

## ENERGY LAW

### LICENSING AND INSPECTION OF PETROLEUM PRODUCTS STORAGE INSTALLATIONS AND FUEL STATIONS INSTALLATIONS LEGAL REGIME

WITH THE ADOPTION OF DIRECTIVE 2006/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, OF 12 DECEMBER 2006 (THROUGH DECREE-LAW 92/2010, JULY 26), THERE IS THE NEED TO ASSURE THE CONFORMITY OF ALL LEGAL REGIMES APPLICABLE, AT A NATIONAL LEVEL, TO THE SIMPLIFICATION PRINCIPLES AND RULES OF THE FREE ACCESS AND EXERCISE OF SERVICES ACTIVITIES.

IN THE ENERGY SECTOR, DECREE-LAW 217/2012, OF OCTOBER 9, ASSUMES A SPECIAL RELEVANCE WITHIN THE SCOPE OF THIS LEGISLATION CONFORMITY TASK, IMPOSING AN ADAPTATION OF THE NATIONAL LEGAL REGIME REGARDING THE LICENSING AND INSPECTION PROCEDURES AND POWERS OF PETROLEUM PRODUCTS STORAGE AND FUEL STATIONS INSTALLATIONS, PREVIOUSLY FORESEEN IN DECREE-LAW 267/2002, OF NOVEMBER 26.

Decree-Law 217/2012, of October 9, published on October 9, 2012, proceeds to the 4th amendment and republication of the Licensing and Inspection of Petroleum Products Storage Installations and Fuel Stations Installations Legal Regime, foreseen in Decree-Law 267/2002, of November 26.

As the main amendments introduced by the referred diploma, we highlight the following:

- The non compliance by the petitioner of the supplementary information request, ceases to imply the immediate cancellation of the licensing request, but implies the effective assessment of the request without recourse to such information, save, however, the cases foreseen in nr 3 of article 91 of the Administrative Procedures Code. Thus, only in the cases where *“the information, documents or acts requested to the petitioner are necessary for the assessment of the request filed by the same”* will *“the procedures not proceed, the petitioner being duly notified of such”*.
- The deadline for the licensing entity to access the license request filed by the petitioner, will now only begin *“after the notification of the favourable or conditionally favourable environmental impact declaration or after the term of the deadline necessary for the tacit approval to be effective (...)”*.<sup>1</sup>

The inspection fees payment note foreseen in nr 5 of article 12, must now be issued within a deadline of 10 days as of the date on which is requested the inspection, and the inspection must be scheduled within a deadline of 20 days as of payment.<sup>2</sup>

After 15 days as from the initial inspection being performed, the licensing entity shall issue *“a duly grounded decision approving, imposing alterations or rejecting the project, and shall notify the petitioner in accordance”*.<sup>3</sup>

In case the initial inspection is not scheduled within a deadline of 40 days after the reception of the licensing request, or in case it is not issued a decision regarding the request within the foreseen deadline (15 days), the petitioner may apply to the administrative courts, in order to obtain an order for the licensing entity to perform the act in cause.

<sup>1</sup> In nr 2 of article 11.

<sup>2</sup> In nr 12 of article 12.

<sup>3</sup> Current wording of nr 1 of article 13.

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The non performance of the works within the deadline fixed with the decision approving the project, implies the expiration of the latter. Nevertheless, through a grounded request filed by the petitioner, such deadline may be extended by the licensing entity.

In any case, the expiration declaration above referred, must be preceded of a petitioner hearing.

In case of silence of the licensing entity regarding the exploration license issuance within the deadline foreseen (10 days), the same shall correspond to a tacit approval; or, in case the final inspection is not scheduled or the relevant payment note is not issued within the deadlines foreseen under nr 12 of article 12, after 10 days as of the term of the applicable deadline.

However, the tacit approval shall only be effective if it is verified the compliance of the obligations already foreseen in nrs 3 and 4 of article 14, and does not prevent the performance of the final inspection by the licensing entity, in the cases in which the same had not been previously performed.

In turn, by rule, the installations exploration licenses, including the authorizations of use foreseen in nr 4 of article 5, shall not expire with the passage of time, save in cases in which there are urban and territory order constraints justifying otherwise.

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Regarding the exploration licenses of the installations, which implementation land belongs to the public domain, the same shall be cancelled immediately and automatically with the termination of effects, due to any reason, of the corresponding titles of private use of public domain assets.

The licensing entity may also cancel the exploration licenses when the data or the information included in the license request is false, *“when the facts underlying its issue no longer exist or when the relevant holder seriously breaches applicable legal or regulatory rules”*.<sup>4</sup>

All requests, communications, notifications or declarations between the petitioners and the competent authorities shall be made through the electronic services sole desk.<sup>5</sup>

Finally, please note that the dispositions foreseen under nr 10 of article 12 and nr 3 of article 18 have been revoked.

The legal diploma under analyses shall enter into force on November 9, 2012.

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<sup>4</sup> Please see nr 6 of article 15.

<sup>5</sup> Foreseen in article 6 of Decree-Law 92/2010, of July 26.

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