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# RULES AGAINST CONFLICT OF INTEREST

*Empowering Mediterranean regulators for a common  
energy future*

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energy future*



Institutional  
Working Group  
(INS WG)



Co-funded by  
the European Union

## ABSTRACT

This document assesses the rules regarding conflict of interest (COI) in the electricity and gas market in the Mediterranean region. The report is based on MEDREG's case studies, which describe implementation of the rules and plans to manage conflict-of-interest situations within the national regulatory authority (NRAs) and within the Transmission System Operators and Distribution System Operators.

## ACKNOWLEDGMENTS

This report is the result of the work of the MEDREG Institutional Working Group (INS WG), based on the responses of MEDREG members on the benchmarking carried out by the chairs of the INS WG and the MEDREG Secretariat.

## DISCLAIMER

This publication was produced with financial support from the European Union. The contents are the sole responsibility of MEDREG and do not necessarily reflect the views of the European Union.

## ABOUT MEDREG

MEDREG is the association of Mediterranean energy regulators, bringing together 27 regulators from 22 countries across the European Union (EU), the Balkans, and MENA region.

MEDREG acts as a platform for facilitating information exchange and assisting its members, in addition to fostering capacity development activities through webinars, training sessions, and workshops. Mediterranean regulators work together to improve the harmonisation of regional energy markets and legislations, seeking a progressive market integration in the Euro-Mediterranean Basin.

Through constant cooperation and information exchange among members, MEDREG aims at fostering consumer rights, energy efficiency, infrastructure investment, and development by employing safe, secure, cost-effective, and environmentally sustainable energy systems.

The MEDREG Secretariat is in Milan, Italy.

For more information, please visit [www.medreg-regulators.org](http://www.medreg-regulators.org)

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# EXECUTIVE SUMMARY

The national regulatory authority's (NRA) main role is to set up a transparent regulatory framework that establishes the technical, safety, and quality rules to maintain a proper function of the electricity and gas systems. Furthermore, the NRA ensures the achievement of the country's energy targets and strategy, and the most important role of the NRA is to protect end-users and keep them well informed about their rights and responsibilities.

Among the challenges that the NRA must face is to manage the conflict of interest (COI) within its own premises and establish the rules against the conflict of interest within the electricity and gas market actors. COI may occur when personal interests—family, friendships, financial, or social factors—compromise the judgment, decisions, or actions in the workplace. Within governmental institutions, COI is monitored closely as the impact of it on the country's decisions is crucial. Moreover, most of the governmental institutions are funded through the national budget—people's money—and the least they can do is ensure that this funding is used in the most optimal way so as to achieve the country's objectives and strategy.

Within the electricity and gas systems, the decisions at the NRAs, TSOs, and DSOs should be oriented only towards ensuring the best quality and security of supply while also maintaining the affordability of the energy.

Nowadays, the energy sector is more complicated and more open to many new entities. Therefore, the energy regulators are more vigilant, to avoid any conflict of interest of any type.

The regulatory framework that governs the NRAs, TSOs, and DSOs is likely to become even more transparent in the future. However, COI and transparency are strongly linked. In some cases, transparency may illuminate actual or perceived conflicts of interest, when in the process of making a decision bias is observed, leading to the conclusion that there was a conflict of interest (perceived). On the other hand, in the same situation an actual conflict of interest may occur. In that event the NRAs and the TSO /DSO will make disclosure of the conflict of interest and bring to light the process of making the decision and justify the decision.

The rules against COI and its management differ from one country to another, and in this report MEDREG is mapping the rules that the Mediterranean NRAs have put in place against COI, sharing the experiences of each NRA.

# 1

## INTRODUCTION & METHODOLOGY

## 1.1. Report Objective

The objective of the report is to assess the rules against conflict of interest in the Mediterranean region. Formulation of this report was also an opportunity for MEDREG's members to share their case studies and identify possible areas of cooperation in the future to improve the rules and mechanisms of monitoring.

## 1.2. Methodology

The report is based on MEDREG members' best practices and details the management of conflict of interest in each country.

The case study template is divided into two main parts: the rules against conflict of interest within the NRAs; and within the electricity and gas market actors, with a focus on the TSOs and DSOs.

For some members, the benchmarking is enriched by cases of conflict of interest that arose in the past.

Figure 1. Responses to the INS WG Benchmarking





# 2 CASE STUDIES

The common observation from the MEDREG case studies is that the government and NRAs strictly monitor conflict of interest in the electricity & gas market. In all cases the rules against conflict of interest are set either in the general law or in energy law or both.

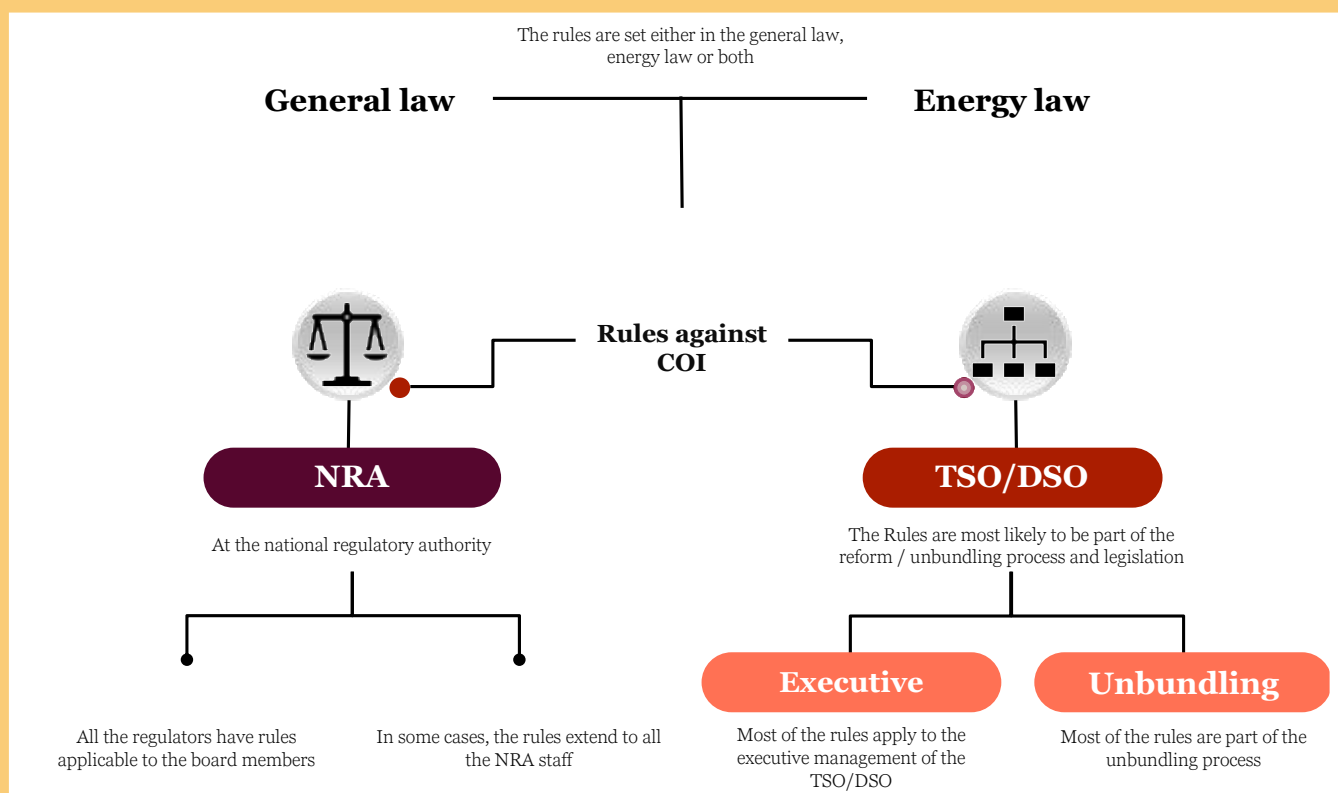
More precisely, the rules to prevent any conflict of interest within the national regulatory authority (NRA) ensure independence of the NRA and its neutrality in decision making. However, at the TSO and DSO levels, the rules usually are set while reforming the electricity and gas market towards an unbundled market, to ensure a transparent, competitive, and non-discriminatory market.

The rules may apply to certain categories of the NRA employees, such as the high-level representatives, as most decisions are approved by the board members. In case the employees have access to sensitive information, the rules may be extended to all the staff.

At the TSO/DSOs, the rules are set to ensure non-discriminatory decisions and operation of the companies. In addition, the TSO/DSOs should not indulge in activities other than those within their scope and competencies as stated in the energy laws or licenses.

The figure 2 below summarises how the rules against conflict of interest are set in most of the cases. The details for each regulator follow.

Figure 2. Common Scheme of the Rules Against Conflict of Interest





- **Definition of Conflict of Interest in the Energy Sector**

A conflict of interest may arise where a public interest can be influenced by a private interest. In the electricity and gas sector, it can occur between operators and can also occur at the level of the regulator.

The article 8 of the Law n° 06-01 define the conflict of interest as follow: " When the private interests of public officials coincide with the public interest and are likely to influence the normal performance of their duties, public officials are required to inform their hierarchical authority."

The Law 02-01, relating to electricity and gas distribution, provides provisions guaranteeing the independence of CREG and the absence of an organic link on one hand with the public authorities (Ministry of Energy) and on the other hand with the operators of the sector.

The law has provided for the independence of the operator of the electrical system, thus guaranteeing the operators concerned access to the network without discrimination.

The law has also provided for the independence of the market operator, thereby guaranteeing producers fair treatment in the distribution of production.

- **Conflict of Interest Within the NRA**

The law provides that the position of a member of the executive board is incompatible with the direct or indirect holding of interests in a company of the energy sector or in a company that is an eligible customer.

The law also provides that, at the end of their tenure, the members of the executive board may not pursue a professional role in the regulated companies of the electricity and gas distribution by pipeline sectors for a period of 2 years.

However, there is no code of conduct in the CREG and the provisions of the law to avoid conflict of interest only concern the members of the CREG Executive Board.

Among its tasks, CREG ensures conditions of neutrality of the gas system operator, the system operator, and the market operator in relation to the other participants.

CREG also ensures that no dominant position is exercised by other players in the management of the system operator and the market operator

The law also provides for establishment of an arbitration chamber within the CREG to rule on conflicts that may arise between operators.

- **Conflict of Interest Within the TSO/DSO**

The electricity and gas market is not yet well developed, and there is no competition at the distribution level; except for some private electricity producers, there are no private companies within the electricity and gas market. Therefore, there is no procedure for managing conflicts of interest for TSO and DSO operators. However, such a procedure will be established once a competitive market is implemented, and in case of conflict of interest the Law 02-01 states that the TSO/DSOs need to refer to the CREG and the arbitration chamber will decide on the next steps.

No conflict of interest has arisen to date, as the electricity and gas distribution markets have not yet been set up. The same applies to the arbitration chamber.



- **Definition of Conflict of Interest in the Energy Sector**

The main conflicts between the operators concern the access to infrastructures. As the law provides, the ARH ensures compliance with the conditions of neutrality of the market operator in relation to other players.

ARH as a regulator is an important player in the separation of activities and must ensure competitive and transparent operation of the market and also its impartiality.

- **Conflict of Interest Within the NRA**

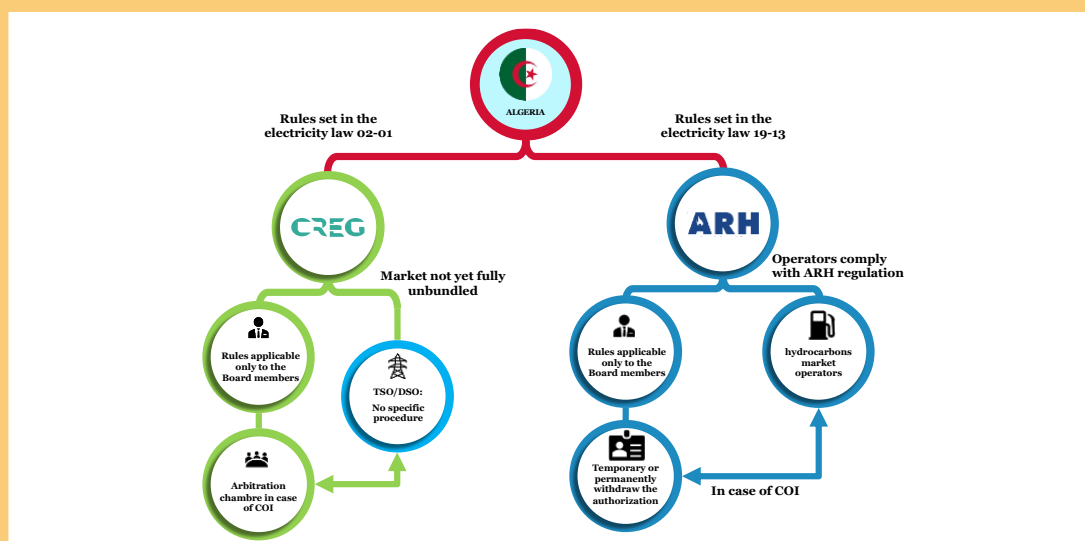
When a member of the management committee is likely to be implicated in a conflict of interest or judicial inquiry, they must inform the commission, which will take all the necessary measures to safeguard the interests of the institution.

- **Conflict of Interest Within the TSO/DSO**

ARH does not regulate any TSO or DSO in the electricity and gas national market. However, ARH does regulate the hydrocarbons market.

The operators in the hydrocarbons market must comply with the law and ARH’s regulation. Regarding conflict of interest, to avoid any such cases between the operators, ARH has provided regulations that clearly define the level of access to infrastructures and authorisations for each type of operator.

ARH may temporary or definitively withdraw the authorisation to operate and would determine administrative sanctions against operators for non-compliance with the rules or standards in accordance with the Law. The figure below summarises the management of COI in Algeria.





State Electricity Regulatory Commission – SERC – BOSNIA AND HERZEGOVINA

- **Definition of Conflict of Interest in the Energy Sector**

SERC’s Code of Ethics defines conflict of interest for board members and staff—they are not allowed to have direct or indirect interest in companies from the power sector (e.g., ownership of stocks, shares, bonds, or parts of these companies), to do business, or have financial arrangements which may influence their impartiality when performing duties with natural or legal persons who may participate in the proceedings before SERC.

