

# Oil and gas regulation in Portugal: overview

by Mónica Carneiro Pacheco and Manuel Cassiano Neves, *CMS Rui Pena & Arnaut*

Country Q&A | Law stated as at 01-Dec-2020 | Portugal

---

A Q&A guide to oil and gas regulation in Portugal.

The Q&A gives a high-level overview of the domestic oil and gas sector, rights to oil and gas, health safety and the environment, sale and trade in oil and gas, tax and enforcement of regulation. It covers transfer of rights; transportation by pipeline; environmental impact assessments; decommissioning; waste regulations and proposals for reform.

---

## Domestic sector

1. What is the role of the domestic oil sector in your jurisdiction?

## Domestic production

Portugal mainly imports its oil from Angola, Saudi Arabia and Algeria.

Some oil exploration was undertaken in Portugal before 2000, when 2D seismic and minor drilling works were carried out. These exploration activities increased after 2007 when 12 new concession contracts were concluded by the government with companies such as Galp, Repsol, Partex, Petrobras, Portfuel and ENI. In 2017, the government terminated the concession contracts for exploration, research, development and production of oil in the Algarve and Peniche offshore areas.

It is not yet known whether there are sufficiently large oil reserves in Portugal to allow for commercially viable production.

It is also important to mention that currently there is no unconventional/shale oil production in Portugal.

## Oil imports/exports market

All imports of crude oil into Portugal are done through the two largest ports, Sines and Leixões. Imports from Sines are transported to the centre of the country through a 147-kilometre multiproduct pipeline operated by CLC (a joint venture between Galp, Repsol, BP and Rubis Energia). This is the only major pipeline in Portugal, and there are no cross-border pipelines.

## Domestic market structure

Underground oil resources are classified by law as in the public state domain, which means that the Portuguese state is the owner of such resources.

Most storage capacity is owned by Galp. Most of it is in the refineries at Sines (3.4 million cubic metres) and Matosinhos (1.9 million cubic metres). These are the two refineries in Portugal.

In the retail sector, the largest company is Galp, a vertically integrated company operating in almost all sectors of the market. Galp, Repsol, Cepsa and BP account for 67% of the retail oil market in Portugal.

## Government policy objectives

Portugal's plans for the energy sector include several commitments to reduce oil dependency, to increase generation from renewable domestic sources and to promote energy efficiency (see [Question 22](#)).

## Current market trends

Domestic renewable energy production has recently increased and oil imports have decreased significantly (see [Question 3](#)).

2. What is the role of the natural gas sector in your jurisdiction?

## Domestic production

There is no domestic production of natural gas. There is some shale gas prospecting in central Portugal. However, Portugal has initiated the first steps for production of green-hydrogen, notably by previewing the basis of such activity in the applicable legal framework.

## Natural gas imports/exports

Natural gas consumed in Portugal is imported from Algeria and Nigeria, through high-pressure pipelines or marine tankers (liquefied natural gas) (LNG).

## Domestic market structures

The natural gas sector is liberalised. Transport, distribution and supply are unbundled, in terms of legal and accountability separation.

Decree-Law 230/2012 and Decree-Law 231/2012, both of 26 October 2012, transposed Directive 2009/73/EC on the common rules for the internal market in natural gas (Gas Directive) into Portuguese law, by:

- Reinforcing independence, unbundling of supply and operation of transmission networks.
- Assigning new powers to the independent regulator.

Competition has emerged in the retail sector. Infrastructure improvements have strengthened the network and delivered greater security of supply.

There is full ownership unbundling of transmission:

- REN Gasodutos SA (the transmission system operator) operates the national transport network.
- Reception, regasification and storage of LNG are operated by REN Atlântico SA.
- Subterranean storage of natural gas is carried out by REN Armazenagem SA and Transgás Armazenagem SA.

These activities are performed through public service concession contracts with the state that regulate the rights and obligations of the parties.

The distribution networks are operated by several private companies.

The supply market is fully liberalised and customers are free to choose their gas suppliers. The most important are EDP Comercial, Galp, Endesa, Iberdrola, Gold Energy and Grupo Gás Natural Fenosa.

Decree-Law No. 38/2017 of 31 March follows the Budget Law for 2017 (Law No. 42/2016 of 28 December). This provides households with information to ensure that switching supplier is quick, simple and transparent, based on simple procedures. It created the Logistics Operator for Switching Suppliers (OLMC) function, performed by the Portuguese Agency for Energy (ADENE).

In 2018, 121,891 households successfully changed their supplier. The number of households changing suppliers has decreased in recent years, and fewer changes are expected in 2020.

## Government policy objectives

The National Strategy for Hydrogen (EN-H<sub>2</sub>), approved by Resolution of the Council of Ministers No. 63/2020 of 14 August, shows a clear commitment by the government to make hydrogen and biomethane a fundamental way to achieve carbon neutrality by 2050 (see [Question 29](#)).

## Current market trends

The government has approved Decree-Law No. 62/2020, establishing the organisation and functioning of the National Gas System and its legal framework. This transposes Directive 2019/692 of 13 July, amending Directive 2009/73/EC, which establishes common rules for the internal market in natural gas (see [Question 29](#)).

