

# US STIMULUS PLAN REPORT 2009: BEHIND THE OPPORTUNITIES THE DETAILS

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## **With its emphasis on renewable energy production and infrastructure projects the US Stimulus Plan would seem a perfect opportunity for Iberian companies**

The signing into force of the US Stimulus Plan by President Barack Obama in February 2009 added increased opportunities to a country that many of Iberia's leading construction, infrastructure, concession and energy companies have for some time considered a growth market.

The Plan, legitimised as the American Recovery and Investment Act 2009 (ARRA), released \$787bn (€579bn) of Federal funds to help stimulate the US economy after the blows dealt to it by the sub-prime crisis, credit crunch and global financial crisis.

Among the measures included is an allocation of \$41bn towards new energy projects, with \$11bn dedicated to improving the efficiency of the national energy grid. Additionally, \$60 billion of federal loan guarantees has been made available for renewable energy and transmission, as well as energy initiatives including smart grid, energy efficiency, biofuels and clean coal.

**“The recent investment grade status achieved by Brazil is allowing a more intense international capital flow to the country, and this is being seen in an upturn in the energy sector.”**

Eduardo Soares, Mattos Filho Veiga Filho Marrey Jr e Quiroga

Around \$100bn has also been allocated for transportation and infrastructure projects, though which experts say this is merely a down payment towards the nearly \$2 trillion of US infrastructure needs.

The scale of opportunities has inevitably seen a dramatic increase in international investment interest in the US including from Spain and Portugal – global leaders in infrastructure, public / private finance initiatives and renewable energy technologies.

Iberian infrastructure companies already active in the US include Abertis, Acciona, ACS, Brisa, Dragados, Cintra, FCC and OHL, while others such as Global Vía are entering the market.

EdP in 2007 acquired Horizon Wind Energy, the third largest wind energy company in the US, while Iberdrola last year acquired PPM Energy and Energy East. More recently, Spain's Fotowatio acquired San-Francisco's MM Renewable Ventures – operator of the US' largest solar facility, in Nevada – making it one of the largest solar energy companies in the country. Spain's Abengoa is also now building the world's largest (\$1bn 280MW) thermal solar park in Solana, Arizona, while President Obama visited the Pennsylvania factory of Spanish wind turbine manufacturer Gamesa on the campaign trail.

For in-house lawyers at companies placing strategic emphasis towards the US, certain aspects of the Plan nonetheless present issues, notably the 'Buy American' provisions and the eligibility of non-US companies for the financial incentives available.

“From our perspective, the US clearly wants to diversify its energy supply and is looking for new technology and ways of doing things, and to restructure the internal energy supply market. An issue is however, will the Federal loans or guarantees be out of the reach of foreign companies, or will they need to adjust the way they operate?” asks the Head of Legal at a major Spanish business.

The ARRA prohibits the use of recovery funds for the construction of public buildings or public

works unless all the iron, steel, and manufactured goods used in the project are produced in the US – although this does not apply to iron or steel used as components or subcomponents of manufactured goods in the project

“The requirements must be implemented in a way that is consistent with international trade agreements that commit to non-discrimination in government procurement; while there are also three exceptions – nonavailability, unreasonable cost, and ‘public interest’ – to the general rule,” says Patricia Menéndez-Cambó, Chair of the Global Practice Group at national US firm Greenberg Traurig.

The allocation of projects to Iberian companies is not likely to raise obvious significant issues, believes Mary Anne Sullivan, energy partner at Hogan & Hartson in Washington DC. “There are no guarantees but the allocation is in theory ‘blind’. Certain funds are not available to ‘foreign’ companies but there are no evident issues around awards to the local subsidiaries of foreign companies.”

When it comes to the perception of Spanish and Portuguese companies to the US, the Stimulus Plan presents a new era of stronger and closer economic and political ties with the US, lawyers there suggest.

“There are no impediments for foreign businesses wanting to operate in the US, but they must nonetheless communicate any desire to invest in terms of the good they can do for the US economy, to economic growth or creating jobs. Companies must not be perceived as a threat but as an opportunity,” says Luis Perez, partner and Head of the Miami office of Hogan & Hartson.