Oil Regulation 2019

Contributing editor
Bob Palmer

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Getting The Deal Through

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

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87 Lancaster Road
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Fax: +44 20 7229 6910

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CMS Cameron McKenna Nabarro Olswang LLP

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Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Bob Palmer of CMS Cameron McKenna Nabarro Olswang LLP, for his continued assistance with this volume.

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For further information please contact editorial@gettingthedealthrough.com

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Portugal

Mónica Carneiro Pacheco and João Marques Mendes*
CMS Rui Pena & Arnaut

GENERAL

Key commercial aspects

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

All Portuguese oil is imported, mainly from Angola (27.6 per cent), Saudi Arabia (12.5 per cent) and Algeria (10.5 per cent). Some oil exploration was undertaken in Portugal before 2000, with 2D seismic analysis and minor drilling works having been carried out.

However, it was mostly after 2007 when 12 new concession contracts were concluded by the government with companies such as Galp, Repsol, Partex, Petrobras, Portfuel and ENI, that the pace of exploration activities increased. In 2017, the current government terminated the concession contracts for exploration, research, development and the production of oil in the Algarve and Peniche offshore areas.

It is yet to be found whether there are oil reserves in Portugal sufficiently large enough to allow commercially viable production.

All crude oil imports land at Portugal's two largest ports, Sines and Leixões, on the Atlantic coast. Imports from Sines are subsequently transported to the centre of the country through a 147km multiproduct pipeline operated by CLC, a joint venture between Galp, Repsol, BP and Rubis Energia, which is the only major pipeline in Portugal. Portugal possesses no cross-border pipelines.

Most Portuguese storage capacity is owned by Galp, the greater part of which is stored in refineries at Sines (3.4Mm^3) and Matosinhos (1.9Mm^3), which are Portugal's two refineries.

In the retail sector, the largest company is Galp, which is a vertically integrated company that operates in almost all sectors of the market. Galp, Repsol, Cepsa and BP account for 67 per cent of the retail petrol market in Portugal.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

In Portugal, oil accounts for almost half the country's energy needs. Data from 2014 indicates that oil represents between 44 per cent to 45 per cent of the total primary energy supply (TPES), against 25 per cent to 26 per cent of renewable energy sources, approximately 16 per cent natural gas and 12 per cent of coal (the remaining being attributable to net electricity imports). As regards total final consumption, oil makes up around 47 per cent of total consumption.

Portugal is a large net importer of fossil fuels because it is not an oil or gas producer. In fact, domestic energy production (notably renewables) makes up only 27 per cent of TPES, whereas the remainder is imported. In 2014, Portugal imported 15.2Mmtoe of crude oil products and exported only 4.6Mmtoe.

However, in the past decade, the trend in Portugal has clearly been an increase in endogenous energy production with a significant reduction in oil imports. Accordingly, net oil and oil-product imports decreased 32.7 per cent from 2004–14, causing Portugal to be at a median level among International Energy Agency countries as regards fossil-fuel share in TPES. Almost 60 per cent of oil consumption is in the transport sector, against 19 per cent in industry and nearly 7 per cent in the energy sector. The remainder is consumed by the service and residential sectors.

Portugal's TPES was slightly above 22Mmtoe in 2014, having grown 5.4 per cent compared with 2014. Portugal's energy consumption was at its highest level in 2015, when it reached 26.5Mmtoe. Energy consumption is expected to grow in the years to come, although this growth, as well as oil's share in it, will greatly depend on the effectiveness of energy efficiency measures and the promotion of electric vehicles, in which Portugal is deeply engaged.

Government policy

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Over the years, Portugal has had strategies and plans establishing goals and priorities in the energy sector and guiding the activities of market players. During the past decade, Portugal has had a serious and consistent commitment to reducing oil dependency through the proliferation of renewable (and endogenous) energy source generation and, increasingly, promoting energy efficiency.

The oil sector has a large negative impact on the Portuguese balance of trade because all oil is imported. Therefore, even though there are no specific plans for this area, priority is being placed on reducing oil consumption and electrifying the country. On the other hand, the government intends to promote price transparency a more competitive oil and gas market.

The last national plans date back to 2013, when the Resolution of the Council of Ministers No. 20/2013 of 10 April, approved the National Action Plan for Energy Efficiency of 2013–16 and the National Action Plan for Renewable Energies of 2013–20.

Despite being theoretically still in force, this plan was approved by the former government and may therefore be considered outdated. Regarding the current government's policy, its programme strengthens the aim for the thorough decarbonisation of the economy, establishing the goal of Portugal becoming fossil fuel free by 2050. For this purpose, the government proposes to resume the strategy of investing in renewable energy sources (mainly decentralised generation and solar), with a view to ensuring that in 2030, 40 per cent of the energy consumed stems from renewable energy sources.

Some recent and upcoming developments of note in oil legislation that reflect the public policy are:

- the law on the general basis of organisation and functioning of the National Oil System (SPN) – Decree-Law No. 31/2006 of 15 February 2006, recently amended by Decree-Law No. 244/2015 of 19 October 2015 – has the clear aim to improve competition and transparency in the oil sector, notably through the unbundling of activities, the mandatory certification of market agents by the supervisory authority and submission of owners of transportation and storage installations declared of public interest to the obligation of granting non-discriminatory and transparent access to third parties;
- Decree-Law No. 57-A/2018, of 13 July 2018, and Decree-Law No. 69/2018, of 27 August 2018, redefined the regulating structure of the oil sector. The Regulatory Entity for Energy Services (ERSE), formerly only in charge of the regulation of electricity and natural gas sectors, had is role extended to regulating downstream oil sector activities, whereas the General Directorate for Energy and Geology (DGEG) became the entity responsible for the upstream oil sector and biofuels and for the certification and registry of companies carrying out oil sector activities. The National Entity for Oil Markets (ENMC), on the other hand, which previously held the aforementioned tasks, were transferred to the ERSE and the DGEG and was renamed National Entity for the Energy Sector (ENSE) and restructured as a horizontal supervising energy sector authority; and
- Law No. 5/2019, of 11 January, increased the disclosure and information duties of oil and oil gas products, and strengthened the protection of consumers thereof.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

The DGEG website provides information as to the concession contracts in force for the exploration, research, development and production of oil and as to the situation of the performance of such contracts by concessionaires (available at www.dgeg.pt).

