”) that will be valid for a period of up to 25 years. Such certificate shall be issued following the submission of an electronic application via the “Electronic Register of RES and CHP Producers” (the “**Electronic Register**”). Applications shall be admissible in three cycles throughout the year as follows:

- 1-10 February
- 1-10 June
- 1-10 October

The Producer’s Certificate will be issued within twenty (20) days as of the expiry of the deadline for objections, i.e. within a hyper accelerated timeframe compared to the one applicable to date. Moreover, the Law provides for the eventual shift of the competency to issue said certificates from RAE to another administrative body.

The Certificate’s 25-year term may be renewed for up to an equal period of time. In case of rejection of the application, a new application by the same applicant (or any legal or natural person participating in the applicant’s company structure) may only be submitted after at least two submission cycles.

As far as the majority of the projects are concerned, the criteria that will be examined for the issuance of the Producer’s Certificate are simplified abandoning the ones applicable under the previous regime, which are considered to have become obsolete in practice, such as the project’s

maturity or the scientific and technical competence of the applicant; nevertheless, issues such as the national security, the public health and safety, the saturation of the grid, any siting restrictions, or the good standing of the applicant, shall continue to be examined.

The scrutiny procedure remains rigorous for the so called "Special Projects" that include hybrid stations, geothermal stations, solar thermal stations on non-interconnected islands, offshore wind farms, clusters of wind farms of a total capacity exceeding 150MW etc. In the case of Special Projects, applications are supported by additional information while further data, such as the energy efficiency or the financial viability of the project, have to be assessed in order for the certificate to be issued. In the same case, the deadline for the issuance of the Certificate is set at thirty (30) days as of the expiry of the deadline for objections.

Applications are admissible following the payment of an *application fee* of up to Euro 12,000, as well as an *issuance fee* for the initial certificate, which is calculated as follows:

Capacity	Issuance Fee
≤ 1MW	Euro 3,000/MW
2 -10 MW	Euro 2,500/MW
10-50 MW	Euro 2,000/MW
50-100 MW	Euro 1,500/MW
≥ 100 MW	Euro 1,000/MW

The issuance fees described above may not exceed the amount corresponding to a 250MW project. The fee may be paid in two equal instalments, 50% payable within twenty (20) days from the notification on the issuance of the Certificate and the remainder 50% within one year after the issuance of the Certificate; otherwise the Certificate automatically ceases to be valid. It is to be noted that no transfer of the Certificate can be made before the payment of such second instalment. Producers opting to pay the issuance fee in one lump sum benefit from a 50% reduction in the amount of the bond to be submitted to the Grid Operator upon acceptance of the final grid connection offer in accordance with the provisions of law 4152/2013.

The Law radically simplifies not only the procedure for the issuance but also the procedure for the modification of the Certificates. Important changes in the shareholding structure taking place within the context of M&A transactions, even if they result in a change of the entity designated for the funding of the project, will henceforth be subject to mere notification requirements without triggering an obligation to modify the Certificate.

The above procedure aims to radically accelerate the first stage of the RES licencing process. The introduction of the Electronic Register that will be used as the interface between the various authorities involved in the licencing process of RES projects is a key factor in this context, digitalising and ultimately modernising a procedure that was bureaucratic and slow up until today.

More detailed rules in relation to the process for the issuance, modification, or the notifications to be effected in relation to the Certificates will be set forth by the secondary legislation in the form of a Regulation to be issued shortly.

Implementation of RES projects – on a deadline

As a counterbalance to the facilitation of the licencing process that will hopefully lead to an easier and speedier issuance of the Producer's Certificate, the Law introduces specific deadlines within which projects need to progress and eventually be implemented. More specifically:

1. For photovoltaic and hybrid stations as well as onshore wind farms:
 - The application for the approval of environmental terms (AET), where applicable, must be submitted within six (6) months from the date of issue of the Certificate or within twelve (12) months in case a special ecological study is required.
 - The application for the final grid connection offer must be submitted within thirty six (36) months from the date of issue of the Certificate.
2. For the other RES and CHP stations, the application for the final grid connection offer must be submitted within thirty six (36) months from the date of issue of the Certificate.
3. For Specific Projects or hybrid projects comprising the construction of undersea connection of two or more non-interconnected islands, the deadlines set are twice the ones set under point (1) above.

