

## PORTUGAL

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## A. Introduction

- 27.01** The Electricity Directives<sup>2</sup> were transposed into Portuguese national law by Decree-Law 29/2006, of 15 February, as amended and complemented from time to time and republished by Decree-Law 215-A/2012, of 8 October, and amended by Decree-Law 175/2015, of 27 August (Decree-Law 29/2006), establishing the new legal framework for the Portuguese electricity sector. This was further developed by Decree-Law 172/2006, of 23 August, as amended and complemented from time to time and republished by Decree-Law 215-B/2012, of 8 October (Decree-Law 172/2006), which established detailed rules for the functioning of the electricity system (the Electricity Regime).
- 27.02** In its turn, the Natural Gas Directives<sup>3</sup> currently in force were transposed into Portuguese national law by Decree-Law 30/2006, of 15 February, as amended and complemented from time to time and republished by Decree-Law 230/2012, of 26 October (Decree-Law 30/2006) establishing the new legal framework for the Portuguese natural gas sector, and

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<sup>2</sup> Directive 2003/54/EC, of 26 June 2003 and Directive 2009/72/EC, of 13 July 2009.

<sup>3</sup> *ibid.*

Decree-Law 140/2006, of 26 July, as amended and complemented from time to time and republished by Decree-Law 231/2012, of 26 October (Decree-Law 140/2006), which further developed this legal framework and established detailed rules for the functioning of the natural gas system (the Natural Gas Regime).

The Electricity Regime establishes a model in which activities relating to generation, supply, and management of organized markets are liberalized and only require previous compliance with a licensing or authorization/registration process. Transmission, distribution, and supply of last resort are regulated activities provided through the award of exclusive public service obligations (PSOs). **27.03**

Similarly, under the current Natural Gas Regime, activities relating to the import, supply, and market management are competitive and merely require previous compliance with a licensing or authorization/registration process. Supply of last resort and the operation of liquefied natural gas (LNG) terminals, storage facilities, and transmission and distribution networks are regulated activities provided through the award of exclusive public service concessions (or licences, depending on the cases). **27.04**

## B. Access Issues

## (1) Network operation (transmission and distribution)

Electricity transmission takes place via the National Transmission Network (*Rede Nacional de Transporte* or RNT), which is operated under an exclusive concession granted by the Portuguese government to REN—Rede Eléctrica Nacional SA, a subsidiary of REN—Redes Energéticas Nacionais, SGPS, SA, for a fifty-year period from the date of the concession agreement, pursuant to Article 69 of Decree-Law 29/2006 and Article 34 of Decree-Law 172/2006. **27.05**

Electricity distribution in high and medium voltage takes place via the National Distribution Network (*Rede Nacional de Distribuição* or RND), which is operated under an exclusive concession granted by the Portuguese government to EDP Distribuição—Energia, SA, a subsidiary of EDP—Energias de Portugal, SA, for a thirty-five-year period from the date of the concession agreement, pursuant to Article 70 of Decree-Law 29/2006 and Article 38 of Decree-Law 172/2006. Electricity distribution in low voltage takes place via the regional distribution grids pertaining to the Municipalities, which are operated under exclusive concessions granted by the Municipalities, for a twenty-year period from the date of the concession agreement, pursuant to Article 71 of Decree-Law 29/2006 and Article 42 of Decree-Law 172/2006. **27.06**

Natural gas transmission is made through the National Transmission Network on similar terms to those applicable to the electricity sector, based on an exclusive concession granted by the Portuguese government to REN Gasodutos, SA, a subsidiary of REN—Redes Energéticas Nacionais, SGPS, SA, for a maximum forty-year period from the date of the concession agreement, pursuant to Article 9 of Decree-Law 140/2006. **27.07**

Natural gas distribution is made through the National Distribution Network (*Rede Nacional de Distribuição de Gás Natural* or RNDGN), which is divided into regional and local distribution networks. Distribution of natural gas through regional grids is based on exclusive public service concessions granted by the Portuguese government for a maximum forty-year **27.08**

period from the date of the concession agreement, and the distribution of natural gas through local grids is based on exclusive public service licences, also granted by the Portuguese government, for a maximum twenty-year period.

- 27.09** The transmission and distribution of electricity and natural gas are activities carried out under a public service regime and the respective infrastructures are considered of public utility. The transmission and distribution system operators (respectively, the TSO and the DSO) are bound to provide access to all users in a transparent and non-discriminatory manner, based on administratively set tariffs, equal for all users.

#### (2) Access rules

- 27.10** Access to all regulated infrastructures (ie LNG terminals, storage facilities, and transmission and distribution networks of electricity and natural gas) must be regulated through objective, transparent, and non-discriminatory criteria, in order to ensure all market participants have the same opportunities and promote competition between the industry's players, pursuant to the Electricity and Natural Gas Regimes and the regulations put into force by ERSE (*Entidade Reguladora dos Serviços Energéticos*) the Energy Services Regulatory Agency) regarding access to the networks, infrastructures, and interconnections, in the electricity and natural gas sectors.
- 27.11** Access to regulated infrastructures is subject to the following key principles:
- (a) safeguard of the public interest, including the maintenance of security of supply;
  - (b) equal treatment and opportunities for all users;
  - (c) reciprocity on the use of interconnections by the entities responsible for the management of the grids to the which the national electricity system is connected; and
  - (d) payment of the applicable tariffs.
- 27.12** As a consideration for the access to regulated infrastructures, users must pay access tariffs, which are determined by ERSE on an annual basis and must be equal for all categories of users, pursuant to the terms of the Electricity and Natural Gas Regimes, the Access to the Networks and Interconnections Regulation, and the Tariff Regulation.

Exceptionally, and notwithstanding being a regulated activity, access to natural gas storage infrastructures may comprise two different regimes: *regulated* access and *negotiated* access. Regulated access requires users to pay access tariffs, equal for all users and defined by ERSE, while negotiated access allows the storage infrastructures operator to negotiate the access tariffs with its users—however, the tariffs should also be determined according to objective, transparent, and non-discriminatory criteria and comply with ERSE's regulations in this respect.

- 27.13** Despite the principle of equal treatment and opportunities for all users and in order to ensure an efficient use of energy sources available at each given moment, both the TSOs and DSOs are bound to grant priority access to the grid for electricity generated using renewable energy sources (RES) (except for electricity generated by hydropower plants with an installed capacity greater than 30 MW). Also, network operators must implement adequate measures aiming to prevent or minimize limitations to the transmission and distribution of electricity generated using RES.

