

ASSEMBLY OF THE REPUBLIC

Law No. 10/2014, of 6 March¹

Approves the Statutes of the Water and Waste Services Regulation Authority

The Assembly of the Republic decrees, under the terms of sub-paragraph c) of article 161 of the Constitution, the following:

Article 1

Subject matter

1 — The present law amends the legal status of the *Entidade Reguladora dos Serviços de Águas e Resíduos, I.P. – ERSAR, I.P.* (Water and Waste Services Regulation Authority, I. P. – ERSAR, I.P.), which is henceforth referred to as Water and Waste Services Regulation Authority, abbreviated to ERSAR.

2 — ERSAR carries on with the legal personality of ERSAR, I. P., maintaining all the rights and obligations, legal or contractual, which are part of the respective legal sphere.

Article 2

Statutes

The new statutes of ERSAR, annexed to this law, which form an integral part thereof, are hereby approved.

Article 3

ERSAR Bodies

The enforcement of the present law does not imply the end of the ERSAR I.P. board members current terms, which are now running and will keep the duration initially defined, with no possibility of renewal.

Article 4

Transitional regime applicable to current employees of ERSAR

1 — Employees who are part of the permanent staff of ERSAR, I. P. at the time of enforcement of the present law and hold the legal status of civil servant, shall be transferred to the staff of ERSAR, maintaining

¹ This translation published by ERSAR in March 2017. Not an official translation of the law.

their respective legal status of employment in civil service in the form of a civil service employment contract, as well as all the inherent rights.

2 — Any tender procedures for recruitment and selection ongoing at the date of enforcement of the present law shall be maintained. The employees under recruitment may conclude civil service employment contracts if they hold a previously constituted legal status of civil servant or if they are students who entered the course of advanced studies in public management on a date prior to the date of enforcement of the present law, where ERSAR has shown interest in their recruitment in view of their indispensability for the execution of the respective enlarged duties.

3 — The existing situations of internal mobility at ERSAR on the date of enforcement of the present law, regardless of the service of origin belonging to the central, regional or local administration, shall continue until the respective term or until the term derived from any extensions arising from the applicable legislation.

4 — The new staff regime to be approved by internal regulations of ERSAR, pursuant to the approved statutes attached to the present law, is applicable to the employees who belong to the permanent staff of ERSAR, I. P., or who perform duties therein under a mobility arrangement, as at the date of enforcement of the present diploma.

5 — Notwithstanding the provisions in the preceding number, the current employees of the permanent staff of ERSAR, I. P. who are integrated in general careers of specialized technician, technical assistant and operational assistant shall be transferred to the careers of an identical degree of functional complexity to be approved by internal regulations of ERSAR and under the terms defined therein.

6 — In the transition to their new careers, the employees shall be repositioned pursuant to article 104 of Law No.12-A/2008, of 27 February, amended by Law No.64 -A/2008, of 31 December, with the necessary adaptations.

7 — The approved permanent staff in force as at the date of start of enforcement of the present law shall constitute the permanent staff of ERSAR.

8 — The concluded fixed-term employment contracts shall continue in force, and shall terminate during the period established therein, without prejudice to their possible renewal under the general terms.

Article 5

Internal organisation

Until the enforcement of the internal regulations established in No. 3 of article 40 of the approved statutes of ERSAR, attached to the present law, the internal organisation and remunerative status of the intermediate level management staff shall remain in force, under the terms defined in Ordinance No. 174/2011, of 28 April.

Article 6

Regulation fees

The ordinances, which define the fees relative to the activity of structural, economic and quality of service regulation and the fees relative to the regulation of the drinking water quality, in force on the date of enforcement of the present law, shall be maintained up to their revocation.

Article 7

References

1 — All references to ERSAR, I. P., established in any law, regulation, contract or other legal instruments, shall be deemed to have been made to ERSAR.

2 — References to the powers of the grantor for approval of tariffs stipulated in Decree-Laws No.294/94, of 16 November, 319/94, of 24 December, and 162/96, of 4 September, republished in the attachment to Decree-Law No. 195/2009, of 20 August, as well as Decree-Law No. 171/2001, of 25 May, are considered applicable to ERSAR.

Article 8

Systems of delegated management of services owned by the State

The extension of the provisions in the approved statutes of ERSAR, attached to the present law, with respect to No. 3 of article 5 and to article 13, to systems of delegated management of services owned by the State shall depend on the review of the respective diplomas and those which establish the model of transfers between them and the multi-municipal systems, which should be concluded within the maximum period of one year, counted as of the date of enforcement of the present diploma.

Article 9

Repealing provision

1 — Decree-Law No.277/2009, of 2 October, is repealed.

2 — Ordinance No.269/2011, of 19 September, is repealed with the enforcement of the tariff regulations established in article 13 of the statutes of ERSAR, attached to the present law.

Article 10

Transitional provision applicable to the budgetary and financial arrangements

1 — The *Sistema de Normalização Contabilística* (Accounting Standardisation System) is applicable to the submission of the annual financial statements for the year starting on 1 January 2014.

2 — Notwithstanding the provisions in the preceding number, the submission of interim financial statements during the year referred to therein can be made in accordance with the *Plano Oficial de Contabilidade Pública* (Official Plan of Public Accounting).

Article 11

Approval of regulations

1 — Tariff regulations shall be approved within the period of 180 days counted as of the date of enforcement of the present law, pursuant to principles of stability and predictability by the regulated entities.

2 — Internal regulations established in the statutes attached to the present law shall be drawn up and approved within the period of 90 days counted as of the date of its enforcement.

Article 12

Entry into force

The present law shall enter into force on the first day on the month following that of its publication.

Approved on 24 January 2014.

The President of the Assembly of the Republic, in office, Guilherme Silva.

Promulgated on 24 February 2014.

To be published.

The President of the Republic, Aníbal Cavaco Silva.

Endorsed on 25 February 2014.

The Prime Minister, Pedro Passos Coelho.

ANNEX

STATUTES OF THE WATER AND WASTE SERVICES REGULATION AUTHORITY (ERSAR)

CHAPTER I

General provisions

Article 1

Legal nature, mission, jurisdiction and head office

1 — The Water and Waste Services Regulation Authority, hereinafter referred to as ERSAR, legal person governed by public law, is an independent administrative entity with regulatory and supervisory duties, endowed with managerial, administrative and financial autonomy, with its own assets and attached to the ministry with competence in the area of the environment.

2 — The mission of ERSAR is the regulation and supervision of the sectors drinking water supply, urban wastewater management and urban waste management services, referred to in abbreviated form as water and waste services, including the duties of competent authority for the coordination and supervision of the rules applicable to drinking water quality.

3 — ERSAR has jurisdiction on national territory, without prejudice to the provisions in the political-administrative statutes of the autonomous regions.

