



Sioufas & Associates
Law Firm

NEW MINISTERIAL DECISION FOR THE RECLASSIFICATION OF RES PROJECTS

READ MORE

www.sioufaslaw.gr

Introduction

The ministerial decision with No 63951/4418 (Gov. Gazette B 3867/03.07.2024) (hereinafter called the “**New Decision**”) has been recently issued, amending the ministerial decision with No 37674/2016 (Gov. Gazette B’ 2471/ 10.08.2016) (hereinafter called the “**Initial Decision**”) and regulating the reclassification of electricity production projects from on shore wind power and on shore photovoltaic stations in categories and sub-categories of the Law 4014/2011.

Background of the New Decision

The Initial Decision, which codified the provisions re: the classification of public and private projects and activities in environmental categories and sub- categories in accordance with the article 1 par. 4 of the Law 4014/21.09.2011 (Gov. Gazette 209/A/2011), has been amended twice, within a short period of time, by virtue of Ministerial Decisions with No 74463/4562/29.7.2020 (Gov. Gazette B’ 3291/06.08.20) and 17185/1069/21.2.2022 (Gov. Gazette B’ 841/24.02.22), [both the above mentioned ministerial decisions are hereinafter called the “**Amendments**” and, jointly with the Initial Decision, hereinafter called the “**Amended Initial Decision**”]. The Amended Initial Decision resulted in a situation where projects classified -until then- in a higher category

Πειραιάς
Νέου Φαλήρου 6^Α
Αγ. Ι. Ρέντη, 182 33
τηλ: +30 210 3673000
fax: +30 210 3673070
email: info@sioufaslaw.gr
website: www.sioufaslaw.gr

Θεσσαλονίκη
Νικηφόρου Ουρανού 3
Θεσσαλονίκη, 546 27
τηλ: +30 231 6005800
fax: +30 231 6005899

Πάτρα
Λεωφόρος Όθωνος-Αμαλίας 65
Πάτρα, 262 22
τηλ: +30 261 0226549
fax: +30 261 0242971

Ρουμανία
76 Splaiul Unirii, River Plaza Tower A 7th floor
Bucharest, District 4, P.C.040037
τηλ: +40 372 171778
fax: +40 372 171779
email: info@sioufaslaw.ro
website: www.sioufaslaw.ro





or sub-category have been reclassified in a lower one or even exempted from the prerequisites of the environmental licensing.

Furthermore, on 25/10/2023, the Council of the State (CoS) issued the decision with No 1885/2023, which accepted the following: **(a)** the classification of the wind, the photovoltaic and the hydroelectric stations in an environmental category after the Amended Initial Decision had as a consequence that “projects previously classified in a higher category or sub-category have been reclassified in a lower one or have been totally exempted from the environmental licensing, without a specific reference (in the preamble of the contested ministerial decisions or in the Administration’s opinion towards the court) of a scientific or technical study justifying the reasons of the relevant amendments, as, for example, the international bibliography on the impact of the said projects or, the, scientifically justified, development of the technology in the construction of the wind, photovoltaic and hydroelectric stations which mitigates or eliminates the impact of such projects on the environment”, **and (b)** the Amendments constitute an adverse (negative) change in relation to the range and the requirements of the environmental impact assessment of the said RES projects, since the relevant reclassification cannot be justified on the basis of a specific study related to the regulation’s object and designating the scientific and technical facts, according to which the construction and the operation of the above projects is not expected to have a significant impact on the environment.

Moreover, the Ministry of Energy and Environment issued, on 27/12/2023, a clarifying circular underlining, among others, that the projects classified, until 25/10/2023¹, in accordance with the provisions of the Amendments, would remain intact.

However, irrespectively to the provisions of the clarifying circular, the good standing of the projects falling within the scope of the categories affected by the Amendments remained to be doubtful.

The New Decision

The Initial Decision is being amended by the New Decision, as in force before the annulled Amendments, so that the Table attached hereinbelow contains the applicable reclassification provisions from now on.