#### (3) Cross-border trade

To foster cross-border energy trade and promote the completion of the internal energy market, the governments of Portugal and Spain negotiated an agreement on cooperation in the electricity sector on 29 July 1998. This initial agreement was further developed on 14 November 2001, through the protocol setting out the conditions for the creation of the Iberian Electricity Market (*Mercado Ibérico de Electricidade*, the MIBEL) (the MIBEL Agreements). The XIX Luso-Spanish Summit, which took place on 8 November 2003 in Figueira da Foz, defined a tentative calendar for the creation of the MIBEL. **27.14**

At the XXI Luso-Spanish Summit in Évora in November 2005, the governments of Portugal and Spain agreed, among other things, to continue strengthening electricity connections through new interconnections in the South, between Algarve and Andalucía, and in the North, at the International North–West axis, by 2011. Two of these interconnections were put into operation in 2004, the Alqueva–Balboa 400 kV line and the 400 kV circuit in Alto–Cartelle–Lindoso. Additionally, the Portuguese and the Spanish system operators (REN and REE) continued working to repower the Duero–Douro and Tajo–Tejo interconnections and to create two new 400 kV interconnections in order to reach a total interconnection capacity of 3,000 MW. An adequate level of interconnection capacity between the systems of the different Member States is regarded as an essential requirement for the completion of the internal energy market. **27.15**

The Iberian electricity forward market managed by Operador do Mercado Ibérico de Energia—Polo Português, SA (the OMIP) began operations on 3 July 2006, and since 1 July 2007 electricity operators in Portugal and Spain have used a common trading platform for spot electricity that is managed by the Operador del Mercado Ibérico de Energia—Polo Español, SA (the OMEL), with the purpose of creating a fully integrated electricity market for the Iberian Peninsula. The MIBEL spot market, which includes daily and intraday markets, currently operates in a market split system pursuant to which electricity market prices in each country depend on supply and demand in each country and the available interconnection capacity between each country. It is expected that as interconnection capacity between Portugal and Spain increases, the MIBEL spot market will evolve into a single market system. The creation of MIBEL requires both countries to acknowledge a single market in which all agents have equal rights and obligations and are required to comply with principles of transparency, free competition, objectivity, and liquidity. **27.16**

On January 2015, the Spanish, French, and Portuguese governments signed an agreement intended to increase interconnection capacity between France and the Iberian Peninsula, up to 10 per cent of total installed capacity by 2020 (currently the interconnection capacity is 1.5 per cent of total installed capacity).

In 2005–2013, Portugal registered an importation balance ranging from approximately 9,000 GWh to 2,500 GWh. In 2014, Portugal imported 7,247 GWh and exported 6,344 GWh, registering an importation balance of 902 GWh.<sup>4</sup> **27.17**

<sup>4</sup> Energy Statistics available at <<http://www.dgeg.pt/>> last accessed March 2016. Data for 2014 is provisional.

- 27.18** The creation and development of the MIBGAS (Iberian Market of Natural Gas) is of significant importance to natural gas consumers and suppliers. Trading of products in the MIBGAS platform started on 16 December 2015. Considering the significance of the existing capacity in the Iberian Peninsula for the reception of LNG, both at the European level and worldwide, the MIBGAS is perceived as an international market. In fact, according to 2006 data the natural gas market in the Iberian Peninsula has more than 7.3 million consumers, with total annual sales amounting to 446,000 GWh, which makes it the fourth largest market of its type within the European Union (EU). Furthermore, the LNG imported by the Iberian market amounts to more than half the total LNG imported by Europe.<sup>5</sup>
- 27.19** In 2000–2014, Portugal imported natural gas quantities ranging from 2,180,532,000,000 to 3,857,970,000,000 Nm<sup>3</sup> annually, mainly from Algeria and Nigeria, but also from Qatar, Egypt, United Arab Emirates, Equatorial Guinea, Norway, and Trinidad and Tobago, among others. In 2013, Portugal imported a total of 4,174,200,000,000 Nm<sup>3</sup>.<sup>6</sup>

#### (4) Tariffication

- 27.20** The Tariff Regulations for the electricity and natural gas industries establish the criteria and methods for the formulation of tariffs; in particular, the access to the grid and interconnection and system services tariffs and the tariffs for the sale of electricity and natural gas by the supplier of last resort, in accordance with the principles set forth in Decree-Law 29/2006 and Decree-Law 30/2006. The Tariff Regulations also establish provisions applicable to the tariff convergence between the continental electricity and natural gas systems and the electricity and natural gas systems of Azores and Madeira autonomous regions. The Tariff Regulation for the electricity sector was first enacted on December 1998 and subsequently subject to significant amendments, which resulted on the approval by ERSE, on 15 December 2014, of a new Tariff Regulation for this sector. The Tariff Regulation for the natural gas sector was enacted in September 2006 and has also been subject to several amendments, the last of which was dated April 2016.
- 27.21** Electricity and natural gas tariffs are uniform across mainland Portugal and are annually set *ex ante* by ERSE, based on investment, cost, and quantity estimations, according to the rules set in the Tariff Regulations approved by ERSE for the electricity and natural gas sectors.
- 27.22** Within each regulatory period (which has a duration of three years), regulated entities have to provide every year a set of information, in terms of financial information, verified and expected future costs, energy balance, and customer's characterization (all tariff driver components).
- 27.23** Up to the 15 April and 15 October (each year), ERSE establishes a tariff proposal for the coming year of the natural gas and electricity sectors, respectively. Said proposals are sent to the Tariff Councils of the electricity and natural gas sectors, which consist of (mandatory) consultation boards of ERSE, comprised of representatives from both sectors' participants, for the purpose of issuance of a non-binding annual report by 15 May, for the natural gas

<sup>5</sup> <<http://www.erse.pt/pt/mibgas/Paginas/default.aspx>> last accessed March 2016.

<sup>6</sup> Annual Natural Gas Importation—statistics available at <<http://www.dgeg.pt/>> last accessed March 2016. Data for 2014 is provisional.

sector, and 15 November, for the electricity sector. Other entities also have the opportunity to comment on the tariff proposal, eg the Competition Authority and the relevant (regulated) entities. Taking into account the non-binding assessment of the Tariff Council, ERSE sets the tariffs for the coming year, up to 15 June, for the natural gas sector, and up to 15 December, for the electricity sector.