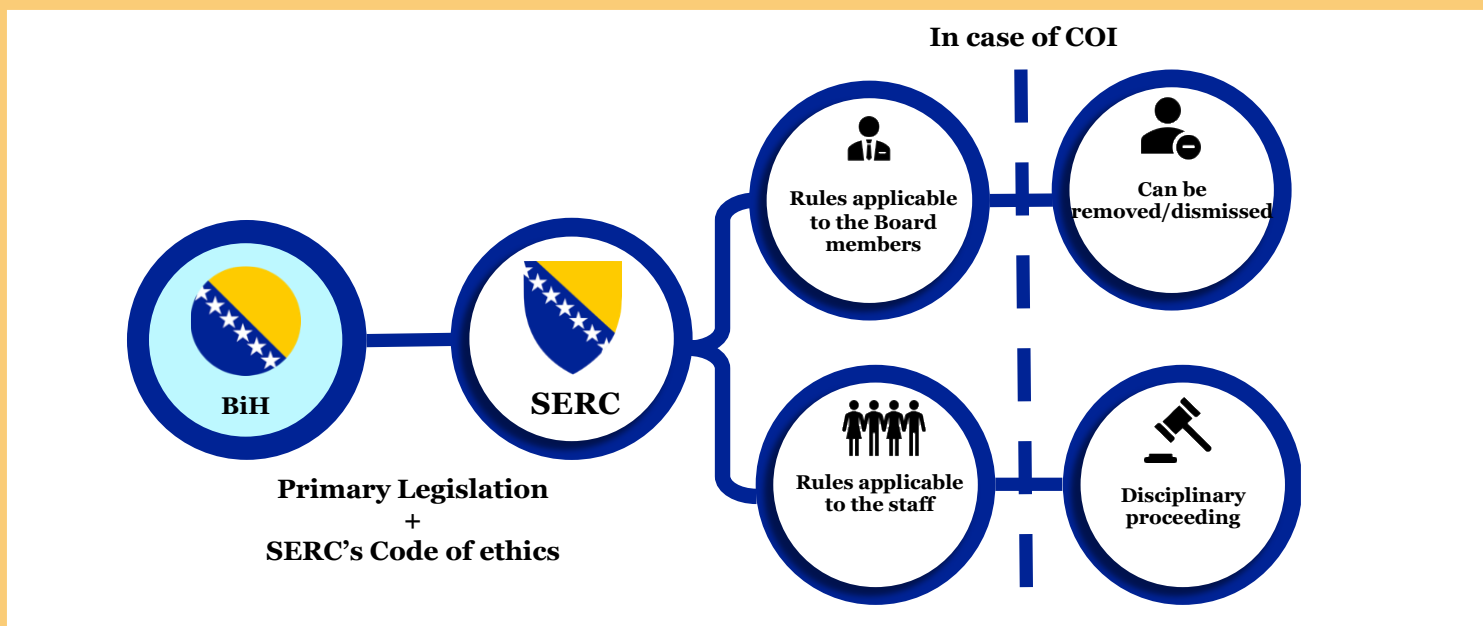
- **Conflict of Interest Within the NRA**

In case of violation of the Code of Ethics, according to the primary legislation, board members can be removed/dismissed. For employees, SERC initiates disciplinary proceedings, and the employee can be disciplined.

- **Conflict of Interest Within the TSO/DSO**

There are no rules regarding conflict of interest among the electricity and gas market actors, adopted by SERC, nor does the primary legislation prescribe the role of SERC in this field. Since SERC does not have any legal basis to regulate conflict of interest of the electricity market actors, they do not monitor or manage this issue in the regulated entities. Till today, there has been no conflict-of-interest case recorded.

Figure 3. Conflict of Interest Management in Bosnia & Herzegovina





## Cyprus Energy Regulatory Authority - CERA - CYPRUS

### • Definition of Conflict of Interest in the Energy Sector

Regarding the electricity market, a conflict of interest may eventually arise in a vertically integrated company which holds a dominant position in the electricity market and is active in the four core activities of the market. Nevertheless, a regulatory framework governing and preventing a potential conflict of interest was adopted in 2014 by CERA. More precisely, it was based on the Regulatory Decision 04/2014 “Functional unbundling of the activities of EAC,” and after three audits it was established that the vertically integrated company was, in this first phase of the evaluation, in compliance with the legal and regulatory framework.

### • Conflict of Interest Within the NRA

The measures to prevent and manage conflict of interest within the NRA are as follows:

1. According to the Law for the Establishment and Operation of the Cyprus Energy Regulatory Authority (L. 129(I)/2021), a person who holds a position as a member of the top management cannot:

- Have any financial or other interest, direct or indirect, including an interest in shares, debentures, or other type of security and/or benefits, excluding pension benefits, or remuneration or other payment from any company, authority or body which carries out any business in the energy sector or has decisive control over a company that carries on any business in the energy sector.
- Maintain employment in any work, office, or position anywhere in the private sector for remuneration of any kind or under any circumstances in which remuneration may reasonably be expected, whether paid or not.
- Hold a position or employment, the remuneration for which is subject to the control of the Republic, or in the acceptance or retention of any position or capacity in the public service or in a municipality or in any legal person or body governed by public law.
- Hold a position in a political party or be actively involved in party activities.

2. According to the Regulations on recruitment, promotion, service, and disciplinary control (R.A.A. 528/2004), no employee is permitted to own, directly or indirectly, a share or other interest in any enterprise related to the work of CERA and no employee is permitted to participate in the management of any company or cooperative or other private profit-making enterprise without prior written consent of CERA.

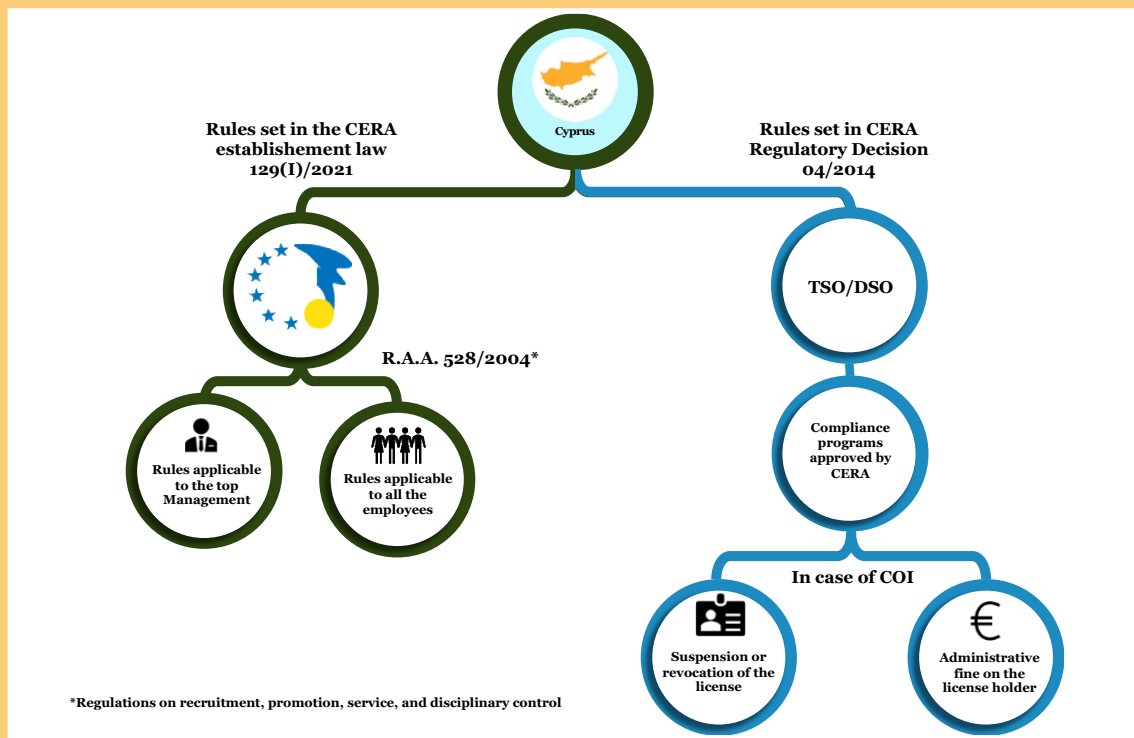
3. Also, according to the Regulations on recruitment, promotion, service, and disciplinary control (R.A.A. 528/2004), a member of the top management of CERA who has a special relationship or a consanguineous bond by blood or blood relationship up to the fourth degree or is in acute enmity with the person to whom the case under consideration concerns or who has an interest in its outcome, does not participate in the production of the administrative act.

• **Conflict of Interest Within the TSO/DSO**

The TSO and the DSO must prepare compliance programs, which are submitted to CERA for approval, which include the measures taken and define the obligations of their employees, to ensure the impartial behaviour of their staff.

If CERA finds a violation of a license condition and/or a regulatory decision and/or a decision and/or a violation of the provisions of the Law and/or the provisions of any Regulation, it may impose an administrative fine on the license holder or decide the suspension or revocation of the license granted.

Figure 4. Conflict of Interest Management in Cyprus





Croatian Energy Regulatory Agency – HERA – Croatia

• **Definition of Conflict of Interest in the Energy Sector**

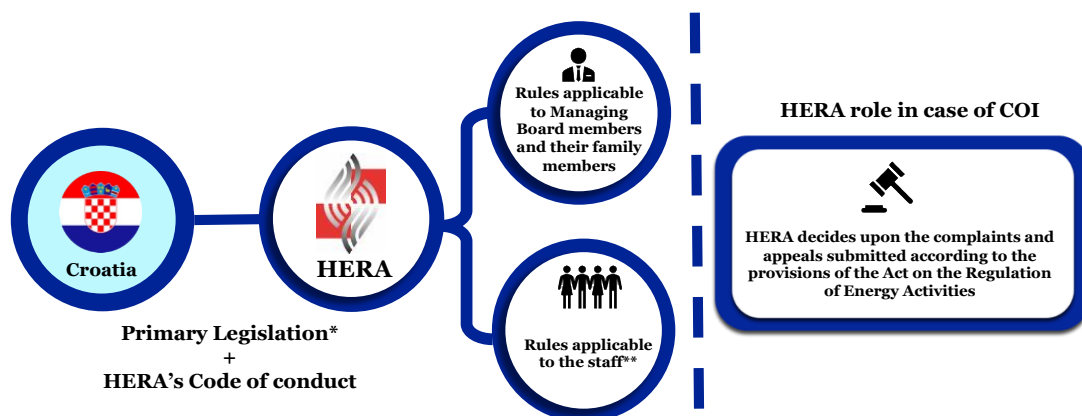
The Act on the Regulation of Energy Activities (Official Gazette No. 120/12, 68/18) regulates conflict of interest regarding HERA’s managing board members, while HERA’s Statute regulates conflict of interest regarding HERA’s heads of professional services, workers of the Independent Department for Internal Auditing, and Office of the President of the Managing Board.

• **Conflict of Interest Within the NRA**

Members of the managing board and their family members, as well as heads of professional services and their family members, shall not own or hold shares or stakes in any energy undertaking exceeding 0.5% of the capital stock, or be members of the management board or supervisory board or any other bodies in any energy undertaking, and shall not hold any material interest in the area of energy activities or perform any other work in any energy undertaking, which may lead to conflict of interest.

A member of the managing board shall not be an active member of any political party, perform any tasks for any licensed energy undertaking or its branch, or perform any other activity which is likely to lead to conflict of interest. Workers of the Independent Department for Internal Auditing office and the Office of the President of the Managing Board shall not perform any tasks for any licensed energy undertaking, which could lead to conflict of interest.

At the regulator level, HERA decides upon the complaints and appeals submitted according to the provisions of the Act on the Regulation of Energy Activities and other relevant legislation (pertaining to the areas of electricity, gas, and district heating). Furthermore, HERA is authorised to dispute the nomination of the Input Transformation Outcome (ITA) TSO’s management board members in case they don’t fulfil conditions prescribed by the Electricity Market Act.



\*Official Gazette No. 120/12, 68/18

\*\* Heads of professional services and their family members, workers of Independent Department for Internal Auditing and Office of the President of the Managing Board.





## Egyptian Electric Utility & Consumer Protection Regulatory Agency- EgyptERA – EGYPT

### • Definition of Conflict of Interest in the Electricity Sector

Conflict of interest may be defined as a situation (actual, potential, or perceived) that places an employee in a position where personal interests may influence decisions or actions in carrying out responsibilities as an employee at EgyptERA.

EgyptERA monitors the performance of electricity utilities (Gen.-TSO-DSO), and in case of any conflict of interest between stakeholders it is investigated by an independent committee headed by a state council representative.

### • Conflict of Interest Within the NRA

There is no formal conflict of interest plan; however, the Law no.106 of 2013 “Prohibition of conflict of interest of state officials” sets the main pillars for implementing the rules against COI within EgyptERA as follows:

- Independency:

The board of directors of EgyptERA is balanced representing all stakeholders and issues all regulations. In addition, EgyptERA is self-financed.

- Transparency:

Employees should disclose information regarding circumstances that may give rise to conflict of interest and must also disclose their financial status and assets every five years.

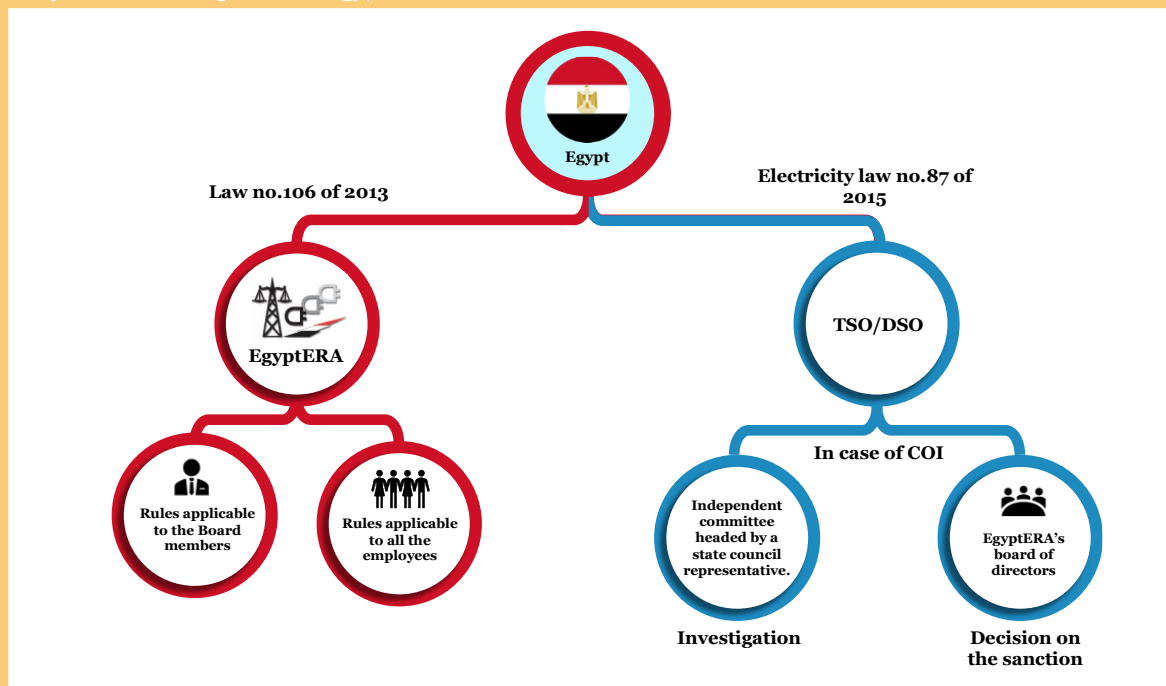
Furthermore, to the extent reasonable and necessary, EgyptERA is transparent about how a conflict of interest was addressed, to minimise misunderstandings about decisions taken (such process could be carried out through several methods, such as interviews).

