
THE ENERGY REGULATION AND MARKETS REVIEW

THIRD EDITION

EDITOR
DAVID L SCHWARTZ

LAW BUSINESS RESEARCH

THE ENERGY REGULATION AND MARKETS REVIEW

The Energy Regulation and Markets Review

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THE ENERGY
REGULATION
AND MARKETS
REVIEW

Third Edition

Editor
DAVID L SCHWARTZ

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EDITOR'S PREFACE

Our third year of writing and publishing *The Energy Regulation and Markets Review* has been marked by an increase in exploration and production of petroleum products and natural gas, investment in energy infrastructure, renewable resource development, competitive market developments in the electricity industry, privatisation of state-owned energy companies, and Chinese state-owned investment. We have also seen decreases in rate/tariff deficiencies and hydroelectric generation productivity in certain low-rainfall regions, as well as an effort to reduce reliance on nuclear generation.

From a supply perspective, upstream oil and natural gas exploration, development and production has continued to grow in North America. Canada continues to look for export opportunities, the United States is continuing to consider export authorisations, and Mexico is constructing natural gas pipelines to import low-cost natural gas from the United States. In the wake of the Fukushima disaster, some countries, including Germany, Switzerland, France, Japan and Korea, are seeking to reduce their current reliance on nuclear generation. Certain countries, such as the United States and Denmark, have also witnessed extensive retirements of coal-fired generation facilities, owing to greenhouse gas emissions targets and comparisons with the cost of natural gas. At the same time, other countries (including Malaysia, India and Indonesia) are continuing to develop coal generation resources due to significant electricity generation needs that require fuel source diversification. We have also seen increases in renewable generation development efforts (including in Sweden, Denmark, Romania, Kenya, Australia, India, Japan and Malaysia), while many other countries in Europe and North America have reduced subsidies for renewable resource development.

From a demand perspective, we are seeing noteworthy reductions in demand in some countries, owing to the residual effects of the global financial crisis, while we are witnessing significant demand growth in other countries, including Indonesia, Turkey and Angola.

From a market and rate perspective, we are observing substantial efforts to reduce rate/tariff deficiencies. Many countries have fully liberalised their generation markets, while others are heading towards a competitive market model. There are

continued efforts to develop competitive electricity markets for energy and capacity, and some countries have developed effective carbon pricing mechanisms. We have seen an increase in privatisations of state-owned energy companies, including in Turkey, Cyprus, New Zealand and Nigeria. Chinese state-owned companies have acquired interests in utilities in Australia (State Grid acquisition of significant shares of two Australian utility companies) and Mozambique (China National Petroleum acquired certain offshore gas rights).

Natural disasters and political strife continue to impair the ability to provide reliable energy services, as evidenced by the impacts of Typhoon Haiyan in the Philippines and the continued unrest in Ukraine. On the other hand, a lack of political strife has contributed to significant development of the energy industry in other countries, such as Angola, which has seen increased capital investment, including in oil exploration and production.

I would like to thank all the authors for their thoughtful consideration of these difficult challenges. We look forward to identifying possible mechanisms to resolve the many issues and concerns discussed in these chapters.

David L Schwartz

Latham & Watkins LLP

Washington, DC

June 2014

Chapter 30

PORTUGAL

Nuno Galvão Teles and Ricardo Andrade Amaro¹

I OVERVIEW

In recent years, following the publication of European Union directives for the implementation of the electricity² and natural gas³ internal markets, the legislation and regulation of the energy sector in Portugal have undergone significant changes.

From production to supply, both in the electricity and the natural gas industries, all activities must be developed by legally separate entities, except for some specific cases. The liberalisation of these sectors in mainland Portugal has almost been concluded, and with the abolition of end-user energy supply tariffs due to happen in 2015, all consumers will shift to the liberalised markets.

