



**AGREEMENT BETWEEN THE PORTUGUESE  
REPUBLIC AND THE KINGDOM OF SPAIN FOR THE  
CREATION OF AN IBERIAN ELECTRIC ENERGY  
MARKET**

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## **Agreement between the Portuguese Republic and the Kingdom of Spain for the Creation of an Iberian Electric Energy Market<sup>1</sup>**

The Portuguese Republic and the Kingdom of Spain, hereinafter designated as “the Parties”,  
Under the scope of the cooperation between the two countries, they express their intention  
to proceed with the implementation of an Internal Energy Market;

Going forward with their cooperation started in year 1998 between the two Portuguese and  
Spanish Administrations in order to progressively clear away the existing obstacles and  
privilege the integration of the respective electric systems;

Considering the Memorandum Agreement signed on the 29 July 1998 by the Minister of  
Economy of Portugal and by the Minister of Industry and Energy of Spain for the cooperation  
in electric energy matters; the Cooperation Protocol between the Spanish and the  
Portuguese Administrations for the Creation of an Iberian Electricity Market signed in Madrid  
on 14 November 2001 by the Minister of Economy of Portugal and by the Government Vice-  
Minister and the Minister of Economy of Spain, defining the conditions for the creation of an  
Iberian Electricity Market, as well as the Memorandum of Understanding signed in Figueira  
da Foz on 8 November 2003, in the context of the XIX Luso-Spanish Meeting in  
consequence of which the Parties, represented by the same signatories have set the  
timetable for the implementation of the Iberian Electricity Market;

Being conscientious of the mutual benefits resulting from the creation of a common electricity  
market, to be designated as Iberian Electricity Market, in the context of an integration  
process of the corresponding electric systems of the Parties;

Being convinced that the creation of an Iberian Electricity Market will represent a milestone  
for the creation of an Internal Energy market in the European Union which will speed up the  
process for the practical adoption of the 2003/54/CE European Parliament and Council  
Directive dated from 26 June 2003 regarding the common provisions for the Internal  
Electricity Market encouraging the exchange and the competition between the companies  
belonging to this sector;

Considering that the integration of both electric systems will benefit the final users of the two  
countries and will allow all the participants to access the market in equal, transparent and  
objective conditions and fully compliant with the applicable European regulation;

Being determined to create a stable legal environment which will allow the electric systems  
operators of the Parties to develop the respective activity in whole Iberian Peninsula;

Considering that both countries have signed on 20 January 2004, in Lisbon an Agreement  
for the Creation of an Iberian Electric Energy Market which has been provisionally applicable  
to the Parties since 22 April 2004 but has not entered into effect;

Considering that the reality coming from the provisional application of the said Agreement  
has evidenced the need to revise the respective legal regime and the obligations there  
stated in order to allow an effective implementation of the Iberian Electric Energy Market in  
order to adequate it to the needs of both countries and to allow the achievement of the  
objectives as described above;

The Parties agree to enter into a new Agreement with the following contents:

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<sup>1</sup> Decreto do Presidente da República n.º 29/2006, de 5 de Março, e pela Resolução da Assembleia da República n.º 23/2006, de 19 de Janeiro, publicados no *Diário da República*, 1ª série-A, n.º 59, de 23 de Março de 2006.  
BOE n.º 121, 22 Mayo 2006

**Part I**  
**General Provisions**

**Article 1**

**Object**

1. The object of this Agreement is the creation and development of an electricity market common to both Parties, designated as Iberian Electric Energy Market, hereinafter designated as "MIBEL" which is a milestone of the integration process of the electric systems of both countries.
2. MIBEL comprises the set of organised and non organised markets on which the execution of transactions or of electric energy contracts take place and for trading financial instruments based on that same energy, as well as others that may be agreed between the Parties.
3. The creation of an Iberian Electric Energy Market implies the recognition by both Parties of a single electricity market where all participants will have the same rights and obligations.
4. Both Parties undertake to develop and modify, on a coordinated basis, the respective internal legislation and regulation deemed necessary to allow the operation of MIBEL.
5. MIBEL will start its operation before 30 June 2005, providing free access to the markets to the entities of both Parties.
6. By entering into this Agreement the national Public Administrations of each of the Parties undertake to comply with all obligations arising from the creation of an Iberian Electric Energy Market.

**Article 2**

**Guiding Principles**

1. The operation of MIBEL shall be based on the principles of transparency, free competition, objectivity and liquidity, self-financing and self-organization of the markets.
2. The self-financing principle of the markets as mentioned in the previous number shall apply, without prejudice of an initial transitional period as set by the Parties during which the financing of the Portuguese division of the Iberian Market Operator and of the Spanish division of the Iberian Market Operator referred to in article 4, may be complemented by the tariffs.
3. The self-organization principle shall apply without prejudice of a proper authorization and supervision model.
4. The Parties shall promote the competition between the entities of MIBEL in order to improve its liquidity by using the mechanisms that may be set for that purpose.