4 — The head office of ERSAR is in Lisbon, and it may create other delegations or forms of representation, whenever deemed appropriate by the board of directors for the pursuit of the duties of ERSAR.

Article 2

Legal framework and independence

1 — ERSAR is independent in the exercise of its duties, under the terms foreseen in the Framework Law for Regulatory Entities, approved by Law No. 67/2013, of 28 August, and in the present statutes, and is not subject to governmental superintendence or supervision in this exercise.

2 — ERSAR is ruled by the provisions of international and European law, by the present statutes, by the internal regulations and provisions which are specifically applicable to it. On matters of financial and asset management, whenever there are issues that have not been established by those diplomas or are incompatible with them, by the rules applicable to corporate public entities.

3 — The following are applicable to ERSAR, under the terms of number 1 and in the exercise of public powers, for everything that does not contradict the provisions of the present statutes and in the diploma which approves them:

- a) The *Código do Procedimento Administrativo* (Administrative Procedure Code) and any other general standards and principles concerning the State's administrative acts;
- b) Administrative litigation provisions, where steps were taken in the exercise of public authority functions and contracts of an administrative nature are concerned;

4 — The following are also applicable to ERSAR:

- a) The public procurement regime;
- b) The State's civil liability regime;
- c) Information duties deriving from the *Sistema de Informação da Organização do Estado* (Information System for State Organisation - SIOE);
- d) The regime of jurisdiction and financial control of the *Tribunal de Contas* (Court of Auditors);
- e) The State services' inspection and audit regime.

Article 3

Principle of speciality

1 — ERSAR's legal capacity includes the entitlement to the rights and obligations required for the pursuit of its object, exercising its powers in the context of the respective responsibilities and allocating its resources to the purposes entrusted to it.

2 — ERSAR can, whenever so requested or on its own initiative, provide technical support and consulting to the Assembly of the Republic and Government.

Article 4

Regulated entities

1 — ERSAR's action is applicable, pursuant to its responsibilities and the terms of the present statutes, to all operators which work in the sectors referred to in No. 2 of article 1, regardless of the State or municipal ownership of the respective systems or the management model adopted, namely:

- a) Direct provision of the service;
- b) Delegation of the service to a State sector company, to a local sector company, to inter-municipal entities or to a company incorporated in partnership with the State;
- c) Concession of the service.

2 — ERSAR's action is also applicable, under the terms of the law, to the entities with the ownership of the water and waste service, whenever rights and obligations of the operators or users are involved, as well as the laboratories which carry out the control of the drinking water quality.

3 — ERSAR's action is also applicable to parishes and associations of users to whom these services have been delegated which, for the effect of the present statutes, are equivalent to operators of municipal-owned systems, in the form established in subparagraph b) of number 1.

4 — ERSAR's action is also applicable to any other entities which have undertaken the responsibility for the management of services in the context of the regulated sectors, irrespective of their public or private nature and the capacity which legitimates the exercise of these activities, which, for the effect of the present statutes, are equivalent to operators of state or municipal systems, in the forms established in subparagraphs b) or c) of number 1, according to the cases and with the necessary adaptations.

5 — For the purposes of the provisions in the preceding number, indications of transference of responsibility for the management of services include the undertaking of investments remunerated fully or partially by tariffs charged to users, the undertaking of the risk of demand, the charging of services to their users and the duration of the contractual bond.

6 — ERSAR also regulates any other entities which, by law, are subject to its action, namely entities with private systems for public supply of drinking water, under the terms of Decree-Law No. 306/2007, of 27 August, amended by Decree-Law No. 92/2010, of 26 July.

Article 5

Assignments

1 — ERSAR's general assignments are to assure the regulation and supervision of drinking water supply, urban wastewater management and urban waste management services, promoting increased efficiency and effectiveness in their provision, considering the protection of the rights and interests of the users, assuring the existence of conditions which enable achieving economic and financial stability on the part of

the activities of the regulated sectors exercised under public service arrangements, as well as the exercise of duties of competent authority for the drinking water quality among all the water supply operators.

2 — ERSAR's assignments regarding structural regulation of the sector involve:

- a) Collaborating with the Assembly of the Republic and the Government in the formulation of public policies and legislation relative to the regulated services;
- b) Contributing to streamlining and resolving dysfunctions regarding the regulated services and the organisation of the sector, as well as monitoring and reporting on the implementation of its strategic plans;
- c) Contributing to the clarification of the rules on provision of these services through the issue of regulations and recommendations, and monitoring the application of these regulations and recommendations and the legislation in force.

3 — ERSAR's assignments regarding behavioural regulation on economic matters are to:

- a) Establish the tariffs for State-owned systems and supervise other economic and financial aspects of the operators of State-owned systems, namely issuing opinions, proposals and recommendations, under the terms defined in the applicable legislation and regulations;
- b) Regulate, assess and audit the establishment and application of tariffs in municipal-owned systems, irrespective of their management model, under the terms defined in the applicable legislation and regulations;
- c) Issue recommendations about the compliance of the tariffs of municipal systems with that established in the tariff regulations and other applicable legislation, as well as inspecting and sanctioning their infringement;
- d) Issue, in the situations and under the terms established in the law, binding instructions regarding tariffs charged by municipal-owned systems which do not comply with the legal and regulatory provisions in force;
- e) Assure detailed invoicing by the operators, in a context of disaggregated identification of the various portions comprising the final value of the invoice, aimed at enabling the end user to

perceive the different components of the costs relative to the water, sanitation, waste management and other activities.

4 — ERSAR's assignments regarding behavioural regulation also involve:

- a) Supervising the compliance by the service owners and operators with the applicable legal, regulatory and contractual provisions, in particular during the stages of creation, tender, contracting, contractual amendment, reconfiguration and extinction, assuring the public interest and legality;
- b) Assuring the regulation of drinking water quality among all the water supply operators, under the terms defined in the applicable legislation, promoting the improvement of its quality and universality, assessing the performance of these entities;
- c) Assuring the regulation of the quality of service provided to the users by the operators, promoting the improvement of service levels, assessing the performance of these entities, comparing the operators between them and awarding reference cases;
- d) Promoting the comparison and public disclosure of the activity of the operators, embodying a fundamental right of access to information to which all the users are entitled, and consolidating a culture of provision of information that is concise, credible and easy to interpret;
- e) Assuring the safeguarding of the rights and interests of the users in relation to tariffs, services and quality of service, and promoting the settlement of their disputes with the operators;
- f) Fostering the participation of the service users, creating mechanisms for provision of advice and disclosure of information;
- g) Knowing the users' complaints and the conflicts, which involve the operators, analysing them, promoting the use of conciliation and arbitration mechanisms between the parties as a form of conflict resolution, and taking the measures deemed urgent and necessary.