Generation and supply of electricity and natural gas are free and deregulated activities, while the operation, maintenance and exploration of infrastructures such as transmission and distribution networks, LNG terminals and storage facilities are regulated activities, with access rates set administratively by the national regulatory authority, the Energy Services Regulatory Authority (ERSE).⁴

Currently, the Portuguese government's policy for the energy sector is set out in the National Plan of Action for Energy Efficiency 2013–2016 (PNAEE 2016) and in

-
- 1 Nuno Galvão Teles is a partner and Ricardo Andrade Amaro is a senior lawyer at Morais Leitão, Galvão Teles, Soares da Silva & Associados, Sociedade de Advogados RL.
 - 2 Directives No. 96/92/EC, 2003/54/EC and 2009/72/EC of the European Parliament and of the Council.
 - 3 Directives No. 98/30/EC, 2003/55/EC and 2009/73/EC of the European Parliament and of the Council.
 - 4 Taking into account their geographical limitations, electricity and natural gas activities on the archipelagoes of Azores and Madeira continue to be developed by vertically integrated companies, and therefore the considerations that follow refer mainly to mainland Portugal.

the National Plan of Action for Renewable Energies 2013–2020 (PNAER 2020), both approved by Ministers' Council Resolution No. 20/2013 of 10 April. The PNAEE 2016 and PNAER 2020 are intended to be tools for a better energy strategy by establishing the means of achieving international goals and commitments⁵ assumed by Portugal in matters of energy efficiency and the use of renewable resources, without losing sight of economic rationale and the need to ensure adequate levels of energy prices, which do not prejudice the competitiveness of Portuguese companies or the minimum living standards of the general population.

Given the scarceness of fossil fuel resources in the country and the current economic and financial situation of the country, these Plans of Action focus primarily on the reduction of the country's energy dependence, the increase of energy generation using renewable resources and the promotion of energy efficiency and sustainable development, namely by:

- a* ensuring the continuance of measures that guarantee the development of an energetic model with economic rationale, which provides sustainable energy costs;
- b* ensuring a substantial improvement of the country's energy efficiency; and
- c* maintaining the reinforcement to diversify primary energy sources, reevaluating the investments made in renewable technologies and presenting a new remuneration model for more efficient and prominent technologies.

The PNAEE 2016 and PNAER 2020 have the following five major objectives:

- a* to comply with the commitments assumed by Portugal with greater economical rationale;
- b* to significantly reduce greenhouse gas emissions;
- c* to reinforce primary energy sources diversification, thus contributing to enhancing Portugal's security of supply;
- d* to improve the energy efficiency of Portugal's economy, particularly in the state sector, thus reducing public spending and promoting an efficient use of available resources; and
- e* to improve economic competitiveness by reducing consumption and costs related to companies' functioning and household economy management, freeing resources to boost internal demand and new investments.

II REGULATION

i The regulators

The national regulatory authority of both the electricity and natural gas industries is ERSE, a public entity with administrative and financial independence. ERSE's by-laws

5 Under the context of the European '20-20-20' measures, Portugal committed to achieve an overall reduction of primary energy consumption of 25 per cent and to have 31 per cent of its gross final energy consumption fuelled by renewable sources.

were enacted by Decree-Law No. 97/2002, of April 12, and recently amended by Decree-Law No. 212/2012 of September 2012.

ERSE is in charge of regulation, supervision and sanctioning in the aforementioned sectors, from generation to supply. Recently, Law No. 9/2013, which came into force on 28 January 2013, established the Energy Sector Sanctioning Regime, which substantially reinforced ERSE's sanctioning competences and powers. Later, Decree-Law No. 84/2013 of 25 June revised ERSE's by-laws, completing the implementation of Directives 2009/72/EC and 2009/73/EC.

Alongside ERSE, the General Directorate of Energy and Geology (DGEG), a state-administered entity with financial independence, has the task of implementing and developing the state's policies regarding energy matters and the exploitation of geological resources.

As such, and in most cases, the DGEG is the competent entity for granting licences and other administrative authorisations concerning energy-related activities, such as power-generating licences or exploration and production licences for oil or gas.