3. Are domestic energy requirements met by domestic oil and gas production?

## Oil requirements

Portugal is a large net importer of oil. Domestic energy production (notably renewables) makes up around 22% of total primary energy supply (TPES), and the rest is imported. In 2014, Portugal imported 15.2 million tonnes of oil equivalent (Mtoe) of crude oil products and exported only 4.6 Mtoe (*Energy Policies of IEA Countries, Portugal Review, 2016, International Energy Agency*).

However, domestic energy production has recently increased and oil imports have decreased significantly. Net imports of oil and oil products decreased by 32.7% from 2004 to 2014. Portugal is now at the median level among International Energy Agency (IEA) countries by fossil fuel share in TPES (*Energy Policies of IEA Countries, Portugal Review, 2016, International Energy Agency*) ([www.iea.org/countries/portugal](http://www.iea.org/countries/portugal)).

Oil accounts for almost half of Portugal's energy needs. In 2019, primary energy consumption related to oil products was 46.8% of total energy consumption. Final energy consumption related to oil products was 42.9% of total energy consumption (<https://www.dgeg.gov.pt/>).

Almost 60% of oil consumption is in the transport sector, with 19% in the industrial sector and nearly 7% in the energy sector. The remainder is consumed in the services and residential sectors.

Portugal's TPES was slightly above 22 Mtoe in 2015, having grown 5.4% compared with 2014. Portugal's energy consumption was at its highest level in 2017. Energy consumption is expected to grow in the future. This growth and oil's share in it depends on energy efficiency measures and electric vehicles. Portugal is deeply engaged in both.

## Natural gas requirements

Portugal imports its natural gas (see [Question 2](#)). Imports come mainly from a few long-term take-or-pay contracts held by the Galp Group with Algeria (through Spain) and Nigeria (imported as LNG).

According to Redes Energéticas Nacionais SGPS SA (REN), in 2019, natural gas consumption:

- Totalled 67.9 TWh, 4.8% higher than 2018 and the second highest annual consumption ever.
- Accounted for 32% of total energy consumption.

4. Are there specific government policies to encourage the exploration and production of unconventional gas or oil?

There are no specific government policies to encourage the exploration and production of unconventional gas or oil.

## Regulation

## Regulatory bodies

### 5. Who regulates the exploration and production of oil and gas?

The Regulatory Entity for Energy Services (ERSE) regulates the electricity and natural gas sectors (<https://eportugal.gov.pt/>).

The Directorate General for Energy and Geology (DGEG) develops and implements policies relating to energy and geological resources, within a framework of sustainability and energy security. DGEG also supports government decision-making in energy crisis and emergency situations, and the Minister of Economy at European and international levels ([www.dgeg.gov.pt/](http://www.dgeg.gov.pt/)).

The Ministry of Economy sets and co-ordinates main policies in the sector, including hydrocarbon production activities. It also organises public tenders and awards oil exploration and production rights.

The National Entity for the Energy Sector (ENSE) has regulatory and inspection powers in the natural gas market, including monitoring compliance with national and international obligations on setting up and maintaining natural gas reserves ([www.ense-epe.pt/en/](http://www.ense-epe.pt/en/)).

The Competition Authority (AdC) regulates competition in the energy sector ([www.concorrencia.pt/vEN/Pages/Homepage-AdC-vEN.aspx](http://www.concorrencia.pt/vEN/Pages/Homepage-AdC-vEN.aspx)).

Environmental matters are regulated by the National Environmental Agency (APA) (<https://apambiente.pt/index.php?ref=x178>).

## The regulatory regime

### 6. What is the regulatory regime for onshore and offshore oil and gas exploration and production?

Decree-Law No. 31/2006 is the main law. It does not distinguish between onshore and offshore regimes for the survey, exploration, development and production of oil and gas.

Concession contracts for underwater areas more than 200 metres deep are specifically regulated (*Article 84, Decree-Law No. 109/94, of 26 April*). This regulation has not yet been published, so the general rules apply. The concession area, deadlines and number of surveys may vary depending on the specific concession.

Differences between onshore and offshore exploration and production are essentially set out in concession contracts.

There are enhanced security measures for offshore oil and gas operations, in line with Directive 2013/30/EU (transposed by Decree Law No. 13/2016 of 9 March) (see [Question 18](#)).

Oilfields located on the continental shelf with a depth of more than 200 metres are exempt from production taxes, regardless of the value of their production (see [Question 13](#)).

## Enforcement of regulation

7. What are the regulator's enforcement powers?

### Orders

The ERSE can issue orders regarding:

- Commercial relations.
- Quality of service.
- Infrastructure operation.
- Access to networks.
- Interconnections and tariffs.

### Fines and penalties

**Oil.** The main fines and penalties are imposed by ENSE, which can bring an infringement procedure for non-compliance with:

- Certification, accountability, asset and legal separation obligations.
- Registration obligations.
- Wholesaler and retailer obligations.
- Notification requirements.
- Allowing third party access to infrastructure.

Sanctions include fines up to EUR45,000 and other penalties (such as suspension of the activity or closure of establishments).