5 — ERSAR is also specifically assignment for the following supplementary regulatory activities:

- a) Coordinating and carrying out the collection and disclosure of information relative to the sector of drinking water supply, urban wastewater management and urban waste management services,

and to the respective service owners and operators, assuring the right of access to the information to all users;

b) Promoting the research, innovation and development of studies on matters under its responsibilities, contributing to improved technical capacity building of the operators and other agents of the sector.

6 — ERSAR also performs all of its other duties conferred by law.

Article 6

Duties of collaboration and provision of information

1 — All entities, public or private, should collaborate with ERSAR in obtaining the requested information for the pursuit of its responsibilities.

2 — Without prejudice to other legally established periods, for purposes of the provisions in the preceding number ERSAR can stipulate that the regulated entities comply with a maximum period of 30 days for the sending of information required for the thorough performance of its duties.

Article 7

Relations of cooperation or collaboration

1 — ERSAR establishes forms of cooperation, collaboration or association, in the context of its responsibilities, with other entities of public or private law, at a national or international level, when this proves necessary or convenient for the pursuit of the respective responsibilities.

2 — Under the terms of specific legislation and in the context of its responsibilities, ERSAR collaborates with other national regulatory entities, in particular with the *Autoridade da Concorrência* (Competition Authority) and the national waste authority regarding the integrated systems of waste streams.

3 — The collaboration referred to in the preceding number addresses aspects of strategic definition, licensing of operators, and definition and review of the counter values. It materialises in procedures to be defined in the regulation on regulatory procedures.

CHAPTER II

Exercise of authority powers, power to impose penalties and regulatory powers

Article 8

Legal equivalence

In the exercise of its responsibilities, ERSAR assumes the rights and obligations attributed to the State in the applicable legal and regulatory provisions, namely those concerning the coercive collection of contributions, fees, revenues of the service and other receivables.

Article 9

Powers of authority

1 — ERSAR exercises the necessary powers of authority for the pursuit of its responsibilities, namely through the accomplishment of inspection, supervisory and audit actions.

2 — The employees of ERSAR, in the development of the actions established in the preceding number, benefit from the following prerogatives:

- a) Have free access to all the facilities, infrastructures and equipment of the operators;
- b) Obtain, by any form, copies or extracts of the controlled documents, as well as the collection of samples, equipment and materials for the conduct of analyses and tests, consultation, support or attachment to the reports, proceedings or records and, the examination of any elements indispensable to the development of the aforesaid actions;
- c) Request, from any legal representative, worker or employee of the entities subject to ERSAR regulation and those collaborating with these same entities, clarifications about facts or documents related to the object and purpose of the inspection or audit, and record their answers;
- d) Determine the suspension or termination of activities and the closure of facilities, following a breach of interim protective measure requested by the board of directors;
- e) Request the collaboration of the competent entities, namely the police and administrative authorities, when necessary for the performance of its duties.

3 — For the purposes of the preceding number, ERSAR's personnel is accredited through the attribution of identification card approved and signed by the board of directors or, in their absence or impediment, by

the joint signature of two members of the board of directors, with external employees being accredited by a document issued by ERSAR for the effect.

4 — The persons referred to in number 2 should exhibit the identification cards mentioned in the preceding number when performing their respective duties.

5 — The entities subject to ERSAR's intervention are obliged to provide it with all the necessary conditions in order to assure the efficacy of the actions developed under its responsibilities, namely through the appointment of discussion partners.

6 — Under the respective powers of supervision and whenever deemed necessary, considering the significant complexity or delay of the analysis required by the situation, ERSAR can contract experts and technical personnel to support and supervise ERSAR's workers, where the former, in the context of this provision of services, are entitled to access the relevant information and are subject to non-disclosure arrangements and restricted treatment of the information, under the same terms applicable to ERSAR, through presentation of credentials for the effect.

Article 10

Powers to impose penalties

ERSAR is responsible for processing administrative offences and applying the corresponding fines, as well as all other penalties applicable to breach of laws and regulations whose implementation or supervision is under its responsibility, and those arising from non-compliance with its own determinations, under the terms established in the law.

Article 11

Regulatory powers

ERSAR is entrusted with preparing and approving regulations enforced externally in the context of its responsibilities, without prejudice to any others, which may be defined by law, namely, with respect to:

- a) Tariffs, under the terms defined in article 13;
- b) Quality of service, in particular through the definition of minimum levels of quality and the compensation owed in case of non-compliance;

- c) Commercial relations, through the definition of rules applicable to the relationships between bulk and retail operators and between the operators and the users, namely regarding the conditions of access and contracting of the service, measurement, invoicing, payment and collection, and provision of information and settlement of disputes, by regulating the corresponding legal arrangements and the protection of users of essential public services;
- d) Regulatory procedures inherent to the relations with the entities subject to its intervention, in the context of the corresponding responsibilities, stipulating the form and timeframe for exercise of the duties of the board of directors concerning regulation;
- e) Procedures for approval of products in contact with water for human consumption, under the terms established in article 21 of Decree-Law No. 306/2007, of 27 August, amended by Decree-Law No. 92/2010, of 26 July.

Article 12

Procedure for regulations approval

- 1 — Without prejudice to the consultation of the advisory bodies of ERSAR, the approval or amendment of any regulation containing provisions enforced externally, whose approval is of its competence, is preceded by a period of public consultation, under the terms of the law, with the minimum duration of 30 business days, unless situations of duly substantiated urgency justify the definition of a shorter period, during which the interested parties can issue their comments and submit suggestions.
- 2 — For the purposes of the preceding number, ERSAR informs the Government members who are responsible for the area of the environment and consumer protection, the service providers, the operators covered by the regulatory scope, consumer associations, other associations of general interest and the general public of the draft regulation drawn up, providing them with access to the respective text and making it available on ERSAR's website.
- 3 — After the period of public consultation, ERSAR prepares and publicises on its website a report reviewing comments and suggestions received, stating the reasons for the decisions taken, and may also refer to the detailed justifications in a supplementary document.
- 4 — ERSAR's regulations enforced externally shall be published in the 2nd series of Diário da República and made available on ERSAR's website.

Article 13

Tariff regulations

1 — ERSAR approves tariff regulations for the water and waste services which establish:

a) Rules for definition, fixing, review and updating tariffs for drinking water supply, urban wastewater management and urban waste management, pursuant to the following principles:

i) Economic and financial cost recovery of the services under a scenario of efficiency;

ii) Preservation of natural resources and promotion of efficient behaviour by consumers;

iii) Promotion of the affordability of domestic users, namely through social tariffs;

iv) Promotion of equitable tariff structures, taking into account the size of the household, with special emphasis, in the case of domestic users, for large families, aimed at favouring fairer and more efficient measurement of water consumption *per capita* for all users;

v) Stability and predictability on the part of the regulated entities;

b) Analytical accountancy rules in the strict perspective of the accounting separation of each of the regulated activities and relative to any other activities that might be carried out by the operators;

c) Tariff convergence rules, which exceptionally allow for the temporary derogation of the principle of cost recovery, for costs incurred under a scenario of efficiency and associated to the provision of the service;

d) Rules for recovery of any incurred surplus or insufficient charges;

e) Information reporting rules for verification of compliance with the application of regulations;

f) Rules and procedures for inspection.