Regarding the oil sector, the DGEG, via its oil exploration and production division is the competent authority to:

- a* manage, organise and integrate all data and technical information resulting from oil exploration and production activities and other relevant data;
- b* promote and carry out specialised studies aimed at establishing the value of oil resources;
- c* promote the oil potential of Portuguese basins throughout the industry;
- d* negotiate and ensure the proper procedures to grant (by direct negotiation or public bidding), transfer and annul exploration and production rights;
- e* prepare and supervise licences for preliminary evaluation and concession contracts;
- f* evaluate work programmes and specific technical projects during the execution of the contracts; and
- g* regulate and supervise the activities during the execution of contracts, ensuring that legal provisions and regulations are followed, including those related to health, safety and environmental protection.

The DGEG is also the competent authority concerning the liquid fuels market, being, *inter alia*, responsible for:

- a* promoting and actively participating in the development of the legal and regulatory framework for licensing of activities, technical responsibility, safety and efficiency of the production, transformation, storage, transport and distribution of liquid fuels;
- b* licensing and auditing of oil, natural gas and channelled liquefied natural gas (LNG) facilities; and
- c* ensuring the technical and supply safety of fossil fuels and oil-derived products, including channelled LNG and natural gas.

In summary, while ERSE is the independent national regulatory authority, the DGEG is the body that represents the state on energy matters, also being competent to grant licences and receive the respective applications or requests.

The core legal framework for the electricity sector is composed of Decree-Laws No. 29/2006 and No. 172/2006, both of 15 February, and in the natural gas sector, by Decree-Laws No. 30/2006 of 15 February, and No. 140/2006 of 26 July (which have all undergone significant changes in recent years).

Another significant source of law within the scope of these industries is the regulations put into force by ERSE, such as the Commercial Relations Regulation, the Tariffs Regulation, the Quality Standards of Service Regulation and the Infrastructures Operation Regulation,⁶ and those put into force by the DGEG, such as the Transmission Network Regulation and the Distribution Network Regulation.

ii Regulated activities

In the electricity industry, transmission and distribution are activities that are subject to administrative authorisations.

The operation and exploration of the national transmission and distribution networks are awarded by means of concession agreements entered into with the Portuguese state, granting the concessionaires the exclusive right to explore the networks within a determined geographical area, for 50 and 35 years, respectively.

Besides the national distribution network,⁷ there are also municipal distribution networks, mainly composed of low-voltage grids. The right to explore these networks is also granted through concession agreements, but these are awarded by the respective municipalities and are valid for a period of 20 years.

In the natural gas industry, the exploration and production, transmission, distribution and operation of LNG terminals and of LNG storage facilities are also regulated, subject to administrative authorisations.

The operation of the national transmission and distribution networks, of LNG terminals and LNG storage facilities is also granted by means of concession agreements, offering the exclusive right to develop these activities for 40 years within a certain geographical area.

Additionally, there are some local natural gas distribution networks with no physical connection to the national distribution network, which may be operated by obtaining a licence, valid for a period of 20 years. The request for its attribution should be directed to the Minister of the Economy and Employment and delivered to the DGEG's office.

The right for prospection, exploration, development and production of oil is granted by the Minister of the Economy and Employment through a concession agreement. Although over the years, Portugal has been targeted with exploration and prospection studies, no actual discovery of any commercial interest has been made to date.

Bearing this in mind, the law established a more attractive and simple legal framework for the development of upstream activities. Apart from production, income and real estate taxes, and some sporadic fees, there is no legal obligation for production sharing, the concessionaire is exempted from paying royalties, and it is free to sell the

6 All available at www.erse.pt/pt.

7 Which, in general terms, refers to high and medium-voltage grids.

oil, except in the event of war or public emergency. The concessionaire is also entitled to freely dispose of all findings of natural gas, being exempt from any production taxation.

The concession agreements for the aforementioned activities are granted by means of a public procurement process.

iii Ownership and market access restrictions

Electricity generation is a free activity, being subject only to obtaining a generation licence. The licensing entity may vary upon the generation technology or geographical location where the generation plant is to be installed. Prior to entry into industrial exploration, the generation groups of the facility must also obtain an exploration licence, granted after an inspection that ensures they meet all technical and safety conditions to start operating.

Generation licences do not have a term, unless the power is generated using public domain water resources, or the generation plant is installed in maritime space that is under sovereign or national jurisdiction, in which cases the term of the generation licence will be that of the licence or concession agreement that confers the right to use public domain resources.