Following its amendment in 2015, Decree-Law No. 31/2006 also foresees that basic data on oil installation and registered suppliers are disclosed to the public on the DGEG website, without charge.

Legal system

5 | Describe the general legal system in your country.

Portugal has a civil law legal system. The rule of law is generally upheld. Contractual and property rights are enforced, in the absence of agreement of the parties, through court decisions or injunctions, without any specific issues being raised. Justice in Portugal has become increasingly faster, with the exception of administrative courts.

Portugal is party to the Hague Convention on the Recognition and Enforcement or Foreign Judgments in Civil and Commercial Matters 1971, as well as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) for the recognition and enforcement or judicial and arbitral foreign awards.

As a member of the European Union, Portugal is also bound by the rules of Regulation (EU) No. 1215/2012 (Brussels I) on the recognition and enforcement of civil and commercial awards.

Portugal is also party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965, as well as to the Energy Charter Treaty 1991.

Portuguese anti-corruption laws and regulations essentially consist of the Criminal Code of the financial liability regime regarding public funds (comprised in the Court of Auditors Law) and in the transposition of EU directives and decisions, such as the Council Framework Decision No. 2003/568/JHA of 22 July 2003, on combating corruption in the private sector.

REGULATION OVERVIEW

Legal framework for oil regulation

6 | Describe the key laws and regulations that make up the principal legal framework regulating oil and gas activities.

Downstream activities

General

Decree-Law No. 31/2006, as amended by Decree-Law No. 244/2015, establishes the organising and functioning rules of the SPN and the legal framework for downstream activities (storage, transport, distribution, refining and trading) and the organisation of crude oil and oil products market. Oil products include fuels and petroleum gases.

Downstream activities have been liberalised, but each downstream activity may only be carried out if the following criteria are met:

- licensing of the facilities pursuant to the relevant applicable legislation;
- the applicant fulfils the criteria set forth in Decree-Law No. 31/2006 (as amended); and
- the applicant undergoes a certification process with the DGEG, for refining, storage, transportation, trading and supply.

This certification process aims to assess the participant's compliance with the legal requirements set forth in Decree-Law No. 31/2006 (as amended), in particular the legal and accounting separation imposed between entities carrying out crude oil or oil product storage and transportation activities and those carrying out oil product refining, pipeline distribution or trading activities.

Under the SPN, the holders of large facilities for storage and transport by pipeline, subject to a public interest utility regime, are required to allow access to those facilities to third parties on a negotiated basis. Such negotiated access shall be subject to technical and economic non-discriminatory, transparent and objective conditions and the applicable access tariffs must be made publicly known.

Operators of other facilities may voluntarily allow access to third parties, within the applicable safety and exploration conditions, in a non-discriminatory and transparent way.

In the event that there are physical congestion constraints for the access to infrastructures declared of public interest, the ERSE may determine measures to resolve such constraints in accordance with transparency, proportionality and non-discrimination principles. The ERSE shall also take into account the security of supply and international best practice.

Refining

Refining activities do not require an autonomous licence but, as mentioned above, is subject to the licensing of the respective facilities. This licence is granted by the responsible minister, currently the Minister of Economy, considering reputation, technical, economic and financial capacity of the applicant and the respect for the national energy policy, urban plans and the objectives of the environment policy. The treatment of oil products only requires the licensing of facilities.

Refining is also subject to industrial licensing, whose regime is set forth in Decree-Law No. 169/2012 of 1 August 2012, as amended by Decree-Law No. 73/2015 of 11 May, complemented by Orders No. 279/2015 of 14 September 2015, and No. 280/2015 and No. 281/2015 of 15 September 2015.

Transportation and distribution

Transportation and distribution activities through pipelines do not require independent licensing but may only be carried out if the following criteria are met:

- licensing of the facilities pursuant to the relevant applicable legislation;
- the applicant fulfils the criteria set forth in Decree-Law No. 31/2006 (as amended); and
- the applicant undergoes a certification process with the DGEG.

The legal framework applicable for crude oil and oil-product transportation is set forth in Order No. 765/2002 of 1 July 2002, which approves the security regulation regarding the project, construction, exploration and maintenance of pipelines for transportation of liquid and liquefied oil and in the Decree-Law No. 152/94 of 26 May 1994, which approves the legal framework of implementation and exploration of pipelines for transportation of liquefied petroleum gas and other refined products.

Transportation and distribution of oil and oil products by sea, river, road or train should comply with the requirements on transportation and distribution of hazardous materials.

Storage

Storage activity includes the provision of storage facilities intended for supplying final clients, such as petrol stations and storage facilities of oil products and facilities for bulk sale.

This activity does not require an autonomous licence but, as specified above, is subject to the licensing of the respective facilities, which depends on the reputation, technical, economic and financial capacity of the applicant and compliance with national energy policy, urban plans and the objectives of the environment policy. The licence is granted by the responsible minister, currently the Minister of Economy.

There is one multi-product pipeline in Portugal, owned by Companhia Logística de Combustíveis SA (CLC), connecting the Sines refinery to the fuel storage facility located in Aveiras de Cima. There is also a pipeline connecting the fuel storage facility located in Boa Nova to the Matosinhos refinery. There are eight fuel storage facilities, seven of which are owned by Galp Energia and one by CLC.

Trading

Trading activity comprises:

- wholesalers – natural or legal persons introducing crude oil for refining purposes or oil products for trading purposes within the national territory, excluding sales to final consumers; and
- retailers – natural or legal persons trading oil products in retail sale facilities, namely automatic sale, with or without delivery service to customers.

The trading of oil and oil products is free and does not require licensing, although it is subject to the prior verification of the previously mentioned conditions and to customs duties. Oil products' traders must be also registered near the DGEG, which should keep an updated public record of all market agents. The ENSE and DGEG are also in charge of monitoring the functioning of the oil and oil products market.

Trading activities must be performed accounting for the following requirements:

- the obligation and regularity of supply;
- the provision of information to the relevant authorities; and
- the creation of mandatory oil reserves in accordance with the applicable legislation.

