

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | CORPORATE

NEWSLETTER CORPORATE | March, 2015

I Portugal 2020: Partnership Agreement entered between Portugal and the European Commission	2
II National Legislation	5
III Case Law	6

CORPORATE NEWSLETTER

I PORTUGAL 2020: PARTNERSHIP AGREEMENT ENTERED BETWEEN PORTUGAL AND THE EUROPEAN COMMISSION

Introduction

The Partnership Agreement between Portugal and the European Commission, also known as “Acordo Portugal 2020”, is intended to create a framework for the implementation of European Union structural funds during the 2014-2020 period, particularly the five European Structural and Investment Funds – ERDF (European Regional Development Fund), CF (Cohesion Fund), ESF (European Social Fund), EAFRD (European Agricultural Fund for Rural Development and EMFF (European Maritime and Fisheries Fund).

The agreement emerged from a study plan and an *ex ante* evaluation developed by the Government, its institutional partners and various entities in civil society and the public sphere, as well as a long process of negotiation with the European Commission, currently reflected in various legislative texts of Community and national scope.

Note should be made, due to their structural nature, of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December, laying down common provisions on various European funds, as well as Decree-Law 159/2014 of 27 October, of the Presidency of the Council of Ministers (“Decree-Law”), which lays down the general rules for the implementation of operational programmes and rural development programmes funded by European Structural and Investment Funds.

Operating principles

Aiming to channel the implementation of Community funds in order to satisfy more urgent short-term needs, the programming and implementation of Acordo Portugal 2020 are developed around four thematic domains:

- Competitiveness and Internationalisation;
- Social Inclusion and Employment;
- Human Capital;
- Sustainability and Efficiency in the Use of Resources.

Two cross-cutting dimensions related to the reform of public administration and an integrated intervention approach at the territorial level should also be considered.

The identification of the main constraints and opportunities offered by each of these areas, as a starting point, also helped to define the intervention priorities of Community funds for the period 2014-2020.

The EUR 25 billion that Portugal will receive until 2020 will be implemented through 16 Operational Programmes, to which must be added the Territorial Cooperation Programmes in which Portugal will participate in cooperation with other member states.

Potential beneficiaries and submission of proposals

Support from European Structural and Investment Funds may be enjoyed by any organisation or individual from the public, cooperative, social or private sectors, whether or not operating for gain, pursuant to Article 12 of the Decree-Law, as well as organisations provided for in specific regulations or in applicable calls for proposals.

Pursuant to Article 13 of the Decree-Law, various eligibility criteria are established, that must be declared and proven by the beneficiaries at any moment. These include: (i) their activity must be duly legalised; (ii) they must have complied with their tax and social security obligations; (iii) they must have a sustainable financial standing and technical resources where applicable; (iv) the proposal must be their first submitted under the specific call for proposals.

As a general rule, proposals are submitted under a tender procedure, although exceptionally proposals may be admitted by invitation, provided this is duly reasoned, under the terms of the specific regulations applicable.

A mention must also be made to the list of impairments and constraints on the submission of proposals, which range from criminal convictions of the beneficiaries, in the first case, to the provision of a suitable guarantee for each payment to be made, in the second case, being these requirements developed in Article 14 of the Decree-Law.

Proposals must be submitted through Balcão 2020, on the Portugal 2020 website, which is the point of access to the Operational Programmes financed by European Structural and Investment Funds, by completing the necessary electronic forms.

Proposals will be then analysed and selected by the Managing Authorities of the corresponding Operational Programmes or by entities with competence for this purpose, in accordance with the eligibility and selection criteria set out in the Decree-Law referred to above, with the notice of competition and with other specific regulations.

The Balcão 2020 site provides full information on funding available in the 2014-2020 period, as well as guidelines for submitting proposals and for the follow-up of projects throughout their lifecycle.

Incentive Schemes

As with the previous community support framework (QREN), under Acordo Portugal 2020, there are also "Incentive Schemes", which are support instruments aimed at most companies and which help to finance investment projects.

The Incentive Schemes are divided into 3 areas of intervention:

- (i) business innovation and entrepreneurship ("SI Inovação");
- (ii) qualification and internationalisation of SMEs ("SI PME"); and
- (iii) technological research and development ("SI I&DT").

The rules for regulating Incentive Schemes have recently been published, as provided for in Decree-Law 6/2015, of 8 January and Ministerial Order 57-A/2015, of 27 February.

