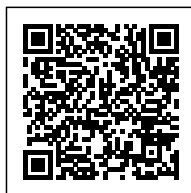


# ENERGY & RENEWABLES REPORT 2008: FILLING THE ENERGY GAP

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Category: [Energy](#)



**Iberian Lawyer's Annual Energy and Renewables Special Report 2008 reveals a legal market full of confidence. Although the wider economy may be slowing, energy clients continue to offer law firms opportunities, reflecting Iberia's position as a leading development centre for renewable energy technologies, and prompting demand for deeper sector expertise.**

Issues surrounding energy production, distribution and supply are gaining ever more importance, say Iberia's lawyers. The continuing rise of oil and gas prices is bringing questions about the sustainability and security of energy supplies, while the crossborder consolidation of energy and utilities companies is raising issues over market concentration and national protectionism. Iberdrola, Gas Natural, EDP and EdF are seemingly now permanent features of the business newspaper headlines.

All of this is also helping to further champion the demand for the diversification of energy resources

and the development of renewable alternatives, in line with countries' international commitments, including Kyoto and the European Union's (EU) energy goals. With few carbon resources Portugal has historically imported around 85% of its primary energy needs while Spain imports around 80%. Such dependency on carbon - based fuels and rising demand has proved a key incentive behind both countries' efforts to try and fill potential energy "gaps" through investments in renewable energy resources. "The Spanish energy sector will continue to grow and develop over the coming year in order to meet strong demand and reduce dependence on energy imports," says Silvestre Arana, energy partner at Garrigues.

"Renewable energy development will continue to rise in line with Spain's commitments under the EU's energy policy, which sets a target of a 20% share in EU energy consumption by 2020." Portugal currently already produces around 40% of its total electricity needs from renewable sources, putting it well ahead of the applicable target set by the EU for 2010.

## **Security of supply**

Interest in renewables may be gaining momentum but much of the press coverage surrounding Iberian energy issues in recent months has focused on the concentration activities of the major utility companies, amongst which further consolidation is perhaps inevitable, believes Manuel García, Head of Legal Gas Natural.

"Energy companies increasingly need to capitalise on synergies to compete at a global level, to manage investment needs and the rising costs of supply infrastructure," he says. Driving this, at least within the EU, has been the European Commission's (EC) desire to open up energy markets and ensure interconnections, alongside national governments' concerns over security of supply, say lawyers.

EDP recently signed a new liquid natural gas (LNG) supply agreement with Sonatrach – Algeria's state-owned gas company and which it has now extended to its Latin American operations – and many believe that the importance of Algerian gas (to Spain, Portugal and France) will rise with the completion of a new pipeline to Almería. It is a development that will make Sonatrach a distributor as well as a supplier in the local market, despite the efforts of some in Spain to block its entry.

"In our view special emphasis and relevance will be given by the Government to a stable, continuous and reliable energy supply both power and gas," says José Guardo, project finance partner at Garrigues. Nonetheless he too sees the potential for further consolidation activity.

El informe anual 2008 llevado a cabo por Iberian Lawyer sobre energía y renovables revela un mercado ibérico muy maduro. A pesar de la crisis económica, parece que el sector de la energía permanece activo, afirman los abogados expertos en la materia. Los temas relativos a la producción de energía, distribución y suministro son de vital importancia, al igual que lo es el incremento continuo de los precios del gas y del petróleo, aspectos que ponen de relieve la sostenibilidad de un suministro seguro de energía. Todo esto está suscitando un mayor interés sobre la posible consolidación en el ámbito transfronterizo de la energía y de las empresas suministradoras, además de una motivación creciente para identificar y buscar fuentes de energía renovable que puedan complementar una posible deficiencia energética.

"The Spanish energy market has yet to stabilise. Merger projects are still pending and the government is closely observing and intervening where necessary in order to achieve both stability and sustainability, which are inextricably linked," says José Ramón de Hoces, partner at Pérez-Llorca.