### **Article 3**

#### **Entities**

1. All the entities that operate in the electric market of both Parties are subject to all the rights and obligations arising from the creation of MIBEL, as well as any other entity which, direct or indirectly, act on the electric system of each of the countries.
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) Those will proceed with the integration of the national transport and distribution networks of energy coming from other external systems by means of its acquisition to third countries;
  - c) The managing entities of organised markets and, once created, the Iberian Market Operator (OMI);
  - d) The system operators of each of the Parties;
  - e) The regulated traders or the final suppliers, under the terms specified on the 2003/54/CE European Parliament and Council Directive containing the common provisions for the internal electricity market.
  - f) The traders constituted as legal persons which by accessing to the national transport and distribution national networks have the function of selling the electric energy to the consumers or to any other entities of the system;
  - g) The final consumers, either moral or legal persons which buy energy for their own consuming;
  - h) The participants that act for the account of other entities of MIBEL, following the rules that might be applicable to them;
  - i) The participants which trade financial instruments on MIBEL markets;
  - j) Any other participant which may be defined following an agreement between the Parties.

### **Part II**

#### **Specific Provisions**

### **Article 4**

#### **Creation of an Iberian Market Operator**

1. The Parties shall promote the creation of an Iberian Market Operator (OMI) which will assume the role as the Portuguese division of the Iberian Market Operator (OMIP) and of the Spanish division of the Iberian Market Operator (OMIE).
2. 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.

3. Until the creation of OMI, there will be a transitory period during which OMIP and OMIE are considered as entities of the electric sector.
4. During the transitory period as referred to in the preceding number the following operations shall take place:
  - a) Within a maximum period of one year as from the date MIBEL starts operating the managing entities of the market shall define a threshold applying to shareholders which will imply that any shareholder is not allowed to hold more than 5% of the share capital of any of those entities;
  - b) Within the same time period, the requirement that none of the system operators is allowed to hold more than 3% of the managing entities of the market must be accomplished;
  - c) Until two years following MIBEL starts to operate, OMI and OMIE shall proceed with an integration process in order to create a single operator, the Iberian Market Operator (OMI).
5. Following the transitory period as referred to in the preceding number, it is not allowed to any shareholder to hold more than 5% in the capital of any of the managing entities of the market and the entities of the electric sector as a whole are not allowed to hold more than 40% of that.
6. Following the transitory period as referred to in number 4, none of the system operators is allowed to have a holding representing more than 3% on any of the managing entities of the market.
7. The Parties shall take the necessary measures to allow that the markets are self-financing at the end of the transitory period, not shorter than two years, which may be agreed between them. During this transitory period the financing of the market may be complemented by the tariffs.

## **Article 5**

### **System Operation**

1. The System Operators of each of the Parties are responsible for the technical management of the system and their object is to guarantee the continuity and the security of the electric energy supply through the management of the adjustments services of the system.
2. The coordination functions and mechanisms between the System Operators of each of the Parties are set by an agreement.
3. In any case, the System Operators shall not execute trading transactions of electric energy, without prejudice of a transitory period to be agreed by both Parties.
4. In the context of the preceding number and within a period of one year following MIBEL starts operating, the National Electric Network ("Rede Eléctrica Nacional, abbreviated "REN") and the Electric Network of Spain ("Rede Eléctrica de Espanha, abbreviated "REE") shall present a proposal to the respective Governments for a final solution regarding the historical energy contracts they participate.

## **Article 6**

### **Trading electric energy markets of MIBEL**

1. The organised markets of MIBEL to which number 2 of article 1 above refers and the respective settlement are the following:
  - a) Forward markets, comprising the transactions regarding energy buckets which settlement is either physical or in cash and completed after the following day of the transaction date;
  - b) Day markets, comprising the transactions regarding energy buckets with physical settlement completed on the following day of the transaction date.
  - c) Intraday market with physical settlement.
2. The non organised markets to which number 2 of article 1 refers comprise bilateral transactions between the entities of MIBEL which settlement is either physical or in cash.
3. The transaction of the adjustment services of the system on the same day may be executed through market mechanisms to be defined by each of the System Operators and the respective settlement is necessarily physical.

