



MACE  
DO ■ ■  
VITO  
RINO

A REGULATORY AND MARKET OVERVIEW | NOVEMBER 2020

# PORTUGUESE ELECTRICITY

MACE  
DO ■ ■  
VITO  
RINO

## CONTENTS

- 03 OVERVIEW
- 05 ELECTRICITY PRODUCTION
- 07 ELECTRICITY TRANSMISSION  
NETWORK
- 09 ELECTRICITY DISTRIBUTION  
NETWORK
- 11 ELECTRICITY SUPPLY
- 13 THE ENERGY REGULATORS

# I. OVERVIEW

Until the first half of the 1990's, the promotion of electricity and the development of the system's main infrastructures was handled by state-owned Eletricidade de Portugal, E.P. ("EDP"). From 2006 onwards, a centralized planning of generating centers was replaced by a liberalized marketplace, in which the State acts as a complement to private initiative.

A new legal framework, starting with Decree-Law no. 29/2006, of February 15, 2006 ("Electricity System Law") transposed Directive 2003/54/EC, thus implementing in Portugal the common rules for the EU internal market. It attached great importance to energy efficiency and environmental protection by increasing electricity production using indigenous renewable energy sources.

The Electricity System Law principles were specified by Decree-Law 172/2006, of August 26, 2006 ("Electricity Regulatory Law"), with new rules for the exercise of production, transmission, distribution and supply services.

As a result of these changes, the electricity sector was unbundled, and is currently divided into several activities, each one with different operators. Thus, the sector is structured in (i) production (ii) transportation (iii)

distribution (iv) transmission, and (vi) supply.

Most recently, Decree-Law no. 76/2019, of June 3, 2019, which amended the Electricity Regulatory Law, introduced competitive procedures for the production of electricity production from renewable energy sources. Additionally, the reservation of energy reception capacity in the distribution network shall be mandatory for the initiation of the procedure for the attribution of production licenses.

According to the most recent data of 2020 published by REN – Rede Elétrica Nacional, S.A. ("REN") the electricity market has been witnessing a decrease in consumption of 2,2% since last year. Renewable production was responsible for 56% of consumption, divided between hydroelectric with 24%, wind with 23%, biomass with 7% and photovoltaic with about 3%. Non-renewable production supplied 39% of consumption, mainly natural gas, with coal accounting for about 3% of consumption.

This briefing intends to give an overview on the functioning and organization of the different activities of the Portuguese Electricity Sector, as well as on the main players that operate on the market.

## 2. ELECTRICITY PRODUCTION

### ORDINARY PRODUCTION REGIME

The ordinary electricity production regime applies to the production of electricity based on traditional non-renewable sources and large water-producing centers.

Since 2007, the production activity of electricity is fully liberalized and subject to a competitive market, following the implementation of MIBEL (Iberian Electricity Market). Thus, power plants have started to offer their energy on a common energy platform, integrated at the Iberian level, only requiring the granting of a production license to be issued by DGEG (“Portuguese National Energy Agency”), in accordance with the Electricity System Law.

There are only 4 producers included in this regime, which are: Grupo EDP (Produção); ElecGas, S.A.; Tejo Energia - Produção e Distribuição de Energia Elétrica, S.A.; and Turbogás - Produtora Energética, S.A.

Recently, EDP announced that it has decided to bring forward the closure (January of 2021) of its coal-fired power stations in the Iberian Peninsula, including Sines in the Setúbal district, which is the largest power plant in Portugal. Pego power plant, the second largest coal-fired power plant in Portugal, is also expected to close at the end of 2021.

### SPECIAL PRODUCTION REGIME

The special production regime refers to the activity of production subject to special legal regimes, as is the case with electricity production through cogeneration and endogenous, renewable and non-renewable resources, micro-production, mini-production and production without injection of power into the grid.

Since the most recent amendments to the Electricity Regulatory Law, this specific legal framework, can now be exercised both under the guaranteed remuneration scheme and under the general remuneration scheme.

Under the guaranteed remuneration scheme generators sell their electricity at a guaranteed price for a given period (fixed or indexed to a market price benchmark, with or without fixing minimum and/or maximum thresholds) and a competitive guaranteed tariff setting mechanism is included. Under the general remuneration scheme, producers sell their electricity at a market price.

