

AGREEMENT REVISING THE AGREEMENT BETWEEN THE PORTUGUESE
REPUBLIC AND THE KINGDOM OF SPAIN ON THE CONSTITUTION
OF AN IBERIAN ELECTRICITY MARKET

Explanatory Memorandum

The Portuguese Republic and the Kingdom of Spain, hereinafter designated by Parties:

Considering that in the Agreement signed by the Parties in Santiago de Compostela on October 1st of 2004 lies the foundations of the Iberian Electricity Market;

Considering that its development during the three years that followed its signature enabled to build the grounds for the integration of the electrical systems of the two Iberian states and that, in the Badajoz summit, the Governments of Portugal and Spain have taken decisions by which the works of both Administrations resulted in the signature of an Agreement, dated from 8th March 2007, which establishes a plan to harmonize the regulation of the energy sector between the two Iberian states;

Given that the Agreement formalized in Santiago de Compostela, on 1st October 2004, provides the possibility for its revision in article 23 by agreement between the Parties, the Governments of the Portuguese Republic and the Kingdom of Spain consider that it is necessary to amend the Agreement of 1st October 2004 as follows:

Single Article

The 1st October 2004, articles of the Agreement between the Portuguese Republic and the Kingdom of Spain are amended as follows:

1. Article 3, Entities:

l) Number 2 is amended to the following text:

"2 – For the purpose of acting on MIBEL, the Parties consider as entities the following:

- a) The producers of electric energy, moral or legal persons, which function is the production of electric energy as well as build, operate and keep

production stations, either for own consuming and for the consuming of third parties;

- b) The Iberian Market Operator (OMI) and the managing entities of organised markets;
- c) The system operators of each of the Parties;
- d) The final traders, under the terms specified on the 2003/54/CE European Parliament and Council Directive containing the common provisions for the internal electricity market.
- e) The traders which are the legal persons which by accessing the transport and distribution networks have the function of selling electric energy to the consumers or to any other entities of the system;
- f) The final consumers, either moral or legal persons, who buy energy for their own consuming;
- g) The participants that on account of other entities of MIBEL, following the rules that might be applicable to them;
- h) The participants which trade financial instruments on MIBEL markets;
- i) Any other participant which may be defined following an agreement between the Parties.”

II) Amended a new number 3 with the following text:

“3 - For the purposes set forth in point g) of the previous number, an entity acting in the MIBEL markets as representative of other entities cannot act on their own account or on a third party’s account simultaneously.

It is understood that an entity acts on its own account when the entrepreneurial group of which it is part participates directly or indirectly in more than 50% of the capital of the represented entity.”

2. Article 4, Iberian Market Operator is amended to the following text:

“1 - The Iberian Market Operator (OMI) will comprise two holding companies, with their respective head-offices in Portugal and in Spain and cross shareholdings of ten percent (10%).

Both entities will hold fifty percent (50%) of each managing entity of the markets.

As for its structure as a legal person, the Iberian Market Operator (OMI) will comprise two managing entities of the market, one with head-office in Portugal, the Portuguese division of the Iberian Market Operator (OMIP), and one with head-office in Spain, the Spanish division of the Iberian Market Operator (OMIE), organised in accordance with the provisions set forth in this

Agreement. Both managing entities of the market will hold, in their turn, fifty percent (50%) of OMIClear – Sociedade de Compensação de Mercados de Energia S.A.

OMIP will act as the managing entity of the forward market and OMIE as the managing entity of the day market, following the previous compliance with the rules of the Party in which territory the head-office is located.

2 - The Administration Councils of both managing entities, OMIP and OMIE, will have the same members and the same presidency and vice-presidency.

Both Iberian countries will be alternately represented at the presidency and vice-presidency. Each representative's term of office will have an initially foreseen duration of at least six years, divided in equal periods of three years by the presidency and vice-presidency, respectively. The joint responsibility for electing the presidency and vice-presidency of both entities belongs to the board members of the Portuguese division of the Iberian Market Operator and the Spanish division of the Iberian Market Operator.

3 - No individual shareholder is allowed to hold more than 5% in the capital of any of the holding companies. On the other hand, the aggregate holding in each of those companies by entities of the electric and natural gas sector cannot exceed 40%.

4 - The System Operators, REN and REE are allowed to have a holding representing up to a maximum of ten percent (10%) of each holding company for each Operating System. The mentioned holding will not take into account the 40% mentioned in number 3.

5 - Both managing entities of the market are self-financing after the transitory period ending on January 1st 2010. During this transitory period the financing of the market may be complemented by the tariffs."

3. Number 4, article 7, Market rules and liquidity, amended to the following text:

"4. The Parties undertake to set:

- a) During a time period to be mutually agreed, a minimum percentage of energy which the final suppliers shall acquire on the forward market managed by OMIP as well as mechanisms in order to promote an efficient commercial management by them;
- b) Physical or financial auctions for the acquisition of energy by the final traders which, from July 2008 on and once OMI is created, will be directly or indirectly managed by this operator."

4. Amended a new article 7-b "Encouragement of competition", with the following text:

"1 - For MIBEL, every company or entrepreneurial group which directly or indirectly holds over 10% of the market, measured in terms of electric energy

produced within MIBEL, without taking into account the production under a Special Regime or in terms of traded electrical energy shall be considered a Dominating Operator.

For this purpose, the company or entrepreneurial group shall be considered dominant when it surpasses the abovementioned market share in any of the two mentioned activities (production and trade) or in both simultaneously.

