



ICLG

The International Comparative Legal Guide to:

Oil & Gas Regulation 2019

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A practical cross-border insight into oil and gas regulation work

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EDITORIAL

Welcome to the fourteenth edition of *The International Comparative Legal Guide to: Oil & Gas Regulation*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of oil and gas regulation.

It is divided into two main sections:

Two general chapters. These are designed to provide readers with an overview of key issues and developments affecting oil and gas regulation.

Country question and answer chapters. These provide a broad overview of common issues in oil and gas regulation in 28 jurisdictions.

All chapters are written by leading energy lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Philip Thomson and Julia Derrick of Ashurst LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Overview of Natural Gas Sector

1.1 A brief outline of your jurisdiction's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

Portugal does not have any natural gas reserves. All the natural gas consumed in the country is imported, mainly from Algeria, Qatar and Nigeria. Nonetheless, natural gas plays an important role in the country's energy mix, having accounted for 18% of the primary energy use during the year 2015.

Natural gas is imported into the country either by pipeline (connected to Spain), which in 2016 received two-thirds of the natural gas consumed in the country, or through the Sines LNG Terminal, the entry point of the remaining third. The Terminal is equipped to carry out reception, storage and re-gasification of hydrocarbons, and is also connected to the national gas network. The Terminal was constructed in 2004 and its capacity was increased in 2009.

The importation of natural gas into the country has systematically and gradually decreased since 2011. However, 2016 witnessed a contrary development as natural gas imports increased, unlike the importation of oil and coal which continued their downward trend. Concerning the present year, provisional data shows that the importation of natural gas continued to increase and, similarly, the importation of oil and coal continued to decrease. During 2017, natural gas was heavily relied upon for energy generation, compensating not only for a decrease in the consumption of oil and coal but also for a drop in energy produced from renewable sources in general, particularly attributable to the significant decline in hydroelectric generation.

The principal legal instruments for the natural gas sector are Decree-Law no. 30/2006 of 15 February 2006 (hereinafter "**DL 30/2006**") and Decree-Law no. 140/2006 of 26 July 2006 (hereinafter "**DL 140/2006**"), which establish and regulate the Natural Gas National System (*Sistema Nacional de Gás Natural*) as well as the activities of transport, storage, distribution and trading.

From a regulatory standpoint, the major agents in the LNG industry are: (i) the Energy Services Regulatory Authority (*Entidade Reguladora dos Serviços Energéticos* – hereinafter "**ERSE**"), which

oversees the LNG market, as well as activities such as regasification and underground storage; and (ii) the General Directorate for Geology and Energy (*Direcção-Geral da Geologia e Energia* – hereinafter "**DGEG**"), which monitors the safety of supplying activities, licensing infrastructure and LNG networks, pipelines and other storage or regasification facilities.

1.2 To what extent are your jurisdiction's energy requirements met using natural gas (including LNG)?

Natural gas accounted for 19.9% of the primary energy supply in 2016.

1.3 To what extent are your jurisdiction's natural gas requirements met through domestic natural gas production?

Portugal does not produce any natural gas.

1.4 To what extent is your jurisdiction's natural gas production exported (pipeline or LNG)?

Portugal does not export natural gas.

2 Overview of Oil Sector

2.1 Please provide a brief outline of your jurisdiction's oil sector.

Despite exploration activities being conducted in Portugal since the 1940s, no commercially viable deposits of oil have been found. Nevertheless, exploration activities in the country's EEZ continue, motivated by: (i) Portugal's proximity to North Africa which is known to have significant oil reserves; (ii) the extension of the nation's offshore territory; and (iii) the quality of the infrastructure, in particular the Sines Terminal. Most of the current exploration activity is around the Lusitânica Basin in the centre of the country. But there is also some activity in the south, around the coast of Algarve, led by companies such as Partex, Repsol and ENI.

During the year of 2017, similar to what had happened in 2016, most of the crude oil imported to the country came from Asia, contrary to what had been the tendency in previous years when the majority of imported oil came from Africa. During 2017, oil imported from Russia, Saudi Arabia, Azerbaijan and Kazakhstan accounted for 59% of the total imports. Crude oil imported from Angola, which

in 2016 accounted for about one quarter of crude oil imports to the country, significantly decreased to about 5% of the imports. Such decrease in imports from Angola was the main factor behind the shift to the Asian markets.

