



ENERGY AND NATURAL RESOURCES

RENEWABLE ENERGIES

2013 LEGISLATIVE CHANGES IN THE SECTOR

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I. MEMORANDUM OF UNDERSTANDING AND PLAN OF ACTION FOR 2020: DEFINITION OF A NEW POLICY

Despite the great gains made by Portugal in meeting the 2020 targets for the increase of the weight of energy from renewable energy sources in final energy consumption, the future for renewable energy incentives in Portugal now looks somewhat short.

The international financial assistance agreed with the Troika as from May 2011 has imposed a number of restrictive measures on the energy sector, with special emphasis on renewables, which are said to be the “most expensive” in terms of the subsidies granted. This has led to a fall in their growth expectations - fruit of the impact on the increase in the tariff deficit of the national electricity sector (“NES”).

Efficiency in promotion of renewable energies is one of the touchstones of the Memorandum of Understanding (“MoU”) signed with the Troika. The MoU provides, in general, for re-evaluation of the support schemes for Electricity Generators from Renewable Sources (“EGRS”). This is to be achieved through (i) a reduction of the feed-in tariff applicable to contracts currently in force and future contracts and (ii) the use of less mature technologies.

Readjusting tariff parameters to balance incentives in the context of markets mechanics means the efficiency of the EGRS incentives under review will work to ensure that generators limit their project costs leading to a growing cost-benefit balance.

In compliance with the MoU and in the current macroeconomic situation, with the National Action Plan for Renewable Energies (“NAPRE”) for the period 2013-2020 of 10 April, the Portuguese Government set aside the ambitious measures of its 2010 predecessor. The current scenario is one of an excess of supply in electricity generation which has also resulted from a reduction in demand.

The strategic reconfiguration is now based on reaching an appropriate level of national generation capacity by applying a logic of economic rationality and freedom of initiative of the promoters, without depending on subsidies, guaranteed remuneration and risk mitigation. The path to be followed is that of a free market logic.

This means that the NAPRE is centred on prioritising technologies at entry to the system, in order – in case of future need to install additional power in the EGRS, which is still expected to be the case - to limit the incentives for installation of this power.

These changes should also result in the revision of the relative weight of the EGRS in the national energy mix and in the targets to be reached by 2020, giving greater importance to the potential of each type of EGRS to function in market regime.

II. REMUNERATION INCENTIVES AND GUARANTEES OF ORIGIN

Following the optimisation of a free EGRS market, the possibility was introduced for generators of energy from renewable sources to carry on their activity as if it were ordinary regime generation ("ORG"). For this purpose, Decree-Law no. 215-B/2012, of 8 October ("Decree-Law 215-B/2012"), makes it possible for there to be a general remuneration system for the sale of electrical energy generated in this way capable of working under a market system - through organised markets or bilateral contracts. This is contrary to what had happened to date, when the EGRS would, mandatorily and directly, be part of an electricity generation scheme with a subsidised tariff and acquisition in full of the electricity by the Last Resort Trader "LRT", debiting the wallets of consumers in general.

This opening up of the markets to the EGRSs gives a further boost to investment in additional power with the use of tried and tested technologies which, in most cases, are less risky and cheaper. The figure of «market facilitator» was created to assist in getting EGRSs onto the market. This facilitator is responsible for the mandatory acquisition of energy generated from renewable sources and for placing it on the market. To some extent, this mitigates the risk inherent to the uncertainty of the EGRS.

Alongside this - general - regime, there is a system of guaranteed remuneration in which the electricity generated is delivered to the LRT against payment of the remuneration attributed to the electricity generating plant in accordance with the old tariffs (which remain in force until the end of the period initially provided for this purpose), or of the new tariffs, already following the new remuneration rules (to be approved). These new rules will also define the tariffs applicable according to the primary source of the energy and the technology used.