**Gas.** Fines and penalties are imposed by ERSE and follow a specific legal framework under Law No. 9/2013 of 28 January. ERSE can bring an infringement procedure for non-compliance with, among others:

- Legal obligations.
- Provision of information requirements.
- Application of tariffs and fees.

## Other

Not applicable.

8. Is there a right of appeal against the regulator's decisions?

Gas decisions by ERSE can be challenged in court proceedings.

DGEG decisions can be challenged before DGEG directly (reclamation) and then by appeal to the Minister of Economy.

The legislation is not clear if an ENSE oil decision can be appealed to the Minister of Economy before challenging it in court.

Depending on the act (for example, if it is null and void), there are time limits to proceed directly against the authority itself or to the courts. General rules administrative acts, such as decisions from a regulatory entity, can be challenged in court within three months after their issuance or acknowledgment. Other deadlines may apply if the act can be considered null and void.

## Rights to oil and gas

### Ownership

9. How are rights to oil and gas held?

Under Article 4 of Decree-Law no. 477/80 of 15 October, the state retains legal ownership of mineral and oil fields, geothermal resources and other natural assets that exist underground (*paragraph g*). As such, landowners have no rights over these kind of minerals found on their property.

## Nature of oil and gas rights

10. What are the key features of the leases, licences or concessions which are issued under the regulatory regime?

### Lease/licence/concession terms

**Oil concessions.** These have an eight-year initial period and can be extended twice for one-year periods to complete the works (if an extension is justified).

The concession can be extended within this period for an additional 25 years (with a possible additional 15-year extension) if all of the following applies:

- There is evidence that an economically viable oilfield exists.
- A preliminary demarcation has been made.
- The DGEG has approved the general development and production plan.

The concessionaire must:

- Adequately pursue the concession's objective.
- Carry out the concession activities according to the requirements of a regular, continuous and efficient public service.
- Use the best procedures, means and technologies used in the oil sector, to guarantee the safety of people and goods.

As the grantor of concessions, the government supervises the concessionaire's activities within the scope of the concession, to ensure proper execution of the activities according to applicable legislation. The government does not generally have a participating interest in the concession.

Licences to assess a potential oilfield are issued for six months and cannot be extended.

**Gas concessions.** The term of gas concessions is determined by the government in each concession agreement but must not exceed 30 years. However, concession contracts can provide for renewal for an equal period if the public interest justifies it and the concessionaires have fulfilled their legal and contractual obligations.



Concessionaires have certain obligations and the government supervises them (*see above, [Lease/licence/concession terms: Oil concessions](#)*).

Licences for local gas distribution have a term of 20 years.

Licences for filling stations have a duration of ten years and can be extended for five-year periods.

Gas trading licences and last resource supplier licences have an indeterminate term.

There is obligation to share or publish seismic reports.

## Fees

**Oil.** Licensees and concessionaires must pay the following fees to the DGEG:

- A fee for a licence to assess a potential oil area in advance.
- A fee for execution of the concession contract.
- A royalty fee for the concession contract (*see [Question 13](#)*).
- A fee to assign the concession contract (*see [Question 12](#)*).

These fees are determined by order of the Ministry of Economy (current fees are set out in DGEG Order No. 82/94).

Concessionaires must also pay a ground rent to the government (according to the total area of the concession). The specific amount is determined in the concession contract, subject to the limits in Joint Order No. A-87/94#XII of 17 January. Ground rent is paid in January of each year.

Concession contracts also usually include compensation to be paid to the government for developing technology programmes, training sessions, acquiring equipment and data storage and processing. Concession contracts also include amounts paid to universities, mainly for research and development.

These amounts are the same for onshore and offshore production.

**Gas.** In relation to gas, a fee is due for the issuance of licences.

## Liability

Under the oil and gas legislation, concessionaires are liable for loss and damage caused to the state or to third parties through the exercise of their activities.

Fines can also be imposed for administrative offences such as failures to comply with safety rules and guidelines.

If the concession is undertaken by more than one autonomous party, liability is usually joint and several. The non-defaulting party may be able to claim against the party in default, under the arrangements between the parties including a consortium or joint venture agreement.

In the gas sector, concessionaires are liable to the grantor (the government) for breaches of obligations under the concession contract. The concessionaire can exclude liability if there is a force majeure event, such as terrorism, epidemics, cyclones, and natural disasters. The same also applies to oil concessionaires

The government can also impose contractual penalties of up to EUR10 million for non-compliance with the concession contract.

The government can redeem the concession when the public interest justifies it, after at least 15 years from the commencement date of the term, by giving notice to the concessionaire one year in advance.

In case of redemption, the concessionaire is entitled to an indemnity. The indemnity value must meet the book value at the redemption date of the assets reverting to the grantor, after any encumbrances or charges, and the value of any loss of profits.

The government can terminate the concession contract in the event of a serious, unresolved or non-remedied breach of the concessionaire's obligations arising from the concession contract.

In the event of non-compliance with the contract that may lead to termination of the concession, the government must notify the concessionaire to fulfil its obligations and correct or repair the consequences of its acts. If the concessionaire fails to do so, the government can terminate the concession contract.