2 — The tariff regulations referred to in the preceding number should take into account the particularities of the delegated management of state-owned services which, under the terms of the legislation, conduct transfers to multi-municipal systems.

Article 14
Conflicts resolution

1 — In the exercise of its competencies concerning dispute settlement between the regulated entities or between them and the end-users, ERSAR is responsible for:

a) Formally acknowledging all complaints of users who are subject to its supervision and those complaints submitted by them, answering them and taking the necessary measures in relation to them, recognising or not the alleged and invoked rights;

b) Conducting actions of reconciliation or promoting the use of arbitration under simple and expedite procedural terms, which tend to be free of charge, whenever such is established in the law or at the request of the interested parties.

2 — ERSAR should ensure that the procedures established under the terms of the preceding number are decided within the maximum period of 90 days counted as of date of reception of the request, where this period may be extended for an equal period when ERSAR requires supplementary information or, also, for a higher period through agreement with the complainant.

3 — ERSAR may inspect the records of complaints submitted by users to the regulated entities.

4 — Following its appraisal of the complaints, ERSAR may, according to the cases, order or recommend the operators subject to its regulation to take the necessary measures to assure the fair reparation of the users.

5 — For the purposes established in subparagraph b) of number 1 of the present article, ERSAR promotes the creation of new centres of institutional arbitration, and may do so in collaboration with other entities, or conclude agreements with existing centres of institutional arbitration. In the latter case, ERSAR is responsible for defining the logistic, financial, technical and human support to be provided to this effect, as well as promoting the participation of the intervening entities of the regulated sectors in the previously mentioned arbitration centres.

CHAPTER III

Organic structure

SECTION I

List of the bodies

Article 15

Bodies

The bodies of ERSAR are:

- a) The board of directors;
- b) The statutory auditor;
- c) The advisory council;
- d) The tariff council.

SECTION II

Board of Directors

Article 16

Function

The board of directors is the collegiate body responsible for the definition and implementation of ERSAR's activity, and for management of the respective services, in conformity with the law and present statutes.

Article 17

Composition

The Board of Directors shall consist of a chairman and two members, one of whom may be designated deputy chairman.

Article 18

Appointment

1 — The members of the board of directors are selected among people of good repute, independence and technical competence, aptitude, professional experience and training deemed appropriate for performing their duties.

2 — The members appointed to the board of directors are nominated by resolution of the Council of Ministers, under proposal of the member of Government responsible for the area of the environment.

3 — The nominations are preceded by a hearing before the competent committee of the Assembly of the Republic, at the request of the Government, accompanied by the rationale for the respective selections and the opinion of the *Comissão de Recrutamento e Seleção da Administração Pública* (National Committee of Selection of Personnel for the Public Administration) relative to the adequacy of the profile to the duties to be performed, including compliance with the applicable rules on incompatibility and impediments.

4 — The Council of Ministers resolution which enacts the nomination of the members of the board of directors, duly substantiated, shall be published in the *Diário da República*, together with a note relative to the academic and professional curriculum of the nominees.

5 — In the case of simultaneous nomination of two or more members of the board of directors, the end of the respective terms cannot coincide, and should diverge by at least six months between them through if necessary, the limitation of the duration of one or more terms.

6 — The nomination of members of the board of directors cannot take place between the resignation of the Government or the calling of elections for the Assembly of the Republic and the parliamentary investiture of the recently-nominated Government, except in the case of vacancy of the positions in question and urgency of the designation, in which case the aforesaid nomination or proposed nomination that has not yet become an effective nomination depends on confirmation by the recently nominated Government.

Article 19

Incompatibilities and impediments

1 — The members of the board of directors perform their duties under an arrangement of exclusivity and cannot, namely:

- a) Hold positions in sovereign public bodies, in the autonomous regions or in local governments, or perform any other public or professional duties, except for teaching or research positions, if they are not remunerated;
- b) Maintain, directly or indirectly, any connection or relationship, remunerated or not, with companies, groups of companies or other entities which are subject to ERSAR's activity or hold any equity stakes or interests in them;
- c) Maintain, directly or indirectly, any connection or relationship, remunerated or not, with other entities whose activity might collide with their responsibilities and competencies.

2 — In situations in which the functions are terminated, during a period of two years, holders of senior management positions or equivalent cannot establish any connection or contractual relationship with companies or other entities which are subject to ERSAR's activity, and are entitled, during the aforesaid period, to a compensation equivalent to 1/2 the monthly salary. In case of breach, they are bound to return all the net remunerations earned, up to the maximum of three years. In this case, it will be applied the update coefficient derived from the corresponding annual average variation rates of the consumer price index published by the *Instituto Nacional de Estatística, I. P* (Statistics Portugal, I. P).

3 — Without prejudice to the provisions of the Framework Law for Regulatory Entities, the members of the board of directors are also subject to the regime of incompatibilities and impediments established for holders of senior public management positions, with the particularities stipulated for regulatory entities.

Article 20

Duration of term

The members of the board of directors are appointed for a period of six years, non-renewable.

Article 21

Termination of term

1 — The members of the board of directors cannot be exonerated from their position before the end of the duration of the term, except in the cases foreseen in this article.

2 — The term of the members of the board of directors finishes at the end of its respective period and also due to:

- a) Resignation, through written statement submitted to the Government member responsible for the area of the environment;
- b) Death or physical or psychological incapacity which is permanent or whose duration is foreseen to overrun the end date of the period for which they were designated;
- c) Supervening incompatibilities;
- d) Condemnation, due final judgement, for an intentional crime, which compromises the member's reputation to hold the position;
- e) Serving a term of imprisonment;
- f) Dissolution of the board of directors or dismissal of its members under the terms of numbers 3 and 4, except for members of the board of directors whose terms are explicitly maintained in the management body of the entity that might follow this board;
- g) Extinction of ERSAR.

3 — The dissolution of the board of directors and the dismissal of any of its members can only occur by resolution of the *Conselho de Ministros* (Council of Ministers), substantiated by a relevant motive.

4 — For the purposes of the provisions in the preceding number, it is deemed that there is a justified motive whenever there is severe misconduct, of individual or collective responsibility, established in investigation directed by an entity independent from the Government, preceding an opinion issued by the advisory council and a hearing of the competent committee of the Assembly of the Republic, namely in the case of:

- a) Serious or repeated breach of the legal rules and statutes, and of the regulations and guidelines of ERSAR;

b) Breach of the duty of exercise of office on an exclusive basis or serious or repeated breach of the duty of confidentiality;

c) Substantial and unjustified failure to comply with the activity plan or budget of ERSAR.