### • Conflict of Interest Within the TSO/DSO

The implementation, management, and approval of the conflict-of-interest plan of the TSO and DSO in both electricity and gas markets are not submitted to EgyptERA. However, according to Electricity Law no.87 of 2015, in case of any conflict of interest between electricity parties they must refer to EgyptERA through a committee established for this purpose.

In addition, conflicts of interest between electricity parties and their consumers are referred to EgyptERA as per their contracts. Non-compliance can be sanctioned though EgyptERA’s board of directors and the decisions can be appealed in the related court.

Figure 5. Conflict of Interest Management in Egypt



## Gas Regulatory Authority – GasReg – Egypt

### • Definition of Conflict of Interest in the Gas Sector

Conflict of interest may be defined as a situation (actual, potential, or perceived) that places a member of the board of directors or of the NRA staff or of a licensed company in a position where personal interests may influence decisions or actions in carrying out responsibilities and/or duties.

GasReg monitors the performance of licensees, and in case of any conflict between stakeholders it is investigated by GasReg and sanctions may apply as the case may be.

### • Conflict of Interest Prohibition Within the Board of Directors of NRA

No incident has occurred as a conflict of interest within the board of directors since GasReg's establishment; however, Law No. 196 of year 2017 for gas market activities' regulation sets the main terms and conditions that prohibit the occurrence of COI as follows:

- Independency:

The board of directors of GasReg is diversified and balanced as it includes members representing the following: the petroleum sector, Egyptian Competition Authority, Federation of Egyptian Industries, and independent experts with expertise in the technical or economic or legal fields or from civil society organisations.

In addition, GasReg is self-financed through license fees, grants, donations, and any fees collected against activities, works, and services performed by GasReg.

- Transparency:

Pursuant to article 7 of law No. 196 for year 2017, the members of the Board should abstain from deliberating or voting on any matters in case of any conflict of personal interest, and in such case the member shall be required to disclose and clarify such conflict to the board of directors.

- **Conflict of Interest Within the TSO/DSO**

#### **Rules Managing COI Among the TSO/DSOs' Employees**

No conflict of interest within the TSO or the DSO has been reported to GasReg since its establishment.

However, the TSO and DSO licenses set the rules and regulations preventing the occurrence of conflict of interest, where clause 14 of the license special conditions states the following:

The DSO/The TSO (as the case may be) shall prepare a code of conduct with provisions that ensure the following with regard to the licensee's employees:

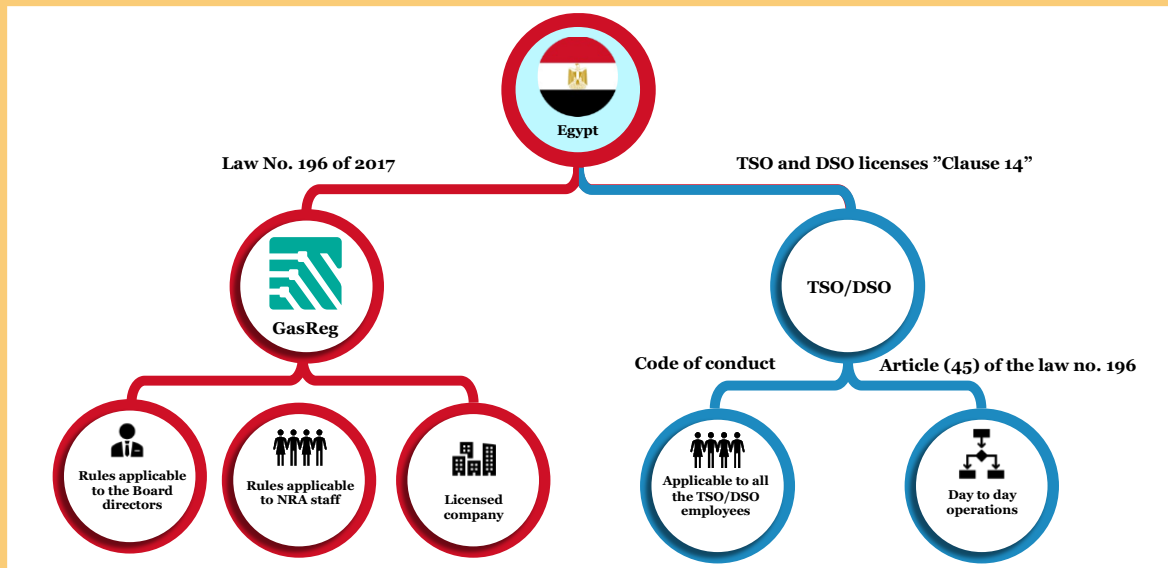
- Refraining from practicing any activities, acts and actions which may create any actual, apparent, or potential conflict between their personal interest, their employer's interest, their responsibilities, and their duties on the one hand and gas market parties on the other.
- Refraining from practicing any acts or actions or disciplines which may lead to discrimination or preference among gas market parties who are dealing with their employer.
- Notifying their direct manager in writing and immediately—so that their company is obliged to notify the GasReg—in case any conflict of interest arises between the employee and any of the gas market parties, or if a conflict arises between the personal interest and the public interest, or in case the employee is exposed to any pressures conflicting with their official job functions, or in case such pressures raise doubts about the objectivity and equality upon which the works and activities are performed, while clarifying the nature of the relationship and the conflict.
- Being aware of the laws which regulate the gas market activities as well as GasReg's respective decisions issued by the board of directors and applying such without any negligence or preferences or violation.

- **Rules Preventing COI Occurrence Within the TSO/DSO with Regard to Day-to-Day Operations**

#### **Article (45) of the Law no. 196 for year 2017 states the following:**

Persons responsible for operating and managing service activities (TSO/DSO/other Operators) are prohibited from participating directly or indirectly in any beneficiary activities (shipping/supply). The operators of the gas facilities shall take independent decisions regarding the operation and management of such facilities.

The shareholders or owners of networks and facilities shall have the right to approve the annual operations plan of the TSO/DSO but shall not be entitled to give any instructions or impose rules on the TSO or the DSO with regard to the daily operation of the networks and facilities which are managed by such operators.





## • Definition of Conflict of Interest in the Energy Sector

The definition of conflict of interest is found in the codes applicable to public servants in general and to the members of the independent regulatory authorities, as presented below:

Generally, article L. 121-5 of the Status of Civil Service provides that “conflict of interest under this code is any situation of interference between a public interest and public or private interests that is likely to influence or appear to influence the independent, impartial and objective performance of the public official's duties.”

Moreover, to prevent conflicts of interest, article L. 100-2 of the administrative procedure code states that “The administration acts in the general interest and respects the principle of legality. It is bound by the obligation of neutrality and respect for the principle of equity. It complies with the principle of equality and guarantees impartial treatment to everyone.”

More specifically, article 9 of the status of independent administrative authorities and independent public authorities provides that “The members of the independent administrative authorities [...] shall perform their duties with dignity, probity and integrity and shall ensure that any conflict of interest, [...] is prevented or immediately stopped [...].”

The above article is also somehow reflected in the Ethics chart of the CRE which mentions, in its preamble, that: “[...] members of the College, CoRDIs and the Commission's staff shall perform their duties with dignity, probity, and integrity. They shall ensure that any conflict of interest is prevented or stopped immediately,” this notion being understood under the terms of article 2 of Law 2013-907 of 11 October 2013 on the transparency of public life as “any situation of interference between a public interest and public or private interests which is likely to influence or appear to influence the independent, impartial and objective exercise of a function.”

Finally, the Ethics chart of the CRE refers to conflict of interest in the following terms: in article 6, it mentions that “[...] staff members shall refrain from taking part in the handling of cases and files likely to place them in a situation of conflict of interest, understood as a situation where the staff member has a personal interest in a decision being taken or a file being handled in a given direction if he/she is likely to benefit from it (for him/herself or for those close to him/her).”

## • Conflict of Interest Within the NRA

CRE is distinct and functionally independent from any other public or private entity. It is autonomous from the directives of the government and any other public or private entities. Article L. 133-6 of the “code de l'énergie” (Energy Code), as modified by Law 55 of 20 January 2017, clearly specifies that “officers of the Commission shall exercise their functions impartially without receiving instructions from the Government or any institution, person, undertaking or organisation.”

CRE's decisions and functions are carried out by the Board of the Commission (College). The CRE board is made up of five members, appointed by the President of the Republic for the Chairman of the CRE, by the

presidents of the National Assembly and the Senate for two commissioners, and by decree of the ministers for Energy Transition and Overseas France for two other commissioners. They are appointed on the basis of their legal, economic, and technical qualifications and are responsible for defining the CRE's main guidelines. The composition of the College respects parity between women and men. College members and the president are appointed for six years. Their mandate is not renewable, which also guarantees their independence.

Based on article 13 of the general statute for independent administrative authorities, which requires the independent public agencies to determine in their internal rules of procedure the ethical rules applicable to their staff, CRE has adopted its own 'Ethics chart of the CRE,' through two deliberations, the first one by the 'College' and the second one, the same text, by the Dispute Settlement and Sanctions Committee CoRDIS (Comité de Règlement des Différends et Sanctions).

The charter provides, in three chapters, the Ethics chart of the CRE. The first chapter includes the obligations common to all members and agents of the Commission. The second chapter specifies the obligations specific to the members of the college and the CoRDIS, and the third chapter the rules specific to the agents of the Commission. The charter also provides for the presence of a deontological referent (compliance officer) within the Commission to provide them with any useful advice on compliance with the ethical obligations and principles set out in this charter.

As per the missions, and the competencies of the CRE to ensure the independence of the TSOs, and subsequently to pre-empt or address any conflict of interest between the holders of legally segregated functions, these are exercised mainly through the following means:

1. Initial certification procedure for network operators.
2. Approval of the code of conduct of network operators.
3. Appointment and reporting of compliance officers within network operators.
4. Publication of report on compliance with codes of conduct and the independence of electricity and natural gas network operators.
5. Prior approval of some financial documents of the network operators.

The details of each point mentioned above are given in the Annexe.

- **Conflict of Interest Within the TSO/DSO**

TSOs and DSOs have plans which, among other elements to ensure their independence, are named 'code of conduct.' For instance, the code "de bonne conduite" of RTE, GRTgaz, and ENEDIS.

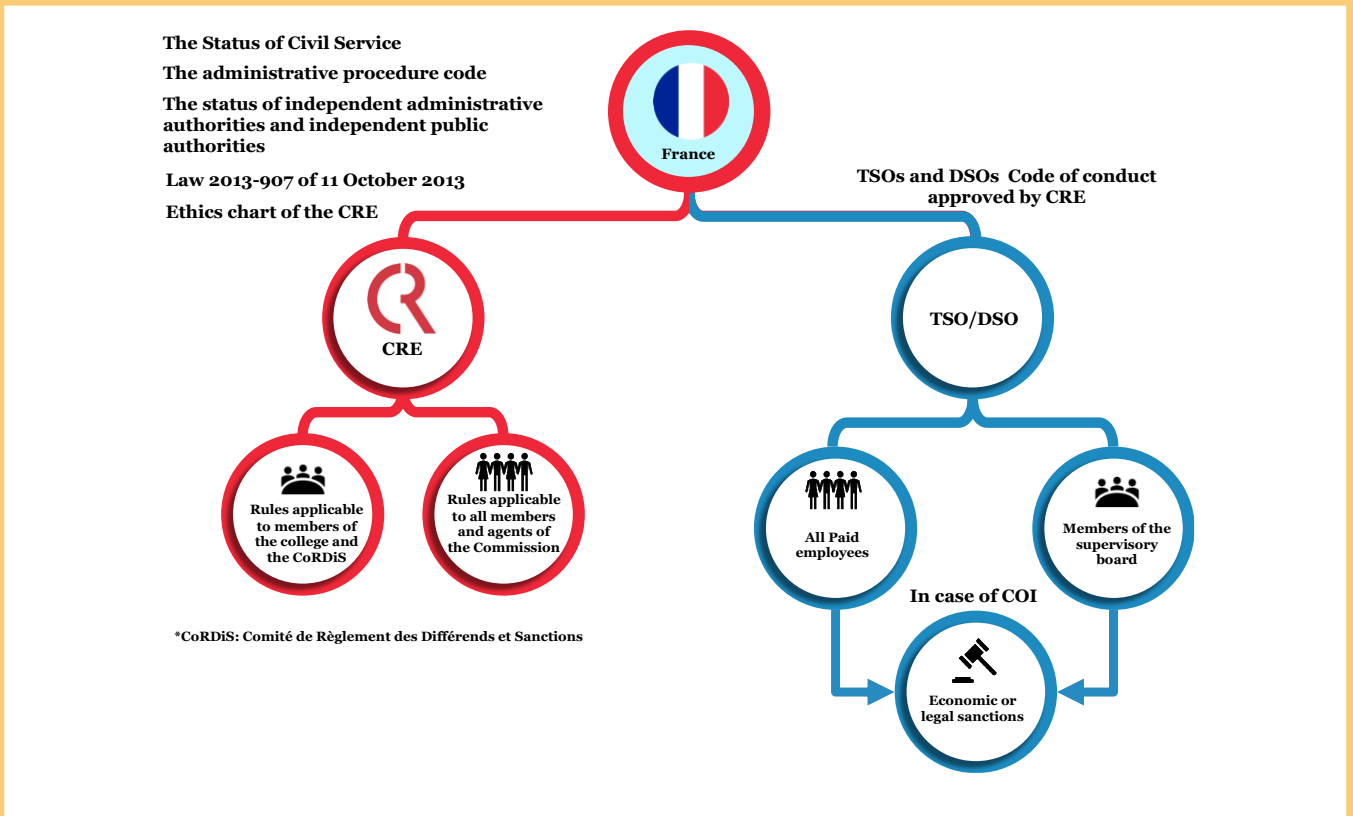
These codes of conduct comprise the following principles, which are intended to prevent the interests of independent system operators within gas and electricity sectors coming into conflict with the interests of the energy producers:

1. Prevention of conflict of Interest in governance structures of energy operators for the members of the supervisory board, executive officers
2. Prevention of conflict of Interest in the internal transactions of energy operators – commercial and financial agreements

3. Prevention of conflict of Interest in the use of resources and execution of missions – human resources
4. Prevention of conflict of Interest in managing the information systems of energy operators
5. Prevention of conflict of Interest in management of autonomous compliance systems of energy operators

The details of each point mentioned above and examples of sanctions in case of COI are given in the Annexe.