His firm represented German bidder E.ON in the protracted 18-month takeover battle for Endesa, which was won by a joint bid by Italy's Enel and Spanish construction company Acciona. The


process also however saw the Spanish government charged with protectionism by the EC for its attempts to favour a domestic bid and the creation of a national energy "champion".

Spain's Iberdrola now looks to be facing a potential takeover scenario and has launched a series of pre-emptive legal attacks intended to prevent a bid from France's EdF. Although a comparable level of merger activity among the major Portuguese utilities has yet to be seen, lawyers there also predict increasing levels of interest across the sector. "The past year has been a frantic one for the Portuguese energy sector and it seems almost impossible to predict any more upturns or opportunities, but surely they shall happen," says Manuel Andrade Neves, partner at Abreu Advogados in Lisbon.

## Liberalisation

Significant in Spain has been the liberalisation of the energy supply markets and the removal of the existing electricity and gas supply tariffs. Notable also, say some, have been the moves toward a pan-Iberian electricity market (Mercado Ibérico de Electricidade – MIBEL) and comparable gas market (MIBGAS), although lawyers question the rate of actual development – with some suggesting that the issues raised are reflective of broader problems facing the region's energy market – particularly issues surrounding an interconnection with France.

"As long as MIBEL remains an 'island' on the Pan European Network, due to the Pyrenees grid-connection limitations, its development will likely be stalled and local political and economic concerns shall have the final word," says Bruno Azevedo Rodrigues at Raposo Bernardo & Associados.

Nonetheless lawyers say that the liberalisation process is increasing the options available to consumers, particularly industrial operators, and removing the distinction between energy providers. Gas Natural, for example, is now one of Spain's largest electricity suppliers and Endesa a major gas supplier, likewise Iberdrola is among Spain's largest nuclear energy providers and the world's largest renewable energy company. 

Liberalisation is prompting energy suppliers and energy-intensive consumers to rethink their strategies and to pursue new lines of business, say Juan Ignacio González Ruiz and Carlos de Miguel at Uria Menéndez. "For example, large industrial consumers currently benefiting from favourable electricity tariffs will need to move to a free-market environment and negotiate their electricity supplies from July 1, 2008."

The same process is ongoing in Portugal but issues remain in order to truly open up the supply market, say lawyers there, including ensuring power grid capacity and overcoming local shortages.

"The Portuguese government's desire to ensure security of supply determines not only a stronger bet on the renewable energy sector, but also for renewable suppliers," says Miguel Lorena Brito at F Castelo Branco & Advogados (FCB&A).

## Forefront

Portugal is however already at the forefront of the global development of renewable energy resource, believe some, and the government has ambitious plans to expand renewable electricity production to 60% by 2020.

The world's largest solar photovoltaic (PV) energy plant is currently under construction by Acciona Energía at Moura – a €200m, 62MW, project. Also under construction is one of the world's largest wind power plants, the €325mn 240 MW Alto Minho project being undertaken by EDP and comprising over 120 turbines.

"Although PV quotes are almost fulfilled we may yet see an extension if Portugal is to reach its targets," says Jorge Santiago Neves at Barrocas Sarmento Neves.

"The energy sector remains very active at all levels. There is considerable M&A activity and a continued growth of the market particularly regarding renewable energies," agrees Manuel Santos Vitor at PLMJ. "The Portuguese Government remains very interested in increasing the production of renewable energy and it has now launched an aggressive program for the construction or development of new dams."


This trend is evident along the River Guadiana where a €2.6bn scheme is creating 18 new hydro-electric plants. In addition the country will also soon see the world's first commercial wave power scheme at Leiria, a project being undertaken by Enersis (a subsidiary of Australia's Babcock & Brown).

"Portugal is also now ahead of many other countries in the application of biotechnology projects for renewable energy, such as laboratory grown seaweed, and now has a pilot hydrogen production project in the Azores through which it is expected to produce 50% of the Islands' electricity by 2010," says Monica Pacheco at Rui Pena Arnault & Associados.

