

3rd Package Implementation: examples from Portugal

IV ARIAE-CEER Meeting

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José Braz

Executive Board member, ERSE
Chair, CEER and ACER MIT WGs



ERSE

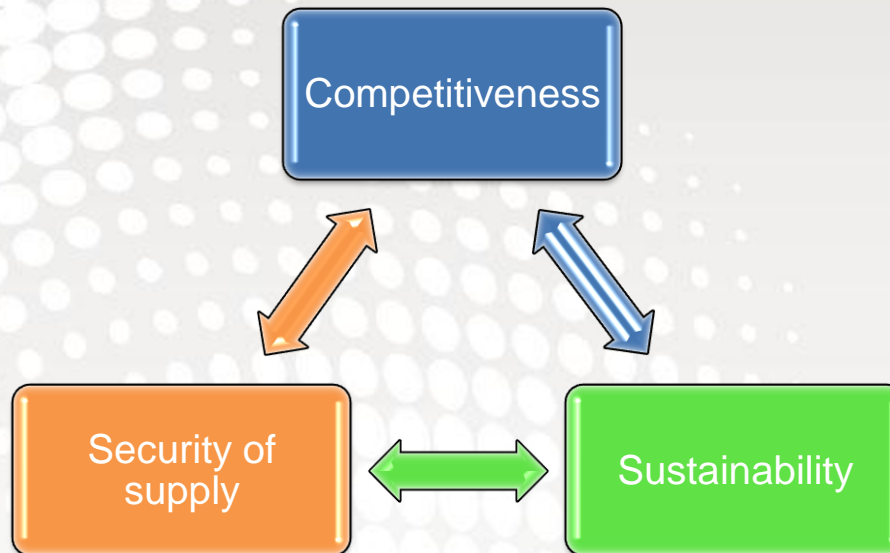
ENTIDADE REGULADORA
DOS SERVIÇOS ENERGÉTICOS

Topics

1. The 3rd Package
2. Complementary EU legislation
3. 3rd Package and Portugal's "Troika programme"
4. TSO certification
5. Unfinished business – post-3rd Package concerns

Background: the 3rd Package

Fundamental objective of economic regulation of the energy sector in Europe: Achieving a **single, competitive EU energy market, sustainable development and security of supply**



A **fourth** dimension was added in final negotiations (mainly by EP):

Consumer protection, especially for **vulnerable** consumers

3rd Package – main elements

Approved Sept 2009; 18 months for transposition; entered into effect March 3, 2011

Package consists of 5 legal instruments covering both electricity and natural gas (2 Directives and 3 Regulations)

Objectives: Reinforce EU Internal Energy Market, with

- (i) Increased competition and efficiency** (remove conflicts of interest of vertically integrated undertakings via ownership unbundling, ISOs or ITOs)
- (ii) Harmonised and reinforced powers and independence** for regulators; **cooperation** via new agency (ACER), responsible for **Framework Guidelines**, basis for EU-wide Network Codes
- (iii) Creation of ENTSOs**, with emphasis on binding **Network Codes** (approved in comitology process) and on **cross-border interconnections** and investments (10-yr network development plans)
- (iv) Specific responsibilities towards consumers**, especially the vulnerable

Complementary EU legislation

1. **“Green Package” – 20-20-20 objectives**

National commitments for CO₂ reductions, in line with EU environmental sustainability objectives

2. **“Infrastructure Package” – EIP + Connecting Europe Facility**

Investments in EU grid interconnections, with definition of PCIs, acceleration of licencing procedures and some financial assistance