Retail of liquefied petroleum gas (LPG) bottles also has to comply with the provisions of Decree-Law No. 5/2018 of 2 February 2008, that notably require the sale of bottled LPG in fuel stations and mandatory exchanging of bottles by LPG retailers, irrespective of their brand, as well as with the provisions of article 210 of the State Budget Law for 2018 (Law No. 114/2017 of 29 December), that creates the solidary tariff for supply of bottled LPG to economically vulnerable clients.

The retail supply of oil and oil gas products is subject to special information and disclosure duties set out in Law No. 5/2019, of 11 January, and consumers are protected, regarding price payment, by the special provisions that, for example, foresee short terms for the prescription of the right to collect the price.

Upstream activities

Decree-Law No. 109/94 sets forth the legal framework of the activities of survey, exploration, development and production of hydrocarbons and is supplemented by the following statutes:

- Order No. 790/94 of 5 September 1994, setting forth the bases of concession contracts;
- Order No. 82/94 of 24 August 1994, setting forth the amount of fees payable for the issuance of preliminary assessment licences and for the signature of concession agreements;
- Joint Order No. A-87/94-XII of 17 January 1994, setting forth the amount of surface rentals; and
- Notice dated 21 July 1994, identifying the areas where petroleum exploration, development and production operations are permitted, as amended by the Notice dated 12 March 2002.

Oil exploration and production requires the execution of concession contracts with the Portuguese government, since all mineral resources existing in an area subject to Portuguese sovereignty are deemed an integral part of the public domain. Mineral rights vested in no state entity. There is no national concessionaire in Portugal.

Preliminary survey activities may be authorised under a licence issued by the DGEG (with the prior authorisation of the Minister of Economy). This licence is issued for a single non-extendable period of six months, and affords the licensee the right to, inter alia, study the existing data and collect existing surface and wellbore samples.

Concession agreements can be granted through public tenders or direct negotiation procedures.

Expropriation of licensee interest

7 | Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

Decree-Law No. 31/2006 (as amended) allows the expropriation of oil facilities. The expropriation has to be preceded by a declaration of public utility based on the acknowledgement of the interest of the facility for the national economy and its structural nature for the security or autonomy of supply.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

Downstream activities usually do not require a licence but activities of refining, storage, pipeline transportation, trading and supply of oil and oil products require a certification by the DGEG. DGEG certifications are monitored permanently, with a view to ensuring that the player maintains the requirements for the certification, notably on suitability and legal and accounting unbundling, and may be suspended if such requirements cease to be verified.

Upstream activities, in turn, are usually developed under a concession agreement, although they may also be developed pursuant to preliminary assessment licenses. Both concessions and licenses may be terminated by the state owing to the breach of their terms and legal obligations of concessionaires.

Concessions may also be redeemed by the state, wholly or in part (in this last case only with the agreement of the concessionaire), against the payment of fair compensation. Finally, concessions and licences may be suspended in case of force majeure situations that do not fully prevent concessionaires or licensees to carry out their activities, in case of agreement between the state and the concessionaire or unilaterally by the state by reasons of national interest or security.

The current Administrative Procedure Code also allows for the revocation of licenses in the situation of supervening modification of circumstances or supervening technical or scientific knowledge which, if existing at the date of issuance of the licence, would prevent it to be legally issued, against the payment of compensation.

Regulators

9 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

In Portugal, the oil industry is supervised by the government and public and independent agencies, such as the DGEG, ERSE and ENSE.

Currently, within the government, the energy sector is under the Minister of Economy, who defines and coordinates the main policies applicable to the sector, including hydrocarbon production activities, and is responsible for the main decisions and authorisations regarding these activities; namely, organising public tenders to award oil exploration and production rights.

Regarding competition matters, the industry is regulated by the Portuguese Competition Authority (AdC).

The DGEG rests within the Ministry of Economy. The DGEG is responsible for upstream oil activities, for certifying players in the oil markets and for the development and implementation of policies related to energy and geological resources within a framework of sustainability and security of energy supply. The DGEG also provides support to government decision-making during an energy crisis or emergency situations and supports the participation of the Minister of Economy at European and international levels.

The ERSE is responsible for the regulation of oil activities, especially in the downstream and midstream sectors, with a special emphasis in public interest transportation and storage activities.

The ENSE has responsibilities within the supervision of the energy sector, including for the application of fines to operators who violate their obligations. The ENSE is also the entity responsible for the management of strategic oil reserves.

The breach of legal obligations may be considered an administrative offence and sanctions may be applied by ENSE. Sanctions may consist in monetary fines up to €45,000 and, in downstream activities, ancillary sanctions (which may consist notably in the prohibition of the development of the activity or closure of establishments).

Government statistics

10 What government body maintains oil production, export and import statistics?

The ENSE and DGEG both maintain oil export and import statistics.

NATURAL RESOURCES

Title

11 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

The activities of oil surveying, exploration, development and production may be carried out within the available areas of the surface area of the national territory, inland waters, territorial waters and continental shelf. All existing oil reservoirs under such territory are considered in the public domain, as expressly foreseen in the legal framework of such activities (Decree-Law No. 109/94) and also in the Portuguese Constitution (article 84).

In general terms, the attribution of rights concerning the exercise of the above-mentioned activities does not conflict with any other rights for the exercise of activities concerning other natural resources (eg, mineral rights) and other uses of the respective area. In case of any conflict, the applicable legislation (Decree-Law No. 109/94) foresees a conciliation procedure between the respective ministers of the areas in conflict in order to decide, in accordance with the national interest and considering the applicable international law, which right shall prevail.

Exploration and production – general

12 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Portugal has on- and offshore areas available for developing oil exploration and production activity. The onshore areas are located in the Oporto, Lusitânica (south of Oporto) and Algarve basins. The offshore basins are located in Peniche, Alentejo and Algarve. Currently, the only concession in force is that of Australis Oil & Gas Ltd, which applied for three concessions in 2015 through direct negotiation in order to explore the onshore Lusitânica basin.

