

New EIA regulation in Portugal: a stepbackwards



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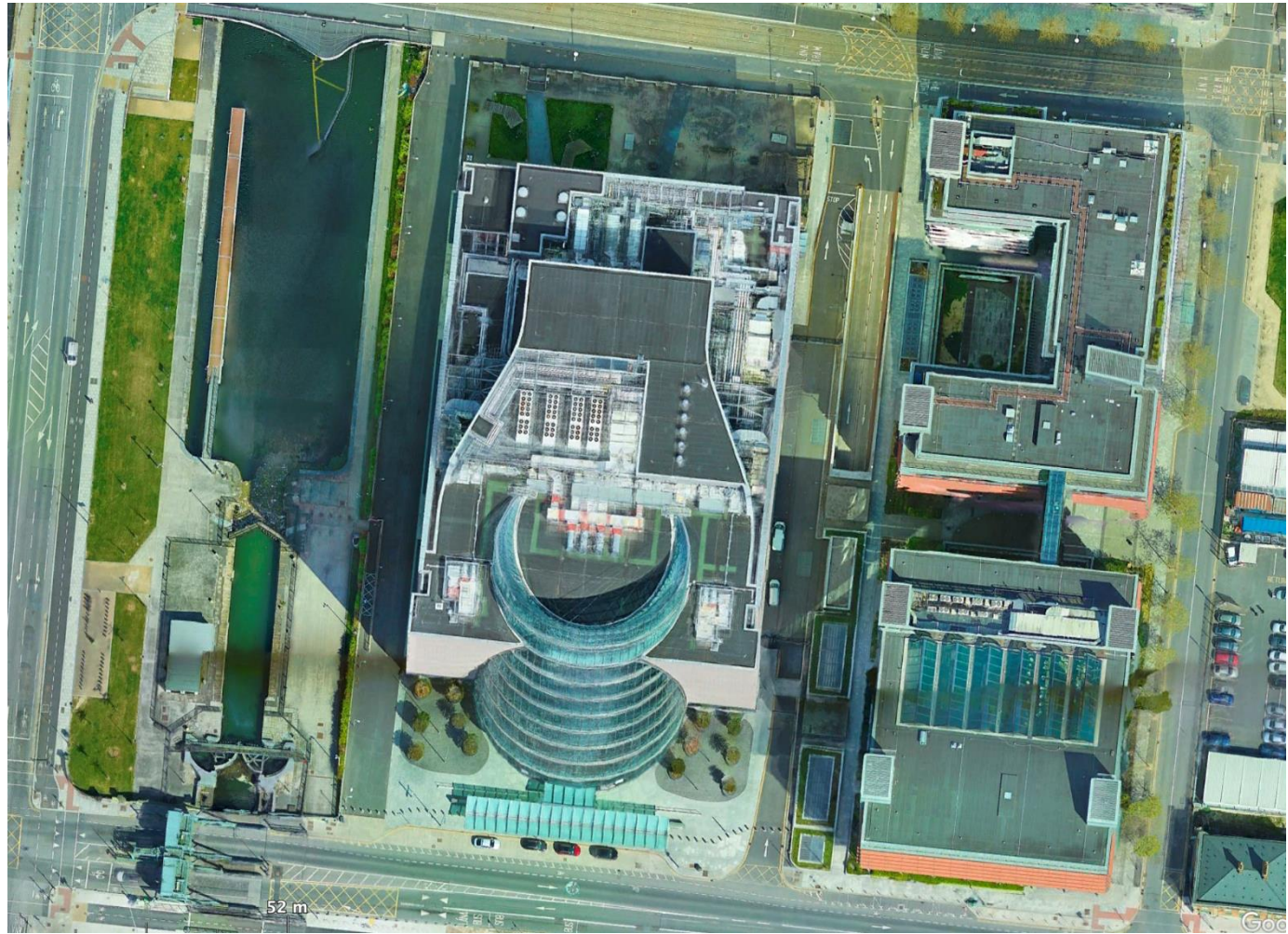
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0,8 ha
2 acre



The new legislation in Portugal allows for a solar power plant of the size of **120** Dublin Convention Centers to be excluded from a mandatory EIA.



This presentation

1. European Union framework
2. The change to the EIA act (Environmental Simplex)
3. Exclusions
4. Thresholds
5. Urban development projects
6. Tacit approval
7. Conclusion

1. European Union framework

EU Regulation 2020/852 of the European Parliament and of the Council, of 18 June 2020, on the establishment of a framework to facilitate sustainable investment. Article 9 states the **environmental objectives**, them being:

(a) climate change mitigation

(b) climate change adaptation

(c) the sustainable use and protection of water and marine resources

(d) the transition to a circular economy

(e) pollution prevention and control

(f) the protection and restoration of biodiversity and ecosystems



EUR-Lex
Access to European Union law

1. European Union framework

Council Regulation (EU) 2022/2577, came into being as a result of socio-economic pressures. The aim of this regulation is to **lay down a framework to accelerate the deployment of renewable energy.**

- Article 3: Overriding public interest
- Article 4: Acceleration of the permit-granting process for the installation of solar energy equipment

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2577&qid=1714051484628>



EUR-Lex
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2. The change to the EIA act (Environmental Simplex)

Context:

- Energy crisis
- Drought
- Fight against climate change

There is a need to speed up the realisation of the changes that need to be made.

