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# Alternative Energy & Power 2022

Portugal: Law & Practice  
and  
Portugal: Trends & Developments

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TELLES

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# PORTUGAL

## Law and Practice

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## 1. GENERAL STRUCTURE AND OWNERSHIP OF THE POWER INDUSTRY

### 1.1 Principal Laws Governing the Structure and Ownership of the Power Industry

The responsibility for preparation of the main power/energy policy and legislation in Portugal lies with the Ministry of Environment and Climate Action, with other specific public entities, such as the Energy Services Regulatory Authority (ERSE) and the General Directorate for Energy and Geology (DGEG), responsible for the regulation of several related matters.

Recent profound reform of the power sector was enacted through Decree-Law No 15/2022, of 14 January, which set the organisation and functioning of the National Power System.

The Portuguese power industry activities (generation, transmission, distribution, aggregation and supply) are heavily regulated, subject to mandatory unbundling and, in most cases, subject to a licensing procedure.

Operation and management of the national transmission and distribution grids is awarded by means of utility concession agreements entered into with the Portuguese state, granting the concessionaires the exclusive right to manage the grids for periods of 50 and 35 years, respectively. Transmission system operators (TSOs) and distribution system operators (DSOs) are, therefore, private investor-owned companies with public service obligations stemming from their concession contracts.

The full liberalisation of these sectors is due to happen in 2025, with the extinction of regulated end-user energy supply tariffs, shifting the consumers to the liberalised markets, in compliance with EU policies and directives.

### 1.2 Principal State-Owned or Investor-Owned Entities

The principal investor-owned entities are currently:

- the Energias de Portugal (EDP) group in the power sector;
- the GALP Energia (GALP) group in the gas sector; and
- the Redes Energéticas Nacionais (REN) group, as the transmission grid and system operator for both the power and gas sectors.

In spite of being investor-owned entities, some of the companies within the group provide a public interest function, thus having certain privileges and obligations as set out by law.

### 1.3 Foreign Investment Review Process

Decree-Law No 138/2014 sets forth certain restrictions to foreign direct investments in strategic infrastructures and services, notably those related to energy, communications, transportation, national security and defence (public services), if these are made by entities from outside the EU and the EEA.

Any decision opposing a transaction needs to be grounded on clear and objective criteria to determine if there is a real and substantial threat, such as to the physical integrity and safety of the strategic asset, its permanent availability and operational readiness, as well as to its capability for punctual performance of the legal obligations of the person or legal entity that controls it, such as continuity, regularity and quality of service.

Nevertheless, this regime is not commonly enforced and, in general, foreign investors receive equal treatment to that afforded to nationals.

### 1.4 Principal Laws Governing the Sale of Power Industry Assets

The main laws governing the sale of power industry assets are:

- Decree-Law No 15/2022;
- ERSE Regulation No 560/2014, as amended, on Access to Grids and Interconnections;
- ERSE Regulation No 1129/2020, on Trading Relationships; and
- Law No 19/2012 (the “Competition Law”).

During the liberalisation of the energy sector, the supply activity was opened up to market agents who meet the necessary requirements. Previously, all the supplying activity was carried out by the last resort supplier (CUR).

Consumers may choose their supplier and switch, free of charge, whenever they find offers more suitable to their type of consumption, while suppliers need to have a licence and be registered by the DGEG to present commercial offers freely. They buy electricity from producers on the wholesale market and sell it to customers, paying the respective operators the regulated grid access tariffs as defined by ERSE.

Under the terms of Ministerial Order No 83/2020, domestic consumers still supplied by the CUR have until 31 December 2025 to secure a supply of electricity from a market supplier.

On another level, the transfers of any resources related to activities approved through concession agreements must obtain prior authorisation from the competent ministry.

Change of control of power generators (be it through assignment of licences or ownership, or through a share deal) is generally admissible, but an increase in guarantees is required.

See also **2.4 Principal Laws Governing Market Concentration Limits**.

### 1.5 Central Planning Authority

The Portuguese regulatory authority for electricity, natural gas, liquefied petroleum gas in all categories and the fuel sectors is ERSE, a public entity with administrative and financial autonomy, which is also responsible for regulating the national electric mobility plan.

ERSE’s mission is to adequately protect customer interests, promote competition between market agents, contribute to the progressive improvement of environmental and economic conditions concerning the sector, and arbitrate some disputes.

ERSE also has the power to issue regulations intended to govern the organisation, operation and compensation of the energy sector, from generation to supply and trading. Some of the most relevant of these are:

- the Regulation on Self-Consumption;
- the Regulation on Trade Relations;
- the Tariffs Regulation;
- the Regulation on Smart Grids; and
- the Regulation on the Management of the Electric Mobility Network Operations.