In 2018, Galp and ENI gave up deep offshore oil exploration in the Alentejo basin area, pursuant to the contract it had with the Portuguese state, owing to numerous complaints from environmental agencies and municipalities.

As regards the areas off-limits to exploration and production, Decree-Law No. 109/94 specifies expressly that the activities of survey, exploration, development and production of oil must be carried out with protection of national interests regarding defence, environment, navigation, research and preservation of marine resources.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The activities of survey, exploration, development and production of oil may be carried by means of a concession following a tender procedure or direct negotiation.

Tender procedure

The tender procedure may be launched at any time, by government initiative (through the minister responsible for energy matters, which is currently the Minister of Economy) or after the submission of an application by an interested party for the exercise of such activities. The launching of a tender procedure is made through the publication of a notice (in the Portuguese Official Journal and also in the Official

Journal of the European Union) and the respective tender documentation (which, among other information, shall refer to the geographical areas comprising the concession, the deadlines and the amount of the necessary security (or guarantee)).

The entities that comply with the technical and economic requirements are admitted, and their proposals (which must include evidence of the legal existence, work programme and cost estimation and financing sources) must be submitted within 90 days of the publication of the notice. After the correction of any irregularity or deficiency (which may be corrected within 15 days after the issuance of a notification), the DGEG issues an opinion with a proposal comprising an assessment of the technical and financing capabilities, quality and quantity of works proposed and the amount payable to the government. The final decision is then issued by the Minister of Economy, following which the concession contract may be executed between the parties.

Direct negotiation procedure

The direct negotiation procedure may be launched in the following situations:

- areas that are permanently available;
- areas that were subject to a previous tender procedure where no concession right has been granted;
- areas that were returned by other concessionaires; and
- areas that are adjacent to areas where a concession was previously granted, if technically and economically justifiable.

The direct negotiation procedure shall take a maximum of 90 days after the issuance of a submission by the interested party (with a possible extension of 60 days issued by the DGEG if duly justified). After such a negotiation, the final proposal must be submitted, within 15 days of the conclusion of the negotiations, for final approval of the Ministry of Economy, after which a concession contract shall be executed in the same terms as the above-mentioned tender procedure.

The concessions shall have an eight-year initial period and may be extended twice, for one-year periods, if duly justified, in order to complete the works. In this period, within the existence of an economically viable field and after a preliminary demarcation and the approval of a general development and production plan by the DGEG, the concession may be extended for an additional 25-year period with the possibility of a 15-year additional extension. The concession area may comprise one or more blocks and may not exceed 16 lots (approximately 1,300km^2 per contract), except if the concession comprises a deep-offshore area (in this case, the area may be larger).

In deep offshore, the initial production period and the period for final demarcation of petroleum fields may exceed the above limits.

At least 50 per cent of the concession areas must be relinquished by the end of the fifth year of the concession. The concessionaires may choose freely the areas to be relinquished. For deep offshore, the areas to be relinquished can be smaller than those established and the period for relinquishment of the areas can exceed the previously fixed limits.

During the concession period, the concessionaire must annually submit a work programme including the budget and all the activities that will be carried out in the following year annually to the DGEG. DGEG work-programme approval does not exempt the concessionaire from seeking the DGEG's approval for each specific operation to be carried out, such as geological and geophysical surveys, exploration drilling, etc.

Preliminary assessment of potential oilfields

Preliminary assessment activity of potential oilfields may be carried out under a licence issued by the DGEG. The licence application must include a clear statement of the assessments stated objectives and goals, the requested area and allocated technical and financing resources. The licences shall be issued for six months' duration and may not be extended. The main objective of these licences is to allow the acquisition and management of information to better evaluate the area concerned. The licence shall cover a maximum area of 35 lots.

The issuance of a preliminary assessment licence and execution of a concession contract require the payment of a fee that is determined in an order to be issued by the Ministry of Economy.

Government participation

14 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

At present, there is no state oil company and the government has no participation right in any oil company.

Royalties and tax stabilisation

15 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are there any tax stabilisation measures in place?

The amounts of royalties are fixed in Decree-Law No. 109/94 and are determined on a progressive basis and in accordance with the location of oilfields and total production.

As regards onshore oilfields, the royalties are as follows:

- exemption from royalties up to an annual production of 300,000 tonnes (approximately 6,000bbl/d);
- 6 per cent of annual production above 300,000 tonnes and below 500,000 tonnes (approximately 6,000–10,000bbl/d); and
- 9 per cent of annual production above 500,000 tonnes (approximately 10,000bbl/d).

With respect to offshore oilfields located in the immersed area of the national territory and in the continental shelf until up to 200 metres offshore, the royalties are as follows:

- exemption from royalties up to an annual production of 500,000 tonnes (approximately 10,000bbl/d); and
- 10 per cent for annual production above 500,000 tonnes (approximately 10,000bbl/d).

Aside from those royalties, the licensees and concessionaires are required to pay the DGEG the following fees:

- fee for the provision of a licence for the activity of previous assessment of a potential oil area;
- fee for the execution of the contract; and
- fee for the publication of the contractual position.

The amount of the fees is determined by order to be issued by the Ministry of Economy (the amounts in force are currently set out in Order No. 82/94). In addition, the concessionaires must pay a surface rent (determined in accordance with the total area of the concession), in an amount to be determined in the concession contract and in accordance with the limits indicated in the Joint Order No. A-87/94-XII of 17 January. The surface rent is paid annually in January.

Apart from these fees, concession contracts usually define compensation amounts to be paid to the government in relation to the development of technology programmes, training sessions, acquisition of equipment and data preservation and treatment. Also, the concession contracts define specific amounts to be transferred directly to

Portuguese universities as per the development of investigation and technology updates.

All the above amounts do not vary between on- and offshore production.

Licence duration

16 | What is the customary duration of oil leases, concessions or licences?

Concessions have an eight-year initial period and may be extended twice, for one-year periods, if duly justified, for the completion of the works. Within this period, as long as the economically viable oilfield is demonstrated to exist, and after a preliminary demarcation and approval of a general development and production plan by the DGEG, the concession may be extended for an additional 25-year period with the possibility of a 15-year additional extension.

Licences for the preliminary assessment of potential oilfields are issued for six months' duration and are not subject to extension.