It is expected that as renewable energy technologies mature and become more competitive, special regime producers will also offer energy produced on the market on similar terms to ordinary producers.

### 3. ELECTRICITY TRANSMISSION NETWORK

The activity of electricity transmission is carried out through the operation of the national transmission network (RNT) to which corresponds a single concession exercised exclusively and as a public service.

The concession is granted for a period of fifty years, and cannot be transferred, sold or otherwise charged by the concessionaire, without prior authorization from the Government.

The concession includes the planning, construction, operation and maintenance of the RNT, as well as the overall planning and technical management of the National Electric System to ensure the harmonized functioning of its infrastructures, as well as the continuity of service and the security of electricity supply.

The electricity produced in places far from the areas of consumption is delivered to the transmission grid and conducted at very high voltage (EHV), in order to bring large amounts of energy to the various points of the territory without significant losses, thus guaranteeing the supply regardless of the distance to the power plants.

This task is called Global System Management and is carried out by the transmission system operator (TSO), which is REN.

Investment in the transmission network has kept pace with the growth in national consumption. Currently, the transmission network operated by REN has an extension of 8,733 km of lines throughout the country.

Fundamentally, regarding the 400 kV lines, the transmission network is developed in a north-south direction close to the coast, from the Alto Lindoso power station in the north to the Algarve, as well as in a west-east direction, establishing interconnections with the Spanish network. The 220 kV lines develop fundamentally between Lisbon and Oporto, and diagonally between Miranda do Douro and Coimbra, as well as along the Douro River and the Beira Interior.

REN's stakeholder structure is diverse. Major stakeholders include State Grid Corporation of China (25%), Oman Oil Company SAOC (12%), Lazard Asset Management (7%), and Fidelidade – Companhia de Seguros, S.A. (5,3%), which is owned by Chinese multinational Fosun.

## 4. ENERGY DISTRIBUTION NETWORK

The distribution activity is carried out by the exploitation of the infrastructures that, as a whole, make up the National Network of Distribution of Electricity.

Electricity distribution is carried out under public service concessions granted by the Portuguese State. The entities responsible for the distribution must be legally unbundled, not being able to carry out other activities within the sector.

The electricity distribution activity is carried out in the following forms:

- Concession of national distribution networks exercised exclusively and under public service in high and medium low voltage (HV and MV);
- Concessions of regional distribution networks under public service in low voltage (LV);

The public service concession for national distribution of electricity has been granted to EDP Distribuição – Energia, S.A.

Low voltage (LV) electricity distribution in mainland Portugal is assigned to the municipalities, which can either concession the activity or directly operate the distribution network.

Currently, all 278 Portuguese municipalities have this activity under concession, with 11 LV network operators, of which EDP Distribuição – Energia, S.A. is the largest, with around 99.5% of market share. The other operators, together, hold 0.5% of the market share with about 30.000 clients. They are small local communities organized as cooperatives that only operate in individual municipalities or autonomous regions (Azores and Madeira).

These concessions to operate the LV grids were given by contracts with twenty years of length. However, the term of the concessions is ending, the majority between 2021 and 2022.

Pursuant to this, the Portuguese Government has announced the launch of public tenders on concessions of LV distribution networks. These public tenders are expected to begin in a synchronized manner in 2021, and the criteria for the selection of the new concessionaires will be detailed in the tender programs, certainly involving both technical and economic factors.

## 5. ELECTRICITY SUPPLY

The supply activity of electricity is fully liberalized and subject to a competitive market, only requiring the granting of a license to be issued by the Portuguese State, in accordance with the Electricity System Law.

Licensed suppliers, in the exercise of their activity, can freely buy and sell electricity and have the right to access the transmission and distribution networks upon payment of access tariffs set by ERSE.

The commercial relationship with the clients derives from the conclusion of a contract for the purchase and sale of electricity, whose content is conditioned to the provisions of the Commercial Relations Regulation of the electricity sector and to the provisions of article 44 of the Electricity System Law.

Consumers have the right to freely choose their electricity supplier, without any charge, in the contractual change. For this to be possible, it was created the Logistics Trader Change Operator (OLMC), currently being exercised by the Energy Agency (ADENE), an independent entity focused to ensure that the change of the electricity marketer demanded by the consumer is carried out free of charge and quickly, with simple, transparent, standardized and dematerialized rules and procedures carried

out through a digital platform, by a simple process called "switching".