Termination of the concession contract by the grantor implies the free transfer of all assets and means related to the concession to the grantor without any indemnity and loss of the bond provided to guarantee timely and full performance of the contract. This is without prejudice to the right of the grantor to be compensated for losses suffered as a result.

The concessionaire is also liable to third parties for any damage caused due to the concession activity, including a party which assigns the concession area to the concessionaire.

## Restrictions

Exploitation concessions and underground gas storage concessions can be assigned to a third party with prior authorisation from the Ministry of Economy (see [Question 12](#)).

11. How are rights to explore for and produce oil and gas awarded?

Surveying, exploration, development and production of oil and gas requires a concession granted by the Minister of Economy, following a tender procedure or direct negotiation.

## Tender procedure

A tender procedure can be launched on the government's own initiative (by the minister responsible for energy, currently the Minister of Economy) or on application by an interested party.

A tender is launched by publication of a notice in the Portuguese Official Journal and in the EU Official Journal, along with the tender documentation, including the:

- Geographical area of the concession.
- Deadlines.
- Amount of security (*caução*) or guarantee required.

Applicants complying with the technical and economic requirements are admitted into the tender. Their proposals must be submitted within 90 days from publication of the initial tender notice, with evidence of their legal existence, work programme, estimated costs and financing sources.

If there are any inaccuracies or missing information, DGEG will notify the applicant and they can be corrected within 15 days from notification. After any corrections are made, DGEG issues an opinion with:

- An assessment of the applicant's technical and financing capabilities.
- An assessment of the quality and quantity of works proposed.
- Proposed fee amounts payable to the government.

The final decision is then issued by the Minister of Economy, after considering DGEG's opinion. The concession contract can then be executed by the parties.

## **Direct negotiation**

The direct negotiation procedure is used for concession areas that are:

- Permanently available.
- Subject to a previous tender where no concession right was granted.
- Returned by other concessionaires.
- Adjacent to areas where a concession was previously granted, if technically and economically justifiable.

The procedure takes up to 90 days after a proposal is submitted by the interested party (with a possible extension of 60 days granted by DGEG, if justified).

The final proposal must be submitted within 15 days from conclusion of the negotiations, for final approval of the Ministry of Economy. A concession contract is then executed.

## **Transfer of rights**



12. How are oil and gas rights transferred?

## Transfer of rights

A transfer of all or part of an oil or gas concession contract requires previous authorisation from the Minister of Economy.

A change of control of an oil or gas concessionaire also requires authorisation from the Minister of Economy.

A transfer of an oil or gas concession is subject to a fixed fee stated in the concession agreement, as set-out in DGEG Order No. 82/94 (from EUR5,000 to EUR50,000).

In a sub-concession or sub-transfer of an oil or gas concession, the concessionaire must send to the Minister of Economy in advance a draft of the sub-concession or transfer agreement, with details of the sub-concessionaire or sub-transferee and other information if requested by the Minister of Economy.

A transfer of all or part of an oil or gas concession without prior authorisation can lead to termination of the concession agreement by the Minister of Economy. This involves the transfer of all assets and means allocated to the concession to the grantor without compensation, and loss of the deposit provided to guarantee punctual and full compliance with the contract.

## Restrictions on transfer

The concessionaire cannot, without the prior authorisation of the government, charge, sub-contract, trespass or transmit, in any form whatsoever, in whole or in part, the concession, or carry out any legal business that aims to achieve or has as its effect, even indirectly, identical results.

A transfer of shares resulting in the creation or modification of a controlling relationship over the concessionaire is equivalent to a transfer of the concession. A transfer of the concession without the necessary prior approval is null and void.

There are no pre-emptive rights reserved for the government.

## Tax

13. What payments are payable by oil and gas interest holders to the government?

## Royalties

**Oil.** Royalties are fixed in Decree-Law No. 109/94 and are determined on a progressive basis, depending on the location of the oilfields and total production.

For onshore oilfields, royalties are a percentage of annual production, as follows:

- Up to 300,000 tonnes: exempt.
- Above 300,000 tonnes and below 500,000 tonnes: 6% on the amount above 300,000 tonnes.
- 500,000 tonnes and above: 9% on the amount above 500,000 tonnes.

For offshore oilfields located in underwater areas of Portugal and on the continental shelf with a depth of over 200 metres, the royalties are as follows:

- Up to 500,000 tonnes: exempt.
- 500,000 tonnes and above: 10% on the amount above 500,000 tonnes.

For the fees that licensees and concessionaires must pay to the ENSE, see *Question 10, Fees*.

Concessionaires must also pay a ground rent (see *Question 10, Fees*).

**Gas.** Gas concessionaires do not have to pay royalties to the government.

## Tax

**Oil production.** A tax is levied on oil production. However, oil production is tax exempt if it is from oilfields located:

- In Portugal and inland waters with an annual value of up to 300,000 tonnes (for onshore production) and up to 500,000 tonnes (for offshore production).
- On the continental shelf at a depth of more than 200 metres (regardless of the value of production).

**Tax on oil and energy products (ISP).** The Code of Special Taxes on Consumption (*Decree-Law No. 73/2010 of 21 June*) imposes ISP on oil and energy products for sale and consumption, including petrol, diesel, propane, butane and liquefied petroleum gas (LPG) (see *Question 14*).