5 — In situations of termination of the term due to the end of the respective period or resignation, the members of the board of directors shall remain in office up to their effective replacement.

6 — In the case of vacancy due to one of the motives established in the preceding numbers, the vacancy shall be filled within the maximum period of 45 days after its occurrence.

Article 22

Rules governing the members

1 — The gross monthly salaries of the members of the board of directors shall be established by the remuneration committee, under the general terms defined in the Framework Law for Regulatory Entities for the boards of directors of regulatory entities.

2 — The general system of social security is applicable to the members of the board of directors, except when they hold the legal status of civil servants, in which case they can opt for the specific arrangement of their place of origin.

3 — Situations of *ex officio* duties or positions by members of the board of directors in entities or other structures related to regulatory entities do not confer the right to any additional remuneration or any other benefits and benefits.

4 — The use of credit cards and other payment instruments, vehicles, communications and social benefits by members of the board of directors is subject to the defined arrangement for holders of senior public management positions.

Article 23

Remuneration committee

1 — ERSAR operates with a remuneration committee, under the terms defined in the Framework Law for Regulatory Entities.

2 — The remuneration committee is composed of three members, appointed as follows:

- a) One indicated by the Government member responsible for the area of finance;
- b) One indicated by the Government member responsible for the area of the environment;
- c) One indicated by ERSAR, preferably chosen from previous members of one of ERSAR's bodies, or, in the absence of indication, co-opted by the members referred to in the preceding subparagraphs.

Article 24

Competencies of the board of directors

1 — The competencies of the board of directors on matters of regulation and supervision are as follows:

- a) Issue opinions, studies, information and draft legislation at the request of the Government or on its own initiative on matters within the scope of ERSAR responsibilities, with the purpose of clarifying the operating rules for water and waste services; and monitor the preparation and application of that legislation;
- b) Approve the regulations enforced externally established in the law, which are necessary to perform the responsibilities of ERSAR;
- c) Establish or issue opinions on the tariffs of the state and municipal-owned systems under the terms defined in the respective legal arrangements;
- d) Issue recommendations and codes of good practices on any matters subject to the intervention of ERSAR in the context of the respective responsibilities;
- e) Take the necessary deliberations for the pursuit of ERSAR's responsibilities and issue instructions on matters within the scope of those responsibilities;
- f) Issue opinions in the context of allocation and contracting of multi-municipal concessions, constitution of inter-municipal systems, delegation of municipal services, public contracting procedures for the selection of private partners and the allocation of municipal concessions, the corresponding contracting, as well as for sub-concessions, conclusion of partnership agreements between municipalities and the State and corresponding management contracts, and the amendment and extinction of contracts as well as public service regulations. All these opinions

should be publicised pursuant to subparagraph b) of number 3 of article 50 of the present statutes and sent to all the interested parties;

g) Call forth the entity providing the services, when they are managed through contract, for the reappraisal of contractual clauses when they conflict with public interest;

h) Determine the conduct of inspection and audit actions to sector systems, regardless of their ownership, management model or services provided;

i) Determine the conduct of inspections to supply systems and supervision of the laboratories which analyse drinking water, in the context of the monitoring of drinking water quality;

j) Exercise the power to impose penalties, under the terms defined in the applicable legislation;

k) Request interim protective measures and similar procedures or in any other form engage in judicial or administrative procedures regarding matters which might compromise the balance of the sector and assure the protection of the rights of consumers, as deemed necessary for the prevention or termination of action contrary to that established in the legislation, whose compliance is under its supervision;

l) Conclude agreements of cooperation or collaboration and establish mechanisms of association with other entities of public or private law, at national or international level, when this proves necessary or convenient for the pursuit of ERSAR's responsibilities.

m) Coordinate and carry out the collection and disclosure of information concerning the regulatory model, the sector of drinking water supply, urban wastewater management and urban waste management, and to the respective operators;

n) Promote research, innovation and conduct studies on matters under its responsibilities;

o) Prepare the annual report on regulation and supervision;

p) Carry out all other acts required for the pursuit of ERSAR's responsibilities for which no other body is competent.

2 — The internal management competencies of the board of directors are as follows:

a) Direct ERSAR's activity and services;

- b) Prepare the annual activity plans and ensure the corresponding implementation, monitoring and assessment;
- c) Prepare the draft budget, under the terms of the applicable legislation;
- d) Propose any necessary budget modifications, without prejudice to the budget approval mechanisms established in the Framework Law for Regulatory Entities;
- e) Prepare the annual report on activities and financial statements;
- f) Prepare the social balance, under the terms of the applicable legislation;
- g) Exercise directorship, management and staff disciplinary powers, and carry out all acts thereof, pursuant to the law, the statutes and the internal regulations to be approved;
- h) Approve the necessary internal regulations to perform its responsibilities;
- i) Carry out all other management acts derived from the application of the present statutes and other applicable legislation as deemed necessary for the good operation of the services;
- j) Systematically monitor and assess the activity developed, namely by promoting the rational use of the available resources in order to maximise the results;
- k) Nominate ERSAR's representatives to external bodies;
- l) Appoint ERSAR's representatives, in court or otherwise, including with the power of appointing substitutes.

3 — The board of directors is also competent to conduct the current management acts required for ERSAR's good operation and to exercise all other competencies entrusted to this board in these statutes and in the Framework Law for Regulatory Entities or which are delegated or sub-delegated to the board.

4 — All entities subject to ERSAR's action which take decisions that are not in conformity with ERSAR's recommendations or opinions established in subparagraphs d) and f) of number 1, shall be bound to the duty of providing explicit substantiation of the decision, with the circumstantial argumentation based on factual and legal evidence justifying the motivation of the act.

5 — The decisions referred to in the preceding number are mandatorily publicised on the websites of ERSAR and of the decision-making entity, as well as in a suitable official publication at a national, regional or local level, within 15 days.

Article 25

Competencies of the Chairman of the Board of Directors

1 — In particular, it is the responsibility of the chairman of the board of directors to:

- a) Convene and chair the meetings of the board of directors, supervise its work and promote compliance with the respective deliberations:
- b) Coordinate the activity of the board of directors and its relations with all the other bodies and services of ERSAR;
- c) Coordinate relations with the Government, with all other public bodies and with the service providers and operators;
- d) Request the convening of the advisory council for the appraisal of issues, as deemed appropriate;
- e) Perform the duties that are delegated or sub-delegated by the board of directors;
- f) Exercise other competencies established in the present statutes or in the law.

2 — The chairman of the board of directors shall be replaced, when absent or prevented from attending duties, by the deputy chairman, if existent, or by the member indicated by the chairman, or in his/her absence, by the most senior member of the board.