3. **REMIT – market integrity and transparency**

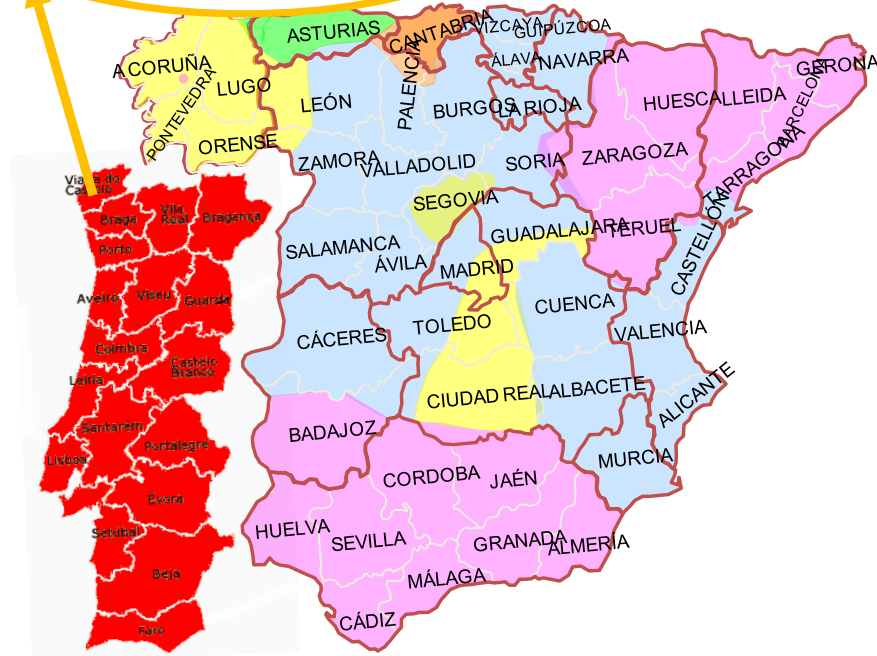
Reaction to financial crisis and evidence of market manipulation – pan-EU market monitoring