There are two sets of tariffs established by ERSE: (i) regulated end-user transitory tariffs to be applied by the supplier of last resort to its clients; and (ii) access tariffs, equal for all users who intend to access regulated infrastructures. **27.24**

Through Decree-Law 104/2010 of 29 September 2010 (Decree-Law 104/2010), the Portuguese government defined the termination procedures in relation to the regulated end-user tariff for electricity large clients (very high, high, medium, and special low voltage) starting at the beginning of 2011. Similarly, through Decree-Law 66/2010 of 11 June 2010 (Decree-Law 66/2010), the Portuguese government determined the termination procedures in relation to the regulated end-user tariff for natural gas large clients (with an annual consumption greater than 10,000 cm<sup>3</sup>) starting as of September 2010. A regulated end-user transitory tariff for electricity and natural gas *large clients* was scheduled to be available only until 2012 and 2011, respectively, but its application has been successively renewed over the past years and is still in force. **27.25**

On 28 July 2011, pursuant to the Memorandum of Understanding underwritten by the Portuguese government, the European Commission, the International Monetary Fund, and the European Central Bank, Resolution of the Council of Ministers no 34/2011 of 1 August 2011 (RCM 34/2011) approved the calendar for termination of the regulated end-user tariff and the introduction of a regulated end-user transitory tariff for *small clients* (ie standard low-voltage electricity consumers and natural gas consumers with an annual consumption equal to or lower than 10,000 m<sup>3</sup>), which was scheduled to cease to be applicable between 2011 and 2012; however, its application has also been successively renewed throughout the past years and is still in force **27.26**

Recently, Decree-Law 15/2015 of 30 January 2015 amended Decree-Law 66/2010, 104/2010, 74/2012, and 75/2012, and determined that the supplier of last resort must continue to supply electricity and natural gas clients who still haven't switched supplier and shifted to the liberalized market, until the date defined by Governmental Order 95/2015 of 30 March 2015. This Governmental Order determines that the term of application of all the above-mentioned regulated end-user transitory tariffs will be on 31 December 2017. On the other hand, Decree-Law 15/2015 also established that the above referred regulated end-user transitory tariffs are subject to the application of an aggravating factor intended to persuade end-users to switch supplier and, therefore, enter the liberalized market. The mechanism for the calculation of such aggravating factor is set out by Governmental Order No 108-A/2015 of 14 April 2015, as amended by Governmental Order No 359/2015 of 14 October 2015. **27.27**

In addition to the extinguishment of the regulated end-user transitory tariff, the Portuguese government has also established a social tariff and an extraordinary social support mechanism for electricity and natural gas consumers who are, according to the law, economically vulnerable (the ASECE). **27.28**

**27.29** The social tariff is, essentially, a discount over the energy price created pursuant to Decree-Law 138-A/2010 of 28 December, as amended by Decree-Law 172/2014 of 14 November—further regulated by Governmental Order 178-B/2016 of 1 July—and to Governmental Order 178-C/2016 of July 1, respectively. In accordance with Dispatch 15747-D/2014 of 30 December, the discount applicable to electricity consumers who benefit from the social tariff is 20 per cent over the energy price. The amount of the discount applicable to natural gas consumers who benefit from the social tariff is determined by Dispatch 5138-B/2016 of 14 April and corresponds to 33.2 per cent over the gas price.

**27.30** The ASECE, aiming to provide additional protection to vulnerable electricity and natural gas consumers, was established through Decree-Law 102/2011 of 30 September, as amended by Decree-Law 172/2014, and regulated by Governmental Orders 275-A/2011 of 30 September, as amended by Governmental Order 275-B/2011 of 30 September and 278-B/2014 of 30 December. ASECE was recently extinguished and integrated in the social tariff by Law 7-A/2016 of 30 March.

**27.31** The tariffs applicable to vulnerable electricity and natural gas consumers are not subject to the above-mentioned aggravating factor, which applies solely to the regulated end-user *transitory* tariffs.

#### (5) Market entry

**27.32** The Electricity and Natural Gas Regimes do not foresee any nationality requirement in what concerns the exercise of activities comprised within such regimes, meaning it is not necessary to be a Portuguese citizen or legal person in order to enter the electricity and natural gas markets in Portugal.

**27.33** As stated before, market entry concerning liberalized activities (ie importation, generation, supply, and management of organized markets) within the electricity and natural gas sectors is free, subject only to prior registration before the state or the obtainment of an administrative authorization. As for regulated activities, such as supply of last resort or the operation of transmission, distribution, or storage infrastructures, these are carried out in a regulated environment, subject to the award of exclusive licences or concessions by the Portuguese government.

**27.34** In general terms, any person wishing to set up a power plant in Portugal must request the attribution of a generation licence before the General Directorate for Energy and Geology (DGEG), which entitles the applicant to proceed with the construction of the power plant. The applicant is required to attach several documents to the request of the generation licence, namely and when applicable, an environmental impact statement. It should be noted that the request for the attribution of a generation licence shall be refused whenever the respective applicant owns, directly or indirectly, a quota of more than 40 per cent of the total generation capacity installed (or at a licensing stage) in the Iberian market; that is, in the combined generation markets of Portugal and Spain. Following the successful obtainment of the generation licence and the construction of the power plant, the owner shall request an inspection of the facilities and the attribution of an operation licence, which authorizes the commencement of the power plant's industrial operation. This is the standard licensing procedure applicable to the entrance of new players in the power generation market, although it may be necessary to comply with other formalities or to obtain other authorizations, depending on the circumstances of each case, namely on the energy source used in the

generation process. Power plants using RES which obtain an operation licence and benefit from a guaranteed remuneration regime have the right to sell all electricity to the Last Resort Supplier and therefore do not need to market their electricity. Differently, power plants using RES which do not benefit from a guaranteed remuneration regime have to market their electricity and benefit solely from an injection priority to the grid in relation to electricity generated using non-RES.

The importation of natural gas is also a liberalized activity and suppliers are entitled to access the transmission and distribution networks, as well as LNG terminals, in order to introduce natural gas in the internal market. **27.35**

The supply of electricity and natural gas (other than the supply of last resort) are free activities and potential suppliers are simply required to previously register before the DGEG. In addition, within electricity or natural gas markets constituted pursuant to international agreements to which Portugal is a party, the recognition of a certain entity as a supplier by one of the parties implies its recognition has such by the other party. Therefore, any supplier currently registered in Spain as a supplier of electricity or natural gas is automatically recognized as such in Portugal, and *vice versa*. **27.36**

### C. Other Regulatory Issues

#### (1) Unbundling

As mentioned before, under the Electricity and Natural Gas Regimes the general rule is that the TSO is the concessionaire of the respective transmission network. **27.37**

In accordance with the rules set out by the Second and Third Electricity and Natural Gas Directives, Portugal has opted to establish the *full-ownership unbundling* (FOU) model regarding the TSOs of the electricity and natural gas sectors. Therefore, the concessionaires and operators of the transmission networks must be separated and independent from an organizational, legal, and ownership standpoint, from any entity which exercises, directly or through affiliated companies, the activities of generation or supply of electricity or natural gas. **27.38**

In order to ensure the independence of the TSOs, and pursuant to Article 9 of the Third Electricity and Natural Gas Directives, the Portuguese law establishes several independence criteria which must be complied with: **27.39**

- (a) the TSO or the companies which control it cannot, directly or indirectly, exercise control<sup>7</sup> or rights<sup>8</sup> over a company dedicated to generation or supply of electricity or natural gas;
- (b) the entities dedicated to the generation or supply of electricity or natural gas cannot, directly or indirectly, exercise control or rights over the TSOs or the transmission networks;

<sup>7</sup> For the purpose of these independence criteria, control has the meaning set out under Art 2(2) of Council Regulation (EC) No 139/2004 of 20 January 2004.