2 - The following limitations and obligations may be imposed to the dominant operators:

- a) The possibility to carry out virtual capacity auctions or other analogous instruments which encourage vertical disintegration, in quantities which shall be established by the parties each year, in a coordinated fashion between systems and taking into account the relative share of the different dominating operators;
- b) Restrictions to the acquisition of energy in other countries of the EU outside MIBEL's scope, according to existing congestions in the interconnection capacity;
- c) Impossibility to represent producers in Special Regime (PER) whenever their direct or indirect holding in them is under 50% of the share capital;
- d) Total or partial restrictions in the concession of authorizations for new production premises for electric energy and in the flowing of energy, whenever situations of congestion arise in particular points in the networks.

3 - The Regulators Council will determine periodically (at least yearly), which entities fulfill the conditions to be considered dominating operators. The Parties will define the limitations and obligations from the previously identified list, and which Party will be responsible for the legal applications of the limitations referred in this article to the dominating operators with head-office or branch in its territory.”

5. Amended a new article 7-c “Virtual capacity auctions”, with the following text:

“Virtual capacity auctions will be carried out.

Yearly, the Parties will establish the quantities to be offered in each system, marking the dates in which they will be made available, distributed in quarterly, bi-annual and yearly contracts. The participation of the Portuguese system in an Iberian mechanism of virtual capacity auctions may be fulfilled through the offer of the energy of the stations which hold Energy Acquisition Contracts (CAEs).

Limitations to the participation of the dominating operators in virtual capacity auctions may be established.”

6. Article 8, Economic management of the interconnection between Portugal and Spain”, is amended to the following text:

“1 - The attribution of the interconnection capacity between the Portuguese and the Spanish systems in a situation of congestion, it will be based in a combined mechanism of market splitting and explicit auctions.

2 - The rents resulting from the restrictions due to congestions in the interconnection shall be applied on the reinforcement of the interconnection between both systems.”

7. Article 9 is amended as follows:

“1 - Last resource tariffs shall be considered maximum prices in both countries.

2 - The Parties, through the agreements they deem necessary, shall tend to harmonize the respective last resource and access tariffs structures.

3 - The harmonization process shall be based on the principle of tariff additivity and transparency and shall reflect the real costs incurred by the electrical energy supply as well as the prices applicable on the markets as defined in article 6 above and the prices of the coordinated energy acquisition mechanisms in which final traders participate.

4 - From July 1st 2008, the interruptibility discounts harmonised according to number 7, applied to High Voltage clients, will only be applicable to free market clients.

5 - From July 1st 2010, a final regulated tariff will only be available to Low Voltage clients.

6 - From July 1st 2011, a final regulated tariff will only be available to Low Voltage clients with a contracted power below 50 Kw.

The ministers responsible for the energy sector might agree on a reduction of the power referred to in the previous paragraph.

7 - The Parties undertake to gradually achieve harmonization regarding interruptibility and compensation for reactive energy services, as well as the payments by capacity.

8 - The Parties undertake to jointly encourage the modernisation of the installed electricity meters, establishing that from the date of the enforcement of this Agreement on, the new meters which shall be installed will be electronic, with the capacity to differentiate the schedules and telemeasurement and promote the coordination of the respective entities responsible for the change of trader as agreed.”

8. Article 11, Regulators Council, amended to the following text:

"1 - The Parties shall create a Regulators Council, comprised by representatives from ERSE, CNE, CMVM and CNMV.

2 - The Regulators Council has the following functions:

- a) To monitor the creation and development of MIBEL;
- b) To issue a previous and mandatory opinion, although not a binding one, about the application of sanctions in case of a very serious infringement in the context of MIBEL, to be agreed between the Parties;
- c) To coordinate the activity of its members when exercising the corresponding supervision powers of MIBEL;
- d) To issue coordinated opinions about proposals regarding rules applying to the operation of MIBEL or its amendments and regarding the rules proposed by the market managing entities that may be incorporated.
- e) To monitor the energy contracting mechanisms of Iberian scope by final traders foreseen in number 4 of article 7. For this purpose, the Regulators Council will regularly present to the Parties an opinion with results and possible proposals for the alteration of the regulation rules in effect.
- f) Any other functions to be agreed between the Parties.

3 - For the purposes of the previous number, every time a member of the Regulators Council is consulted before the approval of any law or regulation proposal which directly or indirectly affects MIBEL's operation, he shall send such proposal to the remaining members of the Regulators Council for their knowledge and possible comments."

9. Amended a new article 22-b "Creation of an Iberian Market Operator", with the following text:

"Before three months have elapsed from the entry into effect of this Agreement, OMIP and OMIE shall adopt the necessary measures to adapt to what is set forth in article 4."

10. Amended a new article 22-c "Creation of an Iberian Market Operator", with the following text:

"Before July 1st 2010, the payment to final traders will be the difference between sale and energy acquisition prices on the markets in which they participate. Nonetheless, the maximum authorised sale prices in each period may reflect eventual payment deficits from previous periods.

The parties shall guarantee the activity of final tariffs and a sufficient development of the coordinated energy acquisitions mechanisms defined within MIBEL's scope so that the risk undertaken by the final traders is acceptable, in both Iberian systems, and that the price fluctuations won't endanger its economical and financial viability."

Done in....., January, 2008 and has been drafted in Portuguese and Spanish languages both being relevant for legal purposes.

By the Portuguese Republic

By the Spanish Kingdom