Besides ERSE, the DGEG is a state-administered entity whose mission is to contribute to the planning, promotion and development of the state’s policies regarding energy matters and the exploitation of natural resources. The DGEG’s nature and missions are set out in Decree-Law No 130/2014, as amended by Decree-Law No 69/2018.

The DGEG is frequently the competent entity for granting licences and other administrative authorisations concerning energy-related activi-

ties, such as production, establishment or exploration.

In summary, whereas ERSE is the independent regulatory authority, the DGEG is the body that represents the state in respect of energy issues, granting licences and receiving the corresponding submissions.

The Portuguese Environment Agency (APA) is the Portuguese regulatory authority on hydric resources, waste and dam safety, having broad powers in relation to other environmental matters, the most important being as the entity responsible for conducting environmental assessments of projects related to the energy market. Having important powers in licensing and policy matters, the APA has authority to carry out its duties – namely, to ensure the safety of public domain assets under its administration, prevent and control infringements, and enforce sanctions for illegal activities.

## 1.6 Recent Material Changes in Law or Regulation

The approval of Decree-Law No 15/2022 fully reforms the power system, renewing regulation in order to better tackle the challenges that climate change policy will pose.

Otherwise, the approval of Decree-Law No 30-A/2022 further simplifies the power system and renewable gas generation technical and environmental licensing, although temporarily and as a response to the energy crisis generated by the ongoing military conflict in Ukraine.

## 1.7 Announcements Regarding New Policies

The transposition of Directive (EU) 2018/2001 of the European Parliament and of the Council, on the promotion of the use of energy from renewable sources to the Portuguese legal framework

is expected to be completed soon and to cause material changes to the current legal framework.

Furthermore, the Portuguese government has been promoting the transition to a carbon neutral society, a decentralised energy market and commitment to invest in the hydrogen economy. These flagship moves could mean material changes in the power industry in the following months and years. The ongoing military conflict in Ukraine may push national and EU legislators into approving further specific legislation to limit its effects.

## 1.8 Unique Aspects of the Power Industry

The following aspects of the power industry in Portugal are worth noting:

- none of Portugal's energy is generated by nuclear sources;
- the transition of the traditional fossil fuel-driven energy market to a renewable energy market is a hot topic, with coal-fired power plants having been fully offline and decommissioned since November 2021;
- more than 50% of the energy generated in Portugal is from renewable sources;
- the main way to inject energy into the public grid is by means of the public auctions launched by the government in 2019; and
- there are excellent environmental conditions for the generation of energy from renewable sources.

## 2. MARKET STRUCTURE, SUPPLY AND PRICING

### 2.1 Structure of the Wholesale Electricity Market

#### The Iberian Electricity Market

The Iberian Electricity Market, MIBEL, resulted from co-operation between the Portuguese and

Spanish governments with the aim of promoting the integration of both countries' electrical systems. This played a significant role in establishing an electricity market at the Iberian level but also at the European level, and contributing to the development of the internal energy market.

The operation of the wholesale market at any given time is determined by the mix of production structure, import capacity, the imperfect meshing of the grid, the inelasticity of demand and the system reserve margin.

One important aspect of MIBEL is the principle of reciprocal recognition of agents: if an agent is granted the status of producer or supplier by one country, it is automatically recognised by the other, and therefore has equal rights and obligations.

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 aggregates the Spanish and Portuguese areas 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 electrical power for the various hours of the day covered by that market. Trading is also done by auction.

OMIP is the operator of the Portuguese division of MIBEL and is responsible for the management of the derivatives trading market. On the OMIP trading platform, all features of the futures agreements are standardised. Therefore, when an

agent opens a position, it only needs to choose the agreement it will trade, the relevant quantity and the price (except if it is a market offer). These contracts are marked to market each day.

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

### **The Iberian Natural Gas Market**

The Iberian natural gas market, MIBGAS, offers its users the possibility of trading within-day, day-ahead, balance of month, and month-ahead products at the Iberian level. Yet, only recently, trading of natural gas through MIBGAS started with physical delivery in Portugal, in the Virtual Trading Point (VTP). At the end of October 2020, MIBGAS and the Portuguese TSO (REN Gasodutos, SA) published a joint schedule of activities for the implementation of the organised gas market in Portugal, which was concluded in March 2021.

MIBGAS is already a solid price reference in the Spanish market and the objective is to make it a reference at an Iberian level, providing transparency to the natural gas prices negotiated in the Iberian Peninsula, making them known to all interested parties and thus contributing to fostering competition in the natural gas sector.