Article 26

Delegation of competencies

1 — With the exception of the competencies established in subparagraphs b), c) and j) of number 1 of article 24, the board of directors and its chairman may delegate their competencies, through deliberation or order, according to the case, to one or more of its members and authorise the sub-delegation of these powers to ERSAR's senior staff or employees, in each case establishing the respective limits, conditions and control mechanisms.

2 — The provisions in the preceding number do not hinder the duty of all members of the board of directors to be informed of ERSAR's affairs in general, follow their progress and issue opinions on them. Nor do these provisions hinder the power of the board of directors to take back the delegated, sub-delegated or mandated powers or to revoke acts conducted by the delegated, sub-delegated or mandated person under the delegation, sub-delegation or mandate, whenever deemed convenient for the pursuit of ERSAR's responsibilities.

Article 27

Operation

1 — The board of directors ordinarily holds meetings once a week and exceptionally whenever called by the chairman, on the chairman's own initiative or at the request of the members.

2 — When voting, there can be no abstentions, but explanations of vote may be given.

3 — The minutes of each meeting should be approved and signed by all the members present, where members who disagree with the content of the deliberations taken may enter their respective explanations of vote in the meeting minutes.

Article 28

Representation, replacement and legal obligation

1 — ERSAR is represented, namely in court or in the conduct of legal acts, by the chairman of the board of directors, by two of its members or by an attorney appointed specially for the effect.

2 — ERSAR is legally bound through the joint signature of two members of the board of directors, where one is its chairman or replacement.

3 — Without prejudice to the provisions in the preceding number, in current management affairs, to be defined through deliberation of the board of directors, ERSAR may be bound only by the signature of one member of the board of directors or any employee of ERSAR in the exercise of sub-delegated powers.

3 — Without prejudice to the provisions in the preceding numbers, ERSAR may also be bound by the signature of mandated persons, in the restricted scope of the competencies which have been vested in the respective mandate.

SECTION III

Statutory auditor

Article 29

Function

The statutory auditor is responsible for controlling the legality, regularity and efficiency of ERSAR's financial and asset management and for exercising advisory competencies in this area.

Article 30

Nomination

1 — The statutory auditor is nominated by a ministerial decree of the members of Government responsible for the areas of finance and the environment.

2 — The statutory auditor should be a chartered accountant or chartered accountants firm.

Article 31

Incompatibilities and impediments

The designated statutory auditor cannot maintain any employment relationship with the State, nor maintain, directly or indirectly, any connection or contractual relationship, remunerated or not, with companies, groups of companies or other entities which are recipients of ERSAR's activity or hold any equity stakes or interests in them, nor with other entities whose activity may collide with its responsibilities and competencies.

Article 32

Duration of term

The statutory auditor is appointed for a four years period, non-renewable.

Article 33

Rules governing the statutory auditor

1 — The statutory auditor is independent in the performance of its duties, not being subject to instructions or guidelines, and is ruled by the legal provisions relative to the exercise of chartered accountant activity.

2 — The statutory auditor is entitled to a monthly salary, paid 12 times a year, of the value of 1/4 of the monthly salary established for the chairman of the board of directors.

Article 34

Competencies of the statutory auditor

1 — The statutory auditor is responsible for regularly monitoring and controlling compliance with the applicable laws and regulations, the budget execution, the economic, financial, asset and accounting situation of ERSAR and performing all the other duties attributed under the terms of the law, in particular the advisory competencies established in the Framework Law for Regulatory Entities.

2 — The statutory auditor is responsible for assessing the quality of the systems of indicators of efficiency, effectiveness and quality, which reflect the overall view of the activities pursued and results obtained, as well as the annual assessment of the results achieved by ERSAR with the available means. The conclusions of this work are reported to the Government member responsible for the area of the environment, pursuant to the provisions of article 39 of the Framework Law for Regulatory Entities.

SECTION IV

Advisory council

Article 35

Function, competencies and composition

1 — The advisory council is a body which provides advice in the definition of the general guidelines underlying ERSAR's action, assuring the participation of representatives of the main interests involved in the activities of the regulated sectors of the water and waste services.

2 — The advisory council is responsible for contributing to the formulation of the sector's public policies and issuing opinions on:

- a) The annual plan and report on activities and financial statements;
- b) The regulatory model;
- c) Other subjects whose appraisal the board of directors submits to it.

3 — The advisory council is also responsible for presenting, on its own initiative, suggestions and proposals to the board of directors aimed at promoting the improvement of the sector and activities of ERSAR in the context of the respective responsibilities.

4 — ERSAR's advisory council is chaired by a personality of recognised merit, nominated by the Government member responsible for the area of the environment.

5 — The advisory council also includes the following members:

- a) The *Diretor-Geral das Autarquias Locais* (Director-General for Local Government);
- b) The *Diretor-Geral das Atividades Económicas* (Director-General for Economic Activities);
- c) The *Diretor-Geral do Consumidor* (Director-General for the Consumer);
- d) The *Diretor-Geral da Saúde* (Director-General for Health);
- e) The *Presidente da Agência Portuguesa do Ambiente, I. P.* (Chairman of the Portuguese Environment Agency, I. P.);
- f) A representative of the regional development and coordination commissions at the Chairman or deputy chairman level, under a rotation system;
- g) A representative of each of the autonomous regions;
- h) A representative of the *Associação Nacional de Municípios Portugueses* (National Association of Portuguese Municipalities);
- i) Four representatives of operators of municipal-owned water supply and urban wastewater management systems, under direct management, delegation, partnership or concession, where two should represent the public entities and two the private entities;
- j) Three representatives of operators of municipal-owned urban waste management systems, under direct management, delegation, partnership or concession, where two should represent the public entities and two the private entities;
- k) A representative of operators of state-owned water supply and urban wastewater management systems, under direct management, delegation or concession;
- l) A representative of operators of state-owned urban waste systems, under direct management, delegation or concession;
- m) A representative of operators of waste streams;

- n) Two representatives of consumer associations of national scope;
- o) Four representatives of associations representing economic activities of national scope;
- p) Four representatives of technical-professional associations of importance in the sector;
- q) Two representatives of environmental non-governmental organisations of national scope.

6 — The advisory council also includes specialists in the sectors of drinking water supply, urban wastewater management and urban waste management services, not more than three, nominated by ministerial decree of the Government member responsible for the area of the environment, under proposal of the chairman of the advisory council.

7 — The members referred to in subparagraphs a) to e) of number 5 take office through inherence of their positions.

8 — The holding of the position of chairman of the advisory council and the specialists referred to in number 6 are remunerated through attendance vouchers, of value to be defined in the internal regulations which cannot exceed the limit of the value of two times the daily allowance attributed by ERSAR for travel within national territory.