Extent of offshore regulation

17 | For offshore production, how far seaward does the regulatory regime extend?

The mineral reservoirs and hydrocarbon pockets found in the Portuguese subsoil, both on- and offshore, are in the public domain.

In 1997, Portugal ratified the United Nations (UN) Convention on the Law of the Sea 1982 (UNCLOS), which defines the regime and boundaries of the maritime areas attributable to each co-signatory state.

In keeping with UNCLOS, Law No. 34/2006 of 28 July, distinguishes between three zones:

- territorial waters, up to 12 nautical miles;
- the contiguous zone, up to 24 nautical miles; and
- the exclusive economic zone up 200 nautical miles from shore.

The outer limit of the continental shelf is the line whose points define the outer edge of the continental margin or the line whose points are 200 miles seawards in cases where the outer edge of the continental margin does not reach this distance from shore.

Accordingly, Portugal may authorise the survey, exploration and production of oil and other hydrocarbons on its continental and insular shelf (for the Madeira and Azores archipelagos) up to a distance of 200 nautical miles measured from shore.

Pursuant to article 76 and in accordance with Annex II of UNCLOS, in May 2009 Portugal submitted to the UN a proposal that sought the extension of its continental and insular shelf beyond 200 nautical miles. This proposal is currently under review and a decision is expected to be reached during the course of 2019. All the necessary studies are already in progress, with the bulk of the scientific effort being dedicated to the study of the geological and hydrographic characteristics of the seabed and the mapping of natural resources. If, as expected, the proposal is approved, the Portuguese continental and insular shelf will increase from 1.7–3.8 million km^2, making it one of the largest and most important offshore production sites in the world. Portugal will exercise sovereign rights over the entirety of this area with regards to the exploration and production of natural resources.

Onshore offshore regimes

18 | Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

In general terms, the applicable law (Decree-Law No. 31/2006) does not distinguish between on- and offshore regimes regarding the survey, exploration, development and production of hydrocarbons.

Article 84 of the referred regime provides a specific regulation for concession contracts whose area is located in the immersed zone beyond the bathymetry of 200 metres, but this regulation has not yet been published. In anticipation of this scenario, it states that the general rules apply, admitting, however, that the concession area and deadlines can be extended, and that the areas to be relinquished and the number of surveys to carried out may be lower than what is established for the remaining concessions.

Differences between on- and offshore exploration and production are essentially those set out in the concession contracts, where there are enhanced security measures for offshore oil and gas operations, in line with Directive 2013/30/EU transposed via Decree Law No. 13/2006 of 9 March 2006.

On the other hand, there are also tax differences. Oil fields located on the continental shelf, in addition to the 200-metre bathymetric, are exempt from production taxes regardless of the value of their production.

Authorised E&P entities

19 | Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

The granting of concessions for the survey, exploration, development and production of oil and other hydrocarbons is normally done by public tender, although in some cases it may be done by direct award, as mentioned above. Preliminary assessment licences may also be issued.

Any national or foreign entities that can demonstrate technical suitability and economic and financial capacity to carry out the activities in question can apply for a public tender.

In awarding the concession, the quality, quantity and speed of the works and the compensatory measures offered to the state shall also be taken into account.

If the concessionaire is a foreign company, it is required to establish a branch in national territory, in accordance with Portuguese law.

The incorporation of this branch can be made 'on time', thanks to a new set of procedures designed to foster administrative simplification.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

Operators have to have been previously approved by the state or DGEG and any change of operator has to be previously communicated and authorised by the same, after assessment of their technical capability by the state or DGEG.

Joint ventures

21 | What is the legal regime for joint ventures?

The legal regime of consortium and joint venture contracts is defined through Decree-Law No. 231/81 of 29 July 1981. This is a comprehensive regime that covers the growing number of projects, whose fulfilment requires cooperation between separate companies that share a common economic project or goal.

Joint venture contracts were born out of US business practices and soon established themselves worldwide in the oil exploration and production business, where financial risk walks hand-in-hand with the need for large capital requirements.

In practice, greater freedom of contract is guaranteed, in part by the definition for the sharing of assets, resources and management put in place by the various partners in order to meet the objective pursued, but also in the definition of risk-sharing and the distribution of profits or losses.

The drafting of contractual models has been fine-tuned over time, evolving as a result of the experience gathered in the execution of various projects by significant worldwide players. Some key associations are also often consulted, such as the Association of International Petroleum Negotiators, which is an independent not-for-profit professional membership association that supports international energy negotiators around the world.

Reservoir unitisation

22 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Domestic reservoir unitisation is regulated under article 46 of Decree-Law No. 31/2006, and occurs as follows:

- where the oilfield extends beyond the concession area, but does not reach a neighbouring concession area, the concessionaires should negotiate with the state the unitisation of the reservoir;
- in the event that the extension reaches the area of another or other non-contiguous concessions, a tender will be opened between concessionaires whose concession areas are bordering the oilfield;
- where the oilfield covers the areas of two or more contiguous concessions, the development and production works may be carried out jointly by the concessionaires, as long as there is an agreement between the involved parties;
- if there is no agreement, the state may integrate the oilfield in the concession area in relation to which this unitisation is best justified by reasons of rationality, technical and economical nature; and
- in the latter case, the state must recover the concessions affected by the unitisation, in whole or in part, through the payment of fair compensation.

There are no specific provisions regarding cross-border unitisation. However, any situations that may arise should be resolved in accordance with existing bilateral agreements and treaties between Portugal and Spain, with respect to onshore oilfields, or in accordance with UNCLOS, with respect to offshore oilfields.

Licensee liability

23 Is there any limit on a party's liability under a licence, contract or concession?

In accordance with the applicable legislation, concessionaires assume full responsibility for all loss and damage caused to the state or third parties arising from the exercise of their activities.

This liability is independent of the fines that may be imposed for administrative offences; namely, failure to comply with any safety rules or guidelines. Given the specific purpose of short-term licences and their duration, the latter does not apply and so these fines may not be imposed.