Figure 6. Conflict of Interest Management in France





- **Definition of Conflict of Interest in the Energy Sector**

Third Package Directives have introduced a structural separation between transmission and generation and supply activities. The objective of these provisions on unbundling is to avoid conflicts of interest and make sure that network operators take autonomous decisions, guaranteeing transparency and non-discrimination towards all network users. This is not only relevant for their day-to-day operational decisions, but also for their strategic investment decisions.

The relevant provisions have been implemented in the National Law no 4001/2011, which includes detailed provisions on unbundling and certification procedures of electricity and gas TSOs and DSOs. The unbundling rules adopted through national law aim to curtail conflicts of interest, resulting from the simultaneous holding of transmission and generation or supply interests, as often this may hamper investments. Furthermore, within TSO certification procedure, it should be clearly demonstrated that there is no incentive for a shareholder in a TSO to influence the TSO's decision making to the detriment of other network users.

The regulator has a dispute settlement role, as any undertaking active in the energy sector may file an application/complain. In this context, the regulator investigates the level of the competition and the operation of the energy market.

- **Conflict of Interest Within the NRA**

The Third Package Directives require personnel and managers of the Authority to act independently of any market interest when carrying out regulatory tasks. More specifically, staff must refrain from pursuing any activity or holding any position or office in any electricity or gas undertaking or holding shares in them. Thus, it is necessary for the Authority to guarantee its independence from all energy stakeholders (public or private) and ensure the conformity of its actions with Union law.

In addition, according to Law 4001/2011, Members of RAE's Board are subject to the principles of independency and impartiality and they should act irrespective of any financial interest. Board members should not receive any instructions from governmental or administrative bodies or any other entity or agency. Moreover, during their term they are prohibited from being partners, shareholders, board members, employees, or consultants in any regulated undertaking.

RAE's staff (members of the Secretariat) are subject to confidentiality obligation and protection of business information. During their employment within RAE, they are prohibited from being partners, shareholders, board members, employees, or consultants in any regulated undertaking.

Finally, RAE, when contracting the services of external experts/consultants, takes into due consideration any potential conflict of interest. RAE, before assigning any duty, requests the submission of a relevant declaration or the signing of a non-disclosure agreement and the commitment to specific confidentiality requirements.



• **Conflict of Interest Within the TSO/DSO**

RAE supervises both the TSO and the DSO, mainly on compliance with unbundling rules and certification, and imposes sanctions in case of violation of European or national legal frameworks.

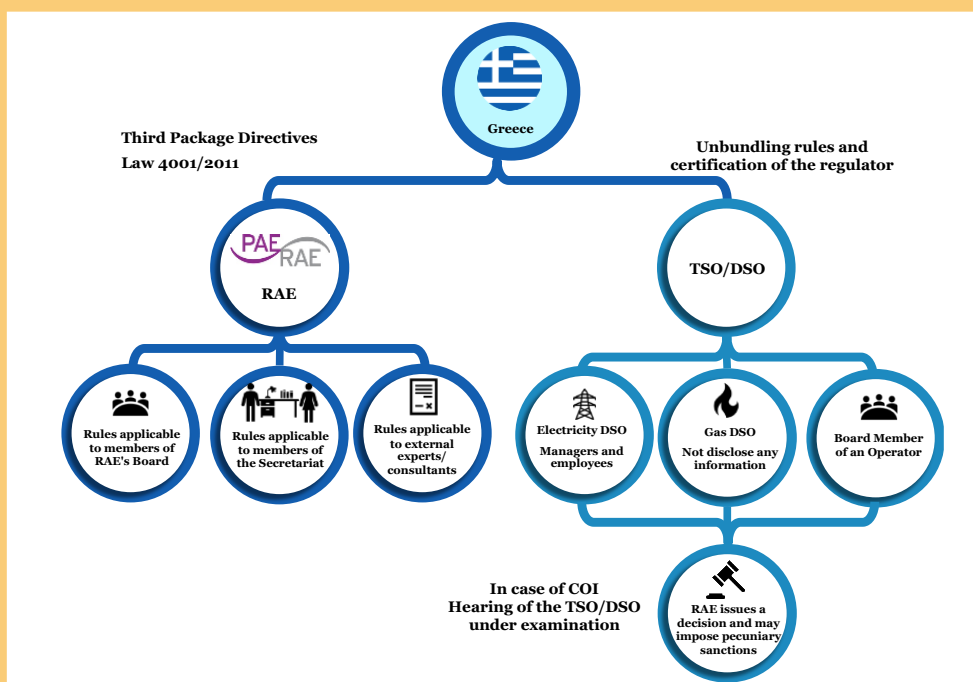
TSOs and DSOs are subject to unbundling rules, and both are certified by the regulator. In this framework, no person can be a board member of an operator (TSO or DSO) and of an undertaking performing energy generation or supply at the same time. For that very reason, the same person should not be entitled to appoint a board member of a TSO/DSO or exercise control over a generation or supply undertaking. It is to be underlined that both gas and electricity TSOs are certified under the ownership unbundling (OU) model. Thus, conflicts of interest are efficiently avoided.

An electricity DSO is obliged to implement a compliance program, which sets out the measures taken to ensure that discriminatory conduct is excluded and ensure that compliance with that program is adequately monitored. The compliance program shall set out specific obligations for managers and employees to meet specific objectives and it is approved by the regulator. Without prejudice to the powers of the national regulator, compliance with the program is independently monitored by a compliance officer.

The law obliges the gas DSOs to not disclose any information. They should respect confidentiality principles and protect commercially sensitive information obtained while carrying out their business.

In case of any COI the RAE, following a written plea or on its own initiative, shall organise a hearing of the TSO/DSO under examination. Afterwards, RAE issues a decision and may impose pecuniary sanctions in case of infringement, up to 10% of the TSO/DSO's annual turnover. However, the fine should be proportionate. In case of repeated infringements RAE may revoke the relevant licenses. An interested party may file an appeal before RAE. RAE's decisions may be challenged before the competent court.

Figure 7. Conflict of Interest Management in Greece





- **Definition of Conflict of Interest in the Energy Sector**

Current energy legislation and regulation refers to “conflict of interest” when it deals with actual and potential obstacles to competition arising from the market power an integrated undertaking may exert. To avoid distortive and anti-competitive behaviour, EU legislation, as well as Italy’s regulation, provides for strict unbundling rules so to make it compulsory for an integrated energy company to institute separate accounts, to adopt a “functional unbundling” organisation, and in some cases to legally separate companies within a group.

ARERA adopts rules and procedure to implement unbundling principles, receives and examines organisational planning documents, runs inspections to check compliance, and fines energy actors that are not fully compliant with unbundling obligations.

- **Conflict of Interest Within the NRA**

In ARERA, based on Law 481/95, board members and staff rules to avoid conflict of interest are clearly stated, in particular the following:

**Art 8:**

“The board members of each Authority shall be chosen from among highly qualified, acknowledged professionals who are experts in the sector. They shall remain in office for seven years and may not be reappointed. Upon pain of forfeiture of office, they may not carry out, either directly or indirectly, any professional or consultant activity, be administrators or employees of public or private bodies, nor hold other public office of any kind whatsoever, including being elected or representing political parties, nor retain interests, either direct or indirect in enterprises operating in the sector for which the Authority itself is responsible. Civil Service employees are suspended from their positions for their entire term of office.”

**Art 31:**

“Employees in service with the Authorities, even under a fixed-term contract, may not be employed or hold office elsewhere, nor carry out any other professional activity, even on an occasional basis. Moreover, they may not, either directly or indirectly, retain interests in enterprises in the sector...”

ARERA also releases a triannual plan to prevent corruption and bolster transparency measures.

- **Conflict of Interest Within the TSO/DSO**

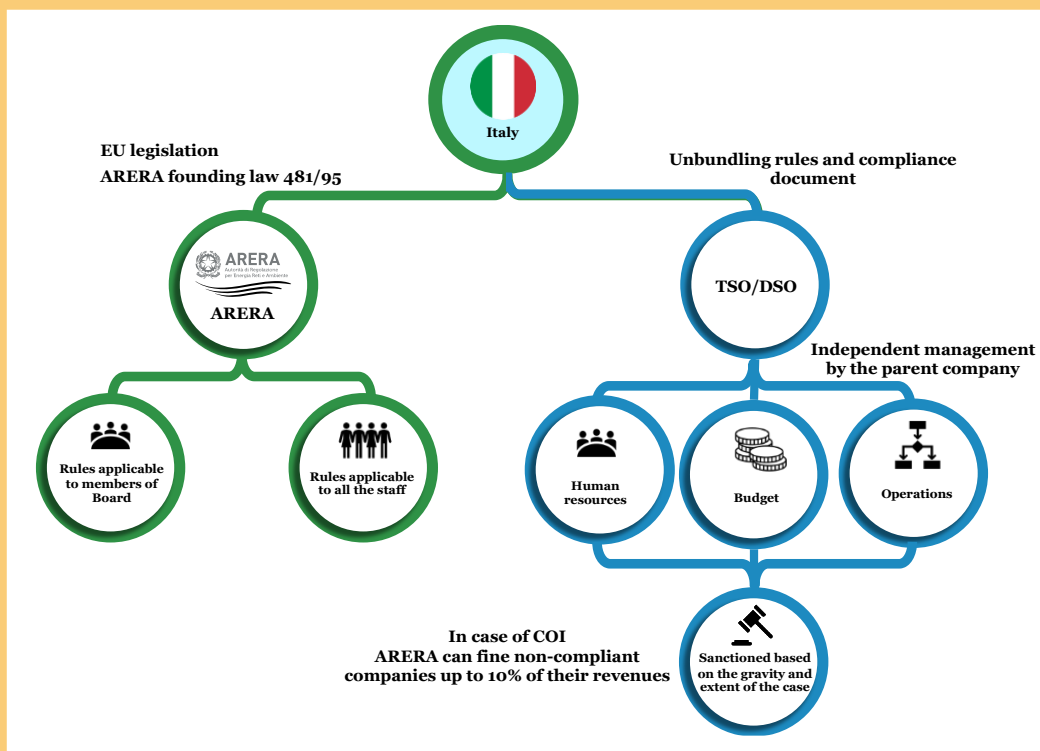
Integrated companies (i.e. companies operating in both regulated and market-based activities) must elaborate a compliance document based on the setting up of the “independent Network Operator.” This is not necessarily a legally separated company; nevertheless, human resources, budget, and operations of the network operators must be managed independently by the parent company. In Italy this holds for DSOs, since TSOs have been legally separated following legislators’ choice.

Conflicts of interest typically emerge when a market operator signals inappropriate behaviour of a DSO/TSO, for instance regarding the suspicion of the commercial advantage a certain DSO secures for the sales company operating within the same parent group.

It can also emerge during an inspection carried out by the NRA. If the non-compliance is confirmed by either inspection and or competitors' complaint, the inappropriate behaviour is sanctioned based on the gravity and extent of the behaviour.

Italy's NRA can fine non-compliant companies up to 10% of their revenues.

Figure 8. Conflict of Interest Management in Italy





### • Definition of Conflict of Interest in the Energy Sector

According to General Electricity Law No.64 of 2002, conflict of interest in the electricity sector is defined in two main articles:

- Article No.28-A – No person is allowed to construct, own, or operate an undertaking or in any way engage in the business of generation, transmission, system operation, supply, or distribution, except in accordance with a licence issued pursuant to the electricity Law or in accordance with a permission granted by the Council of Ministers in accordance with paragraph (D) of article (35) of General Electricity Law.
- Article No.37-A-1 – A licensee shall not assign or cede its license or transfer its assets, or any part thereof, by way of sale, mortgage, lease, exchange or otherwise, without the prior consent of the Council and in accordance with any such conditions prescribed by the Council in the license.

Referring to EMRC Law No.8 of 2017, one of EMRC's roles is to ensure that all licensees are committed to Electricity Law and the conditions mentioned in their licenses, and that is achieved through identification of any disagreements and penalisation. In addition, EMRC discloses non-compliance through indicators of performance codes specified by EMRC. In these codes the process is more detailed.

### • Conflict of Interest Within the NRA

According to Energy and Minerals Regulatory Commission Law No.8 of 2017, the main rules to prevent the conflict of interest within EMRC due to article No.11 are as follows:

- Paragraph A – Commissioners, their spouses, or relatives of the first and second degree shall not acquire, hold, or maintain directly or indirectly any financial interest, office, or consultancy arrangements, either for remuneration or otherwise, connected with generation, transmission, system operation, distribution, or supply throughout their term of appointment and for a period of one year after the termination of the appointment.
- Paragraph B – At the time of their appointment, each Commissioner shall submit a statement in writing to the effect that they do not have any such interest either personally or through their spouse or relatives from the first and second degrees, and they must notify the Council of any such interest if it arises. If such an interest arises by way of succession/testamentary disposition or for any other reason, the Commissioner shall divest themselves of such interest within a period of three months of such interest being acquired.

Referring to General Electricity Law No.64 of 2002, the conflict of interest within EMRC due to article No.15 and article No.16 can be as follows:

Based on the article No.15-C:

1. Failure to comply with the provisions of this article will subject such Council member to the penalty of being dismissed from the Council in addition to becoming subject for prosecution for the crime of

misutilisation of public office or breach of trust, as the case may be, and they shall be liable to reimburse all the sums or benefits gained by them as a result of committing such violation in addition to paying compensation to any party that would have incurred a loss, as decided by the competent court.

2. A spouse or relatives from the first and second degrees referred to in this article shall be bound to reimburse all the sums or benefits gained by them because of violating the provisions of this article, in addition to paying compensation to any party that would have incurred a loss, as decided by the competent court.

Based on the article No.16:

- A. Neither a council member nor any of the Commission's employees, on pain of legal prosecution, shall disclose any confidential information related to the commission, the licensees, or the sector in the Kingdom which might have been obtained by them while performing their functions pursuant to this Law, or otherwise to use said information for personal purposes or benefit, except for the purpose of legal proceedings or in order to apply this Law or to enable another commissioner or employee of the Commission to discharge their responsibilities pursuant to General Electricity Law and Energy & Minerals Regulatory Commission Law.
- B. The prohibition under paragraph (A) of this article shall continue to apply for a period of one year after a commissioner or an employee of the Commission vacates their position at the Commission.

In addition, the licensee shall distribute and supply power to its consumers according to the tariff determined by the EMRC in accordance with the Tariff Methodology; the licensee shall also publish the tariffs applicable to consumers in the manner directed by EMRC. Also, they shall bill each consumer pursuant to the tariff approved by EMRC for that consumer category and shall not be entitled to apply to a customer the tariff applicable to a different customer category.

### • Conflict of Interest Within the TSO/DSO

For the TSO, the transmission licensee, or any of its affiliate companies, their board members, directors, senior staff members, including their spouses or relatives of the first and second degrees, shall not: own, control, or operate an electric power generation business; hold any share in a generation licensee or its affiliate company; enter into an arrangement with a generation licensee or its affiliate company, which brings about benefit to the transmission licensee.