The transmission network operators (TNOs) of the electricity and natural gas sectors are subject to a full ownership unbundling regime.

Under this regime, no entity may hold an equity participation greater than 25 per cent of the share capital of the TNO. Also, the TNO or the companies that control it⁸ may not, directly or indirectly, exercise control or any rights over companies dedicated to generation or supply of electricity or natural gas. Equally, companies dedicated to generation or supply of electricity or natural gas or companies that control such, directly or indirectly, cannot exercise control or any rights over the TNO.

Subject to certain exceptions that relate to the historical role of the electricity TNO, the TNO is also strictly forbidden from acquiring electricity or natural gas for selling purposes.

iv Transfers of control and assignments

The transfer or encumbrance of any assets related to activities granted through concession agreements must obtain prior authorisation from the competent Ministry.

Concentration operations that meet some predetermined conditions must be notified to the Portuguese Competition Authority and are subject to its prior approval.

After being notified, the decision should be issued within 30 or 90 days, depending on whether or not a detailed investigation of the concentration operation is required.

8 The definition of 'control' refers to the definition provided for in Council Regulation (EC) No. 139/2004 of 20 January 2004, regarding the control of concentrations between undertakings (the EC Merger Regulation).

III TRANSMISSION/TRANSPORTATION AND DISTRIBUTION SERVICES

i Vertical integration and unbundling

Currently, the operation and exploration of the national transmission network of electricity and natural gas is carried out in accordance with the full ownership unbundling regime. This means that the company that operates the national transmission network may not integrate any group of companies dedicated to the generation, distribution or supply of electricity or distribution or supply of natural gas.

Under this context, EDP Energias de Portugal SA, formerly the company that held the monopoly in the electricity industry, was required to spin off any assets related to the transmission network into a separate company, thus forming REN Rede Eléctrica Nacional SA. Similarly, GALP Energia SA was also forced to dispose of its natural gas transmission assets, which are now owned and operated by REN Gasodutos SA.⁹

In 2012, in line with the latest European directives, the Portuguese legal framework for the electricity and natural gas sectors allows transmission activity to be developed by a vertically integrated company. In this case, however, the transmission system operator must be a legal entity separate from the rest of the companies, forming an independent transmission operator (ITO). The ITO must observe strict independence obligations and comply with several independence criteria to avoid falling foul of discriminatory behaviours, namely those set out in Article 9 of Directives 2009/72/EC and 2009/73/EC. Compliance with such obligations and independence criteria is assured by means of a certification process, monitored by ERSE and the European Commission, that the ITO must fulfil in order to develop such activity.

The distribution of electricity and natural gas is subject to a legal unbundling regime. This means that operators of distribution networks must be independent from a legal, organisational and decision-making process standpoint from other activities unrelated to distribution. Distribution companies that serve fewer than 100,000 clients are not subject to the legal unbundling regime, but they must still implement accounting and functioning unbundling measures.

Supply activities are also subject to the unbundling regime, implying that they must be legally separate from other activities. The last resort supplier is also bound by this unbundling regime, even in relation to common suppliers.

The operation of LNG terminals and storage facilities is also subject to the legal unbundling regime.

ii Transmission/transportation and distribution access

To ensure equal market conditions for all market participants, the concessionaires of transmission and distribution activities must comply with specific public service obligations: to guarantee equal access conditions to all markets participants and to abstain from adopting any discriminatory behaviour or practices.

⁹ Both companies are wholly-owned by REN Redes Energéticas Nacionais SGPS, SA, a listed company.

The ensuring of equal conditions to all market players for the access and use of infrastructure is intended to create effective market conditions, promoting competition and thus enhancing consumers' experience on such markets.

iii Terminalling, processing and treatment

The access and use of LNG terminals and storage facilities is also regulated, under the same terms as for distribution networks. Rates are determined by ERSE according to the Tariffs Regulation, and all users must benefit from equal commercial conditions.