Spain too is seeing significant renewables activity, and is already the world's second largest wind energy producer, after Germany, and the fourth largest solar PV operator – one of the world's biggest thermo-solar PV plants is already operational at Solucar, near Seville, where a second larger plant is now under construction by operator Abengoa Solar.

"Thermo-solar energy is an area in which we are seeing increasing investor interest, but it is still a relatively new technology and so the banks are being much stricter in their lending criteria," says Miguel Riaño at Linklaters in Madrid.

José Gimenez Cervantes at CMS Albiñana & Suarez de Lezo is among those however that notes that the solar industry in Spain nonetheless faces some serious issues around the development of new projects.

"Spain has succeeded in establishing a clear tariff regime for renewables, which has sent a positive  message to investors in all areas except PV plants, where most of the developers still do not know which tariff to apply after September 2008," agrees Luis Muñoz at Jones Day.

The stability, certainty and reliability of the legal and economic frameworks are essential to secure the sustainable development of facilities, adds Silvestre Arana at Garrigues. "Any modifications to the economic regime that may be introduced by the government could seriously affect the future development of the renewable energy sector."

"The delay has lead to a situation in which promoters cannot afford the risk of starting new projects," says Luis Gil Bueno at Gómez- Acebo Pombo. Likewise in Portugal, say lawyers, the success of the government's ambitious renewables targets may depend on upgrades to the transmission grid, and in ensuring certainty in the rates producers will get for their energy.

"The market is not dependent on changes to the feed-in tariff regime (under which producers get a guaranteed rate), on the contrary, the market depends of not having them change to a market-oriented pricing system as the EU Commission is proposing," says João Macedo Vitorino at Macedo Vitorino & Associados.

## **Investment decisions**

"Even in light of the issues surrounding the tariffs applicable to new PV projects in Spain there is still a strong demand among energy companies and private investors. It is seen as a good time to buy and to sell," says Ignacio Borrego at Clifford Chance in Madrid – which is representing Babcock &

Brown through the sale of its European renewables portfolio.

Luis Muñoz at Jones Day highlights the attraction of the sector at a time when many others on the capital markets may seem less attractive. Europe's largest IPO of 2007 was the flotation of Iberdrola's Energías Renovables, (led locally by Uría Menéndez), and the largest this year to date has been that of EDP Renováveis – the flotation led by Morais Leitão Galvão Teles Soares da Silva & Associados.

## **Ensuring the right mix**

As to the key pressures the energy sector presents to Iberian law firms, among the major issues, say lawyers, is the demand to deepen teams' expertise. A significant driver also, says Javier Santos at DLA Piper, is the subtle shift of clients' emphasis away from "traditional" energy matters (for example, oil, electricity and distribution) to new areas such as renewables and liquid natural gas (LNG).

"Clients are basically looking for someone that knows the sector and who will not miss things, but to remain up-to-date requires a mix of legal and technical expertise as deals are invariably complex," says Pedro Mielgo, the former President of Red Electrica España and now with the energy team at Lovells in Madrid.

A track record is also clearly important. Lovells also last year recruited former Eversheds renewable energy lead Hermenegildo Altozano, partly as a result of Antonio Morales' departure to Latham & Watkins.

Gómez-Acebo & Pombo has likewise seen the importance of adding senior industry experts, having recruited the former chief financial officer of Endesa, Jose Luis Palomo, to its advisory board.

The international expansion of Iberian energy companies particularly is driving law firms to consider how best to develop their own crossborder expertise, or at least to ensure they know where to go to find comparable expertise.

EDP, for example, has benefited from the international flexibility of its advisers, most notably that of Morais Leitão Galvão Teles Soares da Silva & Associados (MLGTS) and Skadden Arps Slate Meagher & Flom for its acquisition of Horizon in the US.