## **Article 7**

### **Market rules and liquidity**

1. The markets as referred to in the preceding article are governed by the rules of the Party where they are created.
2. The intraday market and the forward market shall be adapted to the applicable financial law.
3. OMIE shall manage the day market on an exclusive basis only during a transitory period which lasts for the time period to be defined by the Parties.
4. The Parties undertake to set:
  - c) During a time period to be mutually agreed, a minimum percentage of energy which the regulated traders shall acquire on the forward market managed by OMIP as well as mechanisms in order to promote an efficient commercial management by the market management companies;
  - d) Mechanisms which encourage the vertical disintegration of the companies, such as virtual auctions or any others.
5. The transaction of adjustment services of the system shall operate on an exclusivity basis.
6. The rules to be set under the scope of this Agreement shall define the way each of the Parties will participate on the authorization procedures of the market which the other Party may execute.

## **Article 8**

### **Economic management of the link between Portugal and Spain**

The Parties shall agree on the market mechanisms to provide the interlinking capacity between the Portuguese and the Spanish systems.

## **Article 9**

### **Tariffs**

1. The Parties shall tend to harmonize the respective tariffs structure through the agreements they deem necessary.
2. The process regarding the harmonization of the tariff structure shall be based on the principles of additive (!!!) tariffs, of transparency and of consistency and shall consider the real costs incurred by the electric energy supply as well as the prices applicable on the markets as defined in article 6 above.
3. Within a period of one year following MIBEL starts operate, the Parties shall develop a plan to be submitted to an opinion of the Regulators Council, in order to implement the tariff harmonization.

## **Part III**

### **Regulation, consultation, supervision and management mechanisms**

## **Article 10**

### **Supervision**

1. The supervision entities of MIBEL are, for Portugal, the Energy Services Regulatory Authority (“Entidade Reguladora dos Serviços Energéticos”, abbreviated as “ERSE”) and the Securities Market Commission (“Comissão do Mercado de Valores Mobiliários”, abbreviated as “CMVM”) and, for Spain, the National Energy Commission (“Comisión Nacional de Energía”, abbreviated as “CNE”) and the Securities Market Commission (Comisión Nacional de Mercado de Valores, abbreviated as “CNMV”).
2. The supervision of the markets defined in the context of MIBEL is conducted by the supervision entities of the Party where those are created, in accordance with the applicable regulation.
3. The supervision entities shall conduct the respective functions on MIBEL on a coordinated basis.
4. The Parties shall promote the signature of Memoranda of Understanding between the competent supervision entities, in the context of MIBEL.

## **Article 11**

### **Regulators Council/Committee**

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) Any other functions to be agreed between the Parties.

## **Article 12**

### **Creation of Market Participants Committees**

The managing companies may set up for the respective markets, Market Participants Committees which will be considered as advisory bodies.

## **Article 13**

### **MIBEL's Technical and Economic Management Committee**

The Parties shall set up the MIBEL's Technical and Economic Management Committee comprising the representatives of the systems and markets operators, in order to manage on a proper manner, the communication and the feed information deemed necessary between the different operators, as well as to facilitate the normal running of their activities.

## **Part IV**

### **Authorisation and registration of Participants and Warranty of Supply of Electric Energy**

## **Article 14**

### **Administrative Procedures regarding Authorization and Registration of Participants**

1. The recognition by one of the Parties of the capacity as a participant implies the automatic recognition by the other Party.
2. The administrative procedures regarding the authorization and registration of participants for exercising the different activities in Portugal and in Spain shall be harmonized in accordance with the reciprocity principle.

## **Article 15**

### **Warranty of Supply of Electric Energy**

1. In the context of the operation of MIBEL, the Parties undertake to act under the principle of solidarity which applies in case of emergency, namely in those situations when the warranty of supply of energy in the MIBEL's area is at risk.

2. Without prejudice of the regime as stated in the preceding number, each of the Parties may adopt, in case of emergency in the respective area, the necessary measures in order to warrant the respective energy supply.
3. The adoption of those measures shall be notified at the earliest convenience and preferably before the respective execution to the national authority of the other Party.
4. The intervention in case of emergency which may comply with the solidarity principle as mentioned in the preceding number 1 is submitted to additional protocols.

## **Part V**

### **Infringements, Sanctions and Competent Jurisdiction**

#### **Article 16**

##### **Infringements and sanctions**

1. The infringements regarding the violation of MIBEL rules and the respective sanctions are set by the internal legislation of each of the Parties and in the context of number 4 of article 1 of this Agreement, undertaking to comply with the following:
  - a) The infringements will be qualified as very serious infringements, gross infringements and slight infringements;
  - b) There will be administrative sanctions proportional to the type of the infringement up to the maximum amount of 3 000 000 euros;
  - c) There will be information sharing mechanisms necessary to the findings and the resolution of the infringements proceedings, even though they are governed by a professional secrecy obligation to which, in each case, the competent authorities may be submitted;
  - d) There will be provisions stating the possibility to revoke or suspend the administrative authorization as a consequence of the infringement.
2. The competent authorities of each of the Parties shall inform the other supervisory authorities of MIBEL about the applied sanctions, namely for the purpose of the regime as stated in paragraph d) of the preceding number.