The Iberian electricity landscape

Regional integration and the Iberian market

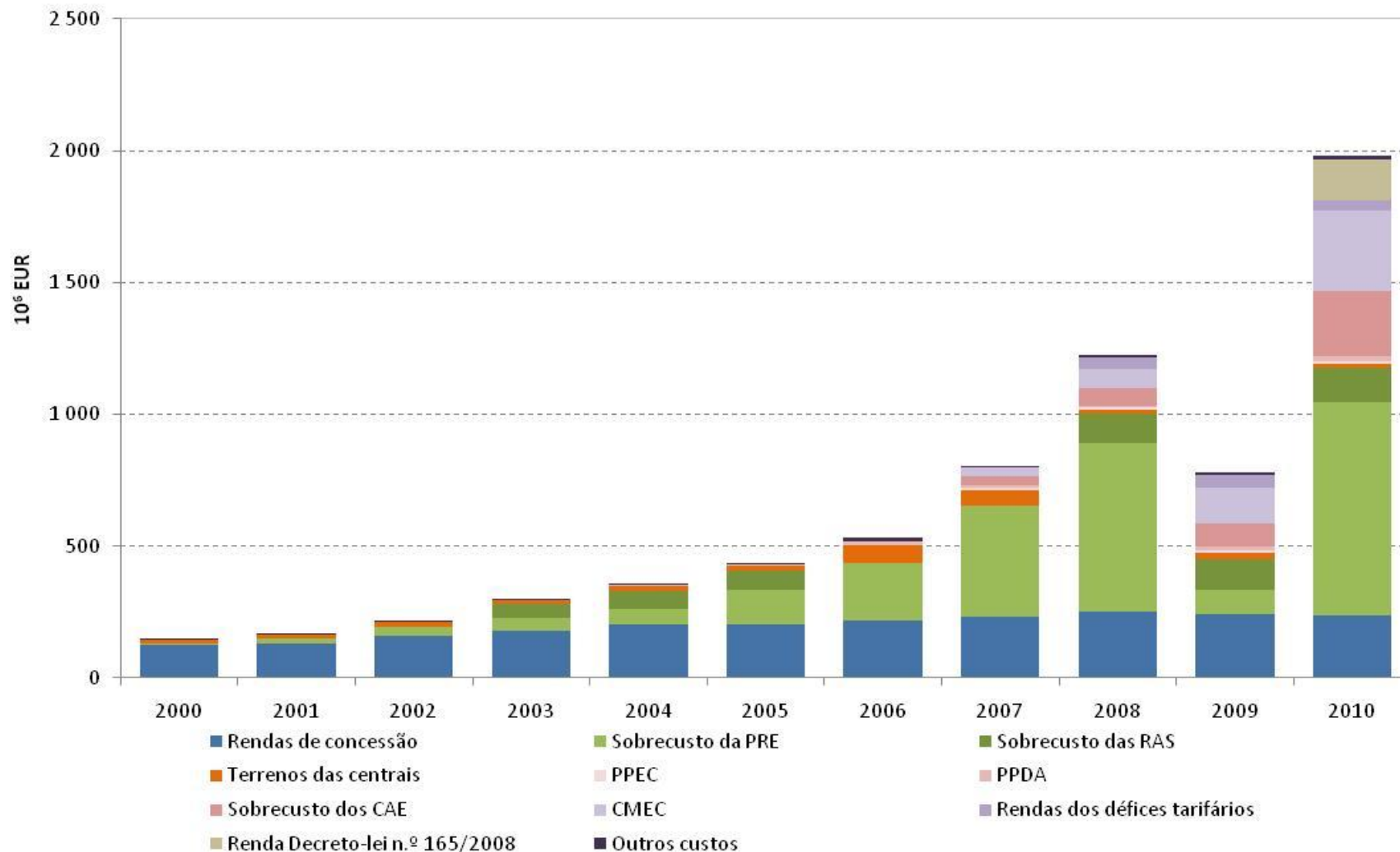
<p>PORTUGAL</p> <p>6 M Consumers</p> <p>Demand: 50 TWh</p> <p>Peak Load: 9 210 MW</p> <p>Installed Capacity: 16 731 MW</p>
<p>SPAIN</p> <p>24 M Consumers</p> <p>Demand: 264 TWh</p> <p>Peak Load: 44 440 MW</p> <p>Installed Capacity: 93 215 MW</p>
<p>MIBEL</p> <p>30 M Consumers</p> <p>Demand: 314 TWh</p> <p>Peak Load: 53 650 MW</p> <p>Installed Capacity: 109 946 MW</p>

Single dominant incumbent, privatised as such



Evolution of electricity costs

Costs of “general economic interest” (environmental and other energy policies)



Energy elements in Portugal's "Troika Programme"

Troika analysis pointed to several energy elements in Portugal's main structural difficulty, the low competitiveness of its economy:

- Lack of competition in energy markets (namely gas, important input for electricity)
- Large accumulated tariff deficit (electricity)
- High contractualised "rents" in electricity generation
- Insufficient independence in regulation and absence of a sanctions code

Energy elements in Portugal's "Troika Programme"

Troika solutions proposed for energy sector:

- Harmonised tariff in Iberian gas interconnections
- End to regulated end-user tariffs
- Gradual elimination (until 2020) of accumulated tariff deficit
- Renegotiation of generation contracts (wind, cogeneration, RoRs on heritage PPAs)
- Suspension of capacity payments
- New statutes for ERSE (with greater autonomy) and sanctions code

TSO certification

Questionnaire

Certification of (*Portuguese TSO*), as ownership unbundled TSO

Ownership of the transmission system by the TSO — Article 9(1a) and 9(5)

Regarding the **ownership of the transmission system** present the analysis:

- Specifying all transmission systems owned by the TSO in Portugal (also those under construction or not constructed before 3 of September 2009), including interconnectors and separated transmission networks.
- Specifying transmission systems, which the TSO owns (fully or partially) in other Member States of the EU.
- Indicating all other owners of the given transmission system specifying the shares of each owners, in case the TSO owns the transmission system only partially.