Above deadlines can be extended for an additional period of up to twenty four (24) months subject to the payment of an extension fee of Euro 150 per MW/month. In case the above deadlines are not complied with, the Certificate is automatically revoked without any need to issue a specific administrative act in this respect, thus ensuring immediate availability both in terms of land and of grid capacity. It is noted that a Certificate transfer is not considered to justify the extension of deadlines for the completion of a project.

It is important to note that the above provisions, which place the implementation of the projects under strict timelines, capture not only new projects but also older ones that already have a production licence in place –sometimes issued years ago– or with a production licence in the pipeline. For projects already having a production licence, the above deadlines will start to count from 1 September 2020, whereas for projects with applications for production licences in the pipeline, the deadlines will start to count as of the issuance thereof. The new provisions are expected to clear the landscape by projects with no real potential to proceed.

Interim Provisions

At present, 1,750 licencing applications representing a total capacity of approximately 29 GW are still pending to be examined by RAE; the Law addresses the processing of such applications by providing that:

- Applications submitted up **until June 2018** will be examined according to the provisions of the previous regime (article 3 of Law 3468/2006) provided applicants re-confirm their interest to issue the licence and update the information related to the projects' polygons and, in the case of wind farms, the siting of wind turbines within thirty (30) days from the relevant RAE announcement.

- Applications submitted **from September 2018 until March 2020** will be examined according to the new regime, again under the condition that applicants re-confirm their interest and update their projects' data. In the case of these applications, interested entities will also be expected to pay the issuance fee, albeit significantly reduced. The exact percentage of reduction is determined on the basis of the time of submission of each application, gradually increasing for more recent applications as follows:

Application cycle	Reduction percentage of the issuance fee
September 2018	10%
December 2018	15%
March 2019	20%
June 2019	30%
September 2019	40%
December 2019	50%

Any new applications shall be examined after completion of the examination of the above pending applications.

It is pointed out that **production licences issued under the previous regime** shall be governed by the Law. In case of licences of initial 15-year duration, which are not revoked nor has their validity ceased, the licence holders, who have already obtained an Approval for Environmental Terms, have the right to submit to RAE a 10-year extension request within one (1) month as of the entry into force of the Law. Production licence holders are also under the obligation to adjust the projects' polygons by 31.12.2021 in accordance with the applicable siting restrictions.

Lastly, it is worth mentioning that, as regards the June 2020 submission cycle, no applications may be submitted for the issuance of Certificates, while applications for amendments of production licences may be submitted only in case of specific amendment grounds defined by the Law.

Exemption of photovoltaic projects $\leq 1\text{MW}$ from the environmental clearance process

The Law exempts pv projects with a capacity $\leq 1\text{MW}$ from the requirement to obtain an environmental clearance. The previous threshold was set at 500KW but this increase in capacity of projects, which are no longer required to undergo the environmental clearance process, is in line with advances in technology making the relevant equipment friendlier to the environment.

Extension of deadlines for RES and CHP projects

Under the provisions of the new law a further 4-month extension is granted to the following:

- Projects that have secured a reference tariff through their successful participation in RAE's competitive procedures and need to be put in operation (trial or regular) within 2021 (from 1 January 2021 to 31 December 2021).
- The entry into force (01.01.2022) of the reference tariffs set forth by Ministerial Decision ΥΠΕΝ/ΔΑΠΕΕΚ/123422/4289/2020 – Government Gazette 220/B/2020 and the date of entry into

force of the reference tariffs set forth by Ministerial Decision ΥΠΕΝ/ΔΑΠΕΕΚ/30971/1190 – Government Gazette 1045/B/2020.

- The date of application of the reference tariffs for specific RES projects as set forth in the special table of Article 4 para. 1 (b) of Law 4414/2016 which are calculated on the basis of the average price achieved during the last three auction processes.

B. Environmental licencing reform

Besides the changes brought in RES legislation the new law also introduces a rather ambitious reform in the environmental clearance legislation notably by introducing the following changes:

Extension of the environmental clearance duration

One of the most significant but also most controversial amendments introduced by the new law to the extension of the validity period of the AET from 10 to 15 years which can even reach 21 and 19 years respectively if the project has in place an Eco-Management and Audit Scheme (EMAS) or ISO 14001. It is worth mentioning that the above apply also to AEPOs being in force at the time of publication of the Law. The above provision has been faced with explicit negative reactions by environmental organisation and skepticism by the stakeholders and scientific community since the envisaged time frame is considered too long to take into consideration changes in technology or the projects themselves. It remains to be seen how this provision will be approached in practice and whether it will be ultimately considered compatible with Article 24 of the Hellenic Constitution on the protection of the environment.