For firms such as Lisbon-based 70- lawyer Miranda Correia Amendoeira & Associados, the increasing importance of Angola and southern Africa as energy markets is providing growing opportunities. Founding partner Agostinho Pereira de Miranda began his career at Gulf Oil and Chevron in Africa, where the firm now operates an alliance across six countries, and is regarded as among the leading regional energy players.

Likewise F Castelo Branco & Advogados and MLGTS are among those seeking to capitalise on the growing importance of Brazil, where they have entered into formal cooperation agreements with their respective referral partner firms, Mattos Filho Veiga Filho Marrey Jr e Quiroga, and Schmidt, Valois, Miranda, Ferreira & Agel Advogados. With such strong demand for expertise, it is inevitable that firms will continue to value and seek out experienced practitioners.

Indicative also of the continuing positivity towards the renewables sector by the international finance community, was last December's €985m refinancing of Babcock & Brown's Portuguese wind farm and hydro plant portfolio, Enersis. The deal, led by Linklaters, was the country's largest-ever energy project financing.

There is also no shortage of investment funds targeting the sector. May saw US-based First Reserve announce a dedicated renewable energy group that will invest €600m (\$940m) into developing renewable energy assets over the next four years. The move is a direct result of its February €261m acquisition of the solar energy unit of Spain's Gamesa Corporación Tecnológica, Gamesa Solar, and the acquisition of Italy-based energy planning and PV focused, Ener3.

## **International ambitions**

Also significant is the increasing international ambition of Iberia's energy companies, with lawyers reporting client activity across Europe, northern Africa, Latin America and the US. "Spanish companies are increasingly looking abroad and to target more sophisticated markets, and in doing so many are taking their domestic legal advisers with them," says Antonio Morales, partner at Latham & Watkins in Madrid.

Notable particularly has been Iberian companies' US ambitions. EDP is now the third largest wind power operator thanks to last year's €1.5bn acquisition of Horizon Wind Energy. And where Iberdrola, through its acquisition of Scottish Power, now controls US-based renewables company PPM and recently acquired gas company, Caledonia Energy Partners.

Spain's Abengoa Solar is also now planning a 280-megawatt \$1 billion (€680m) solar power plant in the Arizona desert, the construction of which may start as early as next year. "We live in a moment of internationalisation in our sector, with international leadership in renewables by Spanish companies, and with big foreign companies interested in getting a foothold in the Iberian marketplace," says Luis Castro-Lourdes Vargas at Legalia Abogados. Manuel Santos Vitor at PLMJ notes also the emerging trend among Portuguese companies to target opportunities in Central and Eastern Europe – where EDP recently acquired a Polish wind operator, Relax Wind Parks – and within the African Portuguese speaking countries.

## **The nuclear question**

The realities of energy security may yet prompt a change of stance over the long-term viability of nuclear energy across Iberia, among both the currently negative Spanish and even Portuguese governments, suggest some lawyers.

"The quest for a reliable power supply is always an issue in Spain. Nuclear energy generation is, has been, and will be a hot topic," says Santiago Garrido at Garrigues.

"Currently it is under a moratorium, the existing nuclear power plants will remain in operation until the end of their respective useful lives but no further investments may be carried out."

Antonio Morales at Latham & Watkins notes however that for all the Spanish government's emphasis on alternative sources, the prospect of an energy gap remains (wind power, for example, currently contributes only 10% of the country's electricity needs).

"The Spanish government will soon have to face the potential closure of the nuclear station of Garoña (which opened in 1968) and that will provide a great opportunity to see the market trend."

The barriers to further investments in nuclear plants are however substantial, suggests Juan Ignacio González at Uría Menéndez, in terms of both overcoming public hostility and the capital requirements needed to finance a nuclear power plant. "It seems difficult that any company will be prepared to devote substantial resources to such projects without a strong commitment and possibly financial support from the Spanish Government, which at present seems unthinkable."