<sup>8</sup> For the purpose of these independence criteria, the exercise of rights comprehends the power to exercise voting rights, and to appoint members of the management and supervisory bodies or of other corporate bodies which legally represent the company and the holding of the majority of the share capital.

- (c) the TSO or any of its shareholders cannot, directly or indirectly, appoint members of the management and supervision bodies of companies dedicated to the generation or supply of electricity or natural gas or of bodies which legally represent such companies;
- (d) the entities which exercise control or rights over companies dedicated to the generation or supply of electricity or natural gas cannot, directly or indirectly, appoint members of the management and supervision bodies of the TSO or of bodies which legally represent them;
- (e) the persons who are part of the management or supervision bodies of the TSO, or of bodies which legally represent them, are prevented from being part of the corporate bodies or of the structures of the companies dedicated to the generation or supply of electricity or natural gas, and the directors of the TSO are prevented from, directly or indirectly, providing services to such companies;
- (f) the professional interests of the persons referred in the previous paragraph should be duly safeguarded in order to ensure their independence;
- (g) the TSO should have an effective decision-making power, independent from other participants in the national electricity and natural gas systems, notably in what concerns the assets necessary to maintain or develop the network;
- (h) the TSO should have an ethical code of conduct regarding the functional independence of its operation and publicize it; and
- (i) no entity, including those dedicated to activities in the electricity or natural gas sectors, either Portuguese or foreign, may hold, directly or in any indirect way, more than 25 per cent of the TSOs' share capital, or of the companies which control them.<sup>9</sup>

**27.40** Currently, REN and REN Gasodutos, SA are the concessionaires and TSOs of the electricity and natural gas transmission networks, respectively, and are each in charge of the global technical management of the respective network (*Gestor Técnico Global do Sistema*). On September 2014, these concessionaires were (provisionally) certified by ERSE as TSOs under the FOU regime, provided certain conditions are met within eight months as of the date of ERSE's certification decision. If, upon the term of such period, ERSE deems all such conditions were met, the certification decision shall become definitive.

**27.41** In cases when during the certification process of a TSO it is deemed that the concessionaire of the national transmission network cannot be certified under the FOU regime, notably because it is part of a vertically integrated undertaking, ERSE should notify the concessionaire in order to undertake the actions and implement the measures necessary to ensure compliance with the conditions regarding the FOU certification. Alternatively, such concessionaire of the transmission network may request from the member of the government responsible for the energy sector its authorization to adopt certain alternative rules provided in Articles 26-A *et seq.* of Decree-Law 29/2006 and in Articles 22-A *et seq.* of Decree-Law 30/2006, in which case it shall be certified as an *independent transmission operator* (ITO), as provided under Article 17 of the Third Electricity and Natural Gas Directives.

**27.42** Whenever the TSO is controlled by persons or legal entities from a country outside the EU, the certification process is subject to additional requirements other than those mentioned above. Upon receipt of the request for certification of a TSO controlled by persons or legal

entities from a country outside the EU, ERSE should notify the European Commission of such request. Within four months as of the presentation of the certification request, ERSE must prepare a decision proposal and submit it to the European Commission to have its opinion on (i) the compliance with the independence and ownership requirements applicable to the type of certification in question (ie under the FOU or the ITO regimes) and on (ii) the risk such certification represents to the safety of energy supply within the EU. The final certification decision is made by ERSE—which must hold in consideration the opinion issued by the European Commission—within two months of the issuance of said opinion and should be published on DGEG's and ERSE's websites. Whenever any circumstances arise which may lead to the TSO or the transmission network being controlled by a person or legal entity from outside the EU, the TSO is obliged to notify them to ERSE, which must initiate a procedure intended to reassess compliance with all certification requirements.

The operation of: (i) distribution networks; (ii) LNG terminals; (iii) natural gas storage facilities; (iv) the supply; and (v) the supply of last resort of electricity or natural gas are subject to the *legal separation* model. This means that the companies dedicated to one of these activities must be legally independent from those dedicated, directly or through affiliated companies, to any of the remaining activities within the electricity or natural gas sectors. The legal unbundling obligation is also applicable between the operation of natural gas storage facilities under *regulated* access and natural gas storage facilities under *negotiated* access activities.

The operators of electricity and natural gas distribution networks must be independent from a legal, organizational, and decision-making standpoint from the remaining activities developed within the electricity and natural gas sectors. In order to ensure such independence, the following minimum criteria must be respected: **27.43**

- (a) the managers of the DSO cannot be part of the corporate bodies or the corporate structure of companies dedicated to any other activity within the electricity or natural gas sectors;
- (b) the professional interests of the persons referred in the previous paragraph should be duly safeguarded in order to ensure their independence;
- (c) the DSO must have an ethical code of conduct regarding the functional independence of the network operation and publicize it;
- (d) the DSO must differentiate its corporate image and communication from the remaining entities acting in the electricity or natural gas sectors, in accordance with the Commercial Relations Regulation; and
- (e) the DSO cannot, directly or through a company it controls, hold equity in the share capital of companies dedicated to any other activity within the electricity or natural gas sectors.

For the purposes of (b) above, the managers of the DSO are prevented from maintaining any contractual or professional relationship with companies dedicated to any other activity within the electricity and natural gas sectors and holding any economic or financial interests over or receive any remuneration or financial benefit from such companies. **27.44**

The DSO which belongs to a vertically integrated company must have the necessary human, financial, technical, and material resources to explore, maintain, and develop the network, and an effective decision-making capacity, independent from the vertically integrated **27.45**

<sup>9</sup> This independence criteria does not prejudice the existing intra-group domain relationship within the corporate structure of REN.

undertaking, concerning the required assets to explore, maintain, and develop the network. The vertically integrated company is generally prohibited to instruct the DSO on the day-to-day operation or specific decisions on the construction or improvement of infrastructures and the remuneration of the DSO's managers cannot depend, directly or indirectly, on the activities or results of companies which are part of the vertically integrated company and dedicated to the generation or supply of electricity or natural gas. Notwithstanding this, the parent company may have coordination mechanisms adequate to ensure the protection of management and economic supervision rights concerning the profitability of the DSO's assets, in accordance with the terms of ERSE's regulations, and is also entitled to approve its annual financial budget or similar instrument which limits the indebtedness levels of the DSO.