TSO certification

Control and ownership over the TSO — Article 9(1)b, c and d, 9(2), 9(3) and 9(7)

(42) Article 9(1)-(3) of Electricity and Gas Directives requires that the **TSO is not controlled by any person involved in the production or supply** of gas and electricity. In order to establish the ownership and control over the TSO it is required to establish list of all undertakings belonging to the same group. Therefore the following information is requested:

- List of all undertakings or persons controlling the TSOs, directly or indirectly.
- List of all undertakings active in any reportable market that are controlled, directly or indirectly:
- List all companies performing any of the functions of generation or supply in case the same person directly or indirectly exercises control or any right over the TSO and such companies.

For each entry listed above the **nature and means of control** should be specified (e.g. voting rights, veto rights, holding of a majority share, powers to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, de facto and de-jure control, sole control or joint control).

TSO certification

In case a public body is exercising the rights described in paragraph (b), (c) and (d) of Article 1 of the Electricity and Gas Directives, the unbundling provisions require ensuring independence between the public body exercising those rights over transmission and over generation, production or supply activities. Therefore in case **one or different central, regional or local governmental bodies (e.g. Ministries)** exercise those rights, it is necessary to introduce mechanisms ensuring such independence.

In case the TSO was part of a vertically integrated undertaking in line with Article 9(7) it needs to be ensured that **no commercially sensitive information is transferred** to the production, generation or supply undertakings and that the TSOs staff is not being transferred to those undertakings. In view of this provisions please describe briefly procedures which ensure that no commercially sensitive information is being transferred to the production, generation or supply undertakings.

TSO certification

Tasks of the TSO - Article 12 of the Electricity Directive and Article 13 of the Gas Directive

The TSO is required to operate the network in line with the Article 12 of the Electricity Directive and Article 13 of the Gas Directive. Please:

- Describe briefly all tasks the TSO fulfils and conclude on compliance with Article 12 (electricity) or Article 13 (gas). Submit all relevant parts of all relevant regulatory provisions (**laws**, network codes, agreements between companies, statutes) showing that the **TSO has the full responsibility** to fulfil the above listed tasks and clearly mark the relevant parts supporting the analysis.
- Show on the basis of applicable regulation that the **NRA concerned is equipped with powers, including ability to impose dissuasive fines** which it is able to apply when the TSO is not fulfilling or not fully fulfilling the tasks and obligations specified in Article 12 of the Electricity Directive and 13 of the Gas Directive.

For Portugal: post-Troika concerns

1. Even if measures are fully implemented, electricity end-tariffs need to rise 1.5% p.a. above inflation through 2020 (total about 15%) to eliminate 2012 accumulated tariff deficit, a **negative contribution to economy's competitiveness**
2. Reduction in end-user prices depends on **productivity** gains and **technological advances** (grid “smartness”, cheaper PV and gas, storage) – but incentives need to be **cost-effective**
3. Aggressive RES growth and current economic slump result in costly **excess generation capacity**; negligible ES-FR interconnectivity makes Iberia an “**energy island**” – need to insist on effective completion of EU **internal energy market**

Unfinished business – ongoing 3rd Package priorities

1. IEM “**completion**” by end-2014 still **leaves much undone**: even with main Network Codes approved, market coupling remains incomplete
2. **Technological advances**, often unpredictable, require continuous adjustment of **target market models**
3. Increasing attention to environmental and supply security concerns determine a **rising share of political** (non-technical) **elements** in the final energy price – while the 3rd package aims at better functioning markets, influence of market factors is being superceded by political decisions
4. Ownership unbundling has largely succeeded for transport/transmission grids but **incumbents still often persist** simultaneously in production and supply; REMIT may well increase incentives for in-group OTCs, further reducing scope for organised markets
5. 3rd package transposition has often **failed to ensure NRA independence** and autonomy - Commission verification and enforcement procedures, only now getting underway, are likely to require many changes

that's all, folks!

obrigado!