ISP applies to oil and energy products (and other products, such as other hydrocarbons) if they are consumed or offered for sale as fuel and electricity and fall under CN Code 2716.

Under the State Budget Law, the rate of ISP was updated in January 2019 by Ordinance No. 301-A/2018. The ISP rate for:

- Petrol with a lead content of up to 0.013 grammes is EUR526.64 per 1,000 litres.
- Diesel is EUR343.15 per 1,000 litres.

There are some exemptions, including oil products that are:

- Consumed in the establishment that produces them.
- Used for purposes other than fuel.
- Used in aviation (except private recreational aviation).
- Used for coastal shipping and inland waterway transport (including fishing and aquaculture) (except private recreational navigation).
- Used by the entities producing them in the production of electricity, and heat or city gas.
- Used for public transport and to transport passengers and goods by rail.

14. What taxes and duties apply on import and export of oil and gas?

Imports of oil and gas from third countries outside the EU into Portugal are subject to:

- VAT at a rate of 23%.
- Customs duties, depending on the product and its origin. There are no customs duties for natural gas (combined commodity code 2709001000) and for crude oil (combined commodity code 2709009000).
- Excise duties.
- ISP (see [Question 13](#)).

For ISP, motor fuels for non-commercial and industrial use are taxed at the following rates:

- Unleaded petrol: EUR642.58 per 1,000 litres.
- Diesel: EUR485.68 per 1,000 litres.
- Kerosene: EUR368.85 per 1,000 litres.
- LPG: EUR293.54 per 1,000 kilograms.
- Natural gas: EUR1.86 per gigajoule.

Motor fuels for commercial and industrial use are taxed at the following rates:

- Diesel: EUR139.04 per 1,000 litres.
- Kerosene: EUR144.44 per 1,000 litres.
- LPG: EUR44.97 per 1,000 kilograms.

- Natural gas: EUR1.02 per gigajoule.

Heating and electricity are taxed at the following rates:

- Heavy fuel oil: EUR55.09 per 1,000 kilograms for business use and EUR55.09 per 1,000 kilograms for non-business use.
- Kerosene: EUR144.44 per 1,000 litres for business and non-business use.
- LPG: EUR44.97 per 1,000 kilograms for business use.

Natural gas is taxed at EUR1.017 per gigajoule for business use and EUR1.017 per gigajoule for non-business use.

Coal and coke are taxed at EUR33.12 per gigajoule for business use and EUR33.12 per gigajoule for non-business use.

## Transportation by pipeline

15. What regulatory requirements apply to the construction of oil and gas pipelines?

### Oil pipelines

The construction and operation of oil and gas pipelines require a certification from DGEG that the operator meets the conditions to exercise the activity, in particular legal and accountability separation.

Specific requirements, such as construction, exploration and maintenance of pipelines to transport liquid and liquefied oil, are set out in Order No. 765/2002 of 1 July. They include:

- Compliance with the requirements for construction and population density of the project location. This is to ensure the security of populated cities/locations.
- Pressure and temperature requirements.
- Requirements for materials.
- Procedures to install pipelines and other equipment.
- Safety distances.
- Application of the pipelines.
- Connection with electric installations.
- Maintenance and hazard prevention.

- Safety and management responsibilities.

Decree-Law No. 152/94 of 26 May sets out implementation and exploration conditions for pipelines to transport LPG and other refined products.

Operators hold and maintain title to the facilities and equipment necessary for transportation, especially oil pipelines. If the pipeline layout implies that the natural gas pipelines pass through someone else's property, the law allows REN-Gas Pipelines to establish an easement on such property.

Construction works require licences (including an environmental licence) (see [Question 21](#)) and involve several entities (for example, municipalities).

## Gas pipelines

Transport in the gas sector (including the construction and exploration of pipelines) is subject to a public service concession regime. In continental Portugal it is performed exclusively by REN Gasodutos (the only transport system operator) under a concession contract and supervised by ERSE and DGEG.

Projects requiring construction of natural gas transport pipelines and storage facilities need prior approval from the government and a licence from DGEG. Construction works require licences (including an environmental licence) and involve several entities (for example, municipalities).

To create infrastructure and facilities, the gas transport concessionaire (REN Gasodutos) can:

- Use public and private assets of the state and other public legal persons.
- Create and enforce easements over property.
- Use the expropriation procedure for public and urgent purposes to acquire real estate or related rights.

The concessionaire has possession of all assets and means in the concession until it expires.

The concessionaire must maintain, for the term of the concession, the assets and means relating to the concession, in a permanent state of good functioning, conservation and security. It must carry out repairs, renovations, adaptations and modernisations necessary for good performance of the public service granted.

16. What regulatory requirements apply to the operation of oil and gas pipelines?

## Oil pipelines

See [Question 15](#).



Decree-Law No. 138/2014 of 15 September 2014 sets out a special regime for the transfer of strategic assets in public utility sectors (including oil and gas pipelines). The transfer of such assets to companies outside the EU can be blocked by the government if the acquisition compromises national security and defence and supply security.

## Gas pipelines

See [Question 15](#).

