

# EXPERT GUIDE

CORPORATE *LiveWire*

JULY 2015

## ENERGY & NATURAL RESOURCES 2015



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## “Energy and the Sea - time to go forward”

By Mónica Carneiro Pacheco

“Politics of the Sea”, “Economy of the Sea”, “Blue growth” (recently used in the World Ocean Summit 2015, held in Cascais, Portugal) are trending words but present both challenges and opportunities.

What does Energy have to do with this?

The answer is very simple: the sea is itself a huge resource for offshore renewable energy.

According to the REN 21 Global Status Report, offshore wind has had a record year, with 1.6 GW added.



In the case of Portugal, due to the immense national marine space, its potential for offshore projects that can contribute to meeting our renewable energy targets is evident. Offshore wind and wave energy, of the range of potential offshore renewable energy projects, are the ones that, in the short term, will provide the largest contribution to the national targets for renewable energy. Notwithstanding, the National Ac-

tion Plan for RES (PNAER) approved by the Resolution of the Council of Ministers 20/2013 has established low targets (27MW of floating offshore wind in 2016 and 6MW of wave energy by 2020, but has set a higher target for wave energy within the pilot zone, created in 2008, near S. Pedro de Moel).

Around the world, advances in technology and the deployment of many renewable energy technologies, have demonstrated their immense potential. In Portugal, the Wind-float project (which

I am proud to have been involved with), located at 5km off the coast of Aguçadoura, is a very good example of how it is possible to mature the offshore wind sector by eliminating deep-water limitations with an innovative solution. To date, the system has produced in excess of around 14 GWh of electricity delivered by a sub-sea cable to the local grid. The structure was completely assembled and commissioned onshore before being towed some 400km along the

Portuguese coast (from its assembly facility near Setubal, Portugal).

It seems that we are learning how to use the energetic potential of our coast thus laying the foundations to become a relevant manufacturer and exporter of core technologies for the marine renewables.

Yet, to encourage use of this resource much has still to be done in legal, fiscal, financial, regulatory and economic aspects of offshore wind farming.

For developers, clear and easy administrative consenting processes are essential when taking an investment decision. A “one-stop shop” providing a single point of contact offering the services needed to enable all the required consents to be obtained (incorporating consents that are needed to environmental, land and marine-based elements, as well as, the required electrical permits) would have the advantage of making licensing efficient and convenient, saving time and money. However, this is currently rare, even in jurisdictions where the concept of one-stop

shops is understood.

In Portugal, given the existing administrative system with its different competent authorities and the level of regulatory requirements involved, deriving from numerous pieces of legislation, it is difficult to implement an integrated and coordinated decision-making approach. In fact, the lack of co-ordination is often considered one of the main reasons for the small number of offshore activities and, consequently, for the feeble expression of the sea-economy in Portugal’s gross national product.

Despite this, Portuguese governments have acknowledged for some time the need for the development of integration mechanisms for the different activities taking place at sea and have made efforts to approve legislation that creates the conditions for developing marine energy projects.

The most recent example is Decree-law n.º 38/2005 of 12 March, which develops the legal regime for planning and management of the national marine space approved by Law

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n.º 17/2014 of 10 April (“LBOGEM”), which has established, for the first time, the legal basis for Portuguese policy on marine spatial planning and management. It should be noted, that LBOGEM was published three months before the approval of the Directive 2014/89/EU of the European Parliament and of the Council, 23 July 2014, establishing a framework for maritime spatial planning, which determined that it should be transposed before 18 September 2016.

By approving a legal framework applicable to the whole marine space adjacent to the Portuguese mainland and archipelagos, including the continental shelf beyond 200 nautical miles, LBOGEM has introduced a new and larger concept of the Portuguese territory, while recognising, at the same time, that uses and activities in the national maritime space must be subject to coherent and efficient spatial planning and management. This includes integrating the environmental, social and economic dimensions.

However, approval and implementation of marine spatial plans needs to become operational, otherwise, instead of being an accelerator for the development of offshore projects could become an obstacle.

Indeed, the right to private utilisation of marine space depends on the existence of an “allocation plan” (*plano de afectação*). The rights can be attributed through a concession of up to 50 years in the case of prolonged use (the use of an area or volume for a period equal or more than 12 months), a license of up to 25 years in the case of temporary use (the use for less than 12 months, intermittent or seasonal use of a reserved area or volume) or an authorisation of up to 10 years in the case of scientific investigation or pilot projects of new technologies and non-commercial activities.

The good news is that people interested in the elaboration of an allocation plan can submit a proposal for a “contract for planning”, whose scope

is the elaboration of an allocation plan, including the identification of the special and temporal distribution of uses as activities to be developed. This does not jeopardise the need to follow the elaboration and approval procedures and the observance of the legal regimes for the use of the maritime space, but will certainly facilitate the development of projects, since developers can take the initiative by themselves and not wait for a government initiative.

Regardless of licenses that must be obtained before installing an offshore project (the license to build infrastructures on land as the substation and the onshore electricity cable, and the power production and the grid connection licenses), the entry into force of LBOGEM and its developing legislation is decisive for the increase in Portuguese sea-economy through, amongst others, renewable offshore projects which can be, not only sources of energy, but also tools to address other needs, including improving energy security, reducing the

health and environmental impacts associated with fossil and nuclear energy, mitigating greenhouse gas emissions and creating jobs.

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