- 27.46** A DSO which is part of a vertically integrated company and serves more than 100,000 clients must elaborate a compliance programme containing adequate measures to exclude discriminatory behaviours and must appoint a compliance officer responsible for monitoring the application of the compliance programme.
- 27.47** Exceptionally and without prejudice to the necessary accounting separation between the several activities of the electricity and natural gas sectors, where the DSO serves less than 100,000 clients it shall be exempted from the legal separation obligation and the independence criteria referred to in (d) above.
- 27.48** The operators of LNG terminals and of natural gas storage infrastructures must also be legally independent from the entities which develop, directly or through affiliated companies, any other activity of the natural gas sector. In order to assure such independence the law determines that such operators are subject to the independence criteria mentioned above in (a), (b), and (c) regarding the DSO, *mutatis mutandis*, and also that no entity, including those acting within the Portuguese or foreign natural gas sector, may hold, directly or indirectly, more than 25 per cent of the LNG terminal operator.<sup>10</sup>
- 27.49** Similarly to the DSO, the operators of LNG terminals and of natural gas storage infrastructures which belong to a vertically integrated company must also have the necessary resources to explore, maintain, and develop the respective infrastructures and an effective decision-making capacity. Furthermore, the vertically integrated company is generally prohibited from instructing the operators on the day-to-day operation or on specific decisions related to the construction or improvement of infrastructures, and the remuneration of its managers cannot depend, directly or indirectly, on the activities or results of companies which are part of the vertically integrated company and dedicated to the production or supply of natural gas. As is the case with the DSO, the parent company may have coordination mechanisms adequate to ensure the protection of management and economic supervision rights concerning the profitability of the referred operators' assets, in accordance with the terms of ERSE's regulations, and is also entitled to approve its annual financial budget or similar instrument which limits the indebtedness levels of the company. The operators of LNG terminals and of natural gas storage infrastructures are required to have a compliance programme within the same terms and conditions stated above regarding the DSO.

<sup>10</sup> This independence criteria does not prejudice the existing intra-group domain relationship within the corporate structure of REN. Furthermore, such independence criteria shall not be applicable to new LNG terminals.

Finally, the supply of last resort and the liberalized supply of electricity and natural gas are also subject to legal unbundling between each other and all other activities from the electricity and natural gas sectors. However, the supplier of last resort is subject to stricter independence criteria, namely by being obliged to have an ethical code of conduct and its managers and management officers being prohibited from being members of corporate bodies of companies dedicated to any other activities within the electricity or natural gas sector, as applicable.

## (2) Balancing of demand and supply

The demand for electricity in Portugal has significantly grown between 2000 and 2010, having registered an annual average growth rate of around 2 per cent and a total gross electricity consumption of approximately 50,610 GWh. From 2011 onwards, with the global financial crisis and the inherent economy slowdown, electricity consumption has fallen and registered a total of 46,245 GWh in 2013.<sup>11</sup>

Likewise, gross electricity generation also declined in recent years, from 54,092 GWh in 2010 to 52,892 GWh in 2014, and the total installed generation capacity remained practically unchanged between 19,632 MW (2010) and 19,690 MW (2014). The electricity importation balance in 2014 was of 992 GWh.<sup>12</sup>

Pursuant to the Electricity Regime, the TSO under the FOU regime is required to elaborate, every two years, a report aiming to monitor safety of supply within the national electricity system, containing the technical characterization of the network as well as the current and estimated demand and supply, to be approved by DGEG. The most recent report to date monitors safety of supply during 2013–2030,<sup>13</sup> its projections being made for three different scenarios: (i) a business-as-usual scenario, intended to assess, under normal and expected circumstances, what is the level of safety of supply and the need for supply evolution; (ii) a sensitive scenario, intended to assess the safety of supply in case demand is greater than currently expected; and (iii) a rupture scenario, intended to identify the year when the national electricity system would rupture in case demand is greater than currently expected and no additional generation capacity would be constructed from 2012 onwards.

The report concludes that according to the business-as-usual scenario, there are high levels of system coverage until 2030 and there would be no critical situations to the national electricity system, meaning there is an excess of generation capacity to meet electricity demand during this period. Similarly, according to the sensitive scenario—where consumption would grow significantly—a high level of safety of supply would continue to exist, having adequate capacity to meet such demand growth until 2030. However, according to the rupture scenario, it is estimated that the rupture point of the national electricity system would occur between 2023 and 2025 or 2026 and 2030. Notwithstanding, even in such a scenario there would be adequate generation capacity to satisfy demand until 2020.

<sup>11</sup> <[http://www.erse.pt/pt/consultaspublicas/consultas/Documents/49\\_1/RMSA-E%202012.pdf](http://www.erse.pt/pt/consultaspublicas/consultas/Documents/49_1/RMSA-E%202012.pdf)> last accessed March 2016.

<sup>12</sup> Electricity generation/consumption statistics available at <<http://www.dgeg.pt/>> last accessed March 2016. Data for 2014 is provisional.

<sup>13</sup> <[http://www.erse.pt/pt/consultaspublicas/consultas/Documents/49\\_1/RMSA-E%202012.pdf](http://www.erse.pt/pt/consultaspublicas/consultas/Documents/49_1/RMSA-E%202012.pdf)> last accessed March 2016.

**27.55** Between 2000 and 2011, natural gas consumption in Portugal grew significantly, from 2.022 ktep to 4,483 ktep (~52,1 TWh), with an annual average growth rate of 7.5 per cent. In 2012, total natural gas consumption totalled 50.2 TWh.<sup>14</sup> In terms of supply, given there are no known natural gas reserves in Portugal, the country meets all its needs through importation, essentially from Nigeria (LNG tankers—55 per cent) and Algeria (pipeline—37 per cent), pursuant to two long-term *take or pay* agreements. Equal to the increase in consumption, importation of natural gas registered a total of 4,562 ktep (~53,4 TWh) in 2011 and an annual average growth rate of 7.4 per cent between 2000 and 2011.