Decree-Law No. 30/2006 of 15 February and Decree-Law No. 140/2006 of 26 July unbundled gas transport, distribution and supply. There is a legal and accountability separation between the transport system operator (REN Gasodutos) and the entities responsible for supply and distribution. The transport system operator board members cannot be part of the corporate bodies of companies responsible for supply and distribution.

17. Is there a system of third party access to pipelines and other infrastructure?

## Oil

Decree-Law No. 31/2006 (as amended) establishes the national oil system rules. Holders of large facilities for storage and transport by pipeline in the public interest must give access to those facilities to third parties, on a negotiated basis.

Any conditions imposed by the holders must be technically and economically non-discriminatory, transparent and objective, and access tariffs must be made public.

Operators of other facilities or infrastructure can voluntarily allow access to third parties in accordance with the applicable safety and exploration conditions, in a non-discriminatory and transparent way.

## Gas

The concessionaire (REN Gasodutos) (*see* [Question 15](#)) must grant all system users access to its infrastructure in a non-discriminatory and transparent way. Access is granted by written contracts, which compensates REN Gasodutos for use of its facilities. Compensation is set by ERSE in the Tariffs Regulation.

## Health, safety and the environment

### Health and safety

18. What is the health and safety regime for oil and gas exploration and production, and transportation by pipeline?

The main aspects of health and safety are in Law No. 102/2009 as amended. This defines the legal regime for safety at work and imposes obligations on companies to protect workers and third parties. The Authority for Labour Conditions regulates health and safety.

## Exploration

In terms of offshore oil and gas exploration, the main requirements are in Decree-Law No. 13/2016, which implemented Directive 2013/30/EU. Operators must ensure compliance with health and safety requirements and pay compensation for damage caused by oil and gas offshore activity. Operators must, among others:

- Take all necessary measures to prevent any serious accidents.
- Have internal rules and procedures and take all necessary measures to control serious accidents, including suspension of the activity.
- Obtain and collect information on equipment and necessary measures.

The supervisory authorities are the Directorate General of Natural Resources, Safety and Maritime Services (DGRM) and the ENSE.

Operators must submit documentation for the approval of the supervisory authorities, such as:

- Their policy to prevent serious accidents.
- An environmental and safety system.
- Inspection measures.
- Emergency plans.

## Production

See above, [Exploration](#).

## Transportation

See [Question 15](#).

## Environmental impact assessments (EIAs)

19. Is an EIA required before extracting or processing onshore or offshore oil and gas?

The legal framework for EIA is in Decree-Law No. 151-B/2013 of 31 October (last amended by Law no. 2/2020 of 31 March). An EIA is required for projects that either:

- May cause a significant environmental impact, due to their location, size or nature (as decided by the member of the government for the sector and the Environment Minister).
- Are set out in Annex I and Annex II of the Decree-Law.

The following oil and gas projects are set out in Annex I and II:

- Oil refineries.
- Extraction of oil and natural gas for commercial purposes, of more than 500 tonnes per day for oil and 500,000 cubic metres per day for gas.
- Gas and oil pipelines with a diameter of more than 800 metres and longer than 40 kilometres.
- Storage facilities with a capacity of at least 200,000 tonnes.
- Surface industrial facilities to extract oil and natural gas.
- Oil storage of more than 150,000 tonnes, or 20,000 tonnes in sensitive areas.
- Industrial facilities to transport gas of more than five hectares, or two hectares in sensitive areas.
- Gas storage facilities to store at least 300 tonnes, or with a surface area of more than one hectare.

Once the EIA is approved, it must be executed by competent experts, in compliance with the conditions set out in a ministerial order.

20. What are the different stages of the EIA?

The first phase defines the extent and scope of the environmental impact study (EIS). The promoter obtains a decision from the public authorities on the environmental concerns covered by the EIS (for example, the impact on specific species). The decision includes detailed information on the environmental areas and concerns.

The EIS must comply with the applicable law and ministerial orders. It must set out the environmental parameters, the different stages of the project and all relevant information.

The promoter must submit the EIS to the APA, along with any previous study, project or execution project carried out in the project area. After submission, the APA carries out an initial analysis to assess compliance. If the EIS complies, the project is subject to public consultation for a period of 30 days.

The APA then issues an opinion, based on reports, opinions and the public consultation. The APA then prepares an environmental impact declaration (EID) and notifies it to the project promoter.

Within 50 days after the promoter receives the opinion, the APA decides on the EID. The APA decision can be favourable, favourable subject to conditions or unfavourable.

If the EIS was submitted during a previous study phase or project, the execution project is also subject to a report and opinion on its environmental compliance.

The procedure may take around six or seven months, depending on whether the procedure is properly followed and the number of parties consulted.

## **Environmental permits**

21. Is there a permit regime for environmental damage or emissions produced during the extraction or processing of oil and gas?

Some projects (particularly oil and gas refineries) are subject to the legal framework for industrial emissions and the prevention and control of pollution (as set out under Decree-Law No. 127/2013 of 30 August).

Such a project requires an environmental licence, including conditions for exploration, and measures to reduce the damage or emissions caused by production.

Such projects are also subject to the legal framework for environmental damage (under Decree-Law No. 147/2008 as amended).

