



## Secretary of State for Energy's decision on alleged CMEC overcompensation

**Lisbon, September 27<sup>th</sup>, 2018:** Pursuant to the terms and for the purposes of the article 17 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council and of article 248-A of the Portuguese Securities code, EDP - Energias de Portugal, S.A. ("EDP") is providing the following information to the market:

DGEG notified EDP about a dispatch issued by the Secretary of State for Energy (SSE) on 29-Aug-2018, which quantifies at €285 million the alleged overcompensation of EDP related to the calculation of the real availability factor of the plants under the CMEC regime. Additionally, the dispatch from the SSE mentions that the possible charging to EDP of a maximum amount of €72.9 million for alleged overcompensation of plants under CMEC regime operating on ancillary services market is still under analysis.

EDP considers that this dispatch lacks legal, economic and technical foundation:

- 1) The availability-related compensation amounts received by EDP resulted from the strict application of the rules and parameters defined in DL 240/2004 (establishing CMEC regime), which are identical to those defined in the previous PPA contracts;
- 2) This decree-law, by ruling the availability of the plants under the CMEC regime, does not expressly requires the performance of availability tests, referring to the PPA termination agreement on the specific legislation on this matter;
- 3) Nevertheless, it was always possible to the system operator to perform availability tests to these plants, within the scope of the regulation in force;
- 4) The above decision intends to, solely based on the absence of express requirement of tests, assign, on an administrative and arbitrary manor, a value to availability factor with no legal or contractual foundation, neither adherence to reality.
  - a. In fact, the mere observance of production hours at some of the plants allows to conclude with confidence that the effective



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Reuters: EDP.LS  
Bloomberg: EDP PL

availability factor was higher than the one administratively set and now included in this DGEG proposal approved by the SSE.

- b. ERSE, the entity who computed the amount of €285 million, recognises that such amount does not represent the impact of the absence of availability tests.

Moreover, since 2007 and on annual basis, ERSE has never issued unfavourable opinions on the annual amounts of CMEC compensations and has even recognised that results of availability tests performed after 2013 were higher than those that now, administratively and unfounded, are intended to be set.

In this respect, in the context of definition of the final CMEC adjustment, the SSE recognised on 25-Apr-2018 that legal changes conducting to the recovery amounts of this kind would be considered of doubtful constitutionality.

EDP finds itself impaired by this administrative decision, and will therefore take the necessary measures to protect its rights and interests, including all legal means available.

Following the set of adverse measures, with no legal foundation and in disrespect of contracts, which have been taken by the Portuguese State in prejudice of EDP, its shareholders and remaining stakeholders, EDP's General and Supervisory Board, in which strategic shareholders take part, has unanimously declared today that the adequate protection of shareholders' interests justifies the resort to International Arbitration under treaties in force regarding the protection of foreign investment.

Following the principle of prudence, the reception of this notification changes the outlook for EDP's reported net profit in 2018, from €0.8 billion to between €0.5 billion and €0.6 billion. This change, fully explained by non-recurring effects, will have no impact on EDP's dividend policy.

This new outlook for reported net profit includes, for the first time since the IPO of EDP, a net loss attributable to its operations in Portugal.

**EDP – Energias de Portugal, S.A.**

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