Expedited environmental clearance procedures

The new law provides for significantly shorter deadlines for the review of applications and the collection of opinions (except for the ones for public consultation) required for the issuance of the AET for projects, as well as the simplification of the review procedure by removing several steps of the process. The Law also provides for several ways to prevent exceeding the time limits imposed on the administration to proceed to specific actions within the context of the law including the continuation of the clearance procedure even in case opinions have been issued when such are considered as nonessential, the appointment of other authorities, namely Central or Regional Councils of Environmental licencing (in Greek “KESPA” or “PESPA”), to issue the required opinions.

Simplified and accelerated procedures also apply for the renewal and/or modification of the environmental clearances. Particularly, with respect to the modification procedure, the Law distinguishes between material and non-material modification, and sets forth different procedures that should be followed in each case. The issuance of a non-material modification should, under the new law, take place in just a few days. To be also noted that, in case both renewal and modification are requested simultaneously, single documentation shall be submitted by the operator for both and a single relevant decision is issued.

The above provision has a rather ambitious aim namely to reduce the time required for the environmental clearance process from several years to a few months. The impact of the new law remains to be seen, but it is certainly considered as a positive step towards lifting a heavy and time

consuming procedure that has hindered investment. On the downside, the radical acceleration introduced has also been criticized as going one step too far and not ensuring full and proper protection of the environment as per the provisions of the Hellenic Constitution.

Register of certified assessors

On top of the above, a significant amendment enacted by the new Law 2020 refers to the creation of a register of Certified Assessors (in Greek "*Pistopoiimeni Axiologites*"). The Law provides that Assessors will be able to participate more actively in the licencing procedures. Assessors may be requested to participate either by the operator of the project or the competent environmental authority, and are selected by lot, at the beginning of the procedure or at any other stage thereafter, to be responsible for the completion of all or some of the stages of the procedure and the submission of the draft AET. Assessors may be also delegated to conclude the procedure for the renewal or the amendment of AET. The above update of Assessors' role is expected to offer relief and assistance to the competent administrative bodies.

Other noteworthy provisions

The new law also touches upon a number of other issues with environmental significance such as the reform of the management scheme of environmentally protected areas notably through the abolition of the management bodies thereof and the creation of a new structure for this purpose, the setting forth of specific rules in relation to the uses applicable in areas characterized as Natura, waste management etc.

Conclusions

The new law recently introduced is certainly a very ambitious step towards the modernisation and acceleration of the environmental and RES licencing process. Hopefully the changes introduced will simplify the rules, shorten the time frames needed for a project to become operational and ultimately boost the investment especially in the sector of Renewable Energy Sources, one of the most dynamic of the Greek economy even amidst the recent Covid-19 outbreak turmoil.

Of course some of the provisions of the new law have been criticised as not ensuring full and proper protection of the environment; it thus remains to be seen whether checks and balances will need to be introduced as the new law is being applied in practice and tested by the courts. Professional guidance in connection with the new law is thus necessary particularly when it comes to those provisions which have not had a straightforward reception during the public consultation procedure.

For further information, please contact:

Anastasia Makri

Partner, Head of Energy group

T (+30) 210 69 67 000

E a.makri@zeya.com

Smaragda Spyrou

Senior Associate

T (+30) 210 69 67 000

E s.spyrou@zeya.com

Sofia Chatziagiannidou

Partner

T (+30) 210 69 67 000

E s.chatziagiannidou@zeya.com

Katerina Vogiatzi

Associate

T (+30) 210 69 67 000

E k.vogiatzi@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280, Kifissias Ave.
152 32 Halandri
Athens, Greece

newsletters@zeya.com
Tel.: (+30) 210 69 67 000
Fax: (+30) 210 69 94 640
www.zeya.com

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior permission. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgment of author, publisher and source must be given.

Nothing in this newsletter shall be construed as legal advice. The newsletter is necessarily generalised. Professional advice should therefore be sought before any action is undertaken based on this newsletter.