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Energy/Natural Resources - Portugal

Regulatory Update

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Decree-Law 184/2003 recognizes that the principles of the Electricity Regulation Framework⁽¹⁾ should continue to evolve in order to adapt the national electricity system to a market regime which is open to competition.

As the development of the Iberian Electricity Market is a complex process, it is necessary to adopt legislative measures in order progressively to adapt it to this model. The process is expected to be completed by 2006.

Accordingly, Decree-Law 184/2003 sets out the conditions for the commercialization, import and export of electricity within a market regime.

In order to commercialize electricity, a commercial enterprise must, among other things:

- request a licence from the director general of energy;
- be duly registered in Portugal; and
- provide suitable financial warranties of at least €2 million.

The decree-law also provides for the existence of external agents. These are entities which are legally established and recognized in other EU countries as authorized to buy or sell electricity to meet their own needs or those of third parties. Among other things, such external agents must:

- be duly qualified in the electric systems in which they wish to operate;
- be legally registered with the Directorate General of Energy through an application to the director general; and
- present an internationally valid document which proves that the applicant is authorized to buy and sell electricity in its home country.

Among other things, Article 8 of the decree-law provides that entities which are entitled to commercialize electricity must pay rent to the municipalities, in an amount to be specified by the Ministry of Economy.

Finally, financial penalties may be imposed on entities which:

- commercialize electricity without the necessary licence or registration;
- transfer the licence or registration without proper authorization; or

- fail to fulfil the duties specified in the licence or registration.

With the same aim, Decree-Law 185/2003 establishes the rules that apply to:

- the sale of electricity within the national electricity system;
- market agents;
- the organized market;
- termination of the power purchase agreements entered into between the grid concessionaire and the holders of licences for the production of electricity; and
- transfer of the land of generating centres.

These are transitional rules and will eventually be included in a framework law, which will implement significant reforms in the organization and functioning of the electricity sector, with the aim of boosting social and economic development through an efficient, free and competitive market.

The commercialization of electricity involves the acquisition, sale or resale of electricity in order to meet the needs of clients. It may take place either in a bilateral trading market or in an organized market.

Decree-Law 185/2003 also includes provisions on the duties and rights of market agents, the respective licences, the market operator, bilateral contracts and the organized market.

The national electricity system agents that will operate within the market regime are as follows:

- producers which hold at least one production licence and which are authorized to sell electricity they produce on the organized market or through bilateral contracts;
- trade agents which hold a licence to acquire or sell electricity on the organized market or through bilateral contracts; and
- external agents.

Producers and trade agents can also export electricity, while trade agents and non-binding clients may import electricity.

Nevertheless, the director general of energy may, after consulting with the energy regulator, appoint any trade agent as a last-resource trade agent in order to ensure that the universal service is delivered.

Likewise, fulfilment of the universal service obligations may be secured by the regulated trade agent during the transitional period before the market regime becomes fully effective.

Further, producers may be obliged to enter into bilateral agreements in order to secure continuity of energy supply.

Bilateral trading involves the trading of electricity acquired or sold outside the organized market. Accordingly, trade agents and producers may enter into sale and purchase contracts for electricity with any national electricity system agent. In order to pursue their activities, trade agents are granted access to the electricity transport and distribution grid through payment of a fixed charge.

The organized market comprises a system of different types of agreements which are entered into taking account of supply and demand. This market is subject to the supervision of the Ministry of Finance and the Ministry of Economy, according to Article 258(2) of the Portuguese Securities Code.

Trade agents and non-binding clients may also be members of the organized market, if they have entered into a contract with a participant in that market.

The market operator is responsible for the management of the organized market, while the system operator is responsible for the management and operation in real time of energy flows within the grid, as well as interconnection.

Under the terms established in Article 13 of the decree-law, energy acquisition agreements entered into between the grid concessionaire and producers are terminated. Among other conditions to be further regulated by order, Article 13 provides that the costs of maintaining the contractual balance should guarantee compensation for the investments made, as well as any obligations of the energy acquisition agreement that are not covered by the expected revenue in a market regime.

During the transitional period, the grid concessionaire must sell in the organized market all electricity acquired under energy acquisition agreements.

The regulatory body must recognize the acquisition costs, which should be reflected on a quarterly basis in the sale rates of the binding client.

Until such time as the final regime on the electricity system is adopted, EDP-Distribuição de Energia, SA is the entity that will act as the regulated and registered trade agent. During this period the grid concessionaire will also assume responsibility for guaranteeing continuity of electricity supply

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Endnotes

(1) Decree-Laws 182/1995, 183/1995, 184/1995 and 185/1995, as amended by Decree-Law 56/1997.

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