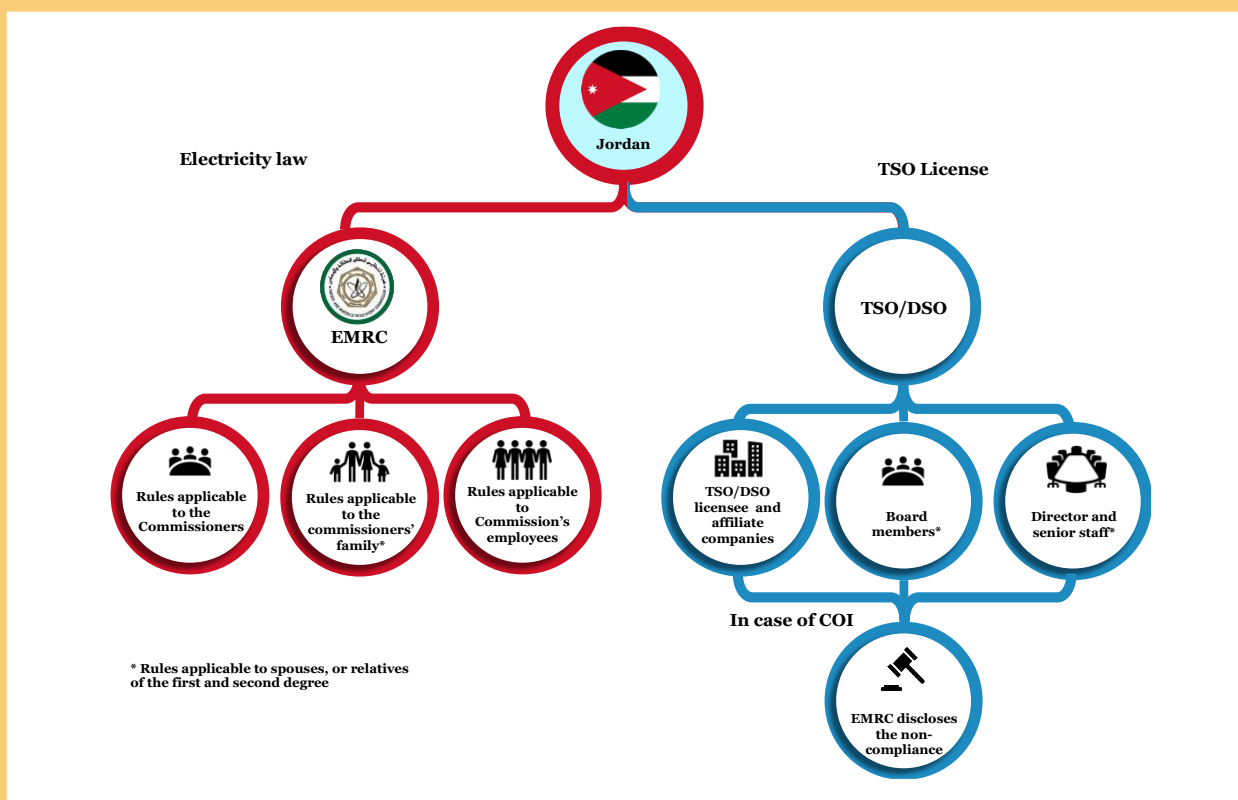
1. The restriction referred to in section of the paragraph above shall cease to have effect if a provision to that effect provides so in the license or if the Council approves an application submitted by the licensee or its affiliate company or any of those mentioned in that section to be exempted from said restriction.
2. In all cases, the period for which a transmission licensee shall be allowed to hold securities in a company which has been licensed for generation before the coming into force of this Law, shall not exceed one year from the date of coming into force of this Law.

At the DSO level, the measures to prevent COI are as follows:

- The licensee shall not, and shall also ensure that any affiliate company, director, and senior staff member shall not, engage in transmission or own or hold directly or through an affiliate company any interest in the transmission system assets in Jordan.

- The licensee shall not undertake the following acts: (a) engage in a non-core activity which would affect its ability to comply with its core activities, unless authorised by the EMRC in accordance with the directives or procedures prescribed by the EMRC for the purpose and subject to such conditions as the EMRC may impose, provided that all non-core activities at the date of issue of this licence and listed in Annexe 6 shall be considered authorised by the EMRC and provided further that the licensee will agree with the EMRC the accounting procedures to account for non-core activities arising after the date this license was issued, and if an agreement is not reached on such accounting procedures within thirty (30) days then the licensee will adopt any reasonable accounting procedures required by EMRC until such agreement is reached; or:
- Make any loans to, or issue any guarantee for any obligations of, any other entity without the approval of the EMRC, in accordance with the procedures, directives, or as prescribed by the EMRC for the purpose, provided that the EMRC’s approval shall not be required in respect of loans to employees and advances to suppliers in the licensee’s ordinary course of business.

Figure 9. Conflict of Interest Management in Jordan





- **Definition of Conflict of Interest in the Energy Sector**

The conflict-of-interest guidelines are set in the Energy Law, specifically in the articles 33, 34, and 35.

- **Conflict of Interest Within the NRA**

The plan to prevent and manage conflict of interest within the NRA is implemented according to the Energy Law. The rules that apply within the bodies of the Agency are as follows:

- Chairman and members of the board, CEO and Deputy CEO of the Agency, as well as members of their immediate family cannot be members of managing bodies and shall not have material, financial, or other interest in an energy undertaking.
- Persons mentioned in the paragraph (1) of this article cannot use free of charge or discounted services from an energy undertaking, unless at the prices and under conditions that are applicable to other final customers pursuant to this Law and general acts enacted in line with this Law.
- Chairman and members of the board, CEO and Deputy CEO of the Agency cannot enter into any employment agreement or receive compensation on some other basis from energy undertakings during their terms of office and within one year following expiry of their term of office or release from duty.
- Employees in the Agency cannot enter into any employment agreement or receive compensation from undertakings in the energy sector during their employment in the Agency.

- **Conflict of Interest Within the TSO/DSO**

In the Energy Law there is no strict definition of conflict of interest regarding the electricity market. However, there is a rule about getting certification of the TSO.

Namely, the Energy Law fully transposes the provisions of the Directive and article 136, whereby it envisages that the independence of an electricity transmission system operator is ensured in the way that the same person or persons is/are not authorised, as set out below:

1. to directly or indirectly control energy undertakings which perform activities of electricity generation or supply, and at the same time directly or indirectly control or have other authority over the transmission system operator or transmission system.
2. to control the transmission system operator or transmission system directly or indirectly and at the same time directly or indirectly control or have other authority over energy undertakings that perform activities of electricity generation or supply.
3. appoint members of the board of directors or other bodies or legal representatives of the transmission system operator and at the same time directly or indirectly control energy undertakings performing the activities of electricity generation or supply, and
4. concurrently be members of the board of directors or other bodies or legal representatives of the transmission system operator and energy undertakings performing the activities of electricity generation or supply.



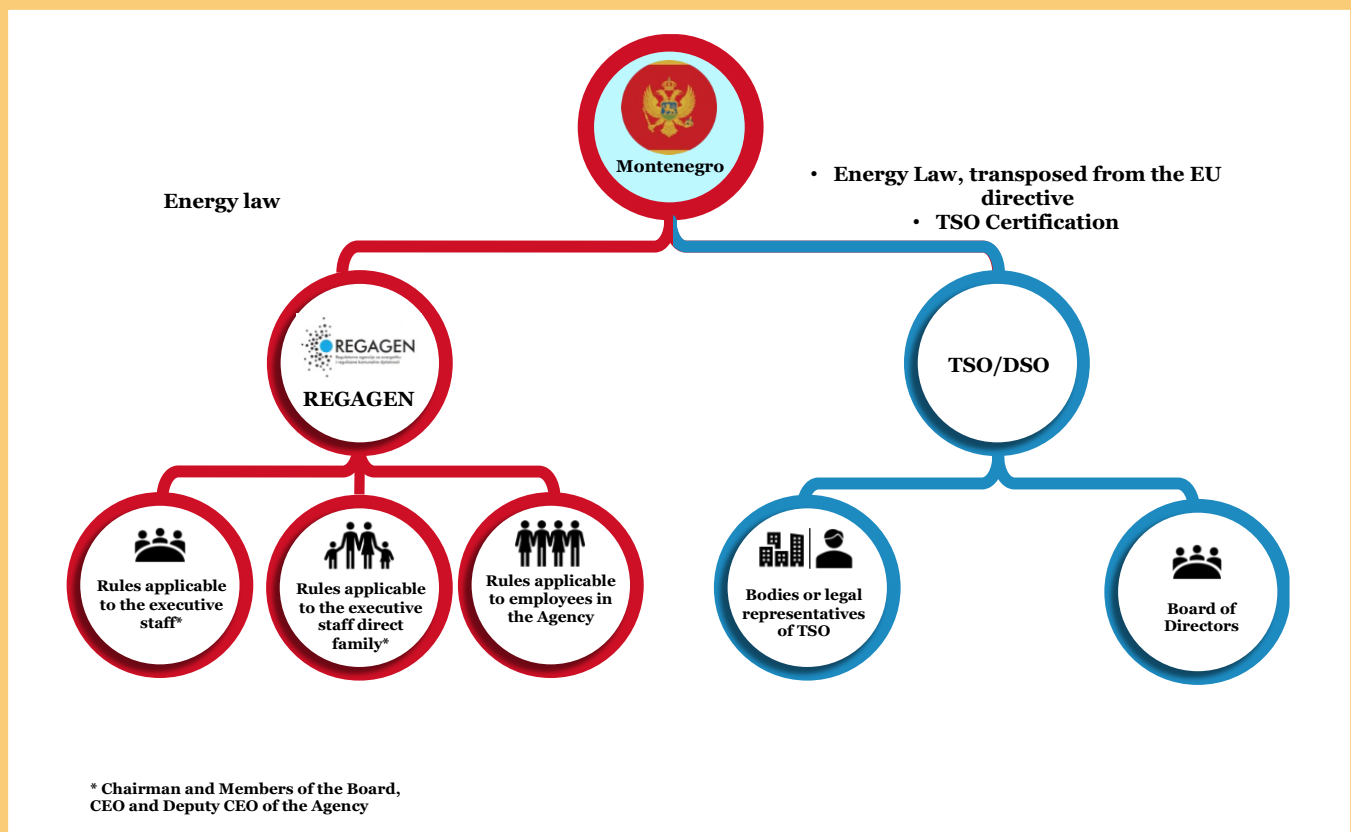
The same article envisages that the mentioned provisions are particularly related to:

1. use of voting rights
2. the right to appoint members of the board of directors or other bodies or legal representatives, or
3. ownership over the majority package of shares.

The Law includes a clear provision saying that the electricity transmission system operator must not carry out both the activity of electricity generation and the activity of electricity supply, and that energy undertakings that perform electricity generation or electricity supply activities must not directly or indirectly control the transmission system operator organised as a separate legal entity.

The Law provides a definition that whether the control is direct or indirect impacts the decisions of an energy undertaking based on ownership right or right to use the overall or a part of fixed assets, i.e. it has a decisive impact on the composition, voting, or decision making of the energy undertaking's bodies.

Figure 10. Conflict of Interest Management in Montenegro







### • Definition of Conflict of Interest in the Energy Sector

Conflict of interest is not specifically defined in the electricity law, but the Law 48.15 of the establishment of the energy regulator ANRE provides for the management of conflict of interest within the board members and the reform of the electricity market foresees several measures that will be in place to avoid any conflict of interest in the market.

### • Conflict of Interest Within the NRA

As the regulator in Morocco has been recently created, ANRE is working on finalising a plan considering Law 48.15 and the reform of the internal rules. The role of the regulator in preventing and managing any conflict of interest within the electricity market is as follows:

- Notwithstanding the provisions of Law No. 104-12 on the freedom of prices and competition, the tariff for use of the national transmission grid and the tariffs for use of the medium-voltage distribution grids shall be set by ANRE. The TSO, in consultation, where applicable, with the interconnection operator in the foreign country concerned, shall propose to ANRE, for approval, the rules and tariff for access to the interconnection concerned, established in a non-discriminatory manner.
- The code of conduct to manage the national electricity transmission system is drawn up by the national electricity transmission system operator and submitted to ANRE for approval. The said code gathers the measures aimed at guaranteeing the independence of TSO and at preventing the risks of discriminatory practices regarding access to the national transmission system and to the interconnections.
- There is a permanent monitoring process done by ANRE, as there is a specific department in charge of analysis and control of the sector.

### • Conflict of Interest Within the TSO/DSO

As the market is not yet fully unbundled and the electricity market is in the process of reform, the implementation, management, and approval of a conflict-of-interest plan of the TSOs and DSOs is still in a development phase.

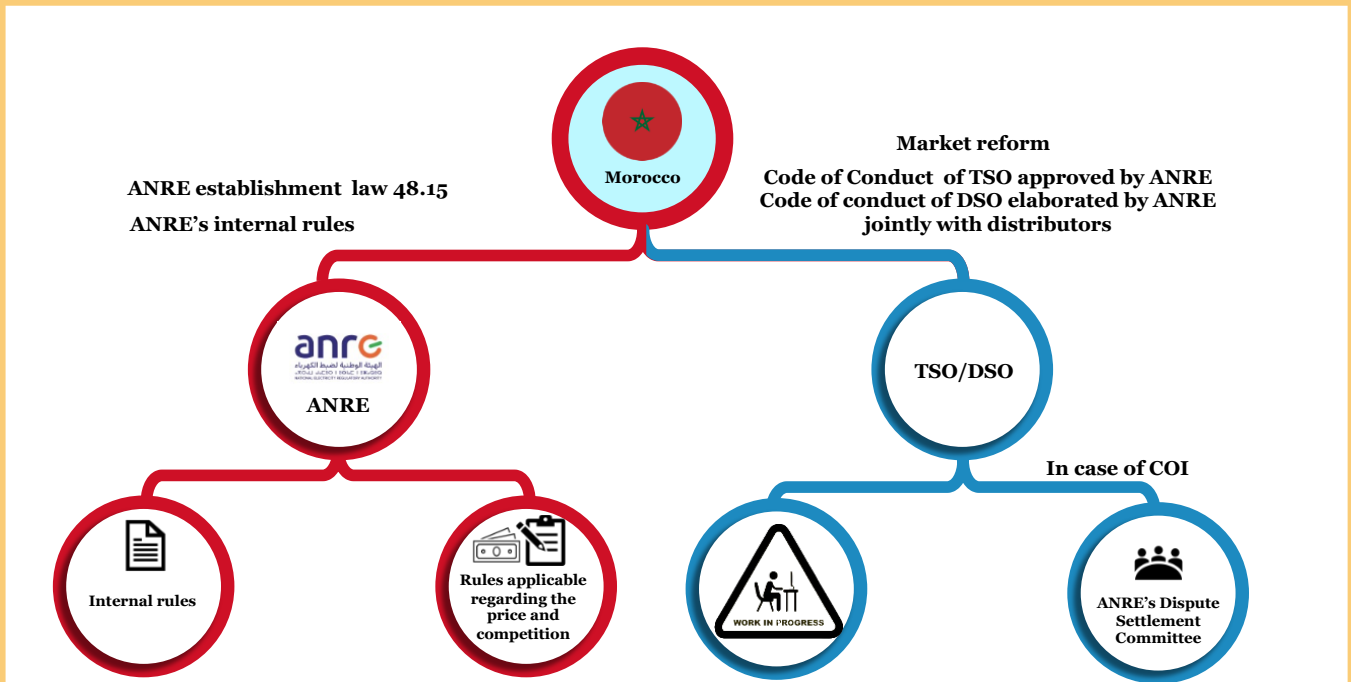
However, in case of conflict of interest, the parties concerned approach the ANRE's Dispute Settlement Committee, which is competent to hear disputes between a TSO and a user of the national transmission system or between a DSO and a user of the medium-voltage distribution system.