From a regulatory standpoint, the main agents are DGEG and the National Authority for the Fuel Market (“*Entidade Nacional para o Mercado de Combustíveis*” – hereinafter “ENMC”) with competence over the constitution, management and maintenance of crude oil reserves and petroleum products. ENMC was created by Decree-Law no. 165/2013 of 16 December 2013 (hereinafter “DL 165/2013”) which transposed the European Council Directive 2009/119/CE.

The most important single player in the oil sector is Galp, having originated from the merger of Petrogal, which refined and distributed petroleum products, with Gás de Portugal, which was an importer and distributor of natural gas.

Currently, Galp is a fully integrated oil company, with significant upstream, midstream and downstream activities, from production and exploration, to refining and distribution. Galp’s upstream activities are predominantly located in Brazil, Angola and Mozambique; regarding midstream and downstream, Galp operates the only two refineries in the country and distributes petroleum products in Portugal, Spain and some African nations.

2.2 To what extent are your jurisdiction’s energy requirements met using oil?

Oil accounted for 42.7% of the primary energy supply in 2016.

2.3 To what extent are your jurisdiction’s oil requirements met through domestic oil production?

Portugal does not produce any oil.

2.4 To what extent is your jurisdiction’s oil production exported?

This is not applicable in our jurisdiction.

3 Development of Oil and Natural Gas

3.1 Outline broadly the legal/statutory and organisational framework for the exploration and production (“development”) of oil and natural gas reserves including: principal legislation; in whom the State’s mineral rights to oil and natural gas are vested; Government authority or authorities responsible for the regulation of oil and natural gas development; and current major initiatives or policies of the Government (if any) in relation to oil and natural gas development.

Exploration and production of petroleum is regulated by Decree-Law no. 109/94 of 26 April 1994 (hereinafter “DL 109/94”). The aforementioned statute establishes that petroleum deposits are part of the public domain of the State. Exploration and production activities may be exercised by any entity with the required technical and financial capabilities and upon the grant of a concession (s. 5.1 DL 109/94). DL 109/94 was recently amended, by Law no. 82/2017 of 18 August 2017, which established a mandatory requirement for the prior consultation of the local governments in the administrative proceedings which precede exploration and production activities.

For activities conducted offshore, the competent local government is the one located in the corresponding coastline.

Concessions are granted by the government, through the Ministry of Energy (s. 6.1 DL 109/94), and are preceded by a public tender but may also, in special circumstances, be sole sourced.

The statute also provides for the possibility of applying for a Previous Assessment Licence (“*Licença de avaliação prévia*” – hereinafter “PAL”), a preliminary procedure which may be executed before the concession is granted. Under the PAL, licensees may process and evaluate information available in ENMC’s archive as well as collect surface samples and conduct surveying activities in order to assess the potential of the licensed areas. The PAL is awarded by ENMC (ss. 5.2 and 23.1 of DL 109/94).

3.2 How are the State’s mineral rights to develop oil and natural gas reserves transferred to investors or companies (“participants”) (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

The State’s mineral rights are transferred to investors or companies through a concession agreement. The general terms of the concession are enshrined in DL 109/94 and in Ordinance no. 790/1994 of 5 September 1994 (art. 18 DL 109/94). In accordance with DL 109/94, the concession contract is of an administrative nature (s. 18).

3.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

Further to the PAL, the concession agreement encompasses both exploration and production activities, as follows:

1. Exploration (*prospecção e pesquisa*): Any laboratory or field activity conducted for the purposes of finding or assessing petroleum deposits are deemed to be exploration activities (s. 30 DL 109/94). The exploration phase is to last for eight years (s. 35.1 DL 109/94), although this period may be extended for two consecutive one-year periods, if the concessionaire does not complete the work programme during the first eight years due to a legitimate reason. The concessionaire is bound to regularly survey the area under the concession, in accordance with the annual work programmes which are part of the agreement. Such work programmes will bind the concessionaire to carry out surveying activities in at least one block per year, from the third year of concession onwards (s. 35.2 DL 109/94). During the exploration period, the concessionaire is also subject to a relinquishment obligation which will apply at the end of the first five years of concession, according to which the concessionaire shall relinquish at least 50% of the initial area (s. 36.1 DL 109/94). If, by the end of the first eight years, the concessionaire wishes to extend the exploration period, in order to do so, 50% of the area still under the concession has to be relinquished (s. 36.2 DL 109/94).
2. Development: If, during the exploration phase, a concessionaire discovers an economically feasible petroleum deposit, the subsequent phase is development. In this phase the concessionaire will prepare a general work programme for the development and production of such deposit (s. 37.1 DL 109/94). The general programme will have to be submitted and approved by the ENMC and shall include, *inter alia*,

the following information: (i) technical description of the petroleum to be produced; (ii) blueprint of the location of the petroleum as well as the infrastructure to be installed; (iii) investment programme; and (iv) forecast of the date on which commercial production is expected to begin as well as the progress of production levels in the field (s. 38 DL 109/94).