The only exception is for storage facilities. Part of the storage capacity is operated under regulated conditions by REN Armazenagem SA, with rates determined by ERSE. The other part of the storage capacity is operated by Galp Energia SA and access to these facilities can be made under a negotiated access regime, with leeway to negotiate access and use terms.

The rates of services rendered by the LNG terminal (reception and unloading of natural gas, liquefaction, storage and loading) are regulated, being established by ERSE according to the terms of the Tariffs Regulation.

iv Rates

Rates for the transmission and distribution of electricity and natural gas are determined by ERSE according to the Tariffs Regulation.

ERSE also determines the matters that must necessarily be included in the network use agreement, such as duration, interruption of service conditions, payment methods and terms of resolution, which vary depending on the contracting parties (generators, suppliers, network operators or consumers). The general terms of the network use agreement are submitted to ERSE for prior approval.

The Portuguese tariff system is constructed in such a way that for each regulated activity there is an associated regulated tariff, and the tariff applicable to each client is made up of the total of the various activity tariffs.

Tariffs for the use of regulated infrastructures are based upon the provider's cost plus a reasonable rate of return, which will determine the operator's allowed revenue. The reasonable rate of return is also established by ERSE for a certain period of time.

The allowed revenue and the provider's cost for the activity of transmission and distribution of electricity is determined in accordance with the Electricity Tariffs Regulation.

The formula used to calculate the allowed revenue of the transmission network operator includes the application of efficiency factors to the provider's costs, in order to reward efficient spending and investments, along with incentives for the maintenance and operation of equipments that are at the end of their lifetime.

In the transmission and distribution of natural gas, the formulae used to determine the allowed revenue of the service provider are set out in the Natural Gas Tariffs Regulation.

Although these are not specifically determined in this regulation, it is established therein that the cost of the TNO's activity will be subject to efficiency incentives to be determined by ERSE.

v **Security and technology restrictions**

The concessionaires of electricity and natural gas transmission activities are also in charge of managing and monitoring the National Electric System (NES) and the National Natural Gas System (NNGS).

The concessionaires of electricity and natural gas transmission activities have the following responsibilities:

- a assuring the long-term capacity of the NES and the NNGS;
- b providing information to other network operators in order to:
 - maintain safe operation;
 - estimate the level of reserves needed for medium-term safety of supply (especially the level of water reserves); and
 - in general, form a central part in the NES and NNGS;
- c operating the transmission network; and
- d coordinating with all other networks and infrastructure operators, generations units and suppliers.

Recently, in cooperation with the DGEG, the concessionaire of electricity transmission activity published a Report for Monitoring the Safety of Supply of the NES for 2013–2020. This report describes, *inter alia*, the NES, provides future grid scenarios, planned and installed capacity, and levels of power generation by source.¹⁰

IV ENERGY MARKETS

i Development of energy markets

The Iberian Electricity Market (MIBEL), a regional, organised electricity market was put in place by Portugal and Spain in July 2007.

One important aspect of MIBEL's functioning is the principle of reciprocal recognition of agents. Under this principle, if an agent is granted the status of producer or supplier by one country, this implies automatic recognition by the other country, granting equal rights and obligations to that agent.

The management of the Iberian spot electricity market is the responsibility of OMEL, the Spanish division of the Iberian Energy Market Operator.

In the spot electricity market, transactions are executed by the participation of agents on the daily and intraday market that aggregate the Spanish and Portuguese zones of MIBEL. Trading on the daily market is based on a daily auction, with settlement of energy at every hour of the following day.

There are various intraday sessions subsequent to the daily market auction in which agents can trade electric power for the various hours of the day covered by that market. Trading is also done by auction.

The financial settlement of the transactions occurs weekly, and guarantees must be deposited.

10 Available at www.dgeg.pt.

Producers, self-producers, external agents (non-resident entities), suppliers, representatives and qualified consumers can be spot market agents.

OMIP is the operator of the Portuguese division of MIBEL and is responsible for the management of the derivatives trading market. OMIP holds a 100 per cent stake in OMIClear, which has the role of clearing house and central counterparty in all operations executed on the market managed by OMIP, also being able to clear trades on the over-the-counter market or even other markets that have, as underlying assets, energy-based products.