These disputes may concern the connection, access, or use of the electricity grid concerned or interconnections, more particularly the refusal of connection or access to the electricity grid concerned or in the event of disagreement on the conclusion, interpretation, or execution of the agreements.

The operating procedures of the Dispute Resolution Committee are set out in ANRE's internal rules.

- ANRE approves the code of good conduct of TSO.
- ANRE elaborates the code of good conduct of DSO jointly with distributors.

Figure 11. Conflict of Interest Management in Morocco





## Palestinian Electricity Regulatory Council – PERC – Palestine

- **Definition of Conflict of Interest in the Energy Sector**

The general electricity law states that the managers in the DSOs are not allowed to have generating or transmission companies; also, DSOs are not allowed to do any activity other than distribution.

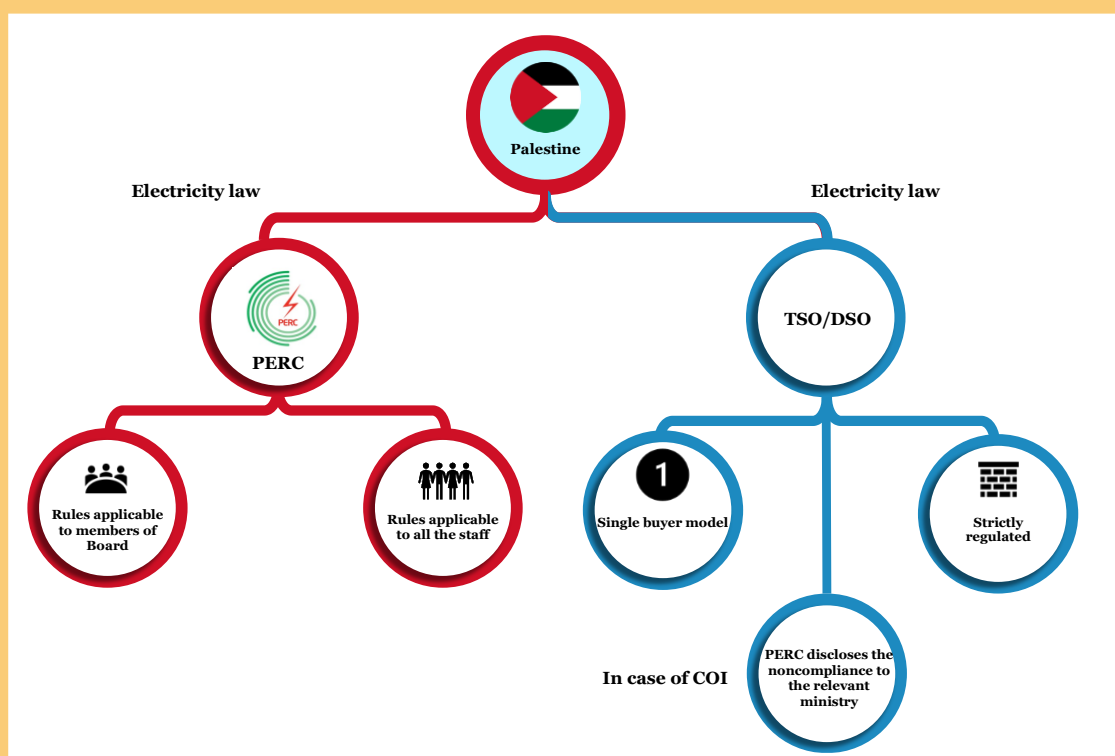
- **Conflict of Interest Within the NRA**

The law states that PERC board members are not allowed to work or to have interest in TSOs and DSOs, nor are the employees of PERC.

- **Conflict of Interest Within the TSO/DSO**

There is no plan for managing conflict of interest because the details that are related to conflict of interest issues are stated in the law. In addition, the market is based on a single buyer model and strictly regulated. However, in case of conflict of interest, PERC discloses the non-compliance to the Ministry of Energy and Natural Resources.

Figure 12. Conflict of Interest Management in Palestine





## • Definition of Conflict of Interest in the Energy Sector

Conflict of interest in the electricity sector is defined in the Decree-Law 15/2022 of 14 January 2022, “Organisation and functioning of the National Electricity System and the transposition of EU Directive 2019/944 and 2018/2001.” Regarding the gas sector, conflict of interest is defined in the Decree-Law 62/2020 of 28 August 2020, “Organisation and functioning of the gas sector and the transposition of EU Directive 2019/692.”

Each regulation stipulates the rules to avoid conflicts of interest in the Portuguese energy market. In addition, the European unbundling model determines the separation of the activities potentially subject to competition from those where competition is not possible or allowed, thus ensuring market openness and competition.

Article 226 of Decree-Law 15/2022 (electricity) and article 125 of Decree-Law 62/2020 (gas) state that a TSO is independent (legal and financial level) from entities that perform generation and supply activities in electricity and gas (including renewable energy gases or low carbon gases).

To ensure this independence some criteria need to be met, as for instance the following:

- a TSO cannot directly or indirectly exercise control over an undertaking performing any of the functions of generation or supply in the electricity or gas sectors;
- and undertakings performing generation and supply activities in electricity or gas sectors (including renewable gases) cannot directly or indirectly exercise control over a TSO.

At the distribution level, article 223 Decree-Law 15/2022 and article 143 of Decree-Law 62/2020 state the legal independence of the DSO, where it must be ensured that any DSO does not directly or indirectly exercise control over an undertaking performing any of the functions of generation, supply, or transportation.

## • Conflict of Interest Within the NRA

ERSE (Energy Services Regulatory Authority) is a legal person governed by public law, endowed with administrative and financial autonomy, management autonomy, organisational, operational, and technical independence, as well as its own assets. Therefore, ERSE is an independent administrative body, governed by the framework-law of regulatory authorities, sector-specific legislation, its statutes, its rules of procedures, and by the legal system applied to corporate public bodies for its financial and asset management. ERSE is not subject to government oversight.

According to ERSE’s Statutes, the Board of Directors is a collegiate body responsible for defining, guiding, conducting, and following ERSE’s activities (article 27). ERSE is headed by a three-person Board of Directors composed of a president and two members, appointed for a 6-year non-renewable mandate (article 28). Board members are appointed by the Council of Ministers, following their nomination by the member of government responsible for energy and opinions from the Public Administration Recruitment and Selection Committee (CRESAP) and the parliament. CRESAP is an independent committee created in 2012 to review

candidates for high level positions in central public administration bodies or equivalent. CRESAP issues a formal opinion based on a candidate's curriculum vitae, their experience, and the fulfilment of any compatibility requirements. The candidate is then heard by the relevant parliamentary commission, which issues a non-binding opinion. The Council of Ministers then makes the final decision. Although the opinion of the parliamentary commission is non-binding, in practice the appointment of a candidate to the ERSE Board was once rejected following a negative opinion from the parliament.

Articles 29, 54, and 55 of ERSE's statutes address incompatibilities and conflicts of interest within the NRA:

Members of the Board of Directors are subject to incompatibilities and impediments that apply to senior positions in the civil service. Additionally, during their term of office members of the Board shall not do the following (article 29):

- a) Perform any other public or private duties, except for teaching or research duties, provided they are unpaid, on a part-time basis and subject to the approval by deliberation of the Board of Directors;
- b) Maintain any employment relationship, service agreement, or any contractual relationship, either direct or indirect, for the provision of an activity for the benefit of stakeholders of sectors regulated by ERSE, with bodies with whom the latter have a control or group relationship, or with bodies with whom the latter also have a control or group relationship, and shall not hold any economic or financial interest in the referred companies.

The members of the Board are obliged to a cooling off period of 2 years. The Board and Heads of Division and similar managers (ERSE senior management) provide independent leadership bolstered by post-separation employment policies during which they cannot work in the regulated industry. During this period, Board members are compensated. Staff, however, do not have any post-employment restrictions.

ERSE staff is covered by the incompatibilities scheme applied to civil servants and cannot do the following (article 54):

- c) Perform tasks in regulated stakeholders, as well as in bodies with whom the latter have a control or group relationship, or in bodies with whom the latter also have a control or group relationship;
- d) Maintain any employment relationship, service agreement, or any contractual relationship with regulated stakeholders;
- e) Hold any economic or financial interest in regulated stakeholders.

This is also true for all service providers with whom a conflict of interest may exist; in such cases the Board of Directors has to assess and safeguard against this kind of conflict.

To comply with the law, every year all staff members must sign a document to declare that they are not involved in a situation that could imply a potential conflict of interest. Should there be a potential conflict of interest, the employee must declare the information in writing to their supervisor.

Article 10 of ERSE's internal code of ethics provides that its staff is bound by the principle of independence and must respect ERSE's instructions and guidelines.

In addition, ERSE's Plan for the Prevention of Risks of Corruption and Related Infractions, in place since February 2015, requires an assessment of corruption risks in the context of the activities performed by the divisions and the adoption of relevant measures to mitigate the identified risks.

ERSE's Internal Code of Ethics also defines that the violation of any duties by any employee is liable to assign disciplinary or criminal liability associated with acts of corruption or related infractions.

More recently, the government published a set of legislation (Decree-Law 109-E/2021, Law 93/2021) to create the General Framework of Anticorruption Prevention, in which a series of public entities (and private), including economic regulators (like ERSE) are obliged to adopt instruments that ensure the impartiality of the members of the respective boards, managers, and workers, and to prevent situations of favouritism.

- **Conflict of Interest Within the TSO/DSO**

ERSE, as the national regulatory authority for the electricity and gas sectors, has the duty to supervise the effectiveness of the independence and full legal and ownership unbundling of TSOs from the activities of generation and supply, namely evaluating possible conflicts of interest of their shareholders and administrative and supervisory board members. Any situations of conflict of interest must be reported to ERSE and may be punished with a fine.

In 2015 ERSE decided to make effective its own decision of certification of REN - Rede Eléctrica Nacional, S.A., as the transmission system operator (TSO) of the national electricity transmission network (RNT) and of REN Gasodutos, S.A., as the transmission system operator of the national natural gas transmission network (RNTGN), in the regime of full ownership unbundling, after verification of full compliance by the operators of certification conditions set by ERSE on September 9, 2014.

ERSE has been monitoring compliance and permanently supervising the certification conditions granted to those operators.

Within the framework of certification of the TSOs, the electricity TSO and the natural gas TSO must send to ERSE, by 30 June of each year, a report related to 31 May of that year, containing complete and detailed information on the state of compliance with the conditions relating to the legal and patrimonial independence of the TSO provided for in the legal certification scheme, as well as all the minutes of the general meeting of the economic group to which it belongs. The electricity TSO as well as the natural gas TSO must also send ERSE their communications regarding qualified holdings, as well as annual and half-yearly information that REN - Redes Energéticas Nacionais, SGPS, S.A. discloses to the market or to the Portuguese Securities and Markets Commission (CMVM).

At the DSO level, article 234 of Decree-Law 15/2002 requires the establishment of a compliance programme for DSOs in the electricity sector. For the gas sector, the same obligation is set in article 144 of the Decree-Law 62/2020. These compliance programmes must be the subject of ERSE's approval. The rules are set out in ERSE's Regulation on Trade Relations, article 340, common for the electricity and the gas sectors.

In the past, ERSE has filed an administrative proceeding against EDP Distribuição (currently E-Redes)—the main DSO for electricity—which is part of a vertically integrated company (“EDP Group”).<sup>1</sup>

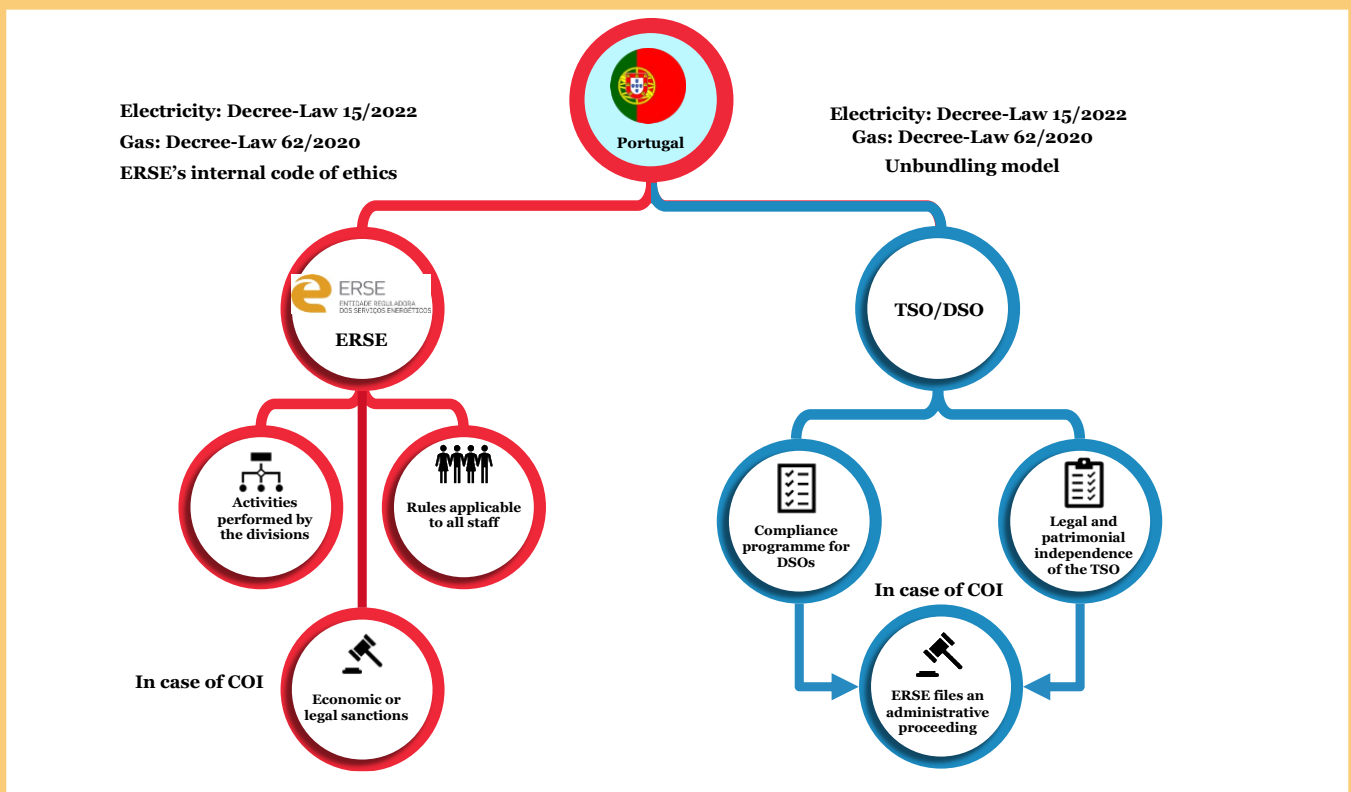
E-Redes did not ensure, under the terms provided by law, its functional independence from the other companies in the group, organising itself to share human, technical, and IT resources with SU Eletricidade, the last resort supplier, and EDP Comercial, a market regime supplier.

