Ad-hoc Network of Economic Regulators: A “Regulatory Integrated Approach (RITA www)” for water, wastewater and waste services

Paris, OECD, April 2013
What must be a comprehensive “Regulatory Integrated Approach for water, wastewater and waste services” (RITA www)?
We can approach regulation of the water, wastewater and waste services in different ways ...
In Portugal we decided to implement regulation:

- With an integrated (holistic) approach in the regulatory model
- Considering the national context and level of development of the country
- Operating at national level (mainland)
- Integrating the water, wastewater and solid waste services (basic sanitation)
- Regulating all the utilities, regardless the governance model (State-owned, municipal-owned and private utilities)
- Adopting a collaborative (pedagogic) regulation, with a intermediate regulatory intensity
What that means, an integrated (holistic) approach?
It means to apply a regulatory model which includes:

- Structural regulation of the sector, to promote a sound strategy with good rules, information and innovation.
- Regulation of each utility performance, regarding legislation and contracts, economy, quality of service, water quality and consumers interface.
• The other five faces of the cube are:
  – Regulatory institutional framework
  – Regulatory interfaces with stakeholders
  – Regulatory procedures and accountability
  – Regulatory leadership and organization
  – Regulatory resources
Regulatory model: What means the structural regulation of the water, wastewater and waste sector?
Structural regulation of the sector

- Contribution to the formulation of national strategy for the sector:
  - Cooperation with Government in the formulation of the national strategies:
    - Clarifying institutional framework
    - Creating a new legal framework
    - Defining new governance models
    - Promoting territorial reorganization
    - Promoting optimal use of external funding
    - Promoting full cost recovery
    - Promoting quality of service
    - Promotion of innovation & capacity building
    - Promotion of consumers protection
  - Proposal of measures with the aim of rationalization and resolution of dysfunctions
  - Monitoring and regular reporting on the degree of implementation of the national strategy
• Contribution to the clarification and improvement of rules and legislation governing the sector:
  – Proposing new legislation
    • Legal framework for state-level services
    • Legal framework for municipal-level services
    • Legal framework for regulation
    • Tariff regulation
    • Quality of service regulation
    • Water quality regulation
    • Technical regulation
  – Proposing the improvement of existing legislation
  – Approving regulations and issuing recommendations
  – Regulatory impact analysis (RIA) is done
Structural regulation of the sector

- Promotion of innovation and technical support to the utilities:
  - The large number, diversity of scale and capabilities of utilities drives ERSAR’s promotion of innovation and technical support, namely:
    - Promotion of innovation and technology in partnership with research centers and universities
    - Edition of free technical guides for the utilities
    - Promotion of training events

- Collection, validation, processing and public disclosure of information:
  - Providing rigorous and comprehensive information to all stakeholders, namely for regulation
  - Reducing information asymmetry
  - Guaranteeing ease-of-use information for consumers
Regulatory model: What means the regulation of the water, wastewater and waste utility performance?
Regulation of utility performance

- Legal and contractual monitoring of the utilities:
  - Analysing the creation of new utilities
  - Analysing tender processes
  - Analysing contract documentation
  - Analysing contract modifications
  - Approving utility codes of practice
  - Monitoring contractual compliance
  - Promoting the conciliation
  - Analysing contract terminations
  - Assessing the global situation annually
  - Disseminating information annually
  - Awarding the best practices annually
  - Applying sanctions when adequate
**Regulation of utility performance**

- **Economic regulation:**
  - Receiving and analysing proposals for updating tariffs
  - Allowing contradictory from the utility
  - Approving the tariffs and public divulgation
  - Auditing utility, namely monitoring tariff application
  - Requesting utility to input of data
  - Validation of the data (audits)
  - Accessing the performance of the utility
  - Allowing contradictory from the utility
  - Benchmarking utilities and accessing the evolution
  - Disseminating information annually
  - Awarding the best practices annually
  - Applying sanctions when adequate
Annual assessment of the economic performance for each utility

Assessment of the evolution for the economic performance

Information available to the consumers on www.ersar.pt

100% utilities - 386 audits/year - 40,000 data/year

Annual benchmarking between utilities regarding the economic performance
• Quality of service regulation:
  – Requesting utility to input of data
  – Validating data (1st stage)
  – Validating data (2nd stage - audits)
  – Accessing the utility’s performance
  – Allowing contradictory from the utility
  – Benchmarking between utilities
  – Accessing the evolution on time
  – Disseminating information annually
  – Awarding the best practices annually
  – Applying sanctions when adequate
Quality of service regulation

Annual assessment of the quality of service for each utility

Annual benchmarking between utilities regarding the quality of service

Information available to the consumers on www.ersar.pt

100% utilities - 386 audits/year - 50,000 data/year
Water quality regulation:

- Receiving proposal of monitoring program
- Approving the program
- Monitoring program application by utility
- Auditing utility and laboratories when necessary
- Receiving on time incompliances information
- Monitoring the resolution of compliances
- Allowing access to the system by utility to input data
- Validating data
- Accessing the utility’s performance
- Allowing contradictory from the utility
- Benchmarking utilities and accessing the evolution
- Disseminating information annually
- Awarding the best practices annually
- Applying sanctions when adequate
Water quality for human consumption regulation

Annual assessment of the water quality for each utility

Benchmarking between utilities and assessment of the evolution for the water quality

100% utilities - 100 audits/year - 640 000 data/year

Information available to the consumers on www.ersar.pt
Regulation of utility performance

• Regulation of the interface between the utility and the consumer:
  – Guaranteeing the right to consumer complaining
  – Receiving the complaint in 10 days
  – Contacting both parts
  – Recommending the solution
  – Suggesting court if someone do not agree
  – Monitoring the set of complaints annually
  – Disseminating information annually
  – Awarding the best practices annually
  – Applying sanctions when adequate
Regulation of the interface between utility and consumer

Information available to the consumers on www.ersar.pt

4200 complaints/year - 126,000 data
What must be the governance of a water, wastewater and waste services regulator?