On the OMIP trading platform, all elements of the futures contracts are standardised (e.g., volume, underlying asset and minimum price variation). Therefore, when an agent opens a position, it need only choose the contract it will trade, the respective quantity and the price (except if it is a market offer). A key characteristic of these contracts is that they have daily mark-to-market.

The operations carried out on OMIP are registered in trading accounts and simultaneously registered in clearing accounts through which the financial settlement of the contracts is assured.

Portugal and Spain are also in the process of developing a similar Iberian market for natural gas.

ii Energy market rules and regulation

The legal framework for the organisation of MIBEL is based on the MIBEL Agreement,¹¹ signed on 1 October 2004. It establishes the general principles for the organisation and management of MIBEL and, in particular, the framework for the organisation of the spot market and the derivatives market.

The MIBEL derivatives market is directly subject to Portuguese law and jurisdiction, being, due to its financial nature, subject to the legislation applicable to this type of market, mainly:

- a* the Securities Code;
- b* the Securities Market Commission (CMVM) Regulations; and
- c* the CMVM Instructions.

The derivatives market is under the direct supervision and regulation of the CMVM, in coordination with ERSE.

Notwithstanding the powers granted to the Portuguese authorities, the regulation and supervision of the derivatives market is carried out in conjunction with the equivalent Spanish authorities, the National Energy Commission and the National Securities Market Commission.

In addition, regulation of MIBEL takes place through market rules developed by the market operators, OMIE and OMIP, which have the duty of developing and jointly applying all the market rules.

11 The Agreement between the Portuguese Republic and the Kingdom of Spain relative to the constitution of an Iberian Electrical Energy Market.

iii Contracts for sale of energy

Any entity (producers, suppliers, consumers or other agents from the organised market) registered as a market agent may enter into a bilateral agreement, either for electricity or natural gas.

With respect to the legal and regulatory applicable provisions, the terms of such contracts are dependent upon each market agent's agreement. The market agents must notify the transmission network operator (as global system manager) of the completion of such agreement and indicate the time periods for which it is executed.

iv Market developments

The process of phasing out of end-user regulated electricity and natural gas tariffs is currently under way. Decree-Law No. 75/2012 of 26 March approved the timetable for the gradual phasing out of such tariffs for normal low-voltage electricity consumers, and Decree-Law No. 74/2012 of 26 March also established that for natural gas.

The process must be completed by 31 December 2014 or 31 December 2015, depending on whether:

- a* electricity consumers have contracted power equal to or over 10.35kVA or less than 10.35kVA, respectively; and
- b* natural gas consumers have an annual consumption equal to or over 500 cubic metres or less than 500 cubic metres, respectively.

During this period, transitory tariffs with a gradually increasing premium component will apply and also be updated quarterly by ERSE.

Decree-Law No. 13/2014, of 22 January, extended the period of application of the regulated transitory end-user tariff for large clients until 31 December 2014, in accordance with Order No. 27/2014 of 4 February (the former period of application of the regulated transitory end-user tariff for large clients ended on 31 December 2013). This extension is only applicable to clients supplied in high, medium and special low voltage, thus excluding the clients supplied in very high voltage and in normal low voltage.

V RENEWABLE ENERGY AND CONSERVATION

In February 2013, the Council of Ministers approved the National Action Plan for Energy Efficiency for the period 2013–2016 (PNAEE) and the National Action Plan for Renewable Energy for the period 2013–2020 (PNAER). The main objective of the PNAEE is to envisage new actions and targets for 2016, integrating the concerns regarding the reduction of primary energy for 2020 contained in the EU policy on energy efficiency.

The PNAER was also defined according to the current situation of oversupply of electricity generation due to lower demand, in order to adapt and mitigate costs. The plan continues to focus on renewable energy sources – very relevant in the promotion of a balanced energy mix – to enhance security of supply and reduce the risk of the price variability of certain commodities and respective implications for the national energy bill.

i Development of renewable energy

In 2010, the Portuguese state granted Enondas, Energia das Ondas SA, a concession for electric power generation using the energy from sea waves. The concession is given for a determined pilot zone, for 45 years, and includes authorisation to install the necessary infrastructure and connect the generation unit to the public electricity grid. The Portuguese pilot zone covers an area of around 320 square kilometres close to São Pedro de Moel between Figueira da Foz and Nazaré. The main goal is to become an open space on the Atlantic coast devoted to the development of marine energy, especially wave power.