3. Production: Commercial production may begin as soon as the respective programme is approved. The production phase will initially last for 25 years, although it may be extended one or more times up to a maximum period of 15 years (ss. 23.3 and 23.5 DL 109/94). The concessionaire is bound to measure and register all the petroleum extracted and recovered on a daily basis (s. 43 DL 109/94). The construction or installation of any pipelines, storage facilities and other related infrastructure is subject to the approval of the Ministry of Energy (s. 45.1 DL 109/94).

3.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of oil and natural gas reserves (whether as a matter of law or policy)?

The State does not have any ownership interest or seek to participate in the activities of concessionaires *per se*. However, as mentioned, petroleum deposits are deemed to be public domain (s. 4 DL 109/94).

3.5 How does the State derive value from oil and natural gas development (e.g. royalty, share of production, taxes)?

The State obtains revenue from petroleum operations from taxes and other fees payable by concessionaires. Oil and gas operators in the country are subject to the general tax regime and also to a petroleum income tax. We summarise below the main taxes and fees applicable:

1. Royalty: A progressive tax based indexed to factors such as location (onshore/offshore) and annual production (s. 51.1 DL 109/94).
2. Income tax: Tax on the profits generated by the concessionaire.
3. Surface fee: Fee calculated in accordance with the value attributed to each square kilometre of the land under the concession. The fee is paid annually (ss. 52 and 53.1 DL 109/94).

DL 109/94 also sets out licence issuance fees, agreement signature fees and assignment of contractual position fees (s. 54.1 DL 109/94 and Order (Despacho) no. 82/94 of 24 August 1994).

3.6 Are there any restrictions on the export of production?

There are no legal restrictions on the exportation of production nor any obligation to supply the domestic market. The general rule under DL 109/94 is that the concessionaire may freely dispose of the hydrocarbons produced as it wishes, subject to the caveat that the State may, upon a resolution of the Council of Ministers, request that part or all the petroleum produced is used to supply the domestic market, in the event of war or other emergency, and in accordance with the strategic needs of the country (ss. 78 and 72 DL 109/94).

3.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

The European Union principle of the free movement of capital applies in Portugal – there are no restrictions of this sort.

3.8 What restrictions (if any) apply to the transfer or disposal of oil and natural gas development rights or interests?

Assignment of the concessionaire's contractual position is subject to the approval of the Energy Minister, and a transfer of more than 50% of the share capital of the concessionaire is also subject to the aforementioned Minister's approval (s. 77 DL 109/94). An assignment fee will also be payable (s. 54.1(c) DL 109/94).

3.9 Are participants obliged to provide any security or guarantees in relation to oil and natural gas development?

Yes. In the terms of DL 109/94, one of the requirements of any interested party to participate in a public tender will be to provide a guarantee (s. 11.4(c) DL 109/94); such guarantee is provisional, i.e. it is not meant to last for more than one year and is merely intended to secure the proposal submitted in the public tender (ss. 74.1 and 74.2 DL 109/94).

Besides the aforementioned interim guarantee, concessionaires are also required to provide another guarantee covering the performance of the obligations arising out of the licence or the concession agreement, as well as damage caused to the State or to third parties (s. 74.4 DL 109/94). Such guarantee shall amount to 50% of the programmed works and shall last throughout the period of the concession and 60 days thereafter (s. 74.5 DL 109/94).

3.10 Can rights to develop oil and natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

The possibility to pledge or otherwise encumber rights acquired under a concession agreement of this type is not expressly regulated by DL 109/94. However, according to art. 688.1(d) of the Portuguese Civil Code, rights arising out of concessions of the public domain may be subject to a mortgage, although the legal rules on the transfer of such rights have to be observed.

3.11 In addition to those rights/authorisations required to explore for and produce oil and natural gas, what other principal Government authorisations are required to develop oil and natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

Additional permits may be necessary in addition to the concession. Depending on the permit sought, different authorities will have to be consulted.

