



***Memorandum of Understanding among CMVM, CNE, CNMV and ERSE for the cooperation and effective coordination of the supervision of the Iberian Electricity Market (MIBEL)***

**DISCLAIMER**

The English text below is not an official translation of the original legal text and is provided for information purposes only.

The original legal text for the Memorandum of Understanding between CMVM, CNE, CNMV and ERSE for the cooperation and effective coordination of the supervision of the Iberian Electricity Market is available in Spanish and in Portuguese and any of these versions will prevail in any conditions including possible discrepancies between the English translation and the original text.

Although every effort has been made to ensure an accurate translation to English of the original Spanish and Portuguese legal texts, CMVM, CNE, CNMV and ERSE decline any liability for the use of, or reliance on, the English translation, as well as any error or misunderstanding deriving from the translated text.

Whereas

- a) That the Governments of Portugal and Spain have agreed on the creation of a joint electricity market, the Iberian Electricity Market (MIBEL) as part of the integration of the electricity systems of the Iberian States, within the framework of the construction of a European internal market in electricity.
- b) The agreement of 1 October 2004 between Portugal and Spain regarding the constitution of an Iberian Electricity Market (the Santiago Agreement) and the revised version thereof, dated 18 January 2008, approved by Resolution n°

17/2009 of the Portuguese Parliament dated 23 March and published in the Spanish Official State Gazette on 11 December 2009;

- c) That the MIBEL is comprised of all organised and unorganised markets in which electric energy transactions or contracts are executed and in which derivative financial instruments using electricity as the underlying asset are traded;
- d) That the MIBEL is subject to supervision in Spain by the Comisión Nacional de Energía (CNE) and the Comisión Nacional del Mercado de Valores (CNMV), and in Portugal, by the Comissão Nacional do Mercado de Valores (CMVM) and the Entidade Reguladora dos Serviços Energéticos (ERSE), in the terms of paragraph 1 of article 10 of the Santiago Agreement;
- e) That the supervision of the markets defined within the scope of the MIBEL is undertaken by the regulators of each State, constituted in accordance with their respective legislation in the terms of paragraph 2, article 10 of the Santiago Agreement;
- f) That the MIBEL supervisory authorities must fulfil their functions in the MIBEL in a coordinated manner, in accordance with the terms of paragraph 3, article 10 of the Santiago Agreement;
- g) That the States must promote the drawing up of memoranda of understanding between the competent supervisory authorities, within the scope of application of the MIBEL, in the terms of paragraph 4, article 10 of the Santiago Agreement;
- h) The functions of the Council of Regulators, constituted of the representatives of the CMVM, CNE, CNMV and ERSE, in the terms of article 11 of the Santiago Agreement;

- i) The Internal Regulation of the Council of Regulators, dated 30 June 2006, with the amendments ratified on 10 December 2007,

**1º - The Comissão do Mercado de Valores Mobiliários (CMVM), represented by its Vice-Chairman, Amadeu Ferreira;**

As entity responsible for the supervision of Portugal's financial instruments markets and the entities trading therein, in the terms of the Portuguese Securities Code approved by Decree Law 486/99, of 13 November.

**2º - The Comisión Nacional de Energía (CNE), represented by its Chairman, María Teresa Costa Campí;**

As entity responsible for supervising Spain's energy markets, in accordance with the objectives and powers allocated by virtue of the Spanish Hydrocarbons Act, Law 34/1998 of 7 October.

**3º - The Comisión Nacional del Mercado de Valores (CNMV), represented by its Chairman, Julio Segura Sánchez;**

As entity responsible for the supervision and inspection of Spain's securities markets and the activities of all private individuals and legal entities trading thereon, in the terms of the Securities Market Act, Law 24/88 of 28 July.

**4º - The Entidade Reguladora dos Serviços Energéticos (ERSE), represented by its Chairman, Vítor Santos;**

As entity responsible for the regulation and supervision of Portugal's electricity and natural gas sectors, in the terms set in its own Statutes approved by the Decree Law 97/2002, of 12 April.

Agree to establish this Memorandum of Understanding (MoU) for the purposes of consultation, cooperation and full and appropriate information exchange, enabling a

more efficient and effective supervision of the markets and the agents intervening in the MIBEL, in the following terms:

## **Article 1.**

### **Principle of Mutual Cooperation**

1. The purpose of this MoU is to establish a principle of mutual cooperation among the undersigning regulators, including the exchange of information among these, without prejudice to their own powers according to their respective national laws. The purpose of this MoU is not to establish additional obligations or replace prevailing national legislation.
2. The supervisory entities must ensure that information exchanges, within the scope of this MoU, are carried out in the terms of the respective prevailing legislation, where the exchange of information is necessary for the coordinated execution of their powers in areas of shared interest.
3. This MoU does not authorise a regulator to, nor prohibit it from, implementing the measures it deems necessary to obtain the information it requires to fulfil its powers as attributed by Law.
4. The regulators acknowledge the importance of their mutual cooperation, in the scope of their respective supervisory and regulatory functions, which must adhere to principles of reciprocity, respect for professional secrecy and the use of information strictly for supervisory purposes.

## **Article 2.**

### **Scope of Cooperation**

1. The supervisory entities signing this MoU shall cooperate reciprocally, with the aim of ensuring a correct supervision and regulation of the MIBEL, the markets comprising it and the entities operating therein, in the terms of article 3 of the Santiago Agreement.

