

REFORM OF THE LEGAL FRAMEWORK FOR THE PORTUGUESE POWER SECTOR


Decree-Laws no. 215-A/2012 and 215-B/2012, both enacted on October 8, completed the transposition to Portuguese law of Directive 2009/72/EC, of July 13, which establishes the common rules for the electricity internal market. The enactment of these diplomas is part of a general reform of the legal regime applicable to the electrical sector in which the approval of Decree Law no. 212/2012 of September 25 is also included; this statute establishes the new by laws of ERSE, reinforcing the supervision and regulation powers of this entity.

In accordance with the objectives set out in the “Third Energy Package”, these diplomas have reorganized the electricity sector introducing, simultaneously, new rules for the generation, transmission and sale of electricity, as well as for the regulation and supervision of the sector and for consumer information and protection.

Regarding electricity generation, the regulation of generation under a special regime, formerly dispersed in various statutes, has been consolidated entirely in Decree Law no. 215-B/2012. A significant change is introduced, since generation under a special regime shall now encompass two remuneration regimes, the common regime and the guaranteed remuneration regime.

On what concerns electricity transmission, new rules for approval, appointment and certification of the Independent Transmission Operator (**ORT**) have been established. As a novelty, the law has provided for a special certification procedure when the concessionary entity of the transmission network is controlled by entities which have their legal seat outside of the European Union

In the matter of the effective unbundling of the Transmission Network Operator, besides the legal and economic unbundling (*full ownership unbundling*) provided in Portuguese law, an alternative method of unbundling is established, substantiated by the Independent Transport Operator (**ITO**), which implementation shall depend on requisition of the concessionary entity and of the approval from the Portuguese government.



ENERGY
AND
CLIMATE
CHANGE

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On the subject of the supply of electricity, the obligation to purchase electricity generated under a special regime imposed on the supplier of last resort, is now limited to the time period during which the generator benefits from a tariff or guaranteed remuneration. At the end of such period, the generator under a special regime shall be able to sell its electricity in organized markets or may sell it to a new regulated supplier, the Market Facilitator, which shall purchase the electricity generated at the price established in the free market and shall operate as a generation aggregator.

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Rules for the access and exercise of the activities of supply under a liberalized market have been simplified. With the exceptions of the activities of the Supplier of Last Resort and the Market Facilitator, supply of electricity is currently a free access business, being subject only to prior registration.

Finally, with the aim of assuring consumer protection new supply obligations are imposed on the Supplier of Last Resort, namely in situations whereby there is no supply of suppliers operating under a free market or such supplier is hindered from the exercise of its activity. Also, ERSE shall make available to consumers a centralized information platform, where they shall have access to current applicable legislation, to know their rights, reference prices for the supply of electricity for each supplier and the means of extrajudicial conflict resolution and claim handling at their disposal.

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