**27.56** The monitoring report on security of natural gas supply in 2012–2030 prepared by the TSO provides that Portugal should diversify and increase its portfolio of natural gas suppliers, especially bearing in mind that its two main suppliers are politically unstable countries. Regarding supply capacity, and considering the (N-1) criteria provided in Regulation (EU) No 994/2010 of the European Parliament and of the Council, the report concludes that such criteria is not met (i) where the LNG Terminal fails to function, in the 2013–2016 period and (ii) in a sensitive scenario with a consumption significantly greater than expected, in 2017, although the capacity deficit is merely 6 per cent. In a rupture scenario, and in the event that the LNG terminal fails to operate, the report concludes that the referred criteria is never complied with during 2013 to 2020, and that, in the event that the interconnection Campo Maior–Badajoz fails to operate, such criteria would not be complied with during 2018 to 2030.

**27.57** Considering the above, the monitoring report on security of natural gas supply between 2012 and 2030 states that the construction of the third Portugal–Spain interconnection point (Mangualde–Zamora) within the planned schedule should be assured, not only because it is an important element to improve the country's security of supply, but also because it is important in the construction and consolidation of the MIBGAS.

### (3) New infrastructure

**27.58** The electricity and natural gas TSOs under full ownership unbundling are required to prepare, every two years, the Development and Investment Plan for the Transmission Networks. These plans should include the key future developments of network expansion, specifying the infrastructures to be constructed or updated within the following ten years and the investments the TSO has decided to make within the next three years, with a schedule of such investment projects. These plans must also take into account and be articulated with the compliance of obligations before the Agency for the Cooperation of Energy Regulators (ACER) and the European Network of Transmission System Operators (ENTSO).

**27.59** The latest Development and Investment Plan for the Electricity Transmission Network foresees the entry into operation, in 2017, of two new natural gas combined cycle power plants, with an installed capacity of 800–900 MW each. Until 2022, pursuant to the National Programme of Dams with High Hydroelectric Potential, a significant number of hydropower plants shall be constructed and several existing hydropower plants shall be overpowered, which will result in an aggregate power capacity increase of almost 5,000 MW. The majority of the new hydropower plants shall be equipped with reversed pumping systems, which enable water storage and provide an important balancing factor for the national electricity

system, considering the significant amount of intermittent renewable generation comprised in the total installed capacity of the country.

Between 2010 and 2022, it is estimated that wind power generation capacity will almost double, reaching a total installed capacity of 7,100 MW and that electricity coming from solar power shall be the RES with the largest growth, foreseeing that total solar generation capacity may reach 1,500 MW in 2022, compared with just 122 MW of installed capacity in 2010. Given its relatively easy installation, experts believe this technology shall have the biggest share in terms of small-scale generation, which may reach an amount greater than 500 MW. **27.60**

The increase in generation capacity, especially from RES, leads to a general need for investments in the transmission network, making this task of the TSO an ongoing execution of works and investment in the networks. Among its main network investments, the TSO plans to enhance the connection with the Spanish electricity system, by constructing a new interconnection line of 400 kV, in the north of the country, between the regions of Minho and Galiza. **27.61**

On July 2012, REN Atlântico—Terminal de GNL, SA, the concessionaire and operator of the Sines LNG Terminal, concluded the expansion of this terminal, allowing for a storage capacity increase of 62.5 per cent and a grid injection capacity increase of 50 per cent, along with the adaptation of the jetty in order to accommodate large LNG tankers. **27.62**

On January 2015, the Competition Authority informed it would not oppose an operation through which Galp Energia sold REN Armanzenagem, SA a part of a concession for underground natural gas storage infrastructures located in Carriço, Pombal, by 71.7 million euros. The deal also includes the concession of the right to construct future storage capacity and makes REN Armanzenagem, SA the sole operator of natural gas storage infrastructures in Portugal. The company intends to further invest in the construction of new storage facilities and thereby increase natural gas safety of supply. **27.63**

Finally, REN Gasodutos, SA is planning to connect new delivery points and remodel certain pressure-reduction and metering stations. A new compression station will be constructed near Carregado, with a total power of 12 MW, which will increase the overall transmission capacity of the network. **27.64**

### (4) Provision of information to regulatory agency

Being an efficient regulator of an industry as complex and essential as the energy sector requires the attribution of adequate—and sometimes extensive—supervision powers to achieve this end. Pursuant to Article 6 of ERSE's by-laws, enacted by Decree-Law 97/2002 of April 12 (as amended latest by Decree-Law 84/2013 of June 25), all operators whose activities are subject to ERSE's regulation are obliged to provide the same any cooperation it requires, namely by providing the information and documents it needs to comply with its duties concerning market monitoring and assessment, which often involves reporting obligations before the national Parliament, the government, European institutions, or MIBEL institutions. **27.65**

The information to be provided by entities acting in the electricity and natural gas sectors to ERSE is mainly related to four domains: tariffs and prices, unbundling and competition, quality of service, and system operation and safety. **27.66**

<sup>14</sup> <<http://www.dgeg.pt?cr=13892>> last accessed March 2016.



**27.67** ERSE has the right to disclose the information collected while exercising its regulatory functions, without prejudice to the protection of confidential information (commercial and industrial secrets, intellectual property) as well as personal data-protection rules. Furthermore, the law allows for ERSE to disclose said confidential information to other regulatory agencies of the EU, including competition and financial supervision authorities, provided such authorities agree to protect its confidentiality. For the purposes of the certification process of the electricity and natural gas TSOs, besides ERSE, the law expressly entitles the European Commission to request information to the TSO and the companies dedicated to production, generation, and supply of electricity or natural gas.

#### (5) Public service obligations (PSOs)

**27.68** The Electricity and Natural Gas Regimes establish the following PSOs:

- (a) the security, reliability, and quality of supply;
- (b) the guarantee for the universal provision of the service;
- (c) the guarantee of all users' connection to the grid;
- (d) consumers' protection, namely in terms of tariffs and prices;
- (e) fostering energy efficiency, environment protection, and the rational use of endogenous and renewable resources; and
- (f) the convergence of the system, namely in terms of solidarity and cooperation with the systems of the autonomous regions of the Azores and Madeira.

**27.69** All electricity and natural gas transmission and distribution networks, LNG terminals, and storage infrastructures, being essential infrastructures for the correct functioning of the system and reliable supply of consumers, are considered of public utility and the activities of the respective operators are carried out under public service regime.