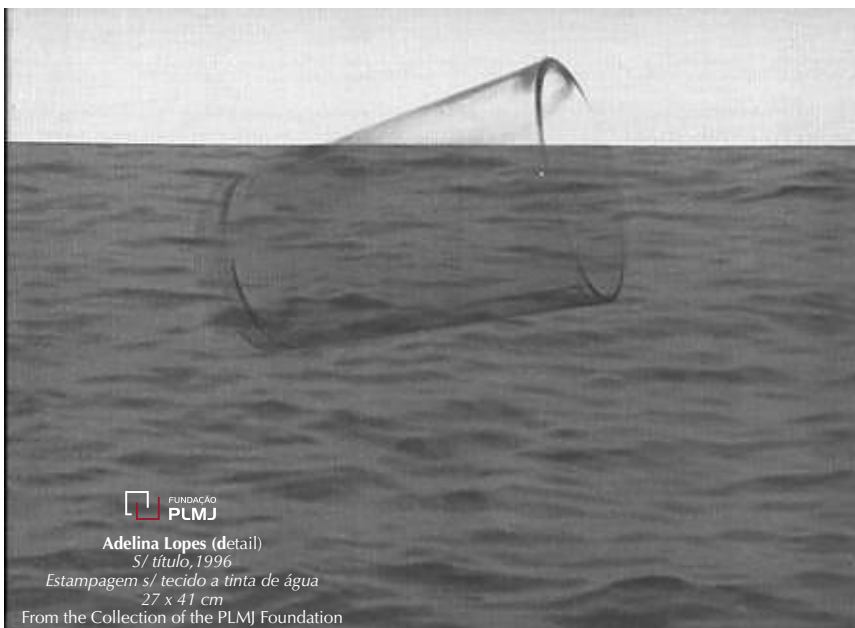
The remuneration incentives applicable to EGRSs in Portugal are basically of two types: (i) **guaranteed tariffs** (feed-in tariffs) and (ii) **green certificates**. **Guarantees of origin** are an instrument that should not be confused with either of these two mechanisms despite the fact that they also benefit generators, even though this benefit is limited in terms and still somewhat unclear.

■ **Feed-in tariffs:** it is hoped for their reduction or even abolition. There is uncertainty as to the remuneration for electricity from non-hydro plants because the period for application of the guaranteed tariffs provided for in Decree-Law no. 33-A/2005, of 16 February ("Decree-Law 33-A/2005"), has passed.

The remuneration rules for non-hydro EGRS were approved at the beginning of this year by Decree-Law no. 35/2013, of 28 February ("Decree-Law 35/2013"). These rules provide that the (non-hydro) EGRS will see the guaranteed tariff (with its value still to be defined) maintained for an additional period of five years after the end of the initial 15-year period provided for such feed-in tariff.

As an alternative, Decree-Law 35/2013 gives the option to any wind energy EGRSs already in operation prior to 17 February 2005 or after this date to choose, at the end of the corresponding period of 15 years from the respective start of operations, a guaranteed tariff for a further 5 years (receiving a tariff corresponding to the market value of between €74/MWh and €98/MWh or a tariff corresponding to the market price paid at a minimum of €60/MWh) against payment to the NES for a period of 8 years of de €5000/MW of installed power. Alternatively, if it opts to pay €5800/MW of installed power during these 8 years, it will receive a guaranteed tariff for 7 years under the same conditions as those defined for the period of 5 years, all subject to annual updating. To note that, if the option for a specific remuneration regime has not been exercised or accepted by 31 March 2013, following the 15 initial years, the energy generated by such wind energy EGRSs will benefit from a guaranteed tariff - not yet fixed - for an additional period of 5 years.

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Wind generation plants with right to inject power into the network originating from public tenders, may choose between extending the period of application of the guaranteed tariff rules, in reduced terms or, as an alternative, joining another remuneration scheme after the respective period of guaranteed remuneration.

Small Hydro Plants (“SHP”) benefit from a period of 25 years from the date of issue of the respective operation licence (which may be extended up to the maximum of 10 years or up to the end of the validity of the respective water use licence) to maintain the earlier remuneration conditions. At the end of this period, the electricity generated will be sold under market conditions.

■ **Green certificates:** these tradable certificates will be implemented only after expiry of the period of feed-in tariffs still in force. The EGRSs will be delivered to the network to be paid at market prices and for the revenue earned from the sale of any certificates that may exist on this date.

■ **Guarantees of origin:** attributable to electricity generators and (now also) to the generators of heating and cooling energy from renewable energy sources with installed power greater than 5MW who confirm to the end consumers that 1MWh of the energy was generated from renewable sources. These guarantees have the advantage of being physically tradable by the generators separately from the energy that underlies them.

One difference should be noted: the **sale** of the guarantees by generators under a subsidised remuneration system is assured by the Directorate General of Energy and Geology (“DGEG”), and the generators must deliver their guarantees of origin to this entity. In this case, these guarantees do not generate any additional remuneration. In the case of generators under the market system, they may freely trade their guarantee of origin certificates, making them into an important complement to the remuneration.

However, the implementation of these certificates has not been completed and, as yet, no certificate has been formally issued.

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III. LICENSING PROCESS

The MoU provides for the simplification of the planning, authorisation and certification procedures, with increased transparency of administrative requirements and charges for the generators of renewable energies (in line with the provisions of European instruments), some steps having already been taken in this area.