But while some in Lisbon, such as Claudio Monteiro at Sera Lopes, Cortes Martins & Associados, suggest that nuclear energy is a non-issue, others say this is largely because the necessary debate

has not yet taken place.

"There are a growing number of specialists who consider that it is not only viable, but essential for energy security in a carbon-restricted environment," says Jorge Santiago Neves at Barrocas Sarmiento Neves.

Diogo Perestrelo, at Gonçalves Pereira Castelo Branco & Associados, applauds the ambitious efforts of the Portuguese government to address the energy issue, but notes that nothing will be achieved without the clear support of the private sector. "Several Portuguese and foreign companies have said 'yes' and agreed to play the energy game but now, from where we stand, I think it is crucial to start a serious public discussion on the pros and cons of nuclear energy."

A single nuclear power plant might solve Portugal's oil dependency, suggests João Macedo Vitorino. Others continue to highlight the ecological dangers such plants bring: "In our opinion it should be a non-issue across Iberia, not only for financial reasons but more for environmental and security reasons," says José Eduardo Martins at Abreu Advogados.

Others note that Portugal is already exposed as a result of the location of Spain's facilities. "Despite Portugal not benefiting from nuclear energy production, even due to its lack of financial capacity to promote nuclear power plants, the Portuguese have already taken on some of the risk associated with the nuclear option," says Miguel Lorena Brito at F Castelo Branco & Advogados.

Others suggest, off the record, that the best option remains the long-awaited interconnection with France, Europe's largest nuclear energy producer, although French nuclear operators are now clearly looking for Spanish opportunities – Areva recently announced the appointment of Ana Palacio, the former Spanish Foreign Minister and World Bank Vice President, to its Executive Committee.

GALP, in May, acquired Shell's fuel businesses in Mozambique, Swaziland and Gambia, and Repsol and Galp are among those hoping to benefit from recent significant oil discoveries off the Brazilian coast.

## **Maintaining energy**

The energy markets therefore remain a major area of focus for much of the Iberian legal community, who see them as offering practice opportunities at home and now abroad.

Investor appetite remains significant for renewable energy assets, among private investors and utility companies, and lawyers notably in Spain are confident that deal flow will increase when the long-awaited new PV tariffs are finally announced. In addition new areas, such as wave, biomass and thermal plants offer new opportunities – Spain has recently passed legislation approving the development of offshore wind farms.

Likewise, while the use of nuclear power across the peninsula may be perceived publicly as a non-issue, with both Spain and Portugal currently opposed to any new developments, many suggest however that the sector still offers possibilities. "Increasing energy demands cannot be indefinitely answered with the current basket of energy sources and probably the EU will force the Iberian governments to reconsider their current opinions," suggests Francisco Solchaga at Aroz & Rueda.

For all its potential, the renewables sector does not offer guaranteed returns and there remains debate over the long-term efficiency of some technologies. "Renewable energy resource options are going to be increasingly overshadowed by two determining questions: do renewables really benefit the environment and are consumers willing to pay the price the environmental protection requires," suggests Miguel Lorena Brito at FCB&A.

The big prize for many law firms, for now at least, is winning a place at the table of the major energy

and utility companies, hungry for assets as well as market share – and among which, the economics of the global energy markets is leading to increasing consolidation.

“The energy sector is one of the few in which Member States are more strongly trying to preserve sovereignty, given the strategic nature of energy activities. This has brought and will continue to bring permanent struggles between the ‘national security’ approach of national governments and the pro-competitive approach held by the European Commission,” says Luis Pérez de Ayala at Cuatrecasas.

However Emiliano Garayer of Garayer Asociados suggests that talk of a “big bang” amongs Spain's domestic energy companies may still be premature. Last year's protracted battle for Endesa, and the associated regulatory, competition and corporate demands generated, is indicative both of the high stakes at play for energy companies, and the potential fee bonanzas for their law firm advisers.