3.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in oil and natural gas development? If so, what are the principal features/requirements of the legislation?

There is no particular legal instrument pertaining to decommissioning; nevertheless, DL 109/94 regulates, in very general and brief terms, decommissioning activities.

Concessionaires may relinquish any part of the concession on grounds of lack of financial or technical feasibility (s. 48.1 DL 109/94).

3.13 Is there any legislation or framework relating to gas storage? If so, what are the principal features/requirements of the legislation?

Yes. The two most important statutes concerning gas storage are DL 30/2006 and DL 140/2006. Gas storage is one of the components of the National Transport, Infrastructure, Storage and LNG Terminal Network (*Rede Nacional de Transporte, Infraestrutura de Armazenamento e Terminais GNL* – hereinafter “**RNTIAT**”).

In accordance with DL 30/2006, which established the general principles on the organisation and functioning of the National System of Natural Gas, gas storage (including both underground storage and LNG terminal storage) is operated under a concession regime (s. 15.1 DL 30/2006); such concession follows either a public tender or a restricted tender with a pre-qualification stage (s. 15.2 DL 30/2006). Operators (concessionaires) of an underground storage facility or an LNG terminal are legally independent from all other entities which, directly or indirectly, carry out other activities in the natural gas value chain. Such operators are also statutorily barred from holding stakes, directly or through a subsidiary, in companies which produce or sell natural gas (ss. 20-A.1, 20-A.2 and 20-A.3(e) DL 30/2006). Operators of an underground storage facility cannot purchase gas for resale (s. 19.4 DL 30/2006).

DL 140/2006 describes the underground storage of natural gas as an activity which includes *inter alia*: acceptance, storage, extraction, treatment and delivery of natural gas, both for the constitution of reserves and for operational and commercial purposes; and the construction, maintenance and operation of all infrastructure related thereto (s. 16.2 DL 140/2006). Similarly, LNG terminal storage includes: acceptance, storage, treatment and regasification of LNG; loading (onto tanker trucks or LNG vessels); and the construction, maintenance and operation of related infrastructure (s. 18.2 DL 140/2006).

3.14 Are there any laws or regulations that deal specifically with the exploration and production of unconventional oil and gas resources? If so, what are their key features?

There is no specific regime relating to exploration and production of unconventional reserves.

4 Import / Export of Natural Gas (including LNG)

4.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

Entities which sell natural gas are subject to registration (s. 33 DL 140/2006); however, such entities have the right to trade natural gas either through bilateral agreements or on organised markets and, most importantly, the right to freely negotiate the terms and conditions of such sales with their clients (s. 35.1 DL 140/2006).

5 Import / Export of Oil

5.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of oil and oil products.

The sale of oil and oil products is not subject to any independent licensing procedure, although ENMC will have to certify both the facilities and the market operator (s. 19 of Decree-Law no. 31/2006 of 15 February 2006 as amended by Decree-Law no. 244/2015 of 19 October 2015 – hereinafter “**DL 244/2015**”). Sale of oil and oil products to EU Member States, both at the wholesale and retail levels, is permitted as long as the tax and customs obligations are complied with (s. 21 of DL 31/2006 of 15 February 2006 as amended by DL 244/2015).

6 Transportation

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

Natural gas comes into the country through a pipeline at the border with Spain. The pipelines which make up the National Natural Gas Transport Network transport the hydrocarbons to the smaller networks operated by the different distribution companies. Natural gas is stored underground inside saline aquifers.

Alternatively, the other point of entry for LNG is the Sines Terminal, which receives and stores the LNG up to the point of regasification; after regasification, the hydrocarbons are directly pumped into the pipelines which connect the Sines Terminal to the National Network.

6.2 What governmental authorisations (including any applicable environmental authorisations) are required to construct and operate oil and natural gas transportation pipelines and associated infrastructure?

As briefly described in question 3.13 above, any activity which integrates the RNTIAT may be carried out through a concession (s. 15.1 DL 30/2006). The notion of transportation of natural gas includes acceptance, transport and delivery through high-pressure networks, and the construction, maintenance and operation of all related infrastructure (s. 14.3 DL 140/2006).

6.3 In general, how does an entity obtain the necessary land (or other) rights to construct oil and natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

Concessionaires have the right to request servitudes and even the expropriation of immovable property necessary for the construction of infrastructure deemed to be necessary to the concession (s. 8.1(b) DL 140/2006). However, such concessionaires are also bound to pay any due compensation which may arise (s. 8.3(e) DL 140/2006).