E-Redes presented a proposal for a transaction, with the confession of the facts found, and acknowledged its responsibility. ERSE accepted the transaction proposal and imposed a single fine of 900 000 euros, reduced in legal terms to 450 000 euros, already paid.

Therefore, E-Redes was condemned for not having ensured, in the legally foreseen terms, its functional independence from other companies of the EDP Group.

ERSE's decision considers that E-Redes declared and assumed the implementation of measures and procedures related to the end of the infringement, having taken measures during the investigation.

Figure 13. Conflict of Interest Management in Portugal



<sup>1</sup> <https://www.erse.pt/atividade/sancionatoria/decisoes/?filtro=2021>





## Comisión Nacional de los Mercados y la Competencia- CNMC - SPAIN

### • Definition of Conflict of Interest in the Energy Sector

The energy regulatory framework, mainly the Electricity Act 24/2013 and Hydrocarbons Act 34/1998, does not provide a definition of conflict of interest. Rather, it establishes the postulate of segregation of functions in the energy sector, which in turn entails prevention or management of cases of conflict of interest based on the definition of the concept as defined in general legislation.

Therefore, the definition of conflict of interest is found in general codes applicable to public servants and those regulating the members of the national regulatory authorities.

First, article 4 of Law 5/2006, regulating the conflict of interest of members of the government and high-level representatives of the central public administration, establishes that there is a “conflict of interest” when high level representatives shall take a decision on any issue in which a public interest exists and an own private interest, related to direct relatives or any interest shared with third parties. In this regard, the Law establishes an incompatibility and sanctioning regime to avoid any kind of conflict of interest and provide a solution if this were to happen.

Second, Law 3/2013 of creation of CNMC determines that CNMC is a public body with organic and functional autonomy and full independence from the government, public administration, and market players. CNMC is subject to parliamentary and judicial control. Board members, managers, and staff are obliged to notify any professional activity or relation with any sector regulated by CNMC, prior to their appointment. In this regard, article 23 of Law 3/2013 determines as a cause of dismissal of the board’s members “a breach of obligations under the incompatibility regime.” In this regard, the government is entitled to take the decision, apart from the corresponding penalty which might apply.

### • Conflict of Interest Within the NRA

Board’s members, managers, and staff are obliged to notify to the board any professional activity or relation with any sector regulated by CNMC, prior to their appointment. In the case of the board members, this information shall be published.

Moreover, CNMC has adopted its own “code of conduct” by a decision of the board in 2015. This code is applicable to all members of CNMC (commissioners, managers, and staff) and it establishes a set of duties in terms of confidentiality and professional discretion in relation to facts, acts, and information coming to their knowledge by their functions. On the other hand, commissioners and managers are subject to an exclusive dedication, thus they cannot perform any other professional activity.

CNMC has created an email address to allow anonymous complaints in case of breaches of the code by any staff of CNMC. This email address is managed by the internal supervision department of CNMC.

Spanish TSOs on electricity and gas (all regulated companies) shall approve and publish their own code of conduct to ensure independency. Afterwards, this is submitted to the Ministry of Ecological Transition and CNMC. Therefore, CNMC hasn’t intervened in the approval process.



• **Conflict of Interest Within the TSO/DSO**

The main provisions regarding prevention and management of conflict of interest in the electricity and gas market are settled in the Electricity and Hydrocarbon acts and emanates from the EU unbundling rules, which are fully implemented in the Spanish regulation, and the underpinning segregation of duties to avoid discrimination. The relevant legal provisions for conflict of interest can be summarised under the main set of rules concerning organisation and governance rules, autonomy of functioning and means, and the public perception of the operators' impartiality.

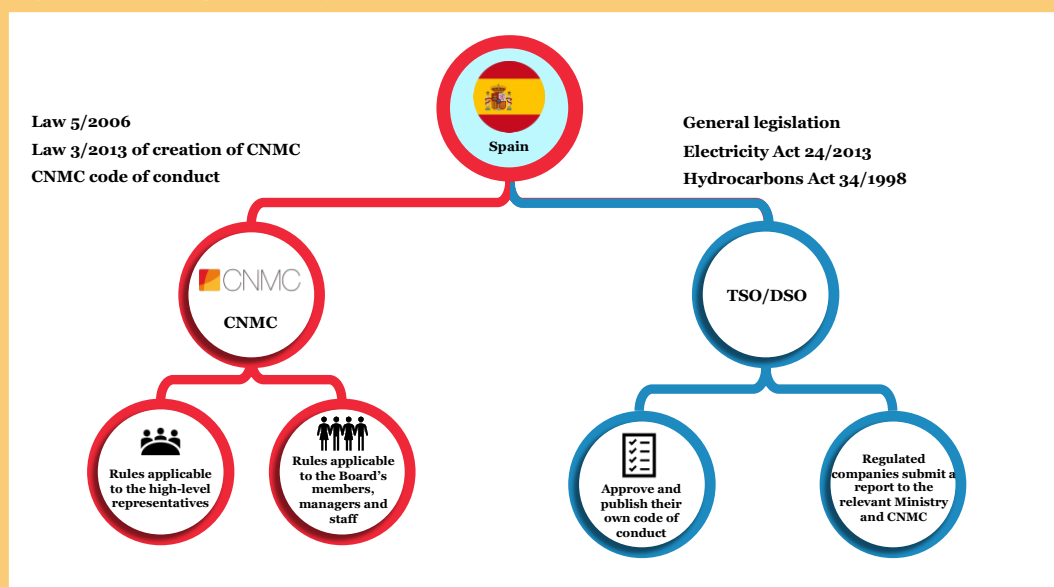
Annually, all regulated companies shall submit a report to the Ministry of Ecological Transition and CNMC (drafted by an independent actor) on compliance with the code of conduct and it shall be published in the Official Gazette.

Since 2018, the Red Eléctrica Group (Spanish electricity TSO) has a Guide for the management of conflicts of interest to help detect and prevent potential conflicts of interest that may involve the management team of the Red Eléctrica Group. The Guide is the result of the duty of diligence of the company regarding conflicts of interest and incorporates the preventive measures necessary to minimise risks in this area.

Red Eléctrica Group has a Consultative Body responsible for the development and due application of the aforementioned guide, to identify, manage, and resolve conflicts of interest. This Consultative Body acts independently in all cases to be able to perform its functions effectively and without undue influence. In addition, it provides advice and proposes measures to ensure better use of confidential information related to the management of conflicts of interest.

On the other hand, Red Eléctrica Group has an ethical and compliance channel for the communication of possible conflicts of interest that may affect its members, so that the necessary measures are adopted by the organisation to preserve the values and principles of the Code of Ethics and Conduct.

Figure 14. Conflict of Interest Management in Spain





- **Definition of Conflict of Interest in the Energy Sector**

Although there is no specific definition in the law concerning conflict of interest, there are rules addressing the issue in the law both in the terms of organisation and the market players' actions.

- **Conflict of Interest Within the NRA**

There are specific rules in the law that prohibit the board members and their intimate family members from working in the regulated sectors (private and state) during and within two years of demitting office.

In addition, there are specific rules in the relevant laws preventing the network operators (TSOs and DSOs) from engaging in trading and supply activities.

The market laws and the organisational law of EMRA provide specific powers to EMRA on disputes (between market players or between a market player and a consumer) where the market laws are applicable. This provides an extensive authority to EMRA over the market players. The law also allows EMRA to carry on the monitoring and surveillance of the market players, which can result in imposing fines or sanctions on the market players.

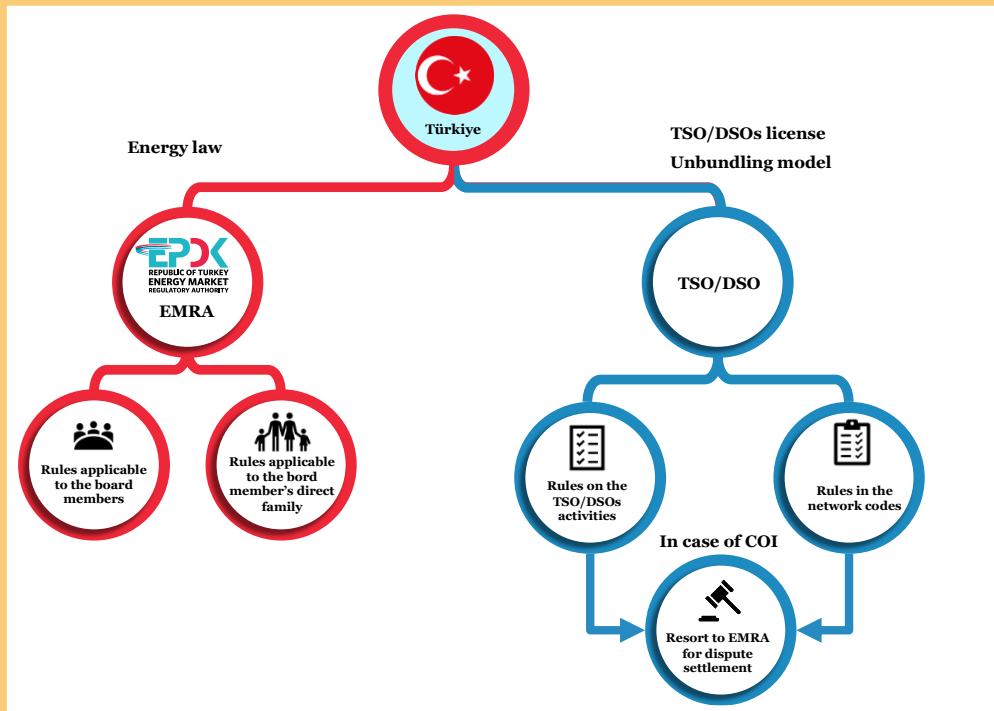
- **Conflict of Interest Within the TSO/DSO**

The licensing procedure prescribed by the law prohibits obtaining relevant licenses if there is conflict of interest. Also, for example in the natural gas market, the market law prohibits the market participants from acquiring shares in the same market activity. Also, the relevant market participant can only acquire shares in the same market activity up to 50% of the shares and the voting rights of the governing boards and the audit boards.

Other than the measures, there are specific rules in the network codes and the other primary and secondary legislation that make it possible for the parties to resort to EMRA in case of non-compliance and for dispute settlement, if any.

For example, there have been several cases arising from disputes about the application of the network code to the third parties by the TSO, all of which were submitted to the EMRA board for final decision. Some of these cases were about the trading in the transmission system, balancing charges, and capacity allocation implementations.

Figure 15. Conflict of Interest Management in Türkiye



## CONCLUSION

The report provides an assessment of the rules managing any conflict of interest (COI) in the electricity and gas markets in the Mediterranean region, within the NRAs and the TSO/DSOs.

The COI may occur when personal interests—family, friendships, financial, or social factors—compromise the judgment, decisions, or actions in the workplace. Within governmental institutions, COI is monitored closely as the impact of it on a country's decisions is crucial. Moreover, most of the governmental institutions are funded through the national budget—people's money—and the least they can do is to ensure that this funding is used in the most optimal way and helps to achieve the country's objectives and strategy.

Each of the aforementioned countries adopt various policies to prevent conflicts of interest in the energy regulator, TSO, and DSO, whether through laws, regulations, and instructions, or through codes of ethical behaviour.

In the absence of a competitive market, such as in Algeria, there are no official procedures for managing conflicts of interest for TSO and DSO operators.

Besides the electricity and gas markets, some MEDREG members regulate other sectors as well; for instance, ARH (Algeria) does not regulate any TSO or DSO in the electricity and gas national market. However, ARH regulates the hydrocarbons market. Regarding conflict of interest, to avoid any cases between the operators, ARH has provided regulations that clearly define the level of access to infrastructures and authorisations for each type of operator, which means that the adopted policy is coherent with the electricity and gas measures taken.

Lastly, the unbundling of the electricity and gas markets includes the rules against COI within the TSO/DSO as shown in the EU member countries or the Balkans. At the NRA level, the rules can be spread over many regulatory legislations including the general law (administrative), electricity & gas law, or the NRA establishment law. In this case, most of the NRAs regroup the set of rules in the NRA code of conduct/ethics to facilitate comprehension of the procedures of managing COI within the NRA.

In a few cases, such as in Bosnia and Herzegovina, the regulator has no role in managing COI within the TSO/DSO and it is under other institutions.



## France Case Study Details

### 1. Ethics Chart of the CRE

#### 1.1 Chapter I: Common Rules Applicable to CRE

The charter recalls that the commissioners shall perform their duties with dignity, probity, and integrity, and that they shall ensure that any conflict of interest is prevented or immediately stopped. This notion is understood as “any situation of interference between a public interest and public or private interests which is likely to influence or appear to influence the independent, impartial and objective exercise of a function.” The rules common to all CRE staff are reiterated, as follows:

- Independence in relations with all external institutions and persons

The members of the College, CoRDIS, and the staff of the Commission shall carry out their duties impartially—and ensure that it is perceived as such—with respect to the government and any other institution, person, company, or organisation, and thus preserve the confidence of the actors of all the regulated sectors and the public in the independence of the Commission.

- Confidentiality and professional discretion in relation to facts, acts, and information coming to their knowledge in the course of their functioning

CRE is prohibited from disclosing information covered by business secrets which come to their knowledge, the content of files handled or being handled within the Commission, the content of all notes and documents for internal use, or the content of meetings and deliberations of the Commission's College and CoRDIS. Some derogations specifically mentioned, mainly related to access to information law and whistleblower protection rules, are clearly mentioned as exceptions and their procedure thoroughly described.

