

Brussels, 2nd October 2017

Subject: Brief summary of ERSE's *administrative offense* procedure related to the interruption of energy supply due to the non-payment of an equipment maintenance service

The new challenges regarding energy regulation require our careful attention. One of these new challenges is what we call additional services (*serviços adicionais*) in Portugal – i.e. types of services not related to energy supply that are provided by energy companies. These services, which are not exclusive to the Portuguese market, can include equipment maintenance services, plumbing services, or even insurance that ensure the payment of energy bills in case of unemployment of the consumer. In all probability, it is not the energy regulatory authority's task to regulate and ensure the enforcement of the regulation of these services. In fact, some of them are subject to regulation by other sectoral agencies, such as the insurance services, which are overseen by the insurance regulator.

However, it is important to recognize that energy companies may sometimes abuse their position (as suppliers) when they provide these services. In other words, the suppliers may seek to subject these services to the *essential public services* legal framework, whenever that framework is more appealing to them than the general one. In these cases, energy regulators must act. Such a situation arose in 2016 in Portugal and led to an *administrative offense* procedure.

The investigation began following receipt of complaints presented by consumers against a supplier company, regarding interruptions of energy supply. One of these complaints was precisely regarding the undue interruption of energy supply due to non-payment of the equipment maintenance service that was contracted as an additional service with the supply company. In this case, the consumer contracted an equipment maintenance service with his supplier. The agreement predicted that in the first six months the equipment maintenance service would be subject to a trial period and during that time, the consumer would pay a reduced price for it. Once this period ended, the consumer decided to terminate the equipment maintenance agreement.

Meanwhile, the supplier found an error in the bill of the service provided during the six previous months and issued a new bill in the amount of €23.70. The consumer did not pay this bill, even

after receiving a notice informing that if she did not pay the bill, the company would interrupt the energy supply.

It is important to add that, currently, according to the Portuguese law, the supplier can interrupt energy supply for reasons attributable to the consumer. **This includes only cases of non-payment of energy bills, whenever these bills are related to energy supply**, once certain criteria are verified. In other words, even if the equipment maintenance service is invoiced in the same bill as the energy supply, the supplier cannot interrupt the energy supply due to non-payment of the equipment maintenance service. Although this is clear according to the law, the company decided to interrupt the energy supply during one day. According to Portugal's legal framework, this action can be qualified as a *very serious administrative offense* ("*contraordenação muito grave*").

Before the final decision was taken, the company asked ERSE for a settlement (something that is foreseen in our legal regime) and admitted the offenses. The company also compensated this particular consumer.

For this specific offense, ERSE applied a €20,000 fine to the company.

Since the company compensated all the consumers whose energy supply had been interrupted in such situations, ERSE reduced the total amount of the fine (considering all cases) to €27,950.