Introducing Decree-law no. 11/2023



2. The change to the EIA act (Environmental Simplex)

- Make a **general simplification for the Public Administration resulting in greater celerity** by avoiding the suspension of decision deadlines and preventing opinions from being issued after the deadline;
- **Reduce bureaucracy by reducing the obligation to carry out EIAs**, reducing duplication of procedures, authorisations and opinions and eliminating the need to renew environmental licences;
- **Attract investment**
- **Reduce costs for the industry.**

But what exactly are the **main changes** of this regulation?

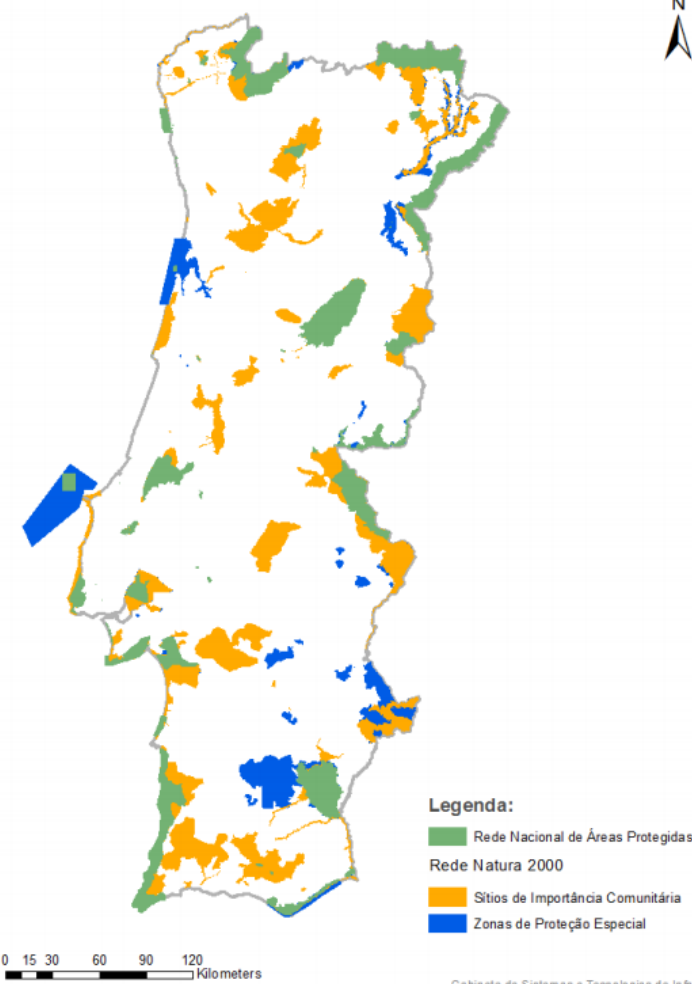
2. The change to the EIA act (Environmental Simplex)

- EIA exclusions and waivers
- Elimination of certain procedures
- Transfer of responsibility
- Non-suspension of deadlines
- Tacit approval
- Presumptions of public interest

3. Exclusions

Simplex introduced the exclusion from the application of the EIA for some types of Annex II projects, outside the sensitive area (Natura network 2000, protected areas, and cultural heritage sites), in particular **intensive fish farming** and the **production of hydrogen from renewable sources or electrolysis of water**.

This applies to 70 % of the territory.



4. Thresholds

The Simplex introduced a change in the thresholds for compulsory submission for some types of categories:

- Agriculture, livestock farming and aquaculture
- Extractive industry
- Energy industry
- Textile, leather, wood and paper industries
- Infrastructure projects
- Other projects



4. Thresholds

Energy Industry	
Before	Now
Mandatory EIA: a) Installed Power \geq 50 MW	Mandatory EIA: a) In the case of solar renewable electricity generating centres, when the area occupied by solar panels and inverters \geq 100 ha; b) In all other cases, Installed Power \geq 50 MW.



5. Urban development projects

EIA Directive Annex II category “Urban developments” was translated as “Urban allotments operations + shopping malls”

This means that all urban developments (except shopping malls), regardless of their size or location, that do not involve a formal allotment operation are not subject to EIA.

A big Convention Centre is not subject to EIA.



6. Tacit approval

The altered act provides tacit approval for everything in the EIA procedure, including the opinions of the competent authorities and the final decision

Electronic platform to issue tacit approval certificates within 8 days

7. Conclusion

- There is a great deal of **pressure to speed up the realisation of renewable energy projects and other projects**, although this can put the **environment at risk**.
- The main concerns, prove that **the new Portuguese regulation ends up jeopardizing and going against the EIA Directive and other EU Regulations**
- There is a **higher risk of litigation**

7. Conclusion

Simplifying processes can be a good thing. But this simplification comes at the expenses of:

- Quality of studies;
- Human resources;
- Technical responsibility;
- Impact prevention, mitigation and compensation;
- Public participation.



Let's continue the conversation!

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