In the event that the concession is undertaken by one or more companies that are legally and economically autonomous, the liability is generally joint and several for all loss and damage caused to the state or to third parties, without prejudice to the right of return of the non-defaulting company in accordance with the internal rules shared between them, without prejudice to any claims that the non-defaulting parties may have in accordance with the agreement constituting the respective consortium or joint venture.

Guarantees and security deposits

24 Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

In accordance with the legal regime applicable to the survey, exploration, development and production of crude oil (Decree-Law No. 109/94), any company that participates in a public tender for the development of these activities must provide a temporary security to ensure the continuation of the application.

On the other hand, licensees of preliminary assessment and concessionaires must provide a security deposit to ensure compliance with the obligations assumed with the issue of the licence or with the award of a concession contract, including, in the scope of these obligations, the payment of fines and compensations for damage caused to the state or third parties.

Specifically, during the initial term, the security deposit of the concession contracts should be provided annually and the respective amount should be equivalent to 50 per cent of the value of the budgeted works included in the annual plans.

It should also be noted that these securities may be provided by cash deposit, bank guarantee or bond insurance, and not by a parent-company guarantee.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

25 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services, capital or personnel?

There are no restrictions. Portuguese law does not provide for any obligation to use a minimum amount of locally sourced goods, services or capital. Any restrictions of this kind would be illegal under EU legislation. Regarding personnel, see question 36.

Social programmes

26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

There are no restrictions of this kind (see question 25).

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The development of upstream activities (survey, exploration, development and oil production) is subject to a concession to be granted by the Portuguese government, in particular by the Minister of Economy.

All transfers of rights granted upon concession contracts to third parties require previous authorisation from the Minister of Economy. Any change of control of the concessionaire requires the same authorisation.

The above transfer of rights under concession contracts is also subject to payment of a fixed fee that is established in each agreement, according to the range established in Order No. 82/94, from 1994 (from €5,000–€50,000). The approximate timetable of the issuance of authorisation is difficult to predict.

The exercise of downstream activities (such as refinery, storage, transportation, distribution and oil commercialisation, and oil products) is, in turn, subject to licensing of the installations and certification of the operator.

Regarding these activities, it must be noted that only storage, transportation and distribution activities have a more comprehensive legal regime (Decree-Law No. 267/2002 of 26 November 2002, and Decree-Law No. 125/97 of 23 May 1997). For these activities, the applicable legislation provides that the transfer of interest in a licence to a third party is subject to communication to the licensing body (that, in the cases laid down by the applicable legislation, may be the Energy and Minerals Directorate or the Economy Regional Directorates, all integrated into the state's central administration). This communication aims the endorsement of the transfer and is subject to payment of a fixed fee of €60, according to Ordinance No. 159/2004 of 14 February 2004 (amended by Ordinance No. 712/2010 of 18 August 2010).

In none of the above-mentioned cases is there any kind of preemptive rights reserved for the government.

Approval to change operator

28 | Is government consent required for a change of operator?

See question 27.

Transfer fees

29 | Are there any specific fees or taxes levied by the government on a transfer or change of control?

See question 27.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Regarding downstream activities (refining, storage, transportation, distribution and retail), operators hold and maintain title to the facilities and to the equipment necessary for the referred activities even after the term of licences or authorisations has expired.

Regarding upstream activities (survey, exploration, development and production of crude oil), carried out by means of concession contracts, the concessionaire holds title to the facilities and to the equipment necessary for the referred activities. Nevertheless, upon termination of the concession contract, the applicable general rule is that, unless otherwise specifically foreseen in the concession contract, all works, equipment, instruments, facilities and other assets directly and permanently assigned to the concession revert to the Portuguese state, without compensation. If other contracts are in place regulating these activities, such contracts may regulate who owns the title to facilities and equipment and if and under what conditions such title is transferred to the other party.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 | What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

According to the applicable legislation (Decree-Law No. 31/2006), the decommissioning of crude oil and oil products installations is subject to licensing by the competent administrative authorities.

Decree-Law No. 109/94 establishes, for offshore operations, that the definitive closure of an oil drilling facility requires the prior presentation of the relevant project to the DGEG, and the Minister of Economy's prior approval.

On the other hand, the concessionaire may, at any time, request the abandonment of one or more oilfields, for technical or economic reasons, and the DGEG shall, upon receipt of the request, formulate its opinion. Subsequently, that opinion is submitted to the decision of the Minister of Economy who will issue it within 30 days.

Finally, the abandonment becomes effective 60 days after the concessionaire is notified of a decision by the Minister of Economy.

Note that Decree-Law No. 13/2016 of 9 March 2016 (implementing Directive 2013/30/EU), on the safety of offshore oil and gas operations, is in force, establishing that in the case of closure or temporary abandonment, the survey operator shall submit to the competent authority a closure or temporary abandonment report within a maximum period of 15 days following the respective decision.

Security deposits for decommissioning

32 | Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

According to the applicable legal regime (Decree-Law No. 109/94), and as already mentioned, licensees and concessionaires must provide a guarantee to ensure compliance with the obligations assumed with the issuance of the licence or with the granting of the concession contract, including the obligation to pay for all damage caused to the state or third parties, and this includes decommissioning.

Specifically, in the case of offshore operations, Decree-Law No. 13/2016 establishes that the granting of concessions requires the applicant to provide a financial guarantee in order to secure against future liabilities arising from economic or environmental damage.

TRANSPORTATION

Regulation

33 | How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The applicable legislation (Decree-Law No. 31/2006), which sets the general principles applicable to the organisation and operation of the SPN, liberalised downstream activities such as the transportation of crude oil and crude oil products, aiming to create a free and competitive market.

As a general requirement applicable to all oil market operators, crude oil and crude oil products' transport operators must be registered with the competent national authority (DGEG).

Apart from that, transportation activity (which excludes the direct supply of final clients or of storage facilities intended for supplying final costumers) is regulated differently depending on the type of transportation (by road, rail, vessel or pipeline).

Transport by road or rail is subject to specific safety conditions set in accordance with transport sector legislation; namely, the transportation of dangerous substances (Decree-Law No. 41-A/2010).

Transport by vessel must comply with rules and conditions set by the International Maritime Dangerous Goods Code, adopted by the International Maritime Organization.