Regulatory institutional framework
Regulatory interfaces with stakeholders
Regulatory procedures and accountability
Regulatory leadership and organization
Regulatory resources
Governance arrangements

• **Regulatory institutional framework:**
  – New framework regime for all regulatory agencies, ensuring harmonization of basic rules of regulatory agencies to be approved by the Parliament
  – New ERSAR bylaw to be approved by the Parliament
  – Independence from executive powers in what concerns regulatory intervention:
    • **Functional:** government cannot give instructions to the Board members (control by the government is restricted to the approval of the budget and annual accounts)
    • **Organic:** government cannot remove Board members (except in case of serious fault)
    • **Financial:** financial and administrative autonomy in the use of their budget (namely in what concerns human resources)
• **Regulatory interfaces with stakeholders:**
  
  – Interface with regulated entities:
    • Operates at national level (mainland)
    • All the water, wastewater and waste utilities, regardless the governance model (State-owned, municipal-owned and private utilities)

  – Interface with customer:
    • Domestic, commercial and industrial

  – Interface with other relevant authorities / regulatory bodies, avoiding lacks and overlapping:
    • Water resources and environment
    • Public health
    • Consumers protection
    • Competition

  – **Risk of regulatory capture:**
    • Transparency, accountability, anticorruption procedures
• **Regulatory procedures and accountability:**
  
  – Transparent and participative rules of procedures
    - Ex. mandatory public consultation stage during the making of regulations, website with information regarding internal organization and regulatory activity
  
  – Decisions subject of direct appeals to courts
    - Administrative courts or a special court on regulation and competition in case of punitive decisions
  
  – Accountability towards the sector
    - Stakeholders participation based on independent Consultative Council / Tariff Council
  
  – Accountability towards Parliament
    - Hearing before nomination of the members of the board
    - Annual reporting
• Regulatory leadership and organization
  – Nomination of (3) members of the board:
    • Nomination by the government after a hearing in the Parliament
    • 6 years non-renewable term
    • Strict incompatibility requirements (during and 2 years after term)

  – Internal organization (governance structure)

  • Regulatory performance assessment
    • Annual targets to be achieved at individual / department / ERSAR levels
Governance arrangements

- Advisory body (Consultative Council) representing all the relevant stakeholders:
  - General matters of the sector
  - General regulatory policy and procedures
  - Specific matters concerning regulation activity

- Advisory body (Tariffs Council) representing all the relevant stakeholders:
  - Matters specifically concerning economic regulation (Tariffs)

- Members of those advisory bodies:
  - Operators (public and private)
  - Consumers
  - Public Administration bodies with intervention in the sector (environment, economy, health, consumers)
  - ONGs
  - Etc.
Governance arrangements

• Regulatory resources:
  – Human resources:
    • Small structure (65 employees)
    • Technical capabilities on economy, engineering, water quality and legal sciences
  – Financial resources:
    • Small budget (7 800 000 €/year) exclusively financed through taxes coming directly from regulated operators and consumers, not from the National Budget
    • Small impact on the tariffs (0.5-1%)
    • Regulatory taxes based on the volume of activity of the utilities
    • Do not benefit from economic penalties to the utilities
  – Technological resources:
    • Sophisticated information system to communicate with 500 utilities and dealing with about 900 000 data per year
In summary ...
• Based a decade of experience in regulation in Portugal, we can say:
  – Regulation is a modern and powerful tool to implement a public policy in this monopolistic sector.
  – Regulation has a fundamental role in the continuous improvement of effective and efficient water services.
  – A Regulatory Integrated Approach (RITA) with a collaborative and pedagogic environment seems to be the more effective model for Portugal.
  – OECD must play an leading role in boosting regulation at international level
The Lisbon IWA World Water Congress 2014: An opportunity to reinforce the “Ad-hoc Network of Economic Regulators”
World Water Congress

21 – 26 September 2014

Lisbon

IWA World Water Congress & Exhibition will take place in Lisbon in 2014

We count on your presence!

O Congresso Mundial da Água da IWA vai realizar-se em Lisboa em 2014

Contamos com a sua presença!
World Water Congress
World Water Congress
Advantages of being in Lisbon congress:

- The biggest world technical conference within the water services sector (around 5000 delegates)
- Five days of technical sessions with worldwide leading speakers
- 1,5 days dedicated to regulatory discussion with the main water regulators worldwide
- Opportunity to discuss a wide range of topics (governance, regulation, efficiency, economics, technology, consumer protection, performance assessment, among others)
- A chance to network with other experts
- OECD and IWA can play an leading role in boosting regulators network
• Activities performed by ERSAR:
  – ERSAR has made in 2009 a study on regulatory frameworks worldwide with more than 140 water economic regulators
  – ERSAR has invited these 140 regulators to participate in the IWA Congress to be held in Lisbon in Sept. 2014
  – Topics identified as the most relevant:
    • Assessment and benchmarking
    • Economic regulation
    • Governance and regulatory framework
  – IWA will program full day program for a closed meeting between regulators and a half day to discuss regulation with other stakeholders
  – This will be the first big scale meeting of water regulators worldwide
IWA World Water Congress & Exhibition will take place in Lisbon in 2014

We count on your presence!

O Congresso Mundial da Água da IWA vai realizar-se em Lisboa em 2014

Contamos com a sua presença!

Regulation of water, wastewater and waste services must be an hot topic of this Congress!