

OIL AND GAS (EXPLORATION AND PRODUCTION) IN PORTUGAL



1. INDUSTRY STRUCTURE AND MARKET

Portugal is usually looked at as a potential oil-producing country attracting industry players on a regular basis to carry out prospection activities due to the extension of its coast.

In fact, several public agencies and experts have identified the Portuguese off-shore and on-shore as having oil-producing potential. This is supported by geological evidence and data, although, so far, no commercial discoveries have been reported.

The most intense period of prospection goes back to the 1970s following the enactment of new laws on oil prospection activity, when 30 agreements relating to offshore areas were entered into.

Interest in oil prospection activity was re-established in the 90s when a further 29 onshore and offshore oil prospection agreements were made.

There are currently ongoing prospection activities, including drilling which is planned or in progress. It has been made public that Portugal is to enter first time ultra-deep water surveys, including 4-D seismic.

It is worth pointing out that natural gas discoveries in the Algarve (south of Portugal) off-shore may well develop into commercial activity, with all specialists confirming the excellent qualities of the natural gas found.

Nowadays, there is renewed interest in the Portuguese subsoil due to the

exponential growth in the potential of the shale gas market in the world economy and some experts have recently supported that Portugal may have substantial reserves of this unconventional gas.

2. REGULATORY AND LICENSING REGIME

2.1 THE REGULATOR

The oil & gas industry is under the supervision of the Government and public and independent agencies, such as the Directorate-General for Energy and Geology (“DGEG”—Direcção-Geral de Energia e Geologia) and the independent Competition Authority (“AdC”—Autoridade da Concorrência) in this latter case in respect of competition matters.

2.2 LAWS, LICENSING OF OPERATIONS AND INFRASTRUCTURE

2.2.1 PROSPECTION AND PRODUCTION

Decree-Law 109/94, of April 26 1994 governs the activities of prospection, research, development and production of hydrocarbons, in a solid or gaseous state, excluding natural solid hydrocarbons and all concentrations which can only be exploited through extraction from rocks.

The development of these activities requires the execution of concession agreements with the Portuguese government following, as a rule, a public tender procedure or through direct negotiation.

“Portuguese Law Firm of the Year”
Chambers Europe Excellence 2009, *IFLR Awards 2006 & Who’s Who legal Awards 2006, 2008, 2009*

“Corporate Law Firm of the Year - Southern Europe”
ACQ Finance Magazine, 2009

“Best Portuguese Law Firm for Client Service”
Clients Choice Award - International Law Office, 2008, 2010

“Best Portuguese Tax Firm of the Year”
International Tax Review - Tax Awards 2006, 2008

Mind Leaders Awards™
Human Resources Suppliers 2007

The importation and exportation of crude oil and oil products are generally free. However, they are subject to prior licensing and specific obligations regarding supply, publication of prices and information, tax and customs.

Preliminary surveys for assessment of the interest in carrying out prospection activities also require the issue of a special preliminary permit.

Any interested party with industry proven technical, economic, and financial capacity may apply for such preliminary permits. The application must include the party's (i) technical, economic and financial capacity; (ii) objectives; (iii) area of intervention; (iv) technical and financial resources to be used; and (v) a provisional budget. The permit is valid for a maximum period of six months and grants exclusive rights to its titleholder over the permit covered area.

The Portuguese government may launch a public tender procedure for the concession of oil prospection activities at any time.

Direct awards are exceptional and may only occur in relation to areas (i) previously declared available on a permanent basis; (ii) following a public tender under which no concession was awarded; (iii) relinquished by former concessionaires or (iv) adjacent to licensed areas.

The initial term of each concession contract is of 8 years and may be further extended for 2 years. In the event of the concessionaire notifying the Portuguese government of a commercial discovery during the initial term, the E&P period for the relevant area will be increased by a further 25 years. This period may be extended up to a maximum of 40 years in total.

2.2.2 IMPORTATION OF PETROLEUM AND OIL DERIVATIVES

Importation of oil products and derivatives is governed by a 2006 law¹ establishing the general principles of what is known as the National Petroleum System ("SPN" or "Sistema Petrolífero Nacional") including the activities of storage, transportation, distribution, refining and trading, and organisation of the markets for oil and its derivatives.

The main guidelines of the new SPN regime are to ensure that all interested parties have free access to these activities coupled with public service obligations such as security, regularity and quality of supply, consumer protection, and the promotion of energy efficiency and

rational use of resources. Prices are to be established under the free pricing system.

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As a rule all activities are subject to specific licensing by the Government. In the smaller scale projects the Regional Directorate for Economy – under the supervision of the DGEG – are the licensing entities (jointly with municipalities and other public agencies for ancillary licensing matters).

2.2.3 SECURITY OIL STOCKS

As provided for in Decree-Law 10/2001, of January 23, as amended,² any person or entity introducing oil and its derivatives to Portugal (for commercial or other purposes) has a duty to maintain emergency stocks of those products. These stocks may be maintained by third parties granting the importer full access to the products.

The stocks may be kept in Portugal or in another EU Member State (subject to a prior bilateral agreement between Portugal and that Member State).

The minimum quantities of the stocks and relevant time for which they must be maintained are pre-established and vary according to the product.³ The DGEG also monitors compliance by national and international undertakings in respect of mandatory stocks of fuels. Importation reports, forecasts and other information relating to the security stocks must, therefore, be disclosed to the DGEG.

Strategic oil security stocks are also maintained by the State-owned company EGREP—Entidade Gestora de Reservas Estratégicas de Produtos Petrolíferos, E.P.E.

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¹ Decree-Law 31/2006, of 15 February, published in the Official Gazette no. 33, Series I-A.

² Law 17/2001, of 3 July, Decree-Law no. 339-D/2001, of 28 December, and Decree-Law no. 71/2004, of 25 March and Decree-Law no. 242/2008, of 18 December.

³ Ministerial Order 517/2004, of 20 May provides for the applicable quantities and limits.