Finally, transport through stationary equipment (pipelines) is not subject to a specific licensing procedure but depends on prior licensing of the installations by the member of the government responsible for the energy sector and prior certification of the operator by the DGEG.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

The legal regime applicable to the survey, exploration, development and production of crude oil (Decree-Law No. 109/94) and also the legal regime on concession contracts (Order No. 790/94) do not define a typical cost recovery scheme.

However, existing survey, exploration, development and production concession contracts generally establish that the concessionaire is entitled to recover 100 per cent of the survey costs and also of the exploration operational costs, after the beginning of the production activity, until the operator achieves a positive net result (without prejudice to the obligation to pay an annual surface rental), after which the concessionaire must pay a royalty levied on production.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

Decree-Law No. 13/2016, implementing Directive 2013/30/EU, on the safety of offshore oil and gas operations, lays down the minimum requirements on the prevention of major accidents in offshore oil and gas operations.

The public authorities in charge of the supervision of the implementation of the referred minimum requirements are the Directorate General of Natural Resources, Safety and Maritime Services (DGRM) and the ENSE (although the competence of the latter may be construed as having been transferred to the DGEG following the 2018 oil sector restructure).

These authorities are, for instance, responsible for:

- evaluating and accepting reports on serious risks, in conjunction with the Maritime Accident Investigation Office and the Aeronautical Meteorology Authority (GAMA) and the Portuguese Institute of the Sea and Atmosphere (IPMA, IP);
- evaluating design notifications and notifications of drilling operations or in combined operations, or any other documents submitted to them, in conjunction with IPMA, IP; and
- supervising compliance by operators with the requirements established by this directive, including inspections, investigations and coercive measures, in coordination with GAMA and IPMA, IP.

The applicable legal regime sets fines and additional penalties in the event of violation of its rules. Additional penalties may include:

- installation closure for one year;
- the loss in favour of the state of equipment, machinery and equipment used in the commitment of the infringement; or
- the termination of the concession without the concession holder being entitled to any reimbursements.

Public and private projects that are likely to have significant effects on the environment are also subject to environmental impact assessment, according to Decree-Law No. 151-B/2013 of 31 October 2013, transposing Directive 2011/92/EU.

Prior to the beginning of the projects, concessionaires must submit, for the approval of the DGEG, the plans specifying the preventive measures to be taken against surface water pollution and contamination of aquifers, as well as the treatment of effluents that come from drilling. Furthermore, concessionaires should adopt best practice in order to minimise the environmental impact of their activities, safeguarding the ecosystem and protecting the cultural heritage.

Law No. 102/2009 of 10 September, defines the legal regime of safety at work. It also establishes obligations for companies regarding the protection of workers in case of risk of exposure to hazardous materials.

The Authority for Labour Conditions is the competent authority regarding health and safety matters; the supervision of environmental issues is predominantly under the responsibility of the National Environment Agency (APA).

Finally, disregarding applicable rules may result in triggering administrative offence procedures, and consequently the application of fines and other linked sanctions, including the suspension of activity. Non-compliance with the rules may also, in serious cases, initiate criminal proceedings.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Labour Code sets the general standards that apply to labour in any area of activity. The Labour Code was approved in 2009 but has had several amendments, some of which were made during the course of the economic and financial assistance programme that Portugal undertook from 2011–14, with a view to deregulating and making the labour market more flexible.

Collective bargaining agreements exist that are applicable within the activities of production, distribution and retail of oil products, but there is no training fund for the local workforce that employers have to contribute to.

According to the general principles laid down in the Labour Code, employees or prospective employees may not be discriminated against on grounds of age, gender, sexual orientation or nationality. There is no minimum mandatory amount of local labour to be employed. The non-compliance with the non-discrimination principle is a very serious administrative offence. The Authority for Labour Conditions is responsible for monitoring non-compliance with labour laws, whereas the General Inspection of Employment is responsible for deciding on administrative offence procedures.

However, this is without prejudice to the legal conditions for foreign or stateless employees to work in Portugal. A foreign or stateless person has to be authorised to exercise a professional activity in Portugal through the obtaining of a specific visa, notably a residence visa. EU citizens can freely reside in Portugal up to three months. If the stay is longer, they have to register near the municipality in which they are residents. Other foreign citizens need to be granted a residency visa, which will only be granted if the relevant job opportunity is not filled by Portuguese, EU or European Economic Area (EEA) citizens, or citizens of any state with which the European Union maintains a free movement agreement or citizens from foreign countries with legal residence in Portugal. Employment contracts with foreign or stateless workers must be in writing and, unless entered into with EU or EEA citizens, have to be registered with the Authority for Labour Conditions.

TAXATION

Tax regimes

37 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

General company tax rules apply to oil companies. As such, the profit of resident entities and the profit allocated to a permanent establishment in Portuguese territory are subject to corporate income tax (IRC) at a rate of 21 per cent.

In addition to IRC, the following surcharges may also be due:

- a municipal surcharge up to 1.5 per cent on taxable profit;
- a state surcharge on the part of taxable profits over €1.5 million, under the following terms:
- 3 per cent rate on the part of the taxable profit between €1.5 million and €7.5 million;
- 5 per cent rate on the part of the taxable profit between €7.5 million and €35 million; and
- 7 per cent rate on the part of the taxable profit exceeding €35 million.

The general company tax rules apply to oil companies. As such, the profit of resident entities and the profit allocated to a permanent establishment in Portuguese territory are subject to an IRC rate of 21 per cent.

In addition to IRC, the following surcharges may also be due:

- a municipal surcharge up to 1.5 per cent on taxable profit; and
- a state surcharge on the part of taxable profits over €1.5 million, under the following terms:
- 3 per cent rate on the part of the taxable profit between €1.5 million and €7.5 million;
- 5 per cent rate on the part of the taxable profit between €7.5 million and €35 million; and
- 9 per cent rate on the part of the taxable profit exceeding €35 million.

Also, the law defines an amortisation regime for investments made during the exploration phase. These investments are counted as intangible assets that are amortisable when the oil production effectively starts.