6.4 How is access to oil and natural gas transportation pipelines and associated infrastructure organised?

Access to the public networks of natural gas distribution is granted by a concession or licence. Further, RNTIAT operators are bound *inter alia* to ensure the access of third parties to the network in a non-discriminatory and transparent manner (s. 13.5(e) DL 140/2006).

6.5 To what degree are oil and natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

Oil pipelines are not integrated, while natural gas pipelines are, as referred to above, interconnected.

6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

One of the statutory duties of RNTIAT operators is to adequately plan and ensure the expansion and technical management of the national distribution network in order to ensure third-party access. This general rule of granting third parties access to infrastructure applies not only in distribution, but also to other storage and transport facilities.

However, this general principle does not apply to closed networks (defined as a distribution network which distributes natural gas within an industrial or commercial location, or within a geographically limited location excluded from the concessions and licences granted for natural gas distribution), whereby the owners and operators freely agree on the rates (s. 29-A.6 DL 140/2006); however, if the third party does not agree with the rates or practices of a closed network, a complaint may be made to ERSE which will establish a fair rate to be applied (s. 29-A.7 DL 140/2006).

6.7 Are parties free to agree the terms upon which oil or natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

The regime differs between natural gas and oil.

Third-party access to oil storage and transport infrastructure is regulated by DL 31/2006 (as amended), according to which the owners of pipelines or storage facilities which are in the public interest have to allow third-party access to them, through an agreement, negotiated in a non-discriminatory and transparent manner (s. 24.1 of DL 31/2006 as amended by DL 244/2015). In this context, owners of this sort of infrastructure are statutorily bound to: (i) inform ENMC of the prices agreed upon within 30 days; (ii) submit an annual price rate plan on the price method to be applied the following year; and (iii) regularly publish and update the capacity of their infrastructure (s. 24.2 DL 31/2006 as amended by DL 244/2015).

Conversely, concerning access to public natural gas infrastructure, the Regulation on the Access to Networks, Infrastructure and Interconnections of the Natural Gas Sector (hereinafter “RANI”) establishes that the fee payable for accessing such infrastructure is regulated by ERSE in the Tariff Regulation (s. 15 RANI).

7 Gas Transmission / Distribution

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

For the purposes of DL 140/2006, distribution encompasses: (i) the receipt and delivery of natural gas to final customers through medium- and low-pressure networks; (ii) the receipt, storage and regasification of LNG, its transportation and delivery to final customers; and (iii) the construction, maintenance and operation of all infrastructure related thereto (s. 20.2 DL 140/2006).

Distribution may thus be carried out through a regional distribution concession or a local distribution licence. The latter will be issued in territorial areas which are not covered by the regional concessions (s. 22.1 DL 140/2006) and cover the distribution of natural gas and the receipt, storage and regasification in autonomous units connected to the licensee's respective network (s. 23.2 DL 140/2006). Concessions are awarded for a maximum period of 40 years, while licences may only be awarded for a maximum of 20 years (ss. 9 and 26 DL 140/2006).

7.2 What governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

The authorisations are either the concessions or the licences.

7.3 How is access to the natural gas distribution network organised?

The RANI establishes that access to the natural gas distribution network is obtained through a contract entered into between the interested party and the operator of the network. The general terms of such contract are subject to regulation by ERSE (s. 10.1 RANI) and are entered into for a maximum period of one year, between 05:00 on 1 October and 05:00 of 1 October of the following year. These agreements are automatically renewable for successive one-year periods (ss. 11.1 and 11.2 RANI).

7.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

In principle, yes, the law provides that the granting authority may require the concessionaire to expand the network on the grounds of safety, frequency and quality of supply, if such expansion is consistent with the concession (DL 140/2006).

7.5 What fees are charged for accessing the distribution network, and are these fees regulated?

Yes. Please see question 6.7 above.

7.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

The transfer or assignment of a concession without the previous authorisation of the granting authority is void. For these purposes, the assignment of shares which results in a change of control is considered equivalent to the transfer of concession, and therefore also requires authorisation. On the same terms, the transfer of a local distribution licence is also conditional on the authorisation of the competent Minister (s. 27.1 DL 140/2006).

8 Natural Gas Trading

8.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

Natural gas trading may be carried out under one of the following regimes: (i) free trading; and (ii) last resort trading.

