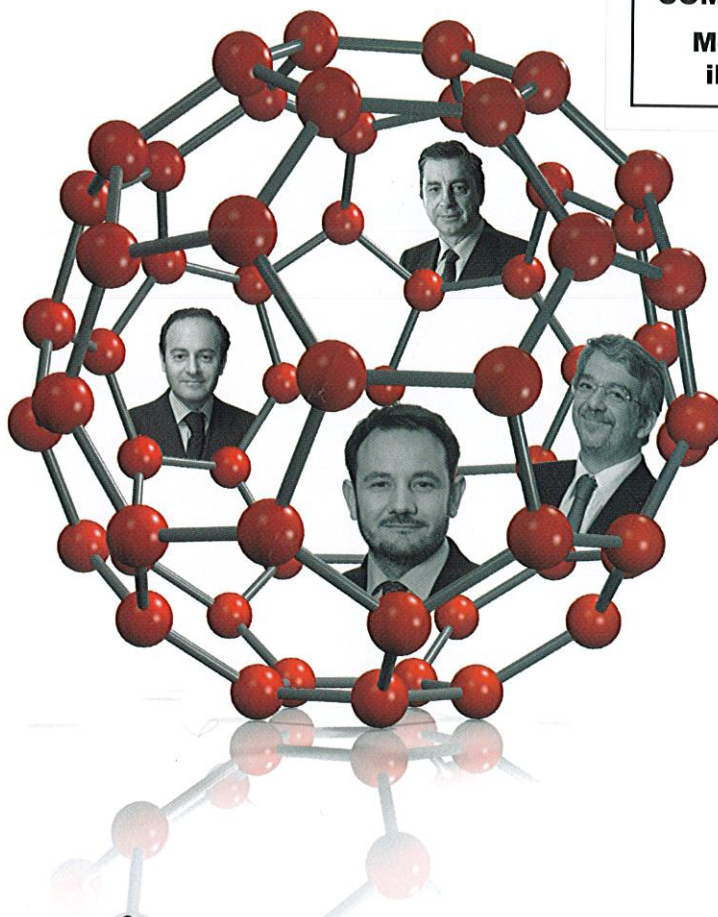


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The changing role of the State in Portugal's energy markets

The Portuguese Government is to draw up new energy regulations to reflect its changed stakeholdings within the sector

In light of the "Troika" agreement outlining the terms of its €78bn finance assistance package, the Portuguese Government is privatising major energy assets including power company EdP and distribution network REN. Beyond these high-profile sales lies a deeper issue though; the State also has to radically overhaul its regulatory approach to the energy market.

Mónica Carneiro Pacheco, co-Head of Energy at Rui Pena Arnaut & Associados in Lisbon, points out that the privatisations are in line with a wider EU trend encouraging a reduction in the role of the State as an operator in energy markets.

In essence, the State has to move from being the "manager" of sections of the energy sector to being solely its "regulator". The change does not therefore mean the absence of the State.

"In a European context, in which essential activities such as the supply of electricity and natural gas are performed by private entities, the intervention of the

State through regulation setting is essential. It has to create obligations to which the operators are obliged respect while also guaranteeing consumers' rights."

This will mean a distinct change of emphasis for the Portuguese Government. Through its stakes in companies like EdP and REN it had given a subtle hand to guide the market. Now the Government must entrust energy provision wholly to the private sector and be prepared to merely regulate the way entities operate.

"Since electricity and natural gas networks are natural monopolies, the presence of the State is essential to prevent market abuse and anti-competitive behaviour," asserts Carneiro Pacheco.

It is too early to know exactly what form the proposed regulations will take, but things should become clearer once the privatisations have progressed, she believes. "What is already apparent is that the Government will need to take a new approach and have to be comfortable in its new role."



Mónica Carneiro Pacheco

El gobierno portugués está introduciendo una nueva normativa que regule el sistema energético para reflejar el cada vez inferior papel cada vez inferior que tiene en este sector, afirma Mónica Carneiro Pacheco, de Rui Pena Arnaut & Associados en Lisboa.

Calculating the losses incurred by the solar sector

The 40 percent reduction in feed-in tariff rates applicable to solar photovoltaic sector schemes and the introduction of a cap on the volume of output that can be sold, introduced last year by the Spanish Government, has prompted much anger in the market; raising claims before the Spanish courts in a bid to end the controversial reforms.

Fernando Cuñado, a Director of KPMG Forensic in Madrid, believes that potentially thousands of solar electricity producers are likely to begin actions on the basis that they will now earn only a standard rate for production when they were previously earning a premium rate.

"Investors will make a petition to the Supreme Court for damages caused by the regulatory uncertainty as a result of the retroactive tariff cut," he observes. "The Spanish media has estimated that there could be more than 500,000 entities affected by the changes."

One key issue, however, is calculating the actual financial loss incurred by

each claimant. Cuñado points to the high profile case in which a group of 14 foreign infrastructure and energy investors (with collectively \$30bn of assets) has opened arbitration proceedings against the Government in an attempt to recover "hundreds of millions of euros" lost through the tariff changes.

To determine quantum, companies need to undertake a number of financial procedures to assess the potential loss, such as discounted cash flow and actual value, as well as loss of profit, he says.

The growing complexity of Spanish energy regulation and the recent changes that have arisen require a detailed analysis from both an economic and financial point, if companies are to engage in a robust calculation of the damage actually caused to them.

"The involvement of an independent expert and the coordination with the client's legal team are therefore key strategies to be considered if market players are to properly face the challenges of the new regulatory scenario."



Fernando Cuñado

La reducción de las primas para el sector fotovoltaico en un 40% y la introducción de un tope en el volumen de salida energética están siendo investigadas por los juzgados españoles, explica Fernando Cuñado, de KPMG Forensic en Madrid.