

PUBLIC  
LAW

## THE NEW FRAMEWORK LAW OF REGULATORY BODIES

On August 28, Law no. 67/2013 was published, which approves the “Legal Framework on Regulators” and establishes the principles and rules that govern these bodies<sup>1</sup>. The law is structured in three Titles: *(i)* “Purpose and scope” *(ii)* “General principles and rules”, and *(iii)* “Organization, services and management”.

The law expressly recognizes as regulators the following entities: i) the Insurance Institute of Portugal; ii) the Portuguese Securities Market Commission; iii) the Competition Authority; iv) the Energy Services Regulator; v) the National Communications Authority (former ICP - ANACOM); vi) the National Civil Aviation Authority (former INAC); vii) The Institute for Mobility and Transports, IP; viii) the Regulatory Authority for Water and Waste and ix) the Regulatory Authority of Health. However, are excluded from its scope the Bank of Portugal and the Regulatory Authority for the Media which are ruled by specific legislation. In this context, the existing entities must submit to the Government a draft of their by-laws with amendments accordingly with the new legal framework within 30 days from the first business day after its publication. The by-laws shall be adapted by decree-law within 90 days after the entry into force of this law and must come into force on the 1<sup>st</sup> day of the month following its publication.

Title II of this legal framework contains general provisions relating to the legal nature, principles, rules, creation, extinction, merger, demerger, cooperation, scope and territorial organization of regulatory entities, among which shall be highlighted **the rules concerning to the compliance by the regulatory entities with (i) a set of requirements**, in particular, to have administrative and financial independence, to have management independence, to be organically, functionally and technically independent, to have its own bodies, services, staff and own property, to have regulation, regulatory, monitoring, supervisory and sanctioning powers and to

<sup>1</sup> With regard to its nature, the regulators are defined as legal persons governed by public law, with a legal nature of independent administrative authorities with powers to regulate an economic activity, to defend services of general interest, to protect the rights and interests of consumers and to promote and defend competition of the private, public, cooperative and social sectors (see article 3, no. 1).

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*New rules concerning  
to the compliance by the  
regulatory entities with a set  
of requirements and a set of  
management principles*

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protect the rights and interests of consumers (see article 3, no. 2) and with (ii) **a set of management principles**, such as the transparency in the activities through public discussion of draft documents that contain regulatory provisions and through the public release of relevant documentation on their activities and operations that impact on consumers and regulated entities, including on the cost of its operations for the regulated sector and the respect for the principles of prior programming and programming in expenditure which imply the assumption of commitments and payments in arrears of public entities.

Concerning to organization, it is established in Title III as mandatory bodies of the regulatory entities (i) the board of directors and (ii) the audit committee or auditor, also working with these entities a remuneration committee. The by-laws of the regulatory entities may establish other advisory bodies, tariff regulation bodies or bodies for the participation of the recipients of their activity.

In addition to the general rules relating to the function, composition, appointment, mandate, status, powers and functioning of the bodies provided for in Title III, it should be stressed the **limitations arising from the regime of incompatibilities and impediments defined therein for the members of the board, who shall work on exclusivity during the exercise of its functions** (see article 19, no. 1)<sup>2</sup>. After the termination of their mandate, for a period of two years, the members of the board of directors are forbidden to establish any contractual relationship with the companies, groups of companies or other entities which activity is regulated by the regulator<sup>3</sup>, having the right, in that period of two years, to a compensation<sup>4</sup> equivalent to ½ of their monthly salary (see article 19, no. 2). In case of non-compliance with article 19, no. 2, a former member of the board of directors is obliged to return the amount corresponding to all net wages earned during the period in which he worked, as well as the total net compensation received under article 19, no. 2. (see also article 19, no. 6).

Regarding the employees of the regulatory entities, although it is applicable the legal framework of individual contracts of employment, they are also submitted to the requirements and limitations arising from the pursuit of public interest for workers in public functions, such as accumulations and incompatibilities legally established, as well, some rules on incompatibilities and impediments (see article 32).

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<sup>2</sup> The members of the audit committee and the auditor are also subject to the regime of exclusivity in particular to subparagraphs b) and c) of Article 19 and shall not maintain any employment relationship with the State (art. 28, no. 8). This regime is applicable with some adaptations in the case of the regulatory entity responsible for the application of antitrust rules (Article. 28, no. 9).

<sup>3</sup> In the case of the regulatory entity responsible for the application of antitrust rules this prohibition covers the companies or the entities that have intervened in processes or have been addressed with acts, decisions or resolutions of that entity during the period in which the members of the board of directors have worked in such regulatory entity. In the case of the regulatory entity for health, this limitation does not apply to the members of the board of directors who are professionals in the national health system when they return to the place of origin (see article 19, no. 3 and 4).

<sup>4</sup> The compensation shall not apply in the following cases: (i) if and while the member of the board of directors is in any other occupation or gainful activity (ii) when a member of the board of directors is entitled to a retirement or old-age pension and chooses the last one; or (iii) when the member of the board of directors terminates his mandate for a reason other than the expiration of its term.

*Special attention to the limitations arising from the regime of incompatibilities and impediments for the members of the board, who shall work on exclusivity during the exercise of its functions*

With regard to financial and asset management, regulatory entities have their own budgetary autonomy<sup>5</sup> and may use the net results for the benefit of consumers or for the regulated sector (see article 38, no. 5).

The law also establishes a vast set of powers of regulators, particularly in the context of its activity in regulating, supervising, monitoring, inspecting, auditing and sanctioning (see article 40 and following). It is also established the independence of these bodies in the exercise of their functions, which are subject to government supervision (see article 45.).

<sup>5</sup> Regarding its financial and asset management the regulatory entities are secondarily subject to the rules applicable to corporate public entities.

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