Operating under the free trading regime is subject to registration with DGEG (ss. 33 and 34 of DL 140/2006). An operator under this regime has the right to trade natural gas through bilateral agreements with other agents or in organised markets, access necessary infrastructure, and freely agree on the sale of natural gas with its customers (s. 35.1 DL 140/2006). On the other hand, such operators are also bound to the regular provision of information to the regulator and their customers concerning, *inter alia*, consumption levels, prices and tariffs (s. 35.2 DL 140/2006).

On the other hand, the last resort trading regime is deemed to be a public service, whereby operators supply natural gas to economically vulnerable customers (s. 40.3 DL 140/2006) – both at the wholesale and retail levels (s. 40.1 DL 140/2006). These operators benefit from a tariff which aims to guarantee the economic and financial viability of the activity (s. 41.2 DL 140/2006).

8.2 What range of natural gas commodities can be traded? For example, can only “bundled” products (i.e., the natural gas commodity and the distribution thereof) be traded?

Legal entities which carry out natural gas trading have to be independent and autonomous from other legal entities which provide other services in the natural gas value chain (i.e. transportation, storage, etc.).

9 Liquefied Natural Gas

9.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

LNG storage and regasification terminals are operated by concessionaires (s. 18 DL 140/2006). The award of the concession follows a public tender or a tender restricted by a pre-qualification phase, and culminates with the signature of a concession agreement between the concessionaire and the granting authority.

9.2 What governmental authorisations are required to construct and operate LNG facilities?

Please see question 9.1 above.

9.3 Is there any regulation of the price or terms of service in the LNG sector?

Access to the LNG Terminal is granted through an agreement entered into between the Terminal operator and the interested party. The operator will charge a fee for the use of the relevant infrastructure under the terms of the RANI.

9.4 Outline any third-party access regime/rights in respect of LNG facilities.

As mentioned, third-party access to LNG facilities is formalised by an agreement to that effect. The general terms of such agreement have to be approved by ERSE, and are entered into for a maximum period of one year, between 00:00 on 1 October and 24:00 of 30 September of the following year. These agreements are automatically renewable for successive one-year periods (ss. 11.1 and 11.2 RANI).

10 Downstream Oil

10.1 Outline broadly the regulatory framework in relation to the downstream oil sector.

The National Oil System (*Sistema Petrolífero Nacional* – hereinafter “SPN”) is made up of the following activities: (i) refining of crude oil and petroleum products; (ii) storage of crude oil and petroleum products; (iii) transport of crude oil and petroleum products; (iv) distribution of petroleum products; and (v) sale of crude oil and petroleum products (ss. 12.1 and 12.2 of DL 31/2006 as amended by DL 244/2015). The exercise of these activities falls under a regime of free competition, without prejudice to the observance of the public interest (s. 4.3 of DL 31/2006 as amended by DL 244/2015) – meaning, in other words, operators have to comply with public interest principles such as safety, frequency and quality of supply, consumer protection and the promotion of energy efficiency.

The same entity can carry out more than one activity which composes the SPN (s. 12.2 of DL 31/2006 as amended by DL 244/2015).

10.2 Outline broadly the ownership, organisation and regulatory framework in relation to oil trading.

As mentioned, oil trading is one of the activities which integrates the SPN; as such, it is subject to certification. In particular, oil trading does not require any autonomous licence, despite the licensing of the facilities and the certification of the operator by the ENMC being required (s. 19.1 of DL 31/2006 as amended by DL 244/2015). Traders may be retailers or wholesalers, and different rights and obligations apply to each type of agent (s. 20.1 of DL 31/2006 as amended by DL 244/2015).

11 Competition

11.1 Which governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the oil and natural gas sector?

The competent governmental authority in this regard is the Competition Authority (*Autoridade da Concorrência* – hereinafter “AdC”), although in the domains of oil and gas the AdC may be complemented by the powers and competences of ERSE and ENMC.

11.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The Portuguese Competition Law establishes, *inter alia*, the following practices as anti-competitive: (i) fixing prices; (ii) limiting or controlling production, distribution, technical development or investment; (iii) dividing the market or supply sources; and (iv) applying different conditions to commercial partners supplying an equivalent good or service (s. 9 of the Competition Law approved by Law no. 19/2012 of 8 May 2012 – hereinafter “Law no. 19/2012”). The aforementioned statute also includes abuse of dominant position and abuse of economic dependence (ss. 11 and 12 Law no. 19/2012).

