



Long-awaited ministerial decision on the reclassification of renewable energy projects launched

By virtue of the Council of State's ("CoS") decision 1885/2023, certain provisions of previous ministerial decisions ("MDs") on environmental licensing classification of specific types of RES projects¹ were annulled on account of the underlying justification for the classification of RES projects on lower environmental clearance categories than the ones previously applicable not being sufficient. This created an onerous licensing reality for a wide circle of stakeholders licensed under the contested MDs since following the issuance of the aforementioned decision of the CoS, their respective environmental clearances were deprived from their legal basis. The matter was addressed by the Administration, albeit on a temporary basis, through the issuance of a circular which explicitly stated that the CoS decision did not have an impact on projects which were already licensed in accordance with the annulled MDs prior to the Court's judgment. However, the underlying issue of

the legality of such environmental clearances remained. The new Ministerial Decision (the "Reclassification MD") will hopefully put an end to this uncertainty by properly justifying the reclassification whereby specific categories of projects are placed under a less rigorous environmental clearance regime.

I. Reclassification of Renewable Energy Projects

Specifically, the Reclassification MD amends previous ministerial decision 37674/2016 on environmental classification (Government Gazette B' 2471), as in force, by replacing its provisions for on-shore wind power production and photovoltaic power production, as per the following table:

¹ I.e. Ministerial Decision 74463/4562/29.7.2020 (Government Gazette B' 3291) and Ministerial Decision 17185/1069/24.02.2022 (Government Gazette B' 841).

No.	Project Technology	Subcategory A1	Subcategory A2	Category B	Remarks
1	Electricity production from on-shore wind power	$P > 50$ or $P > 35$ and within areas of Natura 2000 network or $L \geq 20$	$5 < P \leq 50$ independent of N and $L < 20$ or $8 < P \leq 50$ and $N=1$ and $L < 20$ or $5 < P \leq 35$ and within areas of Natura 2000 network and $L < 20$	$0,05 < P \leq 5$ independent of N or $5 < P \leq 8$ and $N=1$ or $P \leq 0,05$ and the remark Ξ is applicable	P: installed capacity in MW L: length of overhead high-voltage transmission line (≥ 150 kV) in km N: number of wind turbines Ξ : According to par. 13 of article 8 of Law 3468/2006 as in force (the project is installed on a field located in an area of the Natura 2000 network or in a coastal location in a distance less than 100m from the coastline excluding rocky islands).
2	Electricity production from on-shore photovoltaic stations	$P > 50$ or $P > 35$ and within areas of Natura 2000 network or $L \geq 20$	$5 < P \leq 50$ and $L < 20$ or $5 < P \leq 35$ and within areas of Natura 2000 network and $L \geq 20$	$1 < P \leq 5$ or $P \leq 1$ and the remark Ξ is applicable	

II. Transitional Provisions

Further, in order to ensure as possible a smooth transition to the new classification regime, the Reclassification MD includes several key provisions as follows:

1. Environmental Licensing for new projects

- Projects that have already submitted an Environmental Impact Assessment (“EIA”) or environmental study for the modification/renewal of the Approval of Environmental Terms (“AET”), or an

application for the issuance of Standardised Environmental Commitments (“SEC”) before the enactment of the Reclassification MD, may either follow the previous regime (i.e. the regime enacted by the 2016 MD prior to its amendment by the contested and already annulled acts) or adhere to the new regime upon project holder’s request. Switching into the new regime would notably be beneficial for projects which initiated the procedure for obtaining an AET but following the issuance of the new MD are eligible to

obtain SEC issuance of the new MD are eligible to obtain SEC.

2. Project Modifications and Existing Permits

- When modifying project features, for projects reclassified from “Category B” to “Category A”, under the Reclassification MD, the environmental licensing process must be re-initiated and an AET is to be issued for the entirety of the project. Importantly, the SEC will remain in force, until the issuance of the new AET.
- Projects which have been granted environmental clearances on the basis of the MDs which have been annulled by virtue of CoS decision no 1885/2023 have a two-year time period to issue the pertinent licence in accordance with the recently enacted MD. This will notably affect projects which under the previous regime were classified as falling within category B and now fall within the ambit of category A2 and will need to issue an AET or projects which fell within category A2 and now are classified in category A1 and will need to “upgrade” their AET.

III. New rules to assess artificial fragmentation of environmental licensing

The Reclassification MD in its supplementary remarks to the above-provided classification table references, inter alia, an important alteration to legal notion of “environmental fragmentation”, through

the expansion of the criteria under which the relevant practice shall be assessed. Namely, the artificial fragmentation notion shall henceforth capture not only projects which are being developed by the same legal entities or entities with the same shareholders but also projects being developed by distinct legal entities that are, however, in apparent agreement in terms of their respective development, following a parallel licensing process and being located in proximity to one another.

Conclusive remarks

The Reclassification MD aims to update the classification and environmental licensing regime for most renewable energy projects in Greece, as necessitated by CoS decision 1885/2023 on the basis of new technical and scientific data which will hopefully justify following a less rigorous environmental clearance approach for specific categories of projects. Among its key requirements is the “upgrading” within a specific period of the environmental clearances issued under the previous regime which was found to be incompatible with the constitutionally enshrined principles of environmental protection by CoS decision 1885/2023. Besides the purely bureaucratic nature of such a requirement, this is also expected to create uncertainty in projects which will need to issue new licences since the latter will, among other things, be open both to the Administration’s scrutiny but also potentially subject to challenges.

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