#### (6) Universal service provisions

**27.70** The law establishes universal service provisions for both the electricity and natural gas sectors. In particular, suppliers of last resort of electricity and natural gas are subject to the following universal service obligations:

- (a) consumer protection, especially those economically vulnerable;
- (b) universal provision of electricity and natural gas supply service to all consumers, namely in areas where there is no active supplier in the liberalized market;
- (c) provision of electricity and natural gas to consumers whose supplier is prevented from exercising its activity;
- (d) purchase of electricity (including all electricity coming from renewable sources) and natural gas, in order to ensure supply of its customers; and
- (e) provision of information to the competent authorities.

#### (7) Impact of competition law on regulatory law

**27.71** Competition law plays an important role in the energy sector at both EU and national level. In Portugal, the *Autoridade da Concorrência* (AdC) is the agency entrusted with the mission to ensure compliance with competition rules. The AdC holds a wide range of *regulatory, supervisory, and sanctioning* powers across all sectors of the economy, including regulated sectors, such as electricity and natural gas. In exercising its powers, the AdC may, *inter alia*: (i) conduct *antitrust* investigations on prohibited agreements and practices or abuses of

dominance, and impose severe penalties (up to 10 per cent of a company's annual turnover or a natural person's annual income) in case an infringement occurs; (ii) review and decide *merger* filings; and (iii) carry out market *studies* and issue *recommendations*.

In regulated sectors, the AdC's powers are exercised in close cooperation with the competent regulatory authorities—ERSE in the case of the energy sector. In the field of *antitrust*, ERSE is under the legal *obligation* to report to the AdC facts it becomes aware of that might qualify as a prohibited practice. In its turn, any final decision rendered by the AdC in such matters (except where the case is closed without conditions) shall be preceded by an opinion of ERSE. To the best of our knowledge, the AdC has never fined an electricity or natural gas company. Conversely, the AdC has been very active in scrutinizing energy transactions under *merger* control rules, where ERSE also has a say prior to the AdC taking a final decision to clear or prohibit the proposed deals. Typically, such transactions involve the acquisition of companies or assets in both the *liberalized* energy market (eg power plants and retail client portfolios) and *regulated* segment of the energy market (eg natural gas transmission and distribution networks, natural gas underground storage facilities, and infrastructures for the regasification of LNG). Due to the structure of the relevant markets concerned, some of these filings were approved by the AdC subject to *behavioural* or *structural* conditions.

In its *supervisory* role, the AdC has issued a few *recommendations* and *reports* focused on the energy sector, notably concerning compensation for stranded costs on the Portuguese electricity sector (2013) and wholesale prices of electricity in Portugal (2009). Normally, the government and ERSE take the AdC's papers into great consideration.

The impact of competition law on the energy sector is also visible at EU level. Together with the powers of the European Commission on *antitrust* and *merger* matters that have an EU dimension, the Commission enjoys sole competence to deal with *state aid* issues. An example of the importance of state aid in this area is the ongoing discussion around the *financing of renewable energies*. Commission President Juncker has stated in its political guidelines that 'we need to strengthen the share of renewable energies on our continent. (...) I therefore want Europe's Energy Union to become the world number one in renewable energies'.<sup>15</sup> However, just a few months before the current Commission took office, the Commission published a set of 'Guidelines on state aid for environmental protection and energy' for 2014–2020, providing, as a guiding principle, for a significant reduction of incentives (and the public instruments available thereof) in favour of renewable sources, which inevitably works as a deterrence for investment in this field. This trend may be a relevant setback for countries, such as Portugal, where renewables still rely to a great extent on feed-in tariffs.

## D. Enforcement

### (1) Powers of regulatory agencies

ERSE's by-laws were subject to an extensive revision operated by Decree-Law 212/2012 of 25 September and 84/2013 of 25 June, and the energy sector penalty regime was enacted

<sup>15</sup> Agenda for the new Commission presented before the European Parliament on July 2014 <<http://www.esc.europa.eu/resources/docs/jean-claude-juncker---political-guidelines.pdf>> last accessed March 2016.



by Law 9/2013 of 28 January (RSSE). Therefore, following the privatization of companies holding strategic assets of the energy sector and accompanying the evolution of the liberalization process of the electricity and natural gas markets, ERSE's regulatory powers have been substantially reinforced in the last years.

- 27.76** ERSE is an independent administrative authority, with its own resources and organization. It has regulation, supervision, inspection, and sanctioning powers, being bound, however, to develop its activities and use its powers solely within the context of its attributions.

Within the scope of its regulation competences, ERSE has the following powers:

- (a) define tariffs and monitor their application;
- (b) define analytic accounting rules within the accounting separation obligation; and
- (c) approve the regulation for the access to the networks and interconnections, the commercial relations regulation, the network operation's regulation, and the quality of service regulation.

- 27.77** In its role of supervisor of the energy sector, ERSE has the following powers:

- (a) execute the applicable laws and rules governing the organization and functioning of the energy sector, namely by adopting binding actions;
- (b) issue orders, instructions, and recommendations in terms of the applicable laws and rules, as well as granting authorizations and approvals;
- (c) ensure the application of the laws and regulations falling within the scope of its attributions; and
- (d) demand from all entities subject to ERSE's regulation the information it needs to execute its attributions and competences.

- 27.78** Within the scope of administrative offence proceedings, ERSE has the following *inspection* powers:

- (a) interrogate regulated entities and other persons involved in the case and request them to present documents and other information;
- (b) carry out searches, examinations, collection, and seizure of accounting data or other documentation, in the premises, property, and means of transport of the regulated entities or other entities (including banks or any other financial institutions);
- (c) seal off the premises of the regulated entities or any other entity where relevant documentation is or may be found, including computers and other data-storage electronic equipment; and
- (d) request assistance from any service that is part of the Public Administration, including the police.

- 27.79** In addition, ERSE may also perform searches on private premises of partners, members of the board of directors, employees, or anyone who works with the regulated entities or any other entity, when duly authorized by the responsible judge after requested by the ERSE. Searches may also be carried out in law firms or in doctors' offices, being mandatory, during such operations, that the responsible judge is present after duly authorizing them.

- 27.80** As for enforcement and *sanctioning* powers, ERSE has the right to apply fines and accessory sanctions, such as the prohibition to exercise certain activities or the prohibition to exercise a position in administration or management. In addition, ERSE may also impose a periodic

penalty payment ('*sanção pecuniária compulsória*') intended to persuade the offender to comply with a certain obligation.