#### **Article 17**

##### **Sanctioning Procedure**

1. The findings and the resolution of the infringements proceedings is a competence of the bodies to which each of the Parties assigned that competence in accordance with the respective internal legislation.
2. The competence of the bodies as referred to in the preceding number is determined in compliance with the criteria of the location where the infringement occurred.
3. In case there is no possibility to determine the location where the infringement took place, it shall apply the criteria of the nationality of the infringer provided that its nationality is either Portuguese or Spanish.

4. For the other cases, it shall apply the criteria of the location where the infringer has firstly got the authorization for exercising an activity in the context of this market.

#### **Article 18**

##### **Competent Jurisdiction**

The competent jurisdiction for the appeals regarding the administrative actions taken by the competent authorities in the context of the implementation of MIBEL rules shall be determined based on the nationality of the authority which has taken the action underlying that appeal.

#### **Part VI**

##### **Final Provisions**

#### **Article 19**

##### **Monitoring Commission**

1. For the resolution of any dispute regarding the construction or the implementation of this Agreement it shall be set up a Monitoring Commission comprising two representatives of each of the Parties.
2. The decisions shall be taken by majority and within a maximum period of six months as from the date when the dispute has been raised, unless there is a resolution taken to extend that period.
3. The Commission shall adopt its operating rules.

#### **Article 20**

##### **Additional Protocols**

The Parties may enter into Additional Protocols to this Agreement.

#### **Article 21**

##### **Entry into effect and transitory regime**

1. This Agreement shall be effective as from the date of the receipt of the last notification attesting the compliance with the internal law requirements of both Parties which are deemed necessary for that purpose.
2. Until the date of the entry into effect of this Agreement, the Parties go on applying provisionally the Agreement between the Portuguese Republic and the Kingdom of Spain for the Creation of an Iberian Electric Energy Market, signed in Lisbon on 20 January 2004.

## **Article 22**

### **Validity and termination**

This Agreement shall be valid for a period of two years, automatically renewable for identical time periods, unless terminated by any of the Parties, by written and diplomatic way with a minimum precedence of six months.

## **Article 23**

### **Revision**

1. This Agreement may be revised following an agreement by the Parties.
2. The amendments shall be effective following the terms set by number 1 of article 21.

## **Article 24**

### **European Union Legislation**

This Agreement shall be construed and implemented in accordance with the applicable rules of the European Union.

As an expression of the acceptance of its contents, this Agreement is signed by the duly authorized signatories.

This Agreement has been executed in Santiago de Compostela, on 1<sup>st</sup> October 2004, and has been drafted in Portuguese and Spanish languages both being relevant for legal purposes.

The Minister of Industry, Commerce and Tourism of the Kingdom of Spain

*José Montilla Aguilera*

The Minister of Economic and Labour Activities of the Portuguese Republic

*Álvaro Roque de Pinho Bissaya Barreto*

### **Aviso n.º 584/2006, de 24 de Maio**

*Por ordem superior, torna-se público que, em 6 e 26 de Abril de 2006, foram emitidas notas, respectivamente pelo Ministério dos Negócios Estrangeiros da República Portuguesa e pela*

*Embaixada do Reino de Espanha em Lisboa, referindo ambas terem sido concluídas as respectivas formalidades constitucionais internas de aprovação do Acordo entre a República Portuguesa e o Reino de Espanha para a Constituição de Um Mercado Ibérico da Energia Eléctrica, assinado em Santiago de Compostela em 1 de Outubro de 2004.*

*Por parte de Portugal, o Acordo foi aprovado pelo Decreto do Presidente da República n.º 29/2006, de 5 de Março, e pela Resolução da Assembleia da República n.º 23/2006, de 19 de Janeiro, publicados no Diário da República, 1ª série-A, n.º 59, de 23 de Março de 2006.*

*Nos termos do n.º 1 do artigo 21 do Acordo, este entrou em vigor em 10 de Abril de 2006.*

*Direcção de Serviços da Europa da Direcção-Geral das Relações Bilaterais, 5 de Maio de 2006.*

*A Directora de Serviços, Liliana Araújo.*

*El presente Convenio entró en vigor el 10 de abril de 2006, fecha de recepción de la última notificación cruzada entre las Partes de cumplimiento de requisitos de derecho interno, según se establece en su artículo 21.1. Igualmente con fecha 10 de abril deja de aplicarse el Convenio de igual denominación firmado en Lisboa el 20 de enero de 2004 (publicado en el B.O.E. n.º 132 de 01-06-04), según se establece en el artículo 21.2 del presente Convenio.*

*Lo que se hace público para conocimiento general. Madrid, 5 de mayo de 2006.–El Secretario General, Técnico, Francisco Fernández Fábregas.*