With the start of trading in Portugal, the Iberian dimension of MIBGAS is completed, a decisive step towards its consolidation as a reference hub in southwest Europe.

## **2.2 Imports and Exports of Electricity**

The Iberian peninsula is a de facto energy island, with limited connection to the central European markets. Although legally permitted to trade with other countries, the gross majority of international electricity trading is done with Spain.

As the Iberian power market is fully integrated (see **2.1 Structure of the Wholesale Electricity Market**), marginal prices are the same across the Iberian Peninsula; market decoupling (and therefore different prices being set for each national market) only occurs when international interlinks are fully saturated, which is an uncommon event.

Pricing is set through wholesale marginal markets. Cross-border PPAs are also allowed, and pricing is freely set between parties.

### **2.3 Supply Mix for the Entire Market**

Of the 49.5 TWh consumed in the Portuguese market in 2021, 59% originated from renewable energy sources.

Conventional generation had a market share quota of 31% (natural gas corresponding to 29% of the global mix, with the remaining 2% divided between coal and others). The remaining 10% were supplied through import.

### **2.4 Principal Laws Governing Market Concentration Limits**

Concentration operations that meet some pre-determined requisites must be notified to the Portuguese Competition Authority (AdC) and are subject to its prior approval.

After being notified, the decision should be issued within 30 to 90 days, depending on whether a thorough examination of the concentration operation is required and if any additional information or opinion was required by the AdC from the company or any other competent entity, respectively.

See **1.4 Principal Laws Governing the Sale of Power Industry Assets**.

### **2.5 Agency Conducting Surveillance to Detect Anti-competitive Behaviour**

See **1.4 Principal Laws Governing the Sale of Power Industry Assets** and **2.4 Principal Laws Governing Market Concentration Limits**.

## **3. CLIMATE CHANGE LAWS AND ALTERNATIVE ENERGY**

### **3.1 Principal Climate Change Laws and/or Policies**

Portugal's current policy for the energy sector is set out in the National Plan for Energy and Climate 2020–2030 (PNEC 2030). The aim of the approach set out in the PNEC 2030 is to establish the means required to achieve the EU goals and commitments assumed by Portugal to increase the amount of energy generated by renewable sources, improve energy efficiency, and reduce energy prices for consumers, without losing sight of the economic rationale.

The renewables sector finally woke up in 2019, and 2020 confirmed this tendency, in spite of the COVID-19 pandemic. Carbon emissions dropped by almost 7% in 2020, an all-time record. Portugal has become known worldwide for its leading role in the promotion of renewable energy, thanks to significant developments and investments in wind and solar projects, and more recently, due to its National Hydrogen Strategy and the subsequent amendment to the Portuguese Gas Law.

Auction schemes for the award of grid injection capacity – a scarce resource in the national power system – have shown to be an effective and economically efficient means of assigning rights to project promoters. The government successfully tested the award of grid capacity injection for floating solar plants, with the lowest awarded price being EUR4.13/MWh, a world record. The



Portuguese government has signalled its intent on keeping in this path, with a predicted 6 to 8 GW of grid injection capacity for offshore wind to be awarded in 2023.

### **3.2 Principal Laws and/or Policies Relating to the Early Retirement of Carbon-Based Generation**

The shutdown of Portugal's two coal-fired power plants has been planned since the publication of the PNEC 2030 and the EU goals aimed at achieving carbon neutrality.

In November 2021 the last coal-fired power plant was shut down. All coal-fired power generation was decommissioned by autonomous decision of the operator and/or through expiry of licences. No compensation was issued.

### **3.3 Principal Laws and/or Policies to Encourage the Development of Alternative Energy Sources**

PNEC 2030 sets the policy goals to be reached by Portugal on its path to carbon neutrality in 2050.

Several support and incentive schemes are in place. On one hand, the auction mechanism for the award of grid injection capacity provides for additional bankability of projects, as it ensures a stable cash-flow through a contract for differences scheme.

On another hand, the Portuguese government has launched two CAPEX support programmes for green hydrogen generation, with two more being expected in 2022 and 2023 (with approximately EUR60 million per year).

OPEX support for green hydrogen consumers, targeted at lowering or eliminating the cost-differential between natural gas and green hydrogen, is also under design.

## **4. GENERATION**

### **4.1 Principal Laws Governing the Construction and Operation of Generation Facilities**

Decree-Law No 15/2022, of 15 January, is the principal law that governs the construction and operation of generation facilities.

### **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities**

To build and operate a generation facility in the Portuguese market one must obtain (apart from general construction licensing):

- a grid capacity injection title;
- power sector licensing;
- when applicable, environmental licensing.