The New Decision includes transitional provisions, according to which:

1. In case of projects **(a)** falling within the scope of the New Decision and therefore, being reclassified, **and (b)** with an already submitted Environmental Impact Assessment (“EIA”) or Environmental Study for the amendment or renewal of the Environmental Terms Approval (“ETA”) or application to issue Standardized Environmental Commitments (“SEC”), there are two alternatives: either to choose to remain subject to the Initial Decision’s provisions, as in force before the Amendments, or to apply to adhere to the New Decision’s provisions.

¹ Date of issue of the decision 1885/2023 of the CoS.





2. In case of a project's modification and reclassification from category B, in accordance with the previous regime, to category A, due to the New Decision, a new process of environmental licensing is being initialized for the entirety of the project whereas the SEC remains in force until its replacement by the new ETA.
3. In the case of projects having acquired environmental licensing in accordance with the classification regime, as in place at the time of the relevant application, the environmental license remains in force irrespectively to classification's changes. In the case of projects having been subject to SEC based on the provisions of the annulled Amendments and which are being reclassified to Category A, a new process of environmental licensing is to be applied for the entirety of the project and an ETA must be issued within a two-year period. In the case of projects having acquired an ETA based on the provisions of the annulled Amendments, SEC must be issued within a two-year period upon submission of the ETA, the EIA and the relevant legal opinions.

Finally, the New Decision provides that the fragmentation of a single RES project is not permitted in order to avoid classification due to a lower category, than the one of the single project, or even exemption from the environmental licensing procedure. An indicative reference to the notion of the single project is the following: projects in border or close locations, with licensing applications submitted either simultaneously or within the same semester, by the same entity or by entities with common shareholders or by entities acting in concert to each other and (projects) which will use common infrastructure.

Conclusion

The New Decision enacted new classification's terms, within the framework of the Decision of the CoS No 1885/2023, resulting in the necessity of new environmental clearances in certain categories of RES projects.





Table

α/α	Kind of Project	Sub-category A1	Sub-category A2	Category B	Comments
1	Electricity production from on shore wind power	P > 50 or P > 35 and in Natura 2000 areas or L ≥ 20	5 < P ≤ 50 irrespectively to N and L < 20 or 8 < P ≤ 50 And N = 1 and L < 20 or 5 < P ≤ 35 and in Natura 2000 areas and L < 20	0,05 < P ≤ 5 irrespectively to N or 5 < P ≤ 8 and N = 1 or P ≤ 0,05 and comment ≡ applies	P: installed capacity in MW L: length of the overhead high voltage transmission line (≥150 kV) in Km N: wind turbines' number ≡: According to art. 13 par. 13 of the article 8 of law 3468/2006 as in force (the project is installed in a part of land located in Natura 2000 area or in a coastal location at a distance less than 100m from the coastline excluding rocky islets).
2	Electricity production from on shore photovoltaic stations	P > 50 or P > 35 and in Natura 2000 areas or L ≥ 20	5 < P ≤ 50 and L < 20 or 5 < P ≤ 35 and in Natura 2000 areas and L ≥ 20	1 < P ≤ 5 or P ≤ 1 and comment ≡ applies	

Peggy Bozou
Attorney-at-law

LLB, Law School, University of Athens (EKPA)
LLM, Civil Law, University of Athens (EKPA)
MSc in Energy: Strategy, Law & Economics, Piraeus University





Σιούφας και Συνεργάτες
Δικηγορική Εταιρεία

Πειραιάς
Νέου Φαλήρου 6^Α
Αγ. Ι. Ρέντη, 182 33
τηλ: +30 210 3673000
fax: +30 210 3673070
email: info@sioufaslaw.gr
website: www.sioufaslaw.gr

Θεσσαλονίκη
Νικηφόρου Ουρανού 3
Θεσσαλονίκη, 546 27
τηλ: +30 231 6005800
fax: +30 231 6005899

Πάτρα
Λεωφόρος Όθωνος-Αμαλίας 65
Πάτρα, 262 22
τηλ: +30 261 0226549
fax: +30 261 0242971

Ρουμανία
76 Splaiul Unirii, River Plaza Tower A 7th floor
Bucharest, District 4, P.C.040037
τηλ: +40 372 171778
fax: +40 372 171779
email: info@sioufaslaw.ro
website: www.sioufaslaw.ro

