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Portugal and the Renewables' – Reliance on Solar

By Manuel Santos Vítor & Ana Oliveira Rocha

I – The Past

Renewable energy sources have assumed a key role in the Portuguese energy mix for the last decade, i.e., since the first steps of the undergoing liberalisation of the Portuguese electricity market. Within the European Union context – as implemented at national level – renewable energy generation growth is sought so as to improve security of supply, decrease energy dependency and reduce environmental impact including through the reduction of the use of fossil fuels in energy generation – among other aims pursued by the relevant policies.

Wind has been, since the early stages of diversification of the Portuguese energy mix, the preferred source of renewable energy, wind generated electricity representing, in 2016, almost a quarter of the country's total mainland energy demand[1]. Portugal was, in 2016, one of the European countries with most wind energy generating installed capacity, with 5046 MW[2], within a total of 13046 MW of renewables installed capacity and an overall generation installed capacity of 19518 MW.

Although hydro electricity generation also evolved over the years and large hydro represents a higher share in the renewable electricity generation mix[3], with offshore wind generation still being in its pre-commercial phase[4] and after the Portuguese Government suspended attribution of rights for onshore wind projects in 2012, solar is now the *it*-renewable in Portugal.

II – The Present and the Future

Having reached an effective implementation of wind and hydro renewable energy generation projects to diversify the Portuguese energy mix – evidencing 57% of renewables in energy consumption (with an increase of 10% when compared to 2015) –, the Portuguese Government policies (departing from the latest National Action Plan for Renewable Energies for the 2013-2020 horizon) established that investment in solar is the next bet to be made towards such diversification as well as for the fulfilment of the EU set 20-20-20 goals[5]. In this framework, Portugal is targeting a 31% incorporation of renewable energy sources into final gross energy consumption and 10% of this in the transport sector. These objectives exceed those set forth in Directive 2012/27/EU[6] approving a common framework of measures to promote energy efficiency in the EU by 2020.

In this context, upon several modifications of the renewables legal framework since 2010 and in simplistic terms, the Portuguese renewables legal framework underwent (i) the review of the licensing framework aiming at a swifter and clearer procedure jointly with the end of feed-in-tariffs for new renewable energy generation projects which are to sell the energy so generated in organised markets (such as the OMIE – the Spanish Pole including the day and intraday markets for the Iberian Market) or bilateral agreements[7] and (ii) the adoption of a 2014 regime[8] providing for small-production units and self-consumption generation units which are to be associated to buildings and industry and mainly count on solar energy generation projects for implementation (although biomass is also an option being implemented) with or without connection to the public service electricity grid[9].

Importantly, since 2013[10], the feed-in-tariff scheme (with guaranteed remuneration) no longer applies to new renewable energy projects[11], although projects benefitting from this regime kept the feed-in tariff scheme for the initially granted period (usually of 15 years or limited to a certain amount of energy injected into the RESP) and were provided with the possibility to opt for an additional five or seven years intermediate guaranteed remuneration risk-mitigation regime by (i) paying a contribution aiming at the maintenance of the national electricity system until 2020[12] and (ii) accepting lower feed-in-tariffs, which are based on the daily average wholesale market price subject to a floor and cap.

Notwithstanding the end of the feed-in-tariffs, Portugal is now coming to the verge of having its solar photovoltaic installed generation capacity grow tremendously and several new projects are in the pipeline for licensing.

For comparison purposes, in 2010, the contribution of solar energy generation to the renewable energy sector was only 0.8%, with an installed capacity close to 150 MW. In the end of 2015 only 429 MW of photovoltaic installed capacity were actually licensed, this source representing circa 1.5% of contribution to the renewables sector[13]. 2016 brought an increase of 10 MW in photovoltaic generation installed capacity[14] and additional 380 MW in the pipeline for project development pending completion of the relevant licensing requirementsin. A recent announcement from the Government stated that photovoltaic generation installed capacity in Portugal is forecasted to rise up to 900 MW by 2020.

All these projects are to secure offtake of the energy generated in the free market although some investors are having difficulties in contracting stabilised tariff offtake to secure projects' economic viability and bankability. Investment opportunities are thus not only in generation but also in renewables' electricity offtake, which should greatly contribute to liberalising the Portuguese energy market and setting the pace to the Iberian Electricity Market's growth and competitiveness.