Grid capacity injection may be obtained either on request, whenever grid injection capacity is idle and not reserved (which is non-existent at the present and is not expected to exist in the near future), through auctions launched by the Portuguese government, with the rules and regulations of said auctions being set by the tender documents themselves, or through direct agreements with the TSO or DSO to build new infrastructure (or reinforce existing infrastructure).

Generation facilities with peak capacity above 1 MW require a production licence (issued by DGEG) to be built; during the licensing procedure, compliance with general terms and conditions, with environmental conditions (when applicable) and good and proper design (from a system safety point-of-view) will be subject to administrative control. After construction but before commercial operation, an operational licence must be requested from DGEG.

Environmental licensing is necessary whenever the peak generation capacity is greater than 50



MW (20 MW when in environmentally sensitive areas) and follows the European Environmental Impact Assessment procedure, originated from an environmental impact study prepared by the generator.

### 4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities

Some of the terms and conditions imposed in the approvals are:

- contribution towards the achievement of the energy policy and environmental policy objectives;
- contribution towards local development and wealth creation in the area where the facility will be or is installed;
- compliance with the regulations applicable to soil occupation and location, use of public domain, and the protection of public health and safety of the population;
- attainment of a favourable environmental impact assessment, or the due authorisation of the municipality where the facility will be or is installed; and
- provision of a monetary bond to the DGEG, designed to ensure compliance with the obligations during the procedure.

### 4.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

Under Decree-Law No 15/2022, all developers have a right to request expropriation and/or wayleaves for the construction of the interconnection lines from the generation facility to the public grid.

Those who hold a grid injection capacity title originated in an auction proceeding further have expropriation and wayleave rights for the generation facility itself under the same rules and regulations as if they were a concession holder

(see below **5.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights**).

### 4.5 Requirements for Decommissioning

Under Decree-Law No 15/2022, a decommissioning plan must be included in the environmental impact study and evaluated under the environmental impact assessment, whenever applicable. If the project is not subject to environmental licensing, the decommissioning plan must be approved by DGEG under the production licensing procedure.

Best available practises must be employed, and the plan must include:

- reuse or recycle maximisation;
- state-eminent domain over infrastructure or equipment installed over public domain;
- specific and detailed planning for complex generation facilities.

DGEG may require an update to the decommissioning plan at any time.

## 5. TRANSMISSION

### 5.1 Regulation of Construction and Operation of Transmission Lines and Associated Facilities

#### 5.1.1 Principal Laws Governing the Construction and Operation of Transmission Facilities

The main legal instrument that governs the transmission grid is the Regulation on the Transmission Grid, approved by Ordinance No 596/2010.

This regulation specifies the constitution and characterisation of the transmission grid and establishes the conditions for its operation, namely regarding control and management, including the relationship with the entities con-

nected to it, the execution of operations and the respective maintenance.

Moreover, this regulation establishes the general and particular technical conditions applicable to the connection of installations connected to the grid, plus the support, measurement, protection and testing systems of said grid and those same installations, as well as the conditions and limitations to the reactive power injection, arising from the need to ensure the grid's reliability and security.

#### 5.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Transmission Facilities

Both transmission and distribution are awarded by means of utility concession agreements entered into with the Portuguese state, granting the concessionaires the exclusive right to explore the grids for periods of 50 and 35 years, respectively.

There are also municipal distribution grids, mainly composed of low-voltage power lines and substations. The right to explore these grids is also granted through concession agreements, but these are awarded by the respective municipalities and are valid for 20 years. Most of these concession agreements will soon come to term and the Portuguese government is already preparing a tender for the bidding for these concessions. The details of such procedure are still unknown.

The operation of the national transmission and distribution grids, 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 grids with no physical connection

to the national transmission or distribution grid, which may be operated by obtaining a licence, valid for 20 years. The request for attribution should be delivered to the DGEG office.

#### 5.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate Transmission Facilities

The concession activities are exercised on an exclusive basis, which does not prejudice third parties' right of access to the grid, in accordance with the Access to Grids and Interconnections Regulation of ERSE.

The concession activities are performed in accordance with the rules and regulations set forth in Decree-Law No 15/2022.

#### 5.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

Under Portuguese law, in spite of being a private party, a concessionaire of a public service has the right to expropriate land under the same conditions as the state, as it is providing a service considered to be of public utility.

#### 5.1.5 Transmission Service Monopoly Rights

The operation of the Portuguese Transmission Grid is awarded by means of a public concession.

The TSO of the electricity and natural gas sectors is subject to full ownership under the unbundling regime that Portugal adopted. Currently, REN is the Portuguese TSO, owning that concession until 2057.

