

CATALAN REGIONAL DECREE-LAW 16/2019: CATALONIA COMMITS TO THE DEVELOPMENT OF PHOTOVOLTAIC AND WIND POWER PROJECTS

On 28 November, Decree-Law 16/2019, dated 25 November, was published in the Official Gazette of the Catalan Regional Government (*Diari Oficial de la Generalitat de Catalunya*). This Decree, which implements urgent measures to deal with the climate emergency and encourage the use of renewable energies (the "RenewablesDL"), will enter into force on the day after it is published, notwithstanding that it must be approved by the Catalanian Parliament within 30 days or will otherwise be considered repealed.

The aim of this decree having the force of law approved by the Government of the Autonomous Region of Catalonia is as follows:

- i) To adopt urgent ecological and energy transition measures in order to rapidly achieve the objectives set in Catalanian Regional Act 16/2017, dated 1 August, on Climate Change, remedying the defects of unconstitutionality brought to light by Spain's Constitutional Court in its Judgment 87/2019 (and introducing, among others, the regime on research permits for obtaining oil and gas from shale by fracking).
- ii) To facilitate and simplify the setting up of installations for the exploitation of solar and wind power in terms of urban planning requirements.
- iii) To simplify the procedure for the authorisation of photovoltaic solar power and wind power generation installations, establishing the necessary requirements for obtaining such authorisation.

The RenewablesDL forms part of the Clean Energy Package adopted throughout the European Community (which sets the target for the amount of energy coming from renewable sources in the energy mix for 2030 at 32% of the total gross final energy consumption) and Spain's National Integrated Energy and Climate Plan (*Plan Integral Nacional de Energía y Clima*, PNIIEC), which the European Commission reported positively on, although it is pending approval by the Spanish Government, which sets a target for 2030 of 42% of renewables of the final use of energy in the electricity generation mix. The PNIIEC's long-term objective is to make Spain a carbon-neutral country by 2050. According to the Stated Purpose of the RenewablesDL, in Catalonia, the consumption of fossil fuels and nuclear power still represents over 90% of the consumption of primary energy, with the installed wind power capacity being approximately 1.286 MW and installed photovoltaic capacity hardly 300 MW. The RenewablesDL acknowledges the years of paralysis in setting up renewable energies, due to the administrative obstacles deriving mainly from the legislation now being repealed, in an attempt to encourage more generation from solar photovoltaic energy and wind power in the coming years, and to be able to meet national and EC targets. With this aim, the RenewablesDL repeals the wind map of Catalonia approved by Decree 174/2002, of 11 June, as well as Decree 147/2009, of 22 September, governing the administrative procedures for setting up wind farms and photovoltaic plants in Catalonia, which made the granting of authorisations in priority development areas generally subject to holding a tender process.

Main changes to the legislation on setting up solar photovoltaic and wind power generation installations

1. Wind farms and photovoltaic solar plants (in both cases having a capacity higher than 100 kW and less than or equal to 50 MW) can generally be set up in any location that is compatible with land planning and urban development that has the ideal conditions from a technical, economic, energy, urban and landscape planning perspective, and in those areas which meet the requirements established by law (mainly, no significant impact in terms of the different aspects and minimal

impact on the land). Whether the land is used for agriculture or forestry does not in itself constitute an obstacle for setting up these installations, provided that the requirements are met. Adicionalmente, la norma establece requisitos concretos en relación a la selección del emplazamiento de parques eólicos y plantas solares fotovoltaicas.

The RenewablesDL also establishes specific requirements in relation to selecting the location of wind farms and photovoltaic solar plants.

The only areas considered non-viable for setting up wind farms are natural spaces with special protection (*Espacios naturales de especial protección* (ENPE)), areas with special protection for birdlife (*Zonas de especial protección de las aves* (ZEPA)) and the natural spaces included in Catalonia's areas of natural interest plan (*Plan de espacios de interés natural* (PEIN)) having a surface area of less than 1,000 ha, notwithstanding that this criteria may change following the approval of a zoning plan for the sector.

As for the areas considered non-viable for setting up photovoltaic solar plants, these are limited to the natural spaces included in Natura 2000 (the network of nature protection areas in the EU), unless the plants are to be used for self-consumption or occupy fewer than 3 ha, or are located in a municipality that has no other type of land, notwithstanding that this criteria may change following the approval of a zoning plan for the sector.