9 — Members of the advisory council who are representatives of non-profit making non-governmental entities can request compensation for expenses incurred in relation to travel and accommodation, through attendance vouchers, which are noncumulative with those indicated in the preceding number, of value equivalent to the daily allowance attributed by ERSAR for travel within national territory, under the terms to be defined in ERSAR's internal regulations.

10 — The advisory council can create specialised sections according to the water or waste services or particular matters, under the terms to be defined in the respective internal regulations.

11 — The represented entities, included in each of the categories referred to in subparagraphs i) to q) of number 5, may decide to share the representation, by designating two or more representatives, according to the internal regulations, which shall succeed one another halfway through the term.

12 — If there are no confederative structures at a national level associating the entities which can be represented and if there are difficulties in the establishment of a platform of understanding about their representation, the following procedure shall be adopted:

a) The chairman of the advisory council, based on objective criteria of representativeness, shall prepare a proposal indicating the entity or entities to be included in the advisory council in each subparagraph of number 5;

b) The proposal referred to in the preceding subparagraph shall be submitted to all the entities which can be represented for their opinion within the period of 30 days, where they can present an alternative proposal, and should they not do so it shall be considered that they accept the proposal;

c) In the case of acceptance by simple majority of the consulted entities, the chairman of the board of directors and the chairman of the advisory council shall formally invite the entity in question to designate representatives;

d) In the case of refusal of the proposal by simple majority of the consulted entities, the chairman of the board of directors shall decide in a substantiated manner, and taking into account the alternative proposals, on the entity or entities which shall indicate representatives for the advisory council, where the term may be performed under a rotation system.

13 — The advisory council ordinarily meets at least twice a year, as convened by its chairman.

14 — Extraordinarily, the advisory council holds meetings as convened by its chairman, on the chairman's own initiative or at the request of a least one-third of its members, or at the request of the chairman of the board of directors.

15 — The members of the board of directors can participate, without the right to vote, in the meetings of the advisory council.

16 — The advisory council approves its internal regulations.

Article 36

Duration of term

1 — The members of the advisory council are nominated for three years, without prejudice to being replaced at any time by the entities nominating them.

2 — The permanent members, referred to in subparagraphs f) to q) of number 5 of the preceding article, can be replaced by alternate members, designated during the act of nomination of the permanent member.

SECTION V

Tariff council

Article 37

Function, competencies and composition

- 1 — The tariff council is the specific advisory body for ERSAR functions relative to rates and prices.
- 2 — The tariff council is responsible for:
 - a) Issuing opinions on the proposed tariff regulations and their revisions;
 - b) Issuing an annual opinion on the balance of the economic regulation cycle.
- 3 — The tariff council is chaired by the chairman of the advisory council, and has the following composition:
 - a) A representative of the *Direção-Geral das Autarquias Locais* (Directorate-General for Local Government);
 - b) A representative of the *Direção-Geral das Atividades Económicas* (General Directorate-General for Economic Activities);
 - c) A representative of the *Direção-Geral do Consumidor* (Directorate-General for the Consumer);
 - d) A representative of the *Agência Portuguesa do Ambiente, I. P.* (Portuguese Environment Agency, I. P.);
 - e) A representative of the *Associação Nacional de Municípios Portugueses* (National Association of Portuguese Municipalities);
 - f) Four representatives of operators of municipal-owned water supply and urban wastewater management systems, under direct management, delegation or concession, where two should represent the public entities and two the private entities;
 - g) Three representatives of operators of municipal-owned urban waste management systems, under direct management, delegation or concession, where one should represent the public entities and two the private entities;

h) A representative of operators of state-owned water supply and urban wastewater management systems, under direct management, delegation or concession;

i) A representative of operators of state-owned urban waste management systems, under direct management, delegation or concession;

j) A representative of operators of waste streams;

k) Two representatives of consumer associations of national scope.

4 — Membership of the tariff council is not remunerated.

5 — The tariff council ordinarily meets once a year, as convened by its chairman.

6 — Extraordinarily, the tariff council holds meetings as convened by its chairman, on the chairman's own initiative or at the request of a least one-third of its members, or at the request of the chairman of the board of directors.

7 — The members of the board of directors can participate, without the right to vote, in the meetings of the tariff council.

8 — The tariff council approves its internal regulations.

Article 38

Duration of term

The term of office of the members of the tariff council is subject to the rules laid down in Article 36(2).

CHAPTER IV

Services and staff

Article 39

Operative and supporting services

1 — ERSAR has operative services and technical and administrative support services, which are indispensable to the enforcement of its responsibilities.

2 — The internal regulations of the services, which define the internal organisation, the senior positions of ERSAR and the remunerative statute, is approved by the board of directors.

Article 40

Staff arrangements

1 — ERSAR's staff is subject to the legal system for individual employment contracts, with the exceptions established in these statutes.

2 — ERSAR can be a party in a collective labour regulation instrument.

3 — The conditions for recruitment and selection of employees, provision and discipline of work are defined in the internal regulations approved by the board of directors, pursuant to the following general principles:

- a) Disclosure of the employment offer in ERSAR's website;
- b) Equal conditions and opportunities for the applicants;
- c) Application of objective methods and criteria of assessment and selection;
- d) Substantiation of decision-making.

4 — The adoption of the legal system for individual employment contract does not exempt compliance with the requirements and limitations derived from the pursuit of public interest, namely relative to legally established functions accumulation and incompatibilities for civil servants and those stipulated in the Framework Law for Regulatory Entities.

5 — The performance of ERSAR's employees is assessed through the application of established criteria and guidelines concerning:

- a) Principles and objectives, as well as the existence of systems for performance assessment of employees, senior staff and organic units, operating in an integrated form;
- b) Performance assessment based on comparison between established objectives and results achieved and, in the case of senior staff and employees their demonstrated competencies and potential for development;
- c) Differentiation of performance through the establishment of a minimum number of assessment classifications and maximum percentages for attribution of the highest classifications.

6 — ERSAR's performance assessment system, which complies with the provisions in the preceding number, is defined in the internal regulations approved by the board of directors.

7 — The employees referred to in number 1 are enrolled in the general system of social security of employed workers, safeguarding the option of maintenance of their enrolment in the *Caixa Geral de Aposentações* (Civil Servants Pension Fund) for employees with legal status of employment in civil service.

Article 41

Other personnel

Employees holding public office, as well as any employees, staff or directors of public or private companies, can perform duties at ERSAR or in any of its bodies through use of the legally applicable means in terms of mobility.

Article 42

Contracting of external services and cooperation agreements

ERSAR can contract, under an arrangement of service provision, the cooperation of companies or specialists for the preparation of studies, opinions, auditing and inspection actions or other tasks required for the performance of its duties.

