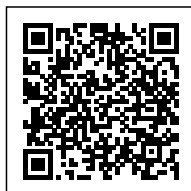


PROJECTS THAT GO WITH THE FLOW - ABREU ADVOGADOS

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Water and wave power is playing an increasing role in Portugal's renewable energy strategy but it is also a development that floats new legal and operational issues, say Manuel Andrade Neves and José Eduardo Martins at Abreu Advogados.

Dentro de la ambiciosa estrategia de energía renovable en Portugal, el creciente énfasis que se otorga a la energía maremotriz (o de las olas) está presentando nuevos planteamientos a los reguladores, proveedores y operadores, destacan Manuel Andrade Neves y José Eduardo Martins, de Abreu Advogados. La novedosa tecnología y la normativa que la acompaña inevitablemente presenta una serie de preocupaciones de tipo jurídico y operacional pero la experiencia demuestra que lo más preocupante suele ser el impacto medioambiental de este tipo de proyecto.

Significant in the evolution of Portugal's renewable energy sector is the growing emphasis on water power projects, say Manuel Andrade Neves and José Eduardo Martins, partners at Abreu Advogados. The country has embarked upon a €1.14bn scheme to create 10 new hydro-electric

plants (including along the River Guadiana), where the world's first commercial wave power project is now operational.

The main drivers behind this growing emphasis are essentially fourfold, says Andrade Neves. 'The need to attain Portugal's ambitious renewables directive targets, the limit placed on new wind plant developments, following the recent wind power tenders and the creation of the so-called 'wind-cluster', the evident complementary ties between wind and water sources, and significantly, the availability of water courses throughout the country that have still to be explored.'

But such schemes have not been without issues, they emphasise. Alongside the inevitable problems surrounding the creation of viable wave power technology, the government also had to establish a demonstration zone, west of São Pedro de Moel, with water depths below 30 metres and exclusively dedicated to the development of prototypes and farms with the view of generating electricity based on wave power.

In addition, says Andrade Neves, a new public entity was required, the Pilot Zone Managing Authority, which will manage the concession contracts under which licences for electricity generation may be granted to eligible developers. 'However, the main issue has been the tariff for the electricity generated by the offshore wave plants which the developers have been arguing is insufficiently appealing for the large investments required to go ahead.'

Likewise, the creation of new hydro-power projects has also presented the government and developers with novel issues. The enactment of water power legislation encourages such developments but nonetheless a number of operational issues have emerged, explains Martins. The River Guadiana, for example, runs through large areas of protected national park.

'The key issues that have affected projects undoubtedly include the extent of the environmental impact and opposition to such projects, but also the availability of experienced contractors for these kinds of projects, as well as the capacity of the market to supply them with the equipment they require in both the short and medium term.'

In order to take into consideration some of the environmental issues that were anticipated to arise, the government's plans for the development of new large-scale hydropower projects were the first, within the Portuguese energy area, to be subject to a Strategic Environmental Assessment (SEA), says Martins, a result of Portugal's transposition of the European Union SEA Directive (required of Member States since 2004).

'Although the plan as a whole has passed the SEA with a green light, each of the hydro power projects will now nonetheless be subject to a specific environmental impact assessment study and there some difficulties are expected to arise for specific projects.' Such a revolution in power development has resulted in lessons being learnt by Portugal's legislators and regulators, and also by developers and operators, they emphasise.

'Almost all of these areas of activity, along with almost all the relevant regulatory framework, are new and have generated a series of novel and significant issues,' says Andrade. 'While there may as yet be no dominant or overriding themes across the entire water power sector our experience has shown us nonetheless that it is however paramount to approach any solution with respect for the local communities and the environment.'

Any regulatory, government or private investment decision taken in the current market environment, with regard to the development of renewable energies – including water and wave developments, they emphasise – must therefore take into consideration that the costs of implementation, and scrutiny, may increase in the years to come.