

OVERVIEW OF THE ENERGY SECTOR IN PORTUGAL

1. INTRODUCTION

The Portuguese energy sector has undergone a significant restructure during the last year, as a result of the implementation of the EU Directives on electricity and gas (Directives 2003/54/CE and 2003/55/CE of the European Parliament and of the Council, both of 26 June) and of the definition of new strategic objectives, principles and general guidelines (Resolution of the Council of Ministers no. 169/2005, of 24 October 2005).

The main objectives of such strategy are (i) to safely guarantee the supply of energy to Portugal, through the diversification of the primary resources used (namely by reinforcing the development of renewable energy sources aiming to achieve, by 2010, an electricity output that derives in 39% from renewable sources) and through the promotion of energetic efficiency, (ii) to stimulate and favour the competition in a way as to promote the consumers protection, as well as the competitiveness and efficiency of the Portuguese companies operating in the energy sector and in the national production sector and (iii) to guarantee the environmental adequacy of the energetic process, reducing the environmental impact at the local, national and global scales, particularly in what concerns the carbonic intensity of the national growth product.

In this article, we present a brief summary of the main features of the new legal framework of the Portuguese energy sector.

2. THE ELECTRICITY SECTOR

The new basis, principles and model of organization of the electricity sector in Portugal have been set out by Decree-law no. 29/2006, of 15 February, and by Decree-law no. 172/2006, of 23 August (the "New Electricity Regime"). According to such New Electricity Regime, the national electricity system is divided into six major components: generation, transmission, distribution, supply, operation of the electricity market and logistic operation for the switching of supplier. Unlike the previous regime, the New Electricity Regime establishes an electricity system in which generation, supply and management of the organized markets activities are competitive and just require compliance with a licensing or authorization process for the beginning of operations. The transmission and distribution activities continue to be provided pursuant to the award of public service concessions.

● Electricity generation

Electricity generation under the new Regime is now free, competitive and subject to licensing. Electricity generation is also divided in two types of regime: ordinary regime generation and the special regime generation.

The ordinary regime of generation comprises the generation of electricity, which is not subject to a special legal regime of incentives applicable to endogenous and renewable sources of generation or to heat and electricity combined generation. The special regime generation refers to the generation of electricity in those special circumstances.

Although this regime already applies to new generation facilities, there are still power centrals in operation under power purchase agreements (PPA's), which are expected to be early terminated with the implementation of the Iberian Electricity Market. Until then, such generators shall be entitled to sell electricity to the transmission operator, which shall, in turn, sell all that energy to the last resort supplier or, whenever justifiable, to an organized electricity market.

● Electricity transmission

Electricity transmission activity is carried out through the national transmission grid, through an exclusive concession granted by the Portuguese State following a public tender.

In accordance to the new basis of the concession agreement, the concession includes (i) the implementation and operation of the national transmission grid (ii) the operation of all infrastructures of the transmission and (iii) the development of the activity of electricity transmission.

The transmission operator must be independent, both in a legal and ownership sense, from other businesses performing generation, distribution and supply activities.

● Electricity distribution

Electricity distribution under the New Electricity Regime is operated through the national distribution grid, corresponding to the medium and high voltage network, and through the low voltage distribution grids.

The national distribution grid in high and medium voltage is carried out through an exclusive concession granted by the Portuguese State following a public tender. The low voltage distribution grids continue to be operated under concessions agreements to be entered into with the municipalities after a public tender.

The activity of electricity distribution should be independent, in a legal, organizational and decision-making standpoint, from the transmission activity and from other activities unrelated to the distribution activity.

● Electricity supply

The electricity supply activity under the New Electricity Regime is open to competition, subject only to a license regime. Suppliers can openly buy and sell electricity.

Under market conditions, consumers shall be free to choose their supplier, without any additional payment for the switching of suppliers. A new entity, whose activity is regulated by the Portuguese electricity independent regulator (ERSE), will be created to oversee the logistical operations of customer switching.

The New Electricity Regime also establishes the last resort supplier, as provided for in the Directive 2003/54/CE, subject to regulation by ERSE and to operational licensing.

3. THE GAS SECTOR

The new basis, principles and model of organization of the gas sector in Portugal have been set out by Decree-law no. 30/2006, of 15 February, and by Decree-law no. 140/2006, of 26 June (the "New Gas Regime"). According to the New Gas Regime, the national gas sector comprises seven major components: reception, storage and regasification of liquefied natural gas ("LNG"), underground storage of natural gas ("NG"), transportation of natural gas, distribution of NG, supply of NG, operation of NG markets and logistic operation for the switching of supplier of NG.

● Reception, storage and regasification of LNG, underground storage of NG, transportation of NG

Within the context of the New Gas Regime the activities of reception, storage and regasification of LNG, the underground storage of NG and transportation of NG are now combined and are being developed by a single entity.

These activities are carried out through the relevant reception and storage facilities and the national high-pressure transportation pipeline pursuant to a concession granted by the Portuguese State. The activity of NG transportation should be independent, from a legal and ownership standpoint, from the NG distribution and supply activities.

● Distribution of NG

The activities of distribution of NG are carried out through concessions granted by the Portuguese State and include distribution of NG through medium and low-pressure pipelines.

The activity of NG distribution should be independent, in a legal, organizational and decision-making standpoint, from the transmission activity and from other activities unrelated to the distribution activity.

● Supply of NG

The activities of supply of NG is open to competition by 2010, subject only to a license regime.

Under market conditions, consumers are free to choose their supplier, without any additional payment for the switching of suppliers. A new entity, whose activity is regulated by ERSE, will be created to oversee the logistical operations of customer switching.

The New Gas Regime also establishes the last resort supplier, as provided for in the Directive 2003/55/CE, subject to regulation by ERSE and to operational licensing.

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