There are currently thirty-eight entities operating in the supply of electricity in Portugal.

According to the latest data published by ERSE, referring to 2020, EDP continues to be the main market operator in terms of number of customers with a 76% market share, while Endesa and Iberdrola came second and third with a market share of 7,3% and 6,1%, respectively. EDP also came first presenting the largest share of electricity consumption (40,8%), Endesa ranks second with 17%, while Iberdrola is third with a 16,2% consumption share.

There is also the figure of the last resort marketer who ensure the supply of electricity to vulnerable customers, or in areas or market segments where there are no offers for supply on the free market.

The last resort marketer license is currently attributed to the current holders of thirteen supply licenses. Under Ordinance no. 83/2020, of April 1, 2020, consumers who are still being supplied by a last resort supplier have a transitional period until December 31, 2025 to secure the supply of electricity by a market supplier.

## 6. THE ENERGY REGULATOR

The Regulatory Entity for Energy Services (ERSE) is the entity responsible for regulating the electricity and natural gas at national level.

ERSE is a legal person governed by public law, with administrative and financial autonomy and its own assets, governed by its articles of association approved by Decree-Law no. 97/2002, of April 12, 2002.

It has the duty to ensure that operators in the electricity and natural gas sectors comply with public service obligations and other obligations laid down in laws and regulations, as well as in the concession contracts.

It is an independent entity in the exercise of its functions, without prejudice to the guiding principles of energy policy established by the Government in legal terms, and of acts subject to ministerial approval

In the course of its activity, it has the task of adequately protecting the interests of consumers, in particular economically vulnerable consumers, in relation to prices, quality of service, access to information and security of supply.

ERSE also aims to promote competition between market players, in particular in the internal energy market, by ensuring that the companies in

the sector perform public service functions, but at the same time maintain the economic and financial balance in the framework of an adequate and efficient management.

At last, it intends to contribute to the progressive improvement of economic and environmental conditions, and also arbitrate and resolve litigation by encouraging the extra-judicial resolution of disputes.

Specifically, regarding the electricity sector, ERSE has the following attributions:

- Ensure the existence of conditions to meet the demand for electricity efficiently; and
- To guarantee concessionaires and licensed entities the existence of conditions that allow them, within an adequate and efficient management, to obtain the economic and financial balance necessary to fulfill the obligations set forth in the concession agreement and in the respective licenses.



MACEDO • VITORINO

## ABOUT US

WHO WE ARE & WHAT WE DO

## ABOUT US

MACEDO VITORINO is a leading Portuguese law firm. We advise domestic and foreign clients in a wide range of business sectors, including banking, distribution, industry, energy, TMT and projects. We are known for our professional and client-oriented approach to complex and difficult matters.

Since the foundation of our firm in 1996 we have been involved in several high-profile transactions in all of the firm's fields of practice, including banking and finance, capital markets, corporate and M&A, etc.. We have also acted on many complex disputes and restructurings.

We have strong relationships with many of the leading international firms in Europe, Asia and the Americas, which enable us to handle cross-border transactions effectively.

The firm recognized by The European Legal 500, IFLR 1000 and Chambers and Partners for its work in its main practice areas.

Our team is committed, hard working, accessible and friendly. We believe in collegiality, teamwork, trust and loyalty. Clients value our team approach, the good management of time and our focus on their business goals.

We advise:

- NATIONAL AND MULTINATIONAL COMPANIES
- BANKS AND OTHER FINANCIAL INSTITUTIONS
- FUNDS
- BUSINESS AND SCIENTIFIC ASSOCIATIONS
- FOREIGN EMBASSIES
- INDIVIDUAL ENTREPRENEURS
- PRIVATE EQUITIES
- START-UPS
- PRIVATE CLIENTS

## OUR ENERGY GROUP

The energy group advises clients in all legal aspects required for the implementing and development of energy infrastructures, energy markets and sector regulation, with a special focus on renewable energy.

MACEDO VITORINO works in the development of energy projects regarding:

- PUBLIC AND ENVIRONMENTAL LICENSING
- SECTOR REGULATION
- FUNDING AND DEVELOPMENT OF PROJECTS
- ENERGY DERIVATIVES
- GREEN CERTIFICATES

MACEDOVITORINO.COM

MA  
CE  
DO  
▪ ▪  
VI  
TO  
RI  
NO