

## LEGAL UPDATES

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## ENERGY: NEW REGULATIONS

# Towards liberalisation



**Vanda Cascao** reports that recent draft regulations to enable the liberalisation of the Iberian electricity market do not dispense with the need for a new legislation framework

The Energy Services Regulatory Authority (ERSE) has recently submitted to public discussion three new draft regulations: (i) the Commercial Relations Code, (ii) the Tariff Code and (iii) the Access to the Networks and to the Interconnections Code.

Upon approval of these regulations, two more are expected: from REN (the electricity transmission system operator in Portugal), the Dispatch Code; and, to be prepared by ERSE, the Quality Service Code.

Also, a new legislative framework is expected to be enacted to implement the directive on the electricity internal market (Directive 2003/54/CE of 26 June, the 'EU Directive'). In addition, and despite delays and uncertainties, the Iberian Electricity Market (MIBEL) is underway.

Anticipating a revised framework, the Government has implemented legislation to deal with issues required in the context of market liberalisation.

In this respect, one may point out the legislation on the early termination of long-term power purchase agreements, which is seen as a preparatory step towards liberalisation. Termination of power purchase agreements shall give rise to compensation mechanisms referred to as contractual balance maintenance costs (CMECs). These are to be reflected in agreements with the relevant generators, and ultimately in the tariffs — for now, only the generator arm of Energias de Portugal (EDP) has entered into a termination agreement with REN.

However, in spite of the efforts already made, it is clear a complete new legislation framework is required. Ideally, such legislation should have preceded the new draft regulations now submitted to public discussion by ERSE.

ERSE maintains that the existing legal framework, as well as the detailed provisions of the EU Directive, already form an adequate legal basis for the new regulations. In addition, ERSE underlines that any delay in the approval of these regulations would have a negative impact in the electricity sector. It would also hinder the possibility of players effectively exercising various rights already granted under the law.

According to ERSE, some provisions foreseen in the new draft regulations, such as the right to choose a supplier, may be immediately applicable. Others, such as the impact of the CMECs in the tariffs, shall require further developments. As such, regulations may have to be adapted or completed in future but, according to ERSE, this will not prejudice the coherence of the new regulations.

The new draft regulations have already aimed at reflecting the new organisational model of the electricity sector. Among other factors, this is based on: (i) market liberalisation, (ii) introduction/confirmation of new concepts such as the trader, external agent and regulated trader, (iii) the termination of long-term power purchase agreements, (iv) the existence of an organized market, (v) possibility of the regulated trader acquiring electricity to supply its clients through bilateral contracts, (vi) payment of CMECs through the tariff and (vii) the imposition of an obligation on REN to continue to acquire electricity from generators whose power-purchase agreements have not terminated.

In addition, ERSE also intends the new draft regulations to be more user-friendly. ERSE's intention has been to provide all interested parties with simpler documents, while covering changes resulting from both existing legislation and the EU Directive.

But, in fact, the absence of a previous new legislative framework has given rise to certain criticisms. Comments made by several entities in the context of the public discussion on these new draft regulations reflect this criticism, as evidenced at the public hearing organized by ERSE and held at Lisbon on 20 May.

While acknowledging the value of the work undertaken by ERSE, public discussion of the document shows players feel much remains to be done. Also, various entities consider that uncertainty around MIBEL may lead to difficulties in implementing these regulations.

Among these, REN considers the new draft regulations should have regulated only the existing legislation. Comments seem to reflect the view that the new regulations should have avoided detailing MIBEL-related issues, as many options remain to be decided.

One of the most representative of consumers' associations, DECO, acknowledges the importance of these new regulations. But it also stresses that the success of true liberalisation in the electricity market is linked to successful planning and performance of MIBEL.

Public discussion of the new draft regulations has already confirmed the obvious: the electricity market is alive and kicking. However, much is still required as players are demanding a stabilized regulated market. Everyone with an interest in energy matters expects further and rapid developments.

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