Decree-Law 215-B/2012 brought about a structural revision of the legal rules applicable to the activities of the NES, in particular with respect to authorisation, certification and licensing applicable to EGRS plants.

Apart from this, the NAPRE itself makes provision to go further and also contemplates the operationalization of the EEGO (the entity that issues guarantees of origin, assured by REN, S.A.), contributing to:

- (i) bringing economic viability to EPRS projects and increasing transparency through the trading of guarantees of origin;
- (ii) streamlining and harmonising administrative procedures and rationalising the support granted in the current micro-production and mini-production programmes; and

- (iii) greater efficiency in the licensing procedures for renewable electricity plants, seeking to reduce the time taken before licensing by creating a ‘one stop shop’, the figure of the project manager and an electronic platform making it easier to handle licensing applications and facilitating access to information about them.

■ EGRSs carrying on activity under the **general regime**, i.e. in the market – legally possible since October 2012 – depend only on obtaining a generation licence or the admission of a prior notification by the interested party, as well as the respective operation licence. The *prior notification* – regulated in Order no. 237/2013, of 24 July – simplifies the licensing process, basing it to a great extent on declarations of commitment by the interested party, preferably to be carried out electronically.

The EGRS is, now and therefore, more similar to the ORG, as the majority of the rules for the latter apply to it, with the attribution of a generation licence which gives it the right to set up and operate the electricity generating plant, to sell electrical energy in organised markets or under bilateral agreements, to buy electrical energy up to the limit of its generation capacity and also to set up and operate direct lines for the sale of electricity to end clients in situations where supply to the clients is not possible through the NES networks.

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■ For an EGRS to carry on activity under the **guaranteed remuneration regime** it shall firstly require (i) being granted reserve capacity of injection into the Public Service Electricity Network (“PSEN”) with the attribution of a reception point, by means of a public tender process (or a procedure that makes it possible for all interested parties who meet the requirements to be established, in accordance with criteria of equality and transparency), and (ii) obtaining the generation licence and respective operation licence (which includes the right to see the electrical energy generated acquired by the LRT in compliance with Order no. 243/2013, of 2 August).

The **granting of the generation licence** depends on whether the project complies with the **objectives and priorities** of energy policy and also takes into account, among other things, the impact of the electricity generating plant on the economic and financial costs of the NES, the contribution to greater energy efficiency and the contribution to generation capacities to meet national and EU targets in the area of energy from renewable sources in gross energy consumption.

Time will tell whether these procedures meet the requirements of the MoU, the forecasts in the NPARE and the directions of the “Renewables Directive¹” in terms of streamlining, simplification, speed and transparency.

¹ Directive 2009/28/EC of the European Parliament and of the Council, of 23 April 2009.

IV. NEXT CHAPTERS

Over recent years energy policy has followed a strategy aimed at conciliating market mechanisms and the promotion of values of environmental preservation, sustainability and technological innovation. As a result of this strategy, Portugal has achieved a position of reference in respect of the use of renewable energies and the latest technologies in the electricity generation sector. The costs associated with this strategy are, however, significant and clearly incompatible with some responsibility in the NES tariff deficit and in the increase in energy bills for every electricity consumer.

The current conditions of shrinking demand and the recent macro-economic projections pointing towards disequilibrium between generation capacity and energy demand have led to a revision of the presumptions for energy consumption. As a consequence, the real needs in terms of the efficiency of renewable energy to meet European targets have also been revised through the approval of the recent NAPRE. This has put a brake on some of the more ambitious aspects of the previous Plan and the National Strategy for Energy2020².

² Approved by Resolution of the Council of Ministers no. 29/2010, of 15 April 2010.

The 2013 approved legislative changes and those which are certainly to be approved are in line with the commitment to ensure that the strategy to promote the EGRS is appropriate to the need to reduce the costs of carrying it out. Maintaining the increased diversification of the primary sources of energy and this reassessment of the investments in renewables with less, or even no, artificial risk mitigation, are based on a new remuneration model that makes it possible for more efficient technologies to play a relevant role, and they will form the backbone of the next measures to be introduced.

Until then and for now, we see timid steps towards establishing new remuneration regimes for these generators (with special emphasis on the old wind farms, and in order to preserve “acquired” rights, following to the letter the Troika’s indication that the Portuguese Government must not unilaterally rescind contracts). This means we can expect movement towards a reduction in the influence of the welfare state in the energy sector by imputing the risks of the next investments to market agents and mechanisms.

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