2. Prior to applying for authorisation to set up a wind farm or a photovoltaic solar plant, the developer must submit an enquiry as to the viability of the location to the Renewable Energies Committee (the "Committee"), the body drafting the RenewablesDL, in order to assess the viability of the draft project for the installation in terms of location and to take any actions to assess the environmental impact of such projects, as the case may be. This enquiry can also include, if so requested, a decision on the comprehensiveness and level of detail of the environmental impact assessment of the future project.

The Committee must issue its decision within a period of three months, after first contacting the relevant Administrations to obtain their allegations, indicating the terms and conditions in which the activity may be implemented. Its decision exhausts administrative channels, and a request for review may be lodged against it or an interested party can take recourse directly to the judicial review jurisdiction. In the event of silence after the three-month period has elapsed, the developer may apply for authorisation for the installation and for approval of the technical project.

A Committee decision finding the project to be non-viable would prevent it from being implemented, this being considered a circumstance impeding the construction of the installation which is not attributable to the developer, for the purpose of avoiding the enforcement of the financial guarantee to apply for access to the electricity transmission and distribution grid.

Once the Committee has issued a favourable decision, the developer must apply for authorisation to set up the wind farm or photovoltaic solar plant within a period of two years. If this period elapses, a new enquiry must be submitted.

A favourable decision does not provide any guarantees, in terms of the environmental impact assessment and approval for the project to set up the installation, that new elements will not materialise and which could affect the authorisation.

3. A single administrative intervention procedure is established, encompassing the photovoltaic solar plant or wind farm project as a whole (including energy discharge infrastructures and substations and accesses), consisting of a prior administration authorisation, declaration of public utility, if applicable, and execution project from an energy perspective; as well as an environmental impact assessment of the project, when required; and the approval of a specific action plan of public interest for lands not suitable for development from an urban and landscape planning perspective (amending, accordingly, the Restated Urban Planning Act for Catalonia, approved by Legislative Decree 1/2010, of 1 August).

When the project is to be built on a type of land other than lands not suitable for development, the single procedure is limited to energy and environmental aspects, and the urban planning permission must be obtained separately in accordance with the applicable urban development laws.

This procedure may take more than a year until a decision approving the prior administrative authorisation is obtained, as well as the declaration of public utility, if this has been applied for, and permission to build the photovoltaic solar plant or wind farm, which will include the environmental impact statement or report with respect to the project, as the case may be, and the approval of the specific action plan for lands not suitable for development.

In relation to the approval of a specific action plan for lands not suitable for development to be obtained in the process for the granting of the prior administrative authorisation for the installation, declaration of public utility, if applicable, and

execution project, the corresponding approval decision must establish the amount of the deposit (*fianza*) for restoring the lands to their original conditions, which will be calculated taking into account the actual dismantling costs. The implementation of the specific action plan is delayed until the guarantee is granted. If such guarantee is not granted in the established period, this will render the approval of the specific action plan null and void. Moreover, the approval of the specific action plan for lands not suitable for development implies the declaration of public utility on the end purpose for which the affected properties are to be used, as well as the need to occupy the properties or acquire the indispensable rights for expropriation purposes.

The prior administrative authorisation and permission to implement the executive project to build the photovoltaic solar plant or wind farm cannot be granted if the applicant has not first obtained permission to access and connect to the corresponding transmission and distribution grids (excluding self-consumption installations without surpluses).

4. The transfer of an authorisation to set up a wind farm or photovoltaic solar plant requires prior consent and compliance with the prerequisites established in the RenewablesDL, for example, that the plant's construction be fully completed and that it have obtained the definitive start-up certificate. An administrative silence regime is in place with respect to the procedure to grant the transfer consent, in this case meaning that if no reply is received, authorisation is denied.

5. The setting up of small-scale wind farm and solar installations for activities which have been granted an environmental authorisation or licence are considered a non-substantial amendment having no impact on the general public or the environment.

6. Amendments to the Restated Urban Planning Act for Catalonia, approved by Legislative Decree 1/2010, of 1 August, include, *inter alia*, permitting the setting up of installations for the exploitation of solar energy by means of solar thermal collectors or photovoltaic panels, without the need to amend urban planning, on the roofs of buildings and other additional constructions in certain circumstances and in areas in plots on urban land, not occupied by the buildings and other additional constructions, when the installations are used to reduce energy consumption in the building and are not more than a metre in height above ground level and do not involve exploitation of more than 25% of the buildable surface area. Their installation will be subject to the urban planning prior notification prerequisite established in the above-mentioned Restated Urban Planning Act for Catalonia.

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