Within this framework, no entity may hold an equity participation greater than 25% of the share capital of the TSO. Also, the TSO or the companies that control it may not, directly or indirectly, exercise control or any rights over companies dedicated to the generation or supply of electricity or natural gas. Equally, accord-

ing to Decree-Law No 112/2012, companies dedicated to the generation or supply of electricity or natural gas, or the entities that control them, directly or indirectly, cannot exercise control or any rights over the TSO.

The TSO is also strictly forbidden from acquiring electricity or natural gas for selling purposes.

## **5.2 Regulation of Transmission Service, Charges and Terms of Service**

### **5.2.1 Principal Laws Governing the Provision of Transmission Service, Regulation of Transmission Charges and Terms of Service**

Remuneration for the services of transmission and distribution of electricity and natural gas are determined by ERSE and regulated in accordance with its Tariffs Regulation.

ERSE also determines the issues that must essentially be included in the grid usage agreement. These are better defined in the Grid and Interconnections Access Regulation and include duration, interruption of service conditions, payment methods and terms of resolution, which vary depending on the contracting parties (generators, suppliers, grid operators or consumers). The general terms of the grid usage agreement are submitted to ERSE for prior approval.

### **5.2.2 Establishment of Transmission Charges and Terms of Service**

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

Tariffs for the use of regulated infrastructure are based on the provider's cost plus a rate of return, which will determine the operator's permitted revenue. The rate of return is also established by ERSE for a certain period.

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

The formula used to calculate the TSO's permitted revenue includes the application of efficiency factors to the provider's costs, to reward efficient spending and investment, with incentives for the maintenance and operation of equipment that is at the end of its life.

In the transmission and distribution of natural gas, the formula applied to determine the permitted revenue of the service provider is set out in the Natural Gas Tariffs Regulation. Although not specifically determined in this regulation, it is established therein that the cost of the TSO's activity will be subject to efficiency incentives to be determined by ERSE.

### **5.2.3 Open-Access Transmission Service**

To ensure equal market conditions for all market players, the concessionaires of transmission and distribution activities in the electricity and natural gas sectors must comply with specific public obligations to guarantee equal access conditions to all markets participants and to refrain from adopting any discriminatory behaviour or practices.

The safeguarding of equal conditions for all market players for access to and use of infrastructure is envisaged to create efficient and effective market conditions, promoting healthy competition and thus enhancing consumers' experience in these markets.

## **6. DISTRIBUTION**

### **6.1 Regulation of Construction and Operation of Electricity Distribution Facilities**

#### **6.1.1 Principal Laws Governing the Construction and Operation of Electricity Distribution Facilities**

The main legal instrument that governs the distribution grid is the Regulation on the Distribution Grid, approved by Ordinance No 596/2010.

Like the Regulation on the Transmission Grid, it specifies the constitution and characterisation of the distribution grid and establishes the conditions for its operation, namely with respect to control and management, including the relationship with the entities connected to it, the execution of operations and the execution of works, and respective maintenance.

The regulation also establishes the general and particular technical conditions applicable to the connection of facilities to the distribution grid, as well as to the support, measurement, protection and testing systems of the distribution network and of these same facilities, and the conditions and limitations to the injection of reactive power arising from the need to ensure network reliability, security and quality of service.

#### **6.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Distribution Facilities**

See **5.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Transmission Facilities**.

#### **6.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate**

See **5.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate Transmission Facilities**.

#### **6.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights**

See **5.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights**.

#### **6.1.5 Distribution Service Monopoly Rights**

See **5.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Transmission Facilities**.

### **6.2 Regulation of Distribution Service, Charges and Terms of Service**

#### **6.2.1 Principal Laws Governing the Provision of Distribution Service, Regulation of Distribution Charges and Terms of Service**

The principal law governing all aspects of the provision of distribution services is Decree-Law No 15/2022, while the charges and terms of service are annually defined by ERSE.

#### **6.2.2 Establishment of Distribution Charges and Terms of Service**

Among other criteria, when establishing the charges and terms of service, ERSE considers the inflation rate, interest rates and spreads, and the cost of purchasing energy for the Last Resort Supplier. A challenge to ERSE decision is limited to the general means to challenge administrative regulations and orders.

**TELLES** is a full-service law firm with national coverage and a local presence in the two main cities of Portugal, Lisbon and Porto. The firm is represented by a range of departments that work in many areas of expertise, namely: finance, projects, corporate and M&A, tax, energy and natural resources, real estate and litigation. The finance, projects and capital markets team is comprised of eight members, with one

partner, four associates and three trainees. Additional practice areas covered are: blockchain, digital, privacy and cybersecurity, tax, and litigation/arbitration. In the last couple of years, the firm has built on its sustained growth and has established itself as a presence in international markets. It has also gained the necessary expertise to provide services regarding new technologies and business models.