Given the economic and financial crisis Portugal is suffering, and following the signing of the memorandum of understanding with the International Monetary Fund, the European Central Bank and the European Commission in 2011, the government decided to reduce the tariffs paid to producers using micro and mini-generation units.

The power guarantee mechanism, designed to avoid power supply interruptions, was abolished and substituted by a different mechanism, with the same purpose, but structured in more efficient and economical terms: incentives to power guarantee. This mechanism divides itself into two distinct incentives: incentives for availability, which aims to support the producers using heat to generate electricity in order for them to be on standby for emergency cases of need for power, while helping to face inherent inactivity costs; and incentives to investment, which are monetary incentives related to investments in new hydroelectric generation capacity.

In light of these circumstances, and in order to re-monitor the efficiency of the facilities that generate power using the heat originated by their production processes of goods (commonly called cogeneration),¹² Decree No. 139/2012 determined some factors used to calculate the remuneration of such activity – introducing a cap on the maximum amount to be paid as an efficiency benefit – and created a new remuneration regime, making the transitory process permanent.

Decree-Law No. 35/2013 of 28 February reduced the term during which special regime generators have the right to receive the respective feed-in-tariff. Alternatively, the Decree also established the possibility of special regime generators (except for small hydropower plants) to adhere to certain alternative remuneration mechanisms which, generally, allow for the extension of the period by which such special regime generators receive a special tariff or guarantee remuneration.

ii Energy efficiency and conservation

In 2008, the government introduced the PNAEE, a plan of action that establishes the main policies and energy-efficiency measures to be developed in order to achieve a target of a 10 per cent reduction in the country's energy consumption. Recently, the PNAEE was revised and the government set new goals to be achieved in matters of energy efficiency until 2016.¹³

12 Glass, for instance.

13 Council of Ministers Resolution No. 20/2013 of 10 April.

After the establishment of the PNAEE, the Energy Efficiency Fund was created,¹⁴ which finances the programmes and measures provided for in the plan.

In 2011, the government, by Decree-Law No. 29/2011 of 28 February, created a specific public tender procedure to expedite and facilitate the formation and execution of energy efficiency contracts, to be entered into by the public administration and private companies to implement measures improving energy efficiency in public buildings.

ERSE has tried to ensure that regulation of the sector galvanises actions that contribute to the promotion of energy efficiency. In the Tariffs Regulation for the electricity sector, a competitive mechanism called the Consumption Efficiency Promotion Plan (PPEC) has been established to promote measures for managing demand. In the electricity PPEC, incentives are awarded for the promotion of measures aimed at improving efficiency in electricity consumption through measures taken by suppliers, network operators and organisations that promote and protect the interests of electricity consumers in mainland Portugal and in the autonomous regions, and that are aimed at consumers in different market segments. The actions result from specific measures proposed, subject to a selection process, whose criteria are defined in the Rules for the Consumption Efficiency Promotion Plan. This process allows the selection of the most promising measures for energy efficiency to be implemented by the aforementioned promoters, taking into account the amount available in the PPEC annual budget, which is approved at the start of each regulation period for each one of its years.

Decree-Law No. 38/2013 of 15 March transposed into national law a set of provisions relating to the greenhouse gas emission allowance trading scheme, namely Directive 2009/29/EC of the European Parliament and of Council of 23 April 2009. In particular, this Decree states that from 2013 onwards the emission allowances that are not allocated free of charge shall be auctioned and the revenues from such auctions shall be applied in measures that contribute to the development of a competitive low-carbon economy. It is also established that the amounts to be transferred to the SEN should be used to offset the over costs incurred with respect to the purchase of electricity from special regime generators.

iii Technological developments

Driven by the growing dependence on oil for energy and by the environmental impact of the use of fossil fuels, Portugal is investing in new energy models for mobility that aim to improve quality of life and reduce pollution.