## (2) Constitutional issues

The RSSE establishes a general duty of regulated entities or any other persons to provide information and documentation to ERSE, when requested. Such information and documentation may be presented as evidence in administrative offence proceedings currently pending or yet to be initiated, being the breach of such duty deemed as a very serious administrative offence. Such legal provision may give rise to serious doubts as to its constitutionality, notably considering the right to remain silent and the right against self-incrimination. **27.81**

Also, ERSE's power (provided under RSSE) to carry out searches, examinations, collection, and seizure of any accounting data or other documentation, in the premises, property, and means of transport of the regulated entities or other entities, irrespectively of their agreement, may be deemed to conflict with the constitutional principle providing that the intrusion in private premises is only admissible if preceded by judicial authorization or in case of consent of the people or entities involved. **27.82**

Finally, RSSE's qualification as administrative offence, on a residual basis, of the breach of an indefinite number and unspecified duties contained within several other statutes and regulations also may give rise to some doubts regarding its compliance with the legality principle, applicable, as provided in the Constitution, to all sanctioning procedures, in particular considering the maxim—arising out from the aforesaid principle—*nullum crimen, nulla poena sine lege stricta*. **27.83**

## (3) Enforcement

The administrative offences provided under the RSSE are attributable, alternatively or cumulatively, to natural or legal persons. In particular, legal persons are held liable when the acts have been performed by members of its corporate bodies, authorized representatives, or employees, in the performance of their duties, acting on its name or on its behalf. **27.84**

The RSSE qualifies as administrative offence the violation of a wide range of duties and obligations applicable within the national electricity system and the national natural gas system. In addition, the RSSE also qualifies as an administrative offence, on a residual basis, the violation of duties that, although not directly mentioned in the RSSE, are provided within other statutes, namely: (i) the basic laws of the electricity and natural gas sectors; (ii) Regulations (EC) 714/2009 and 715/2009, of the European Parliament and the Council, of 13 July; (iii) laws or regulations whose application or supervision is ERSE's responsibility; and (iv) the duties that arise from ERSE's decisions. As mentioned previously, the administrative offences are graduated, according to their severity, as very serious, serious, and minor and punished with fines amounting, for each legal entity concerned, respectively up to 10 per cent, 5 per cent, and 2 per cent of the turnover of the year immediately preceding the final decision issued by the ERSE. For natural persons the fines for very serious, serious, or minor offences established cannot exceed 30 per cent, 20 per cent, and 5 per cent, respectively, of their annual income deriving from the exercise of their functions in the entity concerned (including, among others, salaries, gratifications, commissions, subsidies, bonuses, or any other additional economic advantage). **27.85**

- 27.86** Simultaneously to the application of fines, accessory sanctions, such as prohibition to carry out any regulated activity or prohibition to hold a position in administration or management within regulated companies, may be applied. In addition, ERSE may decide to impose a periodic penalty payment (*'sanção pecuniária compulsória'*) amounting to a maximum of 5 per cent of the average daily turnover of the relevant entity, based on the year immediately before the decision is issued, for each day of non-compliance with ERSE's decision imposing a penalty or the adoption of specific measures.
- 27.87** Regarding appeals, the general principle is that all decisions handed down by the ERSE, either final or interlocutory (notably, decisions concerning the admission of means of evidence, submission of procedural invalidity, or application of interim measures) are subject to appeal, being competent, to this effect, the Competition, Regulation and Supervision Court, which may reduce or increase the fines or the periodic penalty payments determined by the ERSE. As a general rule, even in case of a decision imposing fines, the appeal will not suspend the effects of the appealed decision, except when the party concerned requests the appeal to have suspensive effect, grounded on the considerable harm that the execution of the decision may cause him, and offers to pay a guarantee in amounts equivalent to the fines applied.
- 27.88** The statute of limitation for administrative offence proceedings is, in principle, five years from the day when the offence was committed, except in the case of minor administrative offences, where the time limit is three years.
- (4) Case law
- 27.89** Since ERSE only gained sanctioning powers in 2013, there is not yet any relevant—or, at least, publicly known—case law to mention, apart from a final conviction issued by ERSE against Galp Power, SA, grounded on the alleged failure to include the legally required billing data within invoices sent to clients.
- 27.90** Additionally, ERSE recently issued a document (titled: 'Market's monitoring and supervision led ERSE to initiate investigations under sanctioning procedures') stating that, following searches and examinations carried out on the premises of EDP Distribuição—Energia, SA, Galp Power, SA, and several operators of natural gas distribution belonging to Galp Energia group, administrative offence proceedings—yet at investigation stage—were filed against these entities, arising from the suspicion of non-compliance with legal and regulatory duties on the following areas and subjects: (i) management of the energy supplier switching process; (ii) application of the social tariff and the extraordinary social support mechanism for electricity and natural gas consumers (ASECE); and (iii) (dis)consideration of counter readings—which may be of relevance for invoicing purposes—reported by clients directly to DSOs for natural gas.

## E. Conclusion

### (1) General

- 27.91** Portugal has seen significant legislative developments in the energy sector, particularly from 2006 onwards, where the main steps for the entire reorganization of electricity and natural gas were made.

Following the European Directives, Portugal embraced the vision of the EU internal energy market. It now has in place the structuring foundations of a competitive market, notably the liberalization and promotion of competition of non-regulated activities (such as generation and supply), the unbundling—accounting, legal, and/or ownership—of the operators of natural monopolies such as transmission and distribution infrastructures, the creation of the supplier of last resort and the definition of universal service obligations, the creation of MIBEL and MIBGAS, the progressive enhancement of interconnection points with the Spanish grid, and the provision of solid and effective regulation powers to ERSE, the national regulatory authority (NRA). **27.92**

By the end of the first semester of 2015, more than 4 million electricity consumers, which represent 88 per cent of total consumption in mainland Portugal, and more than 923,825 natural gas consumers, representing 96 per cent of total consumption in Portugal, were part of the electricity and natural gas liberalized markets. **27.93**

The natural gas sector is the one where greater developments are yet to come, namely with the recent start of operation of the MIBGAS and its development as one of the European natural gas strategic hubs. **27.94**

### (2) Future directions

Despite the fact that the energy policy so far pursued by the EU has been largely successful, a Fourth Energy Package would need to rethink, among other issues, the oversupplied Emissions Trading Scheme, the fostering of small and distributed generation, and security of supply in the European context, as well as the interconnection and integration of electricity and natural gas transmission and distribution grids. **27.95**

Considering the significant share of existing capacity for renewable energy generation and its strategic geographic location for the importation of natural gas, the enhancement of interconnection capacity and the integration of energy grids is a subject of vital importance to Portugal and one where the country would gladly welcome the definition of bolder and binding targets for the future. Last, but not the least, an ideal Fourth Energy Package should also demand from Member States a greater level of joint commitment and solidarity on having an effective and coordinated action against climate change. **27.96**

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# LEGAL ASPECTS OF EU ENERGY REGULATION

The Consolidation of Energy Law Across Europe

SECOND EDITION

*Edited by*

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