Article 43

Duty of secrecy, diligence and circumscription

1 — The members of ERSAR bodies, as well as the staff and service providers and their employees, are subject to the duties of diligence and secrecy regarding all affairs that are entrusted to them or to which they are privy as a result of the development of their duties.

2 — The members of ERSAR board of directors cannot make statements or comments on processes in course or specific issues relative to regulated entities, except in defence of honour or for the accomplishment of any other legitimate interest.

3 — The duty of circumscription does not cover statements relative to processes that have already been concluded, or the provision of information with a view to the accomplishment of legitimate rights or interests, namely that of access to the information

CHAPTER V

Property, financial and budgetary regime.

Article 44

Property

1 — ERSAR's property is composed of the assets, rights and obligations of economic content, allocated by the State or acquired by ERSAR.

2 — ERSAR is ruled by the legal arrangements for public immovable property, movable assets and vehicles of the State, in relation to the assets allocated to ERSAR by the State, and by private law in relation to all other assets.

Article 45

Applicable regime

1 — ERSAR has, with regard to financial and property management, specific autonomy established in the present statutes and in the Framework Law for Regulatory Entities.

2 — The public accounting rules, the funds and autonomous services regime, namely the rules and regulations relative to the authorization of expenses, the transfer and use of the net income for the year and the blocking of sums of the part which does not depend on State budget endowments are not applicable to ERSAR.

Article 46

Revenue

1 — ERSAR's own revenue includes:

- a) The fees and contributions charged to operators of water supply, urban wastewater sanitation and urban waste management services relative to the activity of structural, economic and service quality regulation;
- b) The fees and contributions charged to water supply operators relative to regulation of the quality of water for human consumption, as the competent authority;
- c) The rates payable for approval, authorisation or recognition procedures for which ERSAR is responsible;

- d) The amounts of fines applied for the infractions, which ERSAR might be responsible for enforcing;
- e) The revenue derived from services rendered by ERSAR;
- f) The income derived from the operation, divestment or encumbrance of ERSAR's own assets or arising from financial investments at the Treasury Department;
- g) Grants, funding, contributions and donations attributed by any national or foreign entities;
- h) Any revenues that by law, contract or other title assigned to/attribution to ERSAR.

2 — The requirements, criteria of incidence and value of the rates and contributions established in subparagraphs a) to c) of the preceding number are defined by implementing order of the Government members responsible for the areas of finance and the environment.

Article 47

Expenses

ERSAR's expenses comprise all expenses derived from the pursuit of the respective responsibilities and the contributions legally entrusted to ERSAR under the funding arrangements for the *Autoridade da Concorrência* (Competition Authority).

Article 48

Accounting, accounts and treasury

1 — ERSAR applies the *Sistema de Normalização Contabilística* (Accounting Standardisation System).

2 — The presentation of accounts is fundamentally ruled by the provisions in the *Lei de Organização e Processo do Tribunal de Contas* (Law on the Organisation and Procedure of the Court of Auditors) and respective regulatory provisions.

3 — The *Tesouraria do Estado* (State Treasury) system is applicable to ERSAR and, in particular, the principle and rules of the treasury unit.

4 — ERSAR prepares and updates, on an annual basis, the respective inventory of immovable property, under the terms of the legal arrangements for public immovable property.

5 — The net income for the year of ERSAR is carried forward to the following year, and should be used for constitution or reinforcement of reserves intended for the development of specific actions in benefit of the sector, namely technical capacity-building of the operators and other agents of the sector.

CHAPTER VI

Independence, responsibility and judicial supervision

Article 49

Independence

1 — ERSAR is independent in the exercise of its duties and is not subject to governmental authority, under the terms of the present statutes and Framework Law for Regulatory Entities, without prejudice to the provisions in the following numbers.

2 — Government members cannot make recommendations or issue guidelines to the governing bodies of ERSAR on its regulatory activity or on the priorities to be adopted in its pursuit.

3 — The Government member responsible for the area of the environment can request information from ERSAR's bodies on the implementation of the annual and multiannual activity plans, as well as on the execution of the budget and respective multiannual plans.

4 — The budget relative to the following year, the respective multiannual plan, and the management report and financial statements of the previous year require prior approval, within the period of 60 days after their reception, by the Government members responsible for the area of finance and for the area of the environment.

5 — The approvals foreseen in the previous number can only be refused through decision-based on the grounds of illegality or loss for the intended purposes of ERSAR or for public interest, or an unfavourable opinion issued by the advisory council.

6 — If the period established in number 4 has elapsed, without any explicit decision having been issued on these documents, it is considered that they have been tacitly approved.

7 — The following also require prior authorisation by the Government members responsible for the areas of finance and the environment, under penalty of being null and void:

- a) The acceptance of donations, inheritances or bequests;

b) The acquisition or divestment of immovable property, under the terms of the law.

Article 50

Provision of information

1 — ERSAR prepares and sends, on an annual basis, the Assembly of the Republic and Government a detailed report about the respective operation and activity of regulation and supervision, with this report being published on its website.

2 — Whenever requested, the members of the board of directors of ERSAR should present themselves before the competent parliamentary committee, to provide information or clarifications about the respective activity.

3 — ERSAR's website provides all the relevant data for the sector and its activity, in particular:

a) The composition of its statutory bodies, including the biographical records, curricular records and remunerative status of their members;

b) The legal and regulatory diplomas applicable to the regulated sectors, the Framework Law for Regulatory Entities, the regulatory instruments, the present statutes, the opinions issued under the terms of subparagraph f) of number 1 of article 24 of the present statutes and the internal regulations;

c) The annual reports of the water and waste services in Portugal;

d) The management instruments, in particular:

i) Activity plans and budgets;

ii) Approved activity reports and financial statements, including the respective balances.

Article 51

Legal Responsibility

1 — ERSAR, the members of its bodies and its employees are civil, criminally, disciplinary and financially liable for acts and omissions conducted during the performance of their duties, under the terms of the applicable legislation.

2 — Financial liability is enforced by the *Tribunal de Contas* (Court of Auditors), under the terms of the respective legislation.

3 — When accused by third parties, under the terms of number 1, the members of the bodies of ERSAR and its employees are entitled to the right to legal advice assured by the regulatory authority, without prejudice to the right of recourse under the general terms.

Article 52

Judicial review

1 — Issues relative to the appeal against, review and enforcement of decisions, orders and all other measures, which may legally be objected against measures taken by ERSAR, in administrative offence proceedings, fall under the jurisdiction of the *Tribunal da Concorrência, Regulação e Supervisão* (Court of Competition, Regulation and Supervision), under the terms of the applicable legislation, while all other acts of authority of administrative nature conducted by the bodies of ERSAR are subject to administrative jurisdiction, pursuant to the respective legislation.

2 — ERSAR has legitimacy to appeal against the decisions rendered in judicial objection proceedings which permit recourse.