- Restraint and discernment in relation to their personal opinions

CRE staff shall not, in their personal capacity, adopt any public position prejudicial to the proper functioning of the Commission and, in particular, on matters falling within the competence of the Commission.

#### 1.2 Chapter II: Specific Rules Applicable to Commission Members: College and CoRDIS

##### 1.2.1 Incompatibilities and Obligation of Declaration During Mandate

In accordance with article 8 of the general status of independent agencies, establishing incompatibility between the mandate of a member of the College and that of a member of a dispute resolution and sanctions committee, CRE distinguishes, within its organisation, between the College and CoRDIS (committee for the settlement of disputes and sanctions), which are composed of separate members but do not constitute separate "bodies" of the CRE. Only College members are engaged for full-time work. Therefore, the incompatibility rules applicable to CoRDIS members differ slightly.

Within two months of taking up their duties, members of the College and CoRDIS are required to declare their assets and interests. These declarations are personally addressed to the High Authority for Transparency in Public Life (Haute Autorité pour la Transparence de la Vie Publique).

Pursuant to article L. 132-2 of the Energy Code, the duties of the Chairman and the other members of the College are incompatible with any elective [municipal, departmental, regional, European] office and with any direct or indirect holding of interests in a company in the energy sector. Moreover, the full-time mandate of a member of the College is incompatible with any public employment and any professional activity

Subject to the rules mentioned for the members of the CRE, but not being a full-time mandate, membership of CoRDIS is not incompatible with public employment or professional activity. Membership of CoRDIS is however incompatible with executive function in some elected bodies in accordance with article 10 of the general status of independent agencies.

### 1.2.2 Incompatibilities and Declarations After Leaving Office

Members of CRE are subject to the provisions of article 432-13 of the Criminal Code.

That means “the President and the other members of the College may not, under threat of application of the penalties provided for in Article 432-13 of the Criminal Code, take or receive a shareholding by way of work, advice, or capital” in an energy sector company. They are required to submit a new declaration of assets and liabilities within two months of leaving office.

### 1.3 Chapter III: Specific Rules Applicable to CRE Staff

Staff members, according to provisions of article 13 of the Charter may not, either personally or through an intermediary, take an interest in an entity whose activity is related to the Commission's competencies and tasks, which could compromise their independence. Furthermore, article 13 of the charter prohibits the cumulation of activities during the performance of duties by CRE staff who are required to dedicate their entire professional activity to the tasks assigned to them and may not engage in any gainful private activity of any kind. Finally, article 14 of the Charter subjects the exercise of activities after leaving service to the favourable opinion of the High Authority for Transparency in Public Life, to which the CRE transmits the agent's request.

France has chosen the ITO (Independent Transmission Operator) model because, at the dates considered by the European directives, the gas and electricity transmission networks were, based on the definitions of the European directives, owned by vertically integrated enterprises. This makes the CRE responsible, based on the provisions of the Energy Code [art. L. 111-23], for ensuring that the conditions for the network operators' independence are met.

## 2. Details on the role of CRE in the COI:

### 2.1 Initial Certification Procedure for Network Operators

This procedure aims to ensure the independence of the system operators from energy production or supply companies. The list of certified network operators is communicated to the European Commission.



## 2.2 Approval of the Code of Conduct of network operators

In accordance with article L. 111-22 of the energy code, the CRE approves the code of conduct which contains the internal organisational measures taken to prevent the risk of discriminatory practices in relation to third party access to the network.

## 2.3 Appointment and Reporting of Compliance officers within Network Operators

The “responsibility of conformity” somehow relies on the CRE code being embedded inside TSOs to ensure constant respect of the legal obligations of independence by the company. The presence of these officers reminds of those compliance officers, common in companies that use compliance programmes to manage the risks under application of competition law.

In any case, according to Energy code provisions [art. 111-36], CRE approves the labour contract and the appointment of the compliance officers.

## 2.4 Publication of Report on Compliance With Codes of Conduct and the Independence of Electricity and Natural Gas Network Operators

In application of article L. 111-23 of the Energy Code, CRE monitors the independence of network operators and their compliance with the rules of good conduct. To ensure its effectiveness, the conclusions of this monitoring mission are made public by the provisions of article L. 134-15 through the publication of an annual report by the CRE.

Every two years, CRE publishes a report on compliance with the codes of conduct and the independence of the public electricity and natural gas network operators. In this document, the regulator issues an analysis of the implementation of these codes and makes recommendations. The correct implementation of these recommendations is further assessed in the subsequent reports.

## 2.5 Prior Approval of some Financial Documents of the Network Operators

Among the points that CRE monitors as conditions of independence of the ITO (independent transmission operator) are the approval of all commercial and financial agreements that the operating company concludes with a vertically integrated company, as well as the few services that the system operator may provide to the parent company.

This is because the law also prohibits cross-subsidisation in cases where transmission, distribution, and supply activities are carried out simultaneously within the same entity, and this results in the requirement for the separation of accounts (article 111-86).

The separate accounts provided for in article L. 111-84 are submitted to CRE annually. This allows CRE to ensure that there is no discrimination, cross-subsidisation, or distortion of competition results from the rules of allocation, the accounting parameters, and the principles that determine the financial relations between the different activities proposed by the operators in order to implement the separation of accounts provided for in article L. 111-84.

According to art. L. 111-72, the measures taken by operators to ensure confidentiality [of economic, commercial, industrial, financial, or technical information, the disclosure of which could undermine the rules of free and fair competition and non-discrimination] are brought to the knowledge of the Energy Regulatory Commission.

### 3. TSO and DSO Plan to Prevent and Manage COI

TSOs and DSOs have plans which, among other elements to ensure their independence, are named the "code of conduct"; for instance, the code "de bonne conduite" of RTE, GRTgaz, and ENEDIS.

These codes of conduct comprise the following principles which are intended to prevent the interests of independent system operators within gas and electricity sectors coming into conflict with the interests of the energy producers.

#### 3.1 Prevention of Conflict of Interest in Governance Structures of Energy Operators for the Members of the Supervisory Board and Executive Officers

- Professional activities and responsibilities of members of the supervisory board

According to article L. 111-26 of the Energy Code, the minority stakeholder members of the supervisory board may not have exercised any professional activities or responsibilities in the other companies of the EVI, nor have exercised any responsibilities in a company whose main contractual relations are with these companies, for a period of three years prior to their appointment. Furthermore, during their term of office, they may not exercise any activities or professional responsibilities in the other companies making up the EVI.

- Prohibition related to the holding of interests by supervisory board members

Under the terms of article L. 111-26 of the Energy Code, the exercise of the mandate of member of the TSO's supervisory board is subject, for members of the supervisory board who belong to the minority stakeholder group, to the prohibition of having held interests in the other companies making up the EVI, for a period of three years prior to their appointment.

- Independence of the remuneration of the members of the minority stakeholders on the supervisory board

Under the terms of article L. 111-26, 3° and article L. 111-33, 1st al. of the Energy Code, the remuneration of the members of the minority stakeholders on the supervisory board may only be determined by indicators, in particular results indicators, specific to the TSO.

This provision transposes into French law the obligation set out in articles 20(3) and 19(5) of Directive 2009/72/EC, which requires that the remuneration of the minority stakeholder members on the supervisory board should not be linked to activities or results of the IVE other than those of the TSO.

- Executive officers

Articles L. 111-29 and L. 111-30 of the Energy Code set out the deontological rules to guarantee the independence of the TSO's managers. These rules apply to the members of the management board and to the managers who report directly to them and who perform their duties in the areas of management, maintenance, and development of the network. They differ according to whether they are the majority or the minority shareholder group executives.

- **Professional activities and responsibilities**

Under the terms of article L. 111-30 of the Energy Code, the managers belonging to the majority group may not have exercised professional activities or responsibilities in the other companies of the EVI or have exercised responsibilities in a company whose contractual relations are mainly with these companies for a period of three years prior to their appointment.

Minority group executives may not have exercised professional responsibilities in the other companies of the EVI for a period of six months prior to their appointment.

In addition, during their term of office, the executive officers may not exercise any activities or professional responsibilities in the other companies of the VIU.

- **Holding of interests**

According to article L. 111-30 of the Energy Code, the exercise of the functions of TSO executive is subject to the prohibition, for the executives constituting the majority group, to have held interests in the other companies making up the EVI, for a period of three years prior to their appointment.

- **Independence of remuneration**

The first paragraph of article L. 111-33 of the Energy Code states that the remuneration of managers may only be determined by reference to the TSO's own indicators, in particular results.

### 3.2 Prevention of Conflict of Interest in the Internal Transactions of Energy Operators - Commercial and Financial Agreements

Article L. 111-17 of the Energy Code states that all commercial and financial agreements between the TSO and the EVI or any company controlled by the EVI must comply with market conditions and be subject to approval by CRE (including loans granted by the TSO to the EVI).

Provision of services by the EVI for the benefit of the TSO

Under the terms of article L. 111-18 of the Energy Code, any provision of services by the companies making up the EVI for the benefit of the TSO is prohibited. However, an exception is made for certain services, which are therefore regarded as commercial and financial agreements.

### 3.3 Prevention of Conflict of Interest in the Use of Resources and Execution of Missions - Human Resources

Under the terms of article L. 111-19 of the Energy Code, the TSO must have all the human resources necessary to carry out its transmission activity. It must itself employ the personnel necessary for the

performance of its missions and its day-to-day management, including those in the legal, accounting, and information technology departments. Any provision of personnel by or to the EVI is prohibited.

- Paid employees [professional responsibilities, remuneration, interests]

According to article L. 111-20 of the Energy Code, TSO salaried employees may not engage in activities or have professional responsibilities in the other companies of the EVI.

Article L. 111-33 of the Energy Code states that the remuneration of TSO employees may only be set on the basis of TSO-specific indicators, in particular performance indicators.

The second paragraph of article L. 111-33 of the Energy Code prohibits TSO employees from holding an interest in the other constituent companies of the EVI and from directly or indirectly receiving a financial benefit from those companies.

The third paragraph of article L. 111-33 of the Energy Code, however, authorises employees to hold shares in the TSO and to receive benefits intended for all EVI companies and managed at group level in certain areas [coverage of health, disability, incapacity or death risks, collective pension schemes, as well as benefits in the social or cultural fields].

### 3.4 Prevention of Conflict of Interest in Managing the Information System of Energy Operators

Article L. 111-16 of the Energy Code prohibits any employee or service provider of the EVI from having access to automated information processing activities relating to the operation, development, and maintenance of the transmission system carried out by the TSO. Article L. 111-16 of the Energy Code also states that when contracts are signed with service providers to work on the TSO's IS, and these service providers carry out operations of the same nature with companies of the EVI, the TSO shall ensure that the service provider undertakes to respect the necessary confidentiality obligations. The TSO shall notify CRE of contracts concluded under these conditions.

### 3.5 Prevention of Conflict of Interest in Management of Autonomous Compliance System of Energy Operators

Pursuant to 1° of article L. 111-36 of the Energy Code, the compliance officer is appointed after CRE approval, which checks the professional aptitude and independence of the person concerned. During their term of office, compliance officers may not directly or indirectly hold any interest in the other companies of the EVI.

In case of conflict of interest, describe the process that the TSOs/DSOs needs to follow and to whom the parties should disclose the non-compliance? And what are the sanctions for non-compliance?

The staff within a system operator company may refer their concerns regarding a situation of conflict of interest to the officers 'responsible for conformity' (compliance officer) who will act in their support role and not as part of their monitoring and control missions.

It should be noted that a similar rule applies to CRE's staff. Indeed, article 3 of CRE's ethics charter refers to the Law no 83-634 dated 13 July 1983 and provides that "Members of the College and CoRDIS as well as Commission staff may refer to the ethics officer any ethical issue concerning them personally."

According to the art 28 bis of the Law, the 'réfèrent déontologue,' i.e. the ethics officer, is responsible for providing any public servant (civil servant or contractual) who seeks advice on compliance with the ethical principles of the civil service, the required guidance, which includes the prevention or cessation of situations of conflict of interest when the agent is or could be in such a situation.

#### 4. Example of Sanctions Applicable to the NRA

Before providing the examples of the applicable sanctions, preliminary remarks are necessary:

Conflict of interest—as a situation—is in itself not an offence punishable in the penal code. However, it can lead to 'actions' which are punishable by law. The most important one is the "unlawful taking of interest" which is a criminal offence since the 1810 Criminal code, considered as intended to manage the most extreme cases of conflict of interest.

Moreover, as mentioned in the first part, the French legislation's main attempt is to prevent the occurrence of 'situations' of conflict of interest and, whenever it happens, to address it. Therefore, the priority is prevention, resolution, and finally disciplinary sanctions in case of failure to diligently resolve such situations.

According to article 3 of the CRE's Ethics Chart, the non-respecting, by members of the College, CoRDiS, or the Commission's staff of professional secrecy, established by a court decision, entails, in addition to the criminal penalties provided for in article 226-13 of the Criminal Code (one year's imprisonment and a fine of €15,000), the automatic termination of functions within the Commission (9). Failure by the Commission's staff to respect professional secrecy may also result in disciplinary sanctions.

#### 5. Example of Sanctions Applicable to the Energy Sector

Comparable to the above example, the Energy code sets a similar sanction for violation of secrecy: According to article L. 111-80, the disclosure to any person outside the service of the public electricity transmission system operator of any of the information mentioned in article L. 111-72 by a person who is in possession of such information either by virtue of his status or profession, or by reason of a function or temporary assignment, shall be subject to the penalties provided for in article 226-13 of the French Criminal Code.

Furthermore, article 432-13 of the penal code states that such action, by a person who has been entrusted, as a member of [...]an independent administrative authority or an independent public authority, [...], civil servant, [...] or agent of a public administration, within the framework of the functions he or she has effectively exercised, either to ensure the supervision or control of a private undertaking, or to conclude contracts of any kind with a private undertaking or to formulate an opinion on such contracts, or to propose directly to the competent authority decisions relating to operations carried out by a private undertaking or to formulate an opinion on such decisions, to take or receive a shareholding by way of work, consultancy or capital in one of these undertakings before the expiry of a period of three years following the cessation of these functions, is punishable by three years' imprisonment and a fine of €200,000 (which may be increased to twice the amount of the proceeds of the offence).

The same penalties shall apply to any participation by way of work, consultancy, or capital in a private undertaking which has at least 30% of common capital or has concluded a contract involving de jure or de facto exclusivity with one of the undertakings mentioned in the first paragraph.

For the application of the first two paragraphs, any public undertaking carrying on its activity in a competitive sector and in accordance with the rules of private law shall be treated as a private undertaking.

These provisions shall apply to employees of public establishments, public undertakings, semi-public companies in which the State or public authorities directly or indirectly hold more than 50% of the capital and of public operators provided for by Act No. 90-568 of 2 July 1990 on the organisation of the public postal service and France Télécom.



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