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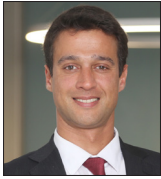
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## Trends and Developments

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### **Introduction**

The Portuguese legal framework of the energy sector is aligned with the EU policy and its internal market, targeting the achievement of carbon neutrality by 2050.

While it remained mostly unaltered during 2021, the first half of 2022 has been marked by several legal developments. Most of the legal acts published during this period were published to comply with EU targets, are based on EU law or intend to provide adequate redress from the ongoing energy crisis stemming from the Russian military operations in Ukraine and the resulting sanctions.

As of today, the Portuguese government's policy for the energy sector continues to be set out in the National Plan for Energy and Climate 2020–2030 (PNEC 2030), which aims to establish the means to achieve the EU goals and commitments assumed by Portugal regarding the increase of energy generated by renewable sources, achieving greater energy efficiency and decreasing the level of energy prices for the consumer.

The legal instruments in force on climate change include the above-mentioned PNEC 2030, the Roadmap to Carbon Neutrality 2050 and the National Hydrogen Plan.

Swift adoption of a new legal framework is expected as a result of the enactment of EU-level legislative acts under the “Fit for 55” package, sustainable finance and environmental, social and governance (ESG) matters and, most recently, under the REPowerEU strategy.

The country's strategy focuses on electrification of consumption, renewable energy generation, mainly through the promotion of public auctions to award grid capacity, prosumer-market stimulation and fostering green hydrogen, aligned with the National Hydrogen Plan.

The promotion of the renewable energy sector continues to be one of the Portuguese government priorities, aiming to position Portugal as a key booster of the carbon neutrality target within the EU, and helping the energy sector and power industry in Portugal to continue to prosper.

Despite the green-hued macro policy of the Portuguese state, support schemes for non-electrifiable consumption and/or natural gas-fired power plants have come into effect after a trilateral agreement was struck between Portugal, Spain (who share a natural gas market) and the European Commission as a result of natural gas price hikes and their trickledown effects in power prices. Other European countries have shown great interest in the success of this initiative – and we might see broad EU member adoption of similar schemes as a stop-gap measure to profound power market reforms which some tout as necessary in order to accelerate further renewable energy penetration.

### **National Electricity Framework**

The major development was the full transposition of Directive (EU) 2019/944 of the European Parliament and of the Council, of 5 June 2019, on common rules for the internal electricity market into the national legal framework, which was only ensured in early 2022, with the entry in force of the new Decree-Law 15/2022 on 15 January.



The Decree-Law also partially transposed Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

This Decree-Law introduced significant changes to the entire value chain of the electricity sector, from generation to supply and to network operation, gathering the rules on all activities in the electricity sector, except for cogeneration and electric mobility activities.

### **Climate Framework Law**

It should also be highlighted that new Climate Framework Law entered into force in the beginning of 2022, with the publication on 31 December 2021 of the Law 98/2021r.

The Climate Framework Law is a comprehensive and programme-based law focused on various sectors, including the energy industry, which also addresses financial assets and green taxation.

It establishes the guiding principles of climate policy and governance, while introducing targets and providing for mechanisms to decarbonise the economy and achieve sustainable development.

### **Auctions**

Since 2019, the procedure for the attribution of connection points and licensing of new projects now includes a competitive electronic auction process, through which interested players may bid on lots for the granting of grid capacity.

The first was carried out in 2019, the second took place in 2020, with the possibility of integrating batteries and storage capacity, and applications for a third were opened in 2021, for floating solar plants in dams. In which a world-record price per MWh was bid: EUR4.13/MWh.

In addition, the government has recently announced the intention to launch an auction for offshore wind energy in 2023, with public statements chasing 6 to 8 GW of generation capacity to be offered. Significant work will still have to be done by the government and public authorities: whilst the current legal framework abstractly allows for the awarding of offshore areas for development, pre-existing spatial planning is showing to be less than adequate for these purposes.

Finally, the government reaffirmed its intention to launch the first auction aimed at promoting the consumption of green hydrogen during the course of 2022.

### **Guarantees of Origin Market**

On 6 July 2021, the Directorate-General for Energy and Geology (DGEG) published the Invitation to the 1st Auction of Guarantees of Origin (GOs), which took place on 28 July 2021.

This auction marked the beginning of a new market, where energy suppliers will competitively bid for GOs in order to guarantee their customers that their energy is produced in Portugal from renewable sources under competitive auctions to be held on the OMIP platform.