According to the legal regime established in Decree-Law No. 109/94, a tax is levied on oil production, but the production of oilfields located in the area of the national territory and in inland waters with annual values up to 300,000 tonnes (in the case of onshore production) or up to 500,000 tonnes (in the case of offshore production), as well as the oilfields located on the continental shelf beyond the bathymetry of 200 metres, regardless of the value of production, are exempt of the payment of tax. Additionally, these entities are also subject to the payment of the following fees:

- licence fee for prior assessment;
- fee for the conclusion of the concession agreement; and
- fee for transmission of the contract position.

It should be noted that the Code of Special Taxes on Consumption (Decree-Law No. 73/2010 of 21 June 2010) defines a tax on petroleum and energy products (ISP) applicable to all petrol, diesel, propane, butane and liquefied petroleum gas, which are intended for sale or consumption. ISP applies to all oil and energy products and others, such as hydrocarbons, if they are consumed or offered for sale as fuel and electricity falling within CN Code 2716.

As stated in the State Budget Law, the value of unitary taxes on oil products and energy was updated in January 2018 by Ordinance No. 301-A/2018. Hence the rate of ISP for petrol with a lead content of 0.013g or less is €526.64 per 1,000 litres and the ISP rate for diesel is €343.15 per 1,000 litres.

Furthermore, the law foresees some exemptions from payment of tax on oil and energy products, including the following situations:

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

COMMODITY PRICE CONTROLS

Crude oil mining

38 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

There is no mandatory price-setting regime for crude oil or crude oil products. Since 2004, when the maximum price regime was abolished, prices of oil and oil products have been set freely on the market on a competitive basis, without prejudice to the relevant rules and the obligations of public service, which rest among the security, regularity and quality of supply, consumer protection, satisfaction of the needs of priority consumers, and in the health, civil protection, armed forces, security forces and social assistance sectors.

However, it is important to emphasise that in the autonomous regions of Madeira and the Azores, the maximum prices for oil products are still set administratively by the regional governments.

COMPETITION

Competition enforcers

39 What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The body responsible for the prevention and punishment of anticompetitive or abusive (exploitative or exclusionary) practices is the AdC, under Law No. 19/2012 of 8 May 2012.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

According to Portuguese law, companies are responsible for their own assessment on the compatibility of their activities with competition law and it is not possible to obtain a previous determination from the AdC on whether a proposed action or agreement is compatible with Portuguese competition law. As a general rule, competition regulation is ensured ex post.

In fact, the only situation in which a pre-determination from the AdC may be obtained is merger control. According to Portuguese law, a concentration that meets one of the following thresholds must be notified to the AdC prior to its implementation:

- market share – creation or reinforcement of a market share equal to or greater than 50 per cent on the national market for a particular good or service, or on a substantial part of it;
- turnover – an aggregate turnover in Portugal of more than €100 million in the previous financial year, as long as each of at least two of the undertakings concerned achieve a turnover of more than €5 million in Portugal; and
- mixed criterion – the creation or reinforcement of a market share equal to or greater than 30 per cent but less than 50 per cent on the national market for a particular good or service, or on a substantial part of it, as long as each of at least two of the undertakings concerned achieve a turnover of more than €5 million in Portugal in the previous financial year.

After the notification, the AdC will assess the effects of the proposed merger on competition. During the merger control procedure, the AdC may order the inquiry of any person or request access to documents and must issue a final decision on whether the proposed action is compatible with Portuguese competition law within 30 working days. The absence of a decision within the period stipulated serves as a non-opposition decision to the merger.

In exceptional cases, if the AdC considers that the transaction raises serious doubts as to its compatibility with competition rules, the AdC can request an in-depth investigation; therefore, extending the deadline to issue a final decision to 90 working days from the notification.

Violation of competition laws may lead to the application of fines up to 10 per cent of the total annual turnover of the undertaking of aggregate annual turnover of the associated undertakings that have engaged in the anticompetitive practice.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

All information produced by concessionaires or licensees within its oil exploration, research, development and production activities, including seismic data, as well as activity reports sent to the state or the DGEG, are of common ownership of the concessionaire or licensee and the state or the DGEG.

Concessionaires and licensees and their subcontractors have to maintain confidential any data and information obtained in their activities during the whole duration of the concession or licence. They may only disclose this data to third parties following explicit authorisation of the DGEG. The state or the DGEG are also subject to a confidentiality obligation regarding such data and information (other than general information for the support of geological mapping or for statistical purposes) for the term of five years since receiving the same or until the concession or licence is terminated, if earlier. After expiry of this term, the state or the DGEG may freely use the information.

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Mónica Carneiro Pacheco
monica.carneiropacheco@cms-rpa.com

João Marques Mendes
joao.mendes@cms-rpa.com

Rua Sousa Martins 10
1050-218 Lisbon
Portugal
Tel: +351 21 095 81 00
Fax: +351 21 095 81 55
www.cms.law

INTERNATIONAL

Treaties

42 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Because Portugal is a member of the European Union, the regulation of crude oil or crude oil products is highly influenced by EU law. In fact, Portugal is subject to EU directives, such as those on oil stocks, public procurement and environmental matters.

In this regard, Directive 2009/119/EC, which requires member states to maintain minimum stocks of crude oil or oil products and Directive 2013/30/EU, on safety of offshore oil and gas operations, both transposed to national law, should be highlighted.

Portugal is also a party to international conventions on the definition of sovereignty rights over waters, the continental shelf and their natural resources, such as UNCLOS. It is also a party to the Convention for the Protection of the Marine Environment of the North-East Atlantic 1992, whose Annex 3 deals with the prevention and elimination of pollution from offshore sources, with consequent effects on regulatory policy.

Foreign ownership

43 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence?

Concessionaires for the survey, exploration, development and production of oil, if foreign companies, must establish a branch in the national territory (article 20 of Decree-Law No. 109/94).

Decree-Law 138/2014 of 15 September 2014, on the protection of strategic assets for the security and supply of the country, is also worth mentioning. According to this legislation, strategic assets, which may include any assets in the energy, transport or communications sectors that are deemed essential to public security, may be subject

to a regime in which their transfer to foreign companies (outside the European Union) can be rejected by the Portuguese government where such acquisition compromises national security and defence, as well as the country's security of supply.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

There are no special cross-border regulations on this subject.

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