The promoter must (among other things) provide a guarantee to the state (that is, a bank guarantee, insurance or participation in environmental funds) in relation to the environmental risk of its activity.

Under Decree-Law No. 75/2015 of 11 May (as amended), operators may require an integrated environmental permit covering all environmental permits (for example, water, waste and emissions) and procedures.

## **Environmental concerns**

22. Are there any specific government policies and/or incentives aimed at meeting the environmental concerns associated with the exploration and production of oil and gas?

There are no specific policies or incentives to meet environmental concerns about the exploration and production of oil and gas, including unconventional/shale oil and gas. Public policy remains focused on reducing oil consumption, despite investment in the oil sector, notably oil exploration.

To reduce oil consumption and promote alternative energy, Resolution of Council of Ministers No. 53/2020 of 21 May approved the Energy and Climate 2030 National Plan. Its implementation will be monitored by the Commission for Climate Action (established by Resolution of Council of Ministers No. 56/2015, of 30 July).

Further, the National Strategy on the Adaptation to Climate Change has been extended till 31 December 2025 (approved by Resolution of the Council of Ministers No. 56/2015 of 30 July).

The Energy and Climate 2030 National Plan has measures to achieve certain targets and international goals, particularly energy efficiency and renewable goals.

Under current government policy, an increase of programmes and measures is expected to decarbonise the economy. Portugal has set a goal to become independent of fossil fuels by 2050 (see [Question 29](#)).

## Waste

23. What are the regulations on the disposal of waste products resulting from oil or gas extraction or processing?

Under the legal framework on waste management (approved by Decree-Law No. 178/2006 of 5 September as amended, and Decree-Law No. 152-D/2017 as amended) waste products must be transported and managed by licensed entities. A producer of waste products from oil or gas extraction and processing incurs civil and criminal liability if the waste is not managed by a licensed entity.

A waste producer must also register on an electronic database and provide information on the quantities of waste delivered and entities responsible for its treatment.

A waste producer must pay a waste management tax, depending on the quantities and types of waste and a calculation formula set out in the legislation.

## Flares and vents

24. Do regulations apply to the flaring or venting of oil and gas?

There are no regulations specifically applying to the flaring or venting of oil and gas.

The main relevant regulations are set out in Decree-Law No. 12/2020 of 6 April, which transposed Directive 2018/410, which amends Directive 2003/87/EC (Emissions Trading Directive) to enhance cost-effective emission reductions and low-carbon investments.

Decree-Law No. 12/2020 requires operators to obtain an emissions licence and they can freely buy and sell them.

## Decommissioning

25. What are the decommissioning obligations and liabilities that arise?

Decommissioning crude oil and oil product installations is subject to licensing by the competent administrative authorities (*Decree-Law No. 31/2006, as amended*).

The closure of an oil drilling facility requires prior submission of the project to the DGEG and prior approval from the Minister of Economy (*Decree-Law No. 109/94*).

Licensees and concessionaires must provide a guarantee to ensure compliance with (among others) their decommissioning obligations in the licence or concession.

In relation to upstream activities, the concessionaire can at any time request the abandonment or waiver of one or more oilfields for technical or economic reasons. The DGEG then issues an opinion and the Minister of Economy decides the request.

In case of closure or temporary abandonment, the survey operators must submit to the competent authority a closure or temporary abandonment report, within 15 days following the relevant decision (*Decree-Law No. 13/2016 of 9 March on the safety of offshore oil and gas operations*).

In the gas sector, the concessionaire must prepare and keep updated an inventory of the assets allocated to the concession. Any assets or rights that lose their use to the concession can be written off, on prior authorisation from

the grantor (the government). This is considered automatically granted if the grantor does not object within 30 days from receipt of the request.

## Sale and trade

26. How is trade in oil and gas usually carried out?

### Oil

Trading takes place in the:

- Wholesale market, where parties trade crude oil for refining or oil products. This does not include sales to final consumers.
- Retail market, where parties sell oil products in retail sale facilities.

Trading of oil and oil products does not require licensing other than a certification from DGEG. This is to prove that the operator meets the necessary conditions to exercise this activity, particularly the unbundling requirements.

Last resort wholesale trading is subject to economic regulation by ERSE.

Wholesalers must:

- Comply with supply and quality requirements under Regulation No. 11/2016 approved by ENMC (now ENSE).
- Provide information to the competent administrative entities.
- Maintain mandatory oil reserves under the applicable legislation.

Retailers must comply with quality standards imposed by DGEG. In particular, they must ensure:

- Product quality.
- Legal compliance of distribution equipment and support installations.
- Regulation of product quantities.
- Client service (such as call centres).
- Support assistance in relation to supply.

### Gas

Trade is typically completed through bilateral contracts between suppliers and buyers.

27. Are oil and gas prices regulated?

## Oil

Prices of crude oil or crude oil products are not subject to mandatory price setting.

Prices of oil and oil products are set on a free market basis, subject to rules and public service obligations, such as security and regulation, quality of supply, and consumer protection.

In the autonomous regions of Madeira and the Azores, maximum prices for oil products are set by the regional governments.