This has led to the creation of the Electric Mobility Network, an integrated network linking 1,300 charging stations in Portugal, managed by MOBI.E, which will enable electric vehicles to recharge, using a charge card.

¹⁴ More information about energy efficiency in Portugal can be found at: www.portal-eficienciaenergetica.com.pt/nacional.html; <http://fee.adene.pt/o-que-e/Paginas/default.aspx>; and www.erse.pt/pt/planodepromocaodaeficiencianoconsumoppec/Paginas/default.aspx.

Its main goal is to contribute to a more sustainable mobility model, promoting the integration of electric power coming from renewable sources into the functioning and development of cities, and maximising its advantages.¹⁵

In March 2011, Portugal initiated the large-scale implementation of the Electric Smart Grid, in charge of a consortium headed by EDP Distribuição SA.

The first phase of the project consists in the implementation, in the city of Évora, of 30,000 electric power meters, or ‘energy boxes’. This project seeks to promote energy efficiency, microgeneration and electric mobility. Consumers will have new services, new billing methods and innovative price plans at their disposal, which will allow greater flexibility of choice, so consumers can adjust their needs to match their consumption requirements. Speed, transparency and convenience are the concepts underpinning the new services on offer.¹⁶ It is expected that by 2020 smart grids will represent 80 per cent of European power distribution networks.

VI THE YEAR IN REVIEW

Despite the current complex financial and economic situation in Portugal, 2013 has been a year with considerable activity in the electricity and natural gas sectors.

The memorandum of understanding underwritten by the Portuguese government, the European Union, the International Monetary Fund and the European Central Bank has led the government to effect a significant number of changes to the legislation governing the electricity and natural gas sectors, and is aimed at ensuring the sustainability of these two sectors for the future. The resulting legislative instruments have provided mechanisms that, without affecting financial decisions or legitimate expectations of private players in these sectors, are designed to reduce costs and increase the overall efficiency of the electricity and natural gas systems.

In 2013 the Portuguese government has also implemented the so-called ‘extraordinary contribution over the energy sector’ (*contribuição extraordinária sobre o sector energético*), the revenues of which are primarily destined to reducing the current tariff deficits being generated in the electricity sector.

VII CONCLUSIONS AND OUTLOOK

The Portuguese power market is currently a mature market with a generation mix in which green energies have a significant weight both in terms of installed capacity and power output. The natural gas market has room for expansion considering that there are still interior regions that do not have distribution networks.

The main challenges in the energy market in Portugal relate to the completion of the liberalisation of the electricity and natural gas industries. Although market efficiency is expected to increase and competition within the market should benefit end-users, the full effects of liberalisation are not yet certain.

15 More details at www.mobie.pt/en/mobilidade-electrica.

16 More information on this project can be found at www.inovcity.pt/en/Pages/homepage.aspx.

Appendix 1

ABOUT THE AUTHORS

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Nuno Galvão Teles joined the firm in 1987 and became a partner in 1995. He is the managing partner of the firm. He coordinates one of the corporate and commercial and capital markets teams. He also leads the firm's energy team, an area in which he has extensive experience.

His relationship with the Portuguese energy sector goes back to the beginning of 1990s. During the past 15 years, he has been involved with enterprises in the energy sector and given support to the Portuguese government on some of the most important transactions that have occurred in the energy sector in Portugal.

He has advised and assisted several companies and banks with a focus on M&A and capital markets operations. During recent years he has played an active role in key M&A transactions in Portugal or carried out overseas by Portuguese companies.

Mr Teles has led the team of lawyers responsible for some of the major privatisation transactions in Portugal, in the energy, pulp, motorways and cement industries.

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Ricardo Andrade Amaro joined the firm in 2002. He is a member of the corporate and commercial and capital markets team. He has great experience in corporate and commercial law, securities law, as well as in energy law.

In the area of energy law, he was involved in the reorganisation process of the national energy sector, during 2003 and 2004. Recently, he acted as a legal adviser in the setting up of securitisations made in Portugal of the right to receive the amounts arising from tariff adjustments, which were concluded in 2013 and 2014.

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