2. The cooperation established in the terms of this MoU includes the exchange of information and documents regarding the MIBEL, the respective markets and entities operating therein, in the scope of the powers of the undersigning supervisory entities, including but not limited to the following:
  - i. Trading, clearing and settlement on MIBEL organised markets;
  - ii. Over The Counter (OTC) Trading, clearing and settlement relating to the MIBEL instruments of the same nature or with the same underlying asset.
  - iii. Other type of trading concerning the MIBEL;
  - iv. Managing bodies of markets, clearing and settlement systems and central counterparty entities, mainly concerning economic, financial and business activity, carried out or planned, the respective bodies and share capital holders;
  - v. Other entities operating in the MIBEL in the terms of article 3 of the Santiago Agreement; and
  - vi. Modification proposals presented by the managing bodies regarding market rules, clearing and settlement systems and central counterparties.

### **Article 3.**

#### **Exchange of Information**

1. For the purposes of information exchange, in the scope of this MoU, the supervisory entities shall draw up, exchange and keep updated a list of each entity's contact persons who are responsible for requesting information, receiving information requests and responding accordingly, ensuring the protection of confidentiality where possible.
2. Information shall be requested in writing form (including e-mail, taking into account agreed security standards, including electronic signatures) by one of the

- persons on the contact list mentioned in the previous point. The response to the information request shall be made through the same channel.
3. By virtue of the nature of the information (volume, type of media, etc.), the supervisory entities shall agreed on the appropriate format for the exchanging and sending of this information.
  4. Information requests from the petitioning entity shall include:
    - i. Objective and clear identification of the information requested;
    - ii. Description of the circumstances behind the information request and the purpose for which the information is requested, as well as justification of the need for its procurement for the purposes of exercising the powers of the requesting supervisory entity (in the event that the information request were to relate to situations regarding breaches of legal or regulatory standards, a brief description of the breached standards must be included); and
    - iii. Any relevant information known to the entity requesting the information and which could condition its delivery.
  5. If the supervisory entity receiving the request were to have the requested information in its power, this shall be forwarded as quickly as possible to the requesting entity, taking into account in particular the need to perform any treatment thereupon (such as calculations or aggregation of information, etc.)
  6. Should the petitioned supervisory entity fail to have the requested information, it should inform the requesting entity accordingly. In these cases, the petitioned supervisory entity should request the information from the entities subject to their supervision in order to be able to respond to the information request received, provided the said request falls within the scope of its powers. If the requested information cannot be obtained (particularly due to inexistence of the information or lack of powers to obtain it), the petitioned supervisory entity shall inform the requesting entity accordingly.

7. Upon analysing the information request, the petitioned supervisory entity shall inform the requesting entity of the potential need to disclose the information request to the entities from whom the petitioned supervisory entity needs to request the corresponding information.
8. The petitioned supervisory entity must indicate its response to the information request if the said information is confidential in nature.
9. The requested information shall only be used for the purposes stated in the information request.
10. Responses to information request made within the scope of this MoU can be rejected on the following grounds:
  - i. If the requested information could not be provided in accordance with the express provisions of applicable national legislation, including cases in which information is declared confidential due to trade or industrial secret and prevailing national legislation does not allow for its disclosure;
  - ii. In the event that of criminal proceedings underway in the jurisdiction of the petitioned supervisory entity, based on the same circumstances and against the same persons, or if these persons had already been sanctioned for the same reasons by the competent authorities in this jurisdiction, except in the case that the petitioned entity were to prove that the additional sanctions or measures that could be applied in the initiated process are not of the same nature, and do not represent duplication of sanctions or measures already imposed in the jurisdiction of the petitioned supervisory entity;
  - iii. When prior consent is not obtained from the competent authorities issuing the request, when this information proceeds from another member State of the European Union or of a third State;
  - iv. If the information request were not carried out in the terms of this MoU; and
  - v. For reasons of public or national interest.

11. In those cases in which the information request is rejected, the rejecting supervisory entity shall state the reasons behind the rejection.

#### **Article 4.**

##### **Council of Regulators of the MIBEL**

Within the scope of the meetings of the Board of Regulators of the MIBEL (Chairs Committee and Technical Committee) information can be requested and provided with the characteristics set forth herein, recording these requests and disclosures in the respective minutes of the meetings.

#### **Article 5.**

##### **Professional secrecy and confidentiality**

1. Information exchanged between the supervisory entities, within the scope of this MoU, is subject to professional secrecy and used exclusively for the purposes of exercising the respective powers of supervision and regulation within the boundaries of the MIBEL.
2. The previous paragraph excludes information in the public domain, which is not subject to professional secrecy.
3. If the petitioning supervisory entity wishes to use the information for purposes other than those stated in point 1 of this article or intends to disclose confidential information to third entities, it must request express authorisation from the supervisory entity providing the information in question.
4. In the event that a legally-binding request, the petitioning supervisory entity shall notify the petitioned supervisory entity in advance and shall be subject to all exceptions or duties of secrecy required by prevailing legislation with regard to information exchanges. The requesting supervisory entity shall make all efforts to protect the confidentiality of information that is not in the public domain, in the terms of this MoU.



**Article 6.**

**Entry into force**

This MoU, drawn up in two versions, one in Portuguese and one in Spanish, shall enter into force on the date of its signing.

**Article 7.**

**Duration**

1. This MoU is of indefinite duration. However, any of the parties can withdraw provided three months written notice is provided to the other parties. The MoU can be modified or revoked by mutual agreement between the parties.
2. The duty to hold secret information exchanges in the terms of this MoU shall remain in force even after its termination.

Madrid, 17 May 2011.

Vice-Chairman of the CMVM

Chairman of the CNE

Chairman of the CNMV

Chairman of ERSE