11.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

The AdC may investigate particular transactions or market practices if it suspects anti-competitive practices. Complaints may also be filed with the AdC regarding the same.

11.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the oil and natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

Company mergers are subject to a procedure of previous notification if:

- as a consequence of the merger, the national market share acquired, created or re-enforced, becomes equal to or surpasses 50% (s. 37.1(a) Law no. 19/2012);
- the national market share acquired, created or re-enforced, corresponds to 30%–50%, as long as the individual annual turnover obtained in Portugal for at least two members of the merger is over EUR 5 million (s. 37.1(b) Law no. 19/2012); or
- the group of relevant companies obtained, in Portugal, a turnover of over EUR 100 million, as long as the individual annual turnover of at least two of the members was over EUR 5 million (s. 37.1(c) Law no. 19/2012).

For the purposes of the Competition Law, a merger is any operation where there is a long-lasting change of control on all or part of one or more companies (s. 36.1), be it via the merger of two previously independent companies or parts of companies, or the direct or indirect acquisition of control of at least one company. The incorporation of a common company qualifies as a merger for these

purposes if the common company incorporated carries out activities as an economically autonomous entity (s. 36.2).

12 Foreign Investment and International Obligations

12.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

No further restrictions apply to foreign companies.

12.2 To what extent is regulatory policy in respect of the oil and natural gas sector influenced or affected by international treaties or other multinational arrangements?

Besides EU laws and regulations applicable to the oil and natural gas sector, Portugal is also a signatory to the Energy Charter Treaty and a member of the International Energy Agency.

13 Dispute Resolution

13.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the oil and natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to oil and natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; downstream oil infrastructure owners or users; and distribution network owners or users in relation to the distribution/transmission of natural gas.

DL 109/94 elects arbitration as the resolution mechanism for any disputes arising out of the interpretation of legal and contractual provisions between the State and the concessionaires. The seat of such arbitration is Lisbon, and Portuguese arbitration law will apply (s. 80 DL 109/94).

13.2 Is your jurisdiction a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID”)?

In 1994, Portugal acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, subject to the reservation of reciprocity.

13.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

No specific difficulties will apply in a suit brought against the State or a public authority.

13.4 Have there been instances in the oil and natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

To our knowledge, there are no such judgments or awards.

14 Updates

14.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Oil and Gas Regulation Law in your jurisdiction.

The upcoming developments in the oil and gas sector in Portugal will probably be motivated by the government's efforts to promote the

Sines LNG Terminal, due to its geographic location, as a centrepiece in the supply of the European LNG market; which would, in principle, provide an alternative entry point for hydrocarbons into Europe, avoiding the politically more contentious routes through Algeria and Russia.

On this point, the Portuguese Ministry for the Sea and the United States Bureau of Energy Resources have signed an agreement for the promotion of LNG, in which both countries recognise the increased role of the Sines Terminal as the LNG hub of the Atlantic Ocean.



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Tomás Vaz Pinto joined the firm in 1994 and became a partner in 2006. He coordinates one of the corporate and commercial teams.

Tomás is highly experienced in the areas of M&A and Corporate and has been involved in several high-level transactions, both at a domestic and international level. He is an expert in privatisation cases. He is also an expert on private equity and assists various clients in this sector and is head of the Oil & Gas team at MLGTS.

He was one of the winners of the 2009 "40 under Forty Award" organised by *Iberian Lawyer* magazine which distinguishes the best 40 lawyers under the age of 40 in Iberia.



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Claudia Santos Cruz joined the firm as a consultant in 2015 assisting clients on the international and cross-border aspects of their investments in Portugal, Angola and Mozambique.

Claudia has close ties to both Africa and England. She was born in Mozambique, grew up in South Africa and holds dual Portuguese and Mozambican nationality.

She trained and practised as an English solicitor from 1994 to 2005 at DLA Piper and Watson Farley & Williams in the City of London. From 2005 to date Claudia has been based in Lisbon and is registered with the Portuguese Bar Association.

She is ranked as a leading lawyer by the most prestigious international Directories. She specialises in areas such as Energy and Natural Resources (Oil & Gas/Mining), international aspects of foreign investment into Angola and Mozambique, and in Shipping.

Claudia Santos Cruz would like to thank Lourenço Limão Oliveira, a junior associate at MLGTS, for his support and contribution in the preparation of this chapter.

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