The GOs subject to the competitive auctions were submitted to the DGEG by renewable energy producers benefiting from production or investment support, in compliance with the obligation set out in Decree-Law 141/2010 of 31 December, as amended by Decree-Law 60/2020 of 17 August, which established the mechanism for issuing guarantees of origin for electricity from renewable energy sources.

According to the above-mentioned Decree-Law, DGEG can sell such GOs through a competitive auction mechanism, under the rules published in Order 6560-B/2021. The net proceeds

of this auction are deducted from the over-costs incurred in acquiring electricity from producers of electricity from renewable energy sources, under the terms set out in the Tariff Regulations.

Therefore, in this auction, the DGEG, through the Supplier of Last Resort (SLR) and OMIP (the organised market operator), will make a market for the GOs associated with the production of renewable energy under a guaranteed remuneration scheme which are, open legis, delivered to DGEG.

Currently, these auctions continue boosting the GOs market, with the volume of GOs sold in the ten auctions concluded surpassing 2.985.365 GWh.

Finally, it should be noted that the GO mechanism was extended to the production of low-carbon and renewable gases, which is already operating in Portugal with the entry into force of Decree-Law 62/2020, of August 28. Portugal seems to have been at the forefront of the GO mechanism curve, with the Fit for 55 package, released by the European Commission, further proposing the adoption of that successful transnational mechanism across the EU. The adoption of such mechanism is likely to bolster investor interest in renewable gas generation.

## Recovery and Resilience Programme (PRR)

Under the Recovery and Resilience Programme (PRR), a set of investments and reforms aimed at restoring sustained economic growth after the pandemic, was defined with several components: resilience, climate transition and digital transition.

As part of the climate transition dimension, the industry decarbonisation component is intended to leverage the decarbonisation of the industrial and business sector, bringing about a paradigm shift in the use of resources by implementing

measures of the PNEC 2030 and helping accelerate the transition to a carbon-neutral economy.

In this context, the Ministerial Order 325-A/2021, published on late 2021, approved the Regulations of the “Decarbonisation of Industry” Incentive Scheme.

This incentive scheme is funded by the PRR and applicable throughout Portugal to economic activities in the industry sector, extractive and manufacturing industries. The aim of this scheme is to promote and financially support projects relating to:

- low-carbon processes and technologies in industry;
- the adoption of energy efficiency measures in industry; and
- the incorporation of energy from renewable sources and energy storage.

The scheme is intended to encourage and financially support projects for:

- low carbon processes and technologies in industry;
- introduction of new processes, products and innovative business models or the alteration of processes to decarbonise, including clean and innovative low-carbon technologies and solutions that encourage the efficient use of resources;
- incorporation of new raw materials and waste-derived fuels including biomass and biogas;
- substitution and adaptation of equipment and processes for new sustainable technologies and renewable energy; and
- electrification of final energy consumption – specifically, adoption of energy efficiency measures in industry.

The support is granted as a non-refundable incentive and it is subject to the maximum co-financing rates on the expenses considered eligible.

### **Self-Consumption and Renewable Energy Communities**

The legal framework applicable to decentralised production units proved to be a booster for a new type of projects, fostering players from the industry, services provider and mere resident consumers to become, directly or indirectly, producers that generate electricity for self-consumption and sell the surplus. It is pushing market players to consider new strategies and business models.

Self-consumers and other participants in renewable energy projects are allowed to agree on joint ventures and incorporate a legal entity for the production, consumption, sharing, storage and sale of renewable energy.

These self-consumption projects are able to trade the surplus of energy produced through a market participant, with the role of aggregator, through a market facilitator, in an organised market or through bilateral contracts.

Renewable energy communities are being created to allow centralised operational management of the respective projects, while also allowing the participation of players that have better financing and know-how.

### **Electro-Intensive Consumers**

The passing of the National Electricity System framework introduced the concept of “electro-intensive consumers”. In general terms, this brings a set of obligations and incentives intended to guarantee that electro-intensive entities and their facilities have more equal conditions in terms of competition when compared to facilities

of the same nature operating in other member states of the EU.

Electro-intensive consumers are entitled to a partial reduction of the tariffs on consumption from the public service grid. Such consumers are additionally partially exempt from the tariffs applicable to off-site self-consumption power plants. Self-consumption power plants are also exempt from all proximity requirements, and thus may be built fully remotely. Electro-intensive consumers are also eligible for a risk coverage policy for long-term renewable power PPAs, and to be compensated for indirect costs arising from the ETS system.

These incentives are currently undergoing state aid clearance by the European Commission.

### **Hydrogen**

The Portuguese government has announced its strong commitment to maximising the renewable capacity by developing large-scale projects for the production of hydrogen.