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With almost 30 years' experience, Manuel was PLMJ's co-managing partner and then managing partner between 2008-2015 and currently heads one of PLMJ's M&A practices and PLMJ Energy, the PLMJ International Legal Network multijurisdictional energy and natural resources team. His name is associated with important projects in these areas, both in Portugal and abroad. An IBA and AIPN member, Manuel is recommended by all the main legal directories.

Ana Oliveira Rocha graduated from the law school of Lisbon and was admitted to the Portuguese Bar Association in 2004. With an LLM in Energy Law and Policy, from the CEPMLP, University of Dundee, Scotland in 2008, Ana has 16 years' experience in legal practice and 13 in energy projects, Ana co-heads PLMJ Energy, the PLMJ International Legal Network multijurisdictional energy and natural resources team. Her name has been associated with important projects involving regulatory matters and negotiation of international contracts, and in operations-related contracts in the oil and gas, and power sectors in Portugal and Portuguese-speaking countries. Ana is recommended by the Chambers, The Legal 500 and Best Lawyers international directories.

1. Source: Portuguese Renewable Energy Association ("APREN") and of the Institute of Science and Innovation in Mechanical and Industrial Engineering ("INEGI"), report on Wind Farms in Portugal, of December 2016, July 2017 version, available at: http://e2p.inegi.up.pt/relatorios/Portugal_Parques_Eolicos_2016.pdf (last consulted on 29 August 2017).

2. Source: The electricity global system manager – REN in its Technical Data 2016 Report, p. 14 – available at: https://www.ren.pt/files/2017-04/2017-04-18143317_f7664ca7-3a1a-4b25-9f46-2056eef44c33$$72f445d4-8e31-416a-bd01-d7b980134d0f$$ee3c56e5-6d14-4aa0-ac1f-ca5006917e03$$storage_image$$pt$$1.PDF (last consulted on 29 August 2017).

3. With 6945 MW of installed capacity in 2016. Please refer to the footnote immediately above for further details on source and electricity generation installed capacity and market. For updated specific information on all renewable energy projects of 250 KW currently operating in mainland Portugal by source, please consult: http://e2p.inegi.up.pt/#nogo (last consulted on 29 August 2017).

4. The 2 MW Windfloat 1 prototype project deployed in 2011 offshore Póvoa do Varzim, North of Portugal, has been successfully completed in 2016. The pre-commercial 25MW Windfloat project is now underway, also as per Resolution of the Council of Ministers no. 81-A/2016, of 9 December 2016, approving the measures to conclude the procedure for installation of the maritime platform for wind generation. For additional information on Windfloat pre-commercial project which is scheduled to enter into operation in 2018, please consult EDP Renewables website, latest information available at: http://www.edpr.com/edp-renewables-mitsubishi-corp-chiyoda-corp-engie-and-repsol-create-a-consortium-to-implement-a-floating-offshore-wind-farm-in-portugal-using-principle-powers-windfloat-technology-2/ and on EU Portuguese Government State aid approval: http://europa.eu/rapid/press-release_IP-15-4836_en.htm (both last consulted on 29 August 2017).

5. Setting a 20% cut in greenhouse gas emissions (from 1990 levels), 20% of EU energy from renewables, 20% improvement in energy efficiency.

6. Of 25 October 2012.

7. Sale of the electricity generated to third parties, including electricity suppliers or market facilitators (the latter will then sell the electricity off-taken in organised markets).

8. By means of Decree-Law no. 153/2014, of 20 October.

9. Self-consumption generation units entail power generation for self-consumption by the undertaking associated to such generation unit, and (ii) small production units ("SPUs") entail power generation for supply to the public service electricity grid. To note that SPUs may still benefit from a 15-year feed-in-tariff attributed based on an auction procedure, with reference to a reference tariff published by governmental order for each year. The tariff shall be impacted by the source of energy used for electricity generation, solar generation's tariff being based on the 100% of the reference tariff and project promoters proposing discounts to the reference tariff within the relevant auction.

10. By means of Decree-law 35/2013, of 28 February, jointly with the legally recognised possibility of selling electricity in organized markets or through bi-lateral agreements brought, among others, Decree-Law no. 215-B/2012, of 8 October 2012.

11. Which procedure began after the feed-in tariff scheme ended or which were not yet part of an ongoing licensing procedure at the time – as per legally set requirements.

12. To assist in the set off the Portuguese electricity system debt.

13. Solar energy generation being of 1,5%

14. Source: please refer to footnote 2 above.