## Gas

The natural gas supply market is fully liberalised. Customers can buy natural gas from suppliers by contract. Contracts must comply with legal requirements, mainly for consumer protection.

However, there are suppliers of last resort which supply:

- Household consumers with an annual consumption of less than 10,000 cubic metres, until the end of 2020 when the market is to be fully liberalised.
- Economically vulnerable consumers (as defined by law).

In these cases, tariffs are set by ERSE.

## Insurance

28. Are there any insurance requirements that must be met by companies exploring for, producing or transporting oil and gas?

A concessionaire must have civil liability insurance to cover damage and personal injury to third parties caused by the exercise of the activity. The minimum amount of the insurance is determined by ministerial order of the member of the government responsible for energy, and can be increased every three years.



Specific insurance may also be required (for example, for industrial installation, workers and vehicles).

Some projects (particularly oil and gas refineries) are subject to the legal framework on environmental damage (under Decree-Law No. 147/2008, as amended) (see [Question 21](#)).

Promoters must also provide a guarantee to the state (for example, a bank guarantee, insurance or participation in environmental funds) to insure the environmental risk of its activity.

## Reform

29. Are there plans for changes to the legal and regulatory framework?

## Oil

Portugal's plans for the energy sector include several commitments to reduce oil dependency, stimulate generation from renewable domestic sources and promote energy efficiency (see [Question 22](#)). No strategies or plans specifically relate to oil and there are no plans to change the legal and regulatory framework.

## Natural gas

The government has approved Decree-Law No. 62/2020 of 28 August, establishing the organisation and functioning of the national gas system and its legal framework. It transposes Directive 2019/692, amending Directive 2009/73/EC, which establishes common rules for the internal market in natural gas.

In particular, the production of gas from renewable sources and low carbon gas is now included in the national gas system. Production of this type of gas will also be liberalised, with low eligibility requirements.

Resolution of the Council of Ministers No. 63/2020 of 14 August approved the National Strategy for Hydrogen (EN-H2). This creates the conditions for incorporating gas from renewable sources or low carbon content into the national gas system.

This is a landmark change for the natural gas sector. Decarbonisation of the gas sector is expected. Biomethane and hydrogen, generated from renewable energy sources, will be injected into the circulating fuel of the public gas network. This will also allow continued use of concession networks.

### Contributor profiles

**Mónica Carneiro Pacheco, Partner**

**CMS Rui Pena & Arnaut**

T +351 21 095 81 00

E [monica.carneiro@cms-rpa.com](mailto:monica.carneiro@cms-rpa.com)

W [www.cms.law](http://www.cms.law)

**Professional qualifications.** Lawyer, Portugal

**Areas of practice.** Energy, environment and natural resources; infrastructure and projects; public law.

**Recent transactions**

- Advising on the acquisition of a share in two offshore oil Angolan blocks.
- Advising on Floating Production Storage and Offloading (FPSO) construction, operation and maintenance in Angola.
- Advising the shareholder in a propane gas supplier on the sale of its shares (including preparation of seller's due diligence).
- Advising a renowned player on the negotiation and execution of natural gas import agreements and supply agreements.
- Advising the owner on the choice of contractor and execution and performance of agreements under tenders to construct natural gas infrastructure (primary and secondary networks) in the concession area.
- Drafting and follow-up of public tenders for distribution of natural gas.
- Analysis of the contractual structure of the public service concessionaire Transgás.
- Advising a new natural gas supplier in Portugal, including negotiation and drafting of agreements for transport, distribution and storage of natural gas, and supply agreements.
- Advising a natural gas distributor in matters relating to the National Regulatory Authority for Energy.

**Languages.** Spanish, English, Portuguese

**Professional associations/memberships**

- Former Deputy at the Ministry for Public Works, Transport and Communications (1994 to 1995).
- Former lecturer at the Law Faculty of the Classic University of Lisbon.

**Publications**

- *Legislação do Gás Natural - Bases Gerais Comentadas, Legislação do Sector Energético, Volume I, Coimbra, Almedina, 2008.*

- *Portugal, Gas Regulation in jurisdictions worldwide, Law Business Research Ltd., 2009, 2010 and 2011.*
- *Cumprir Quioto em Espanha e Portugal, Actualidade Jurídica U&M, 2005.*
- *PPPs takeover in Portugal, Project Finance International, 2004.*

## **Manuel Cassiano Neves, Senior Associate**

### **CMS Rui Pena & Arnaut**

**T** +351 21 095 81 00

**E** [manuel.neves@cms-rpa.com](mailto:manuel.neves@cms-rpa.com)

**W** [www.cms.law](http://www.cms.law)

**Professional qualifications.** Lawyer, Portugal

**Areas of practice.** Energy; environment and natural resources; public law.

### **Recent transactions**

- Assisting a renowned player on the acquisition of a natural gas distributor.
- Assisting a renowned player on the assignment of a natural gas underground storage concession.
- Advising the owner on the choice of contractor and execution and performance of the agreement to construct natural gas infrastructure in the concession area.
- Assisting natural gas grid and infrastructure operators on regulatory matters.

**Languages.** Spanish, English, Portuguese

---

<b>END OF DOCUMENT</b>
------------------------