The National Hydrogen Strategy considers three phases:

- the first, to take place between 2020 and 2023, aims to develop the legislative and regulatory landscape for the implementation of the first projects of variable scale in several sectors;
- the second, to be carried out between 2024 and 2030, is geared towards the consolidation of the national framework, the strengthening of competencies in the sector, as well as the roll-out of projects at national level; and
- the third, to take place between 2030 and 2050, seeks to achieve full development of the Portuguese hydrogen market, including export and international dimension.

The Portuguese Gas Law has already been amended to foresee the licensing of activities related to renewable and low-carbon gases. Portugal has favourable conditions to develop a hydrogen economy ecosystem, namely the existence of a modern natural gas infrastructure, competitive renewable electricity production prices, and an excellent geographical location with regard to exports.

The industrial project in Sines is aimed to be a “hydrogen valley” to produce green hydrogen and export it through the port of Sines. It is also intended that this hub will act as Portugal’s flagship, with capacity to integrate, at the same time, the scale of industrial production, processing, storage and transmission, guaranteeing both internal and external consumption needs.

It is envisaged that there will be a total installed capacity in electrolysers of at least 1 GW by 2030 and that the project will be solely powered by electricity from renewable sources, namely solar and wind, with an estimated total investment of around EUR7 billion.

## Exceptional Measures

Decree-Law 30-A/2022 foresees the exceptional measures intended to ensure the simplification of the procedures for renewable energy generation. These measures came into force on 19 April 2022 and will be in effect for a period of two years.

These exceptional measures have been published by the government in the current macroeconomic and geopolitical situation arising from the energy crisis triggered by the COVID-19 pandemic, aggravated by the ongoing war in Ukraine. This has had severe impacts in price and supply matters.

In general, these new measures are intended to simplify the administrative procedures for

projects that produce energy using renewable sources.

Decree-Law 30-A/2022 placed the emphasis on two areas. The first was the promoter’s own control over the project, which, among other things, waived the requirement to obtain an operating licence/certificate for commercial operation. The regulatory requirements are to be verified subsequently, within three years of entry into operation.

The second point of emphasis was greater accountability of promoters. New obligations are set, in particular related to the involvement of local communities.

Exceptional measures apply to the development and entry into commercial operation of renewable energy power plants (both utility and self-consumption), storage facilities, their connection lines to the Public Service Electricity Grid, facilities for the production of hydrogen by electrolysis from water and power transmission and distribution infrastructure.

Moreover projects which are not located in sensitive areas, and below the thresholds set out in the law, are now only subject to the prior opinion of the Environmental Impact Assessment authority when the Directorate General for Energy and Geology requests it because there is solid evidence that the project is likely to cause significant impacts on the environment.

The issuing of opinions and authorisations provided for in the applicable sector-specific legal regulations are now, within specified constraints, to be concluded as part of the Environmental Impact Assessment or Assessment of Environmental Incidents procedures.

Additionally, the public consultation carried out in the above-mentioned procedures further

replaces the public consultation method in use for the establishment of grid connection lines, streamlining the process.

Any public body opinion required by sector-specific legislation and regulation must now be issued within ten business days, and its omission is deemed to be equivalent to no opposition to the project.

Without prejudice to the injection of additional energy and the guarantee of the safety and reliability of the grid or quality of service, wind-powered plants may inject more than the assigned connection capacity into the Public Service Electricity Grid.

Gas suppliers with a portfolio above 2000 GWh/year are obliged to incorporate at least 1% green hydrogen or biomethane in the natural gas supplied in their supply. This must be proven by guarantees of origin. However, this may not be feasible at the moment because guarantees of origin for renewable gases are not yet in place.

## **Conclusion**

The ever-dynamic energy markets have been undergoing some trepidation as a result not only of COVID-19 constraints and broader economic impacts, but also the military conflict in Ukraine.

European and national strategies have been adjusting to this new paradigm, with a strong focus on reinforcing security of supply and lowering costs for consumers, with renewables showing up as the key for all those targets.

Policy is shaped by all these events, and further changes and adjustments to market design and to regulatory and legislative mechanisms may be necessary to respond to them. Governments and policy-makers are, however, showing acute sensitivity to the issues as they seek to stimulate sound investment.

# PORTUGAL TRENDS AND DEVELOPMENTS

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**TELLES** is a full-service law firm with national coverage and a local presence in the two main cities of Portugal, Lisbon and Porto. The firm is represented by a range of departments that work in many areas of expertise, namely: finance, projects, corporate and M&A, tax, energy and natural resources, real estate and litigation. The finance, projects and capital markets team is comprised of eight members, with one

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