Some aspects of these rules have been changed from the previous framework, including the principle of the application of the Incentive Schemes to all economic activities, particularly tradable and exportable goods and services, and the introduction of simplified costing and expense reimbursement methods.

With regard to this last point, the rule that has been maintained is that which provides that costs submitted in the beneficiary's payment applications (eligible costs) must be based on real costs, justifiable by means of invoices paid or other accounting documents of equal value. However, the application of the simplified cost option to finance indirect costs, based, as a rule, on the application of maximum rate of 25% (of most) of the eligible direct costs, is now permitted in exceptional cases.

It is also important to note, with regard to the choice of the project's geographic location, that there is a ranking granted to each region in the country, which was drawn up based on economic development criteria.

For information purposes, calls for proposals are currently open for the following tenders related to the Incentive Schemes:

- **INCENTIVE SCHEME "QUALIFIED AND CREATIVE ENTREPRENEURSHIP"**
Start date: 20-03-2015 | End date: 24-04-2015 (19.00)
NOTICE No. 04/SI/2015
- **INCENTIVE SCHEME "PRODUCTIVE INNOVATION"**
Start date: 20-03-2015 | End date: 24-04-2015 (19.00)
NOTICE No. 03/SI/2015

- **INCENTIVES FOR RTD ACTIVITIES (SI I&DT)**
Start date: 17-03-2015 | End date: 31-12-2015
NOTICE No. 02/SI/2015
- **INCENTIVE SCHEME "PRODUCTIVE INNOVATION"**
Start date: 17-03-2015 | End date: 31-12-2015
NOTICE No. 01/SI/2015

Also available on the Acordo Portugal 2020 website (www.portugal2020.pt) is a Plan of Calls for Proposals, which enables future applicants to prepare and plan their projects in accordance with the timetable.

In short, Acordo Portugal 2020 is the main instrument for business investment at the disposal of the Portuguese State for the period 2014-2020, defining the interventions, investments and financing priorities in the application of community funds in Portugal.

II NATIONAL LEGISLATION

Ministerial Order No. 57-A/2015 - Diário da República No. 41/2015, 1st Supplement, Series I of 2015-02-27

Adopts the specific regulation for Competitiveness and Internationalisation

Ministerial-Order No. 57-B/2015 - Diário da República No. 41/2015, 1st Supplement, Series I of 2015-02-27

Adopts the specific regulation for Sustainability and Efficiency in the Use of Resources

Law No. 18/2015 - Diário da República No. 44/2015, Series I of 2015-03-04

Partly transposes Directives 2011/61/EU, of the European Parliament and of the Council, of 8 June 2011, and 2013/14/EU, of the European Parliament and of the Council, of 21 May 2013, which ensures the implementation, in the national legal system, of Regulations (EU) No. 345/2013 and 346/2013, of the European Parliament and of the Council, of 17 April 2013, and revises the regime applicable to venture capital investments

Resolution of the Council of Ministers No. 10/2015 - Diário da República No. 46/2015, Series I of 2015-03-06

Determines the start of the process of opening the public passenger transport service provided by the companies Companhia Carris de Ferro de Lisboa, S.A., and Metropolitano de Lisboa, E.P.E., to market forces, through the subconcession of these services

Order No. 2909/2015 - Diário da República No. 57/2015, Series II of 2015-03-23

Approves, in an appendix to the order of which it forms an integral part, the Regulations for Recognition of Clusters of Competitiveness

Order No. 3016-B/2015 - Diário da República No. 58/2015, 1st Supplement, Series II of 2015-03-24

Determines the increase, in cash, of the statutory capital of state-owned companies.

III CASE LAW

Judgment of the Supreme Court of 12 March 2015

Guarantee – Standing of Companies – Directors – Abuse of Rights

Declares that there is no abuse of rights in the Company relying upon the enforceability, in relation to the creditors, of a statutory clause concerning the prohibition of providing personal guarantees and collateral, considering legal persons have a separate “life” in the legal order, which transcends the ones of the natural persons that represent them.

The company cannot therefore be bound to the provision of a guarantee, violating its articles of association, particularly considering that the creditors, acting as partners at the time, were well aware of the statutory limit concerning the provision of personal guarantees and collateral.

Judgment of the Supreme Court of 12 March 2015

Agency Agreement – Commercial Concession Agreement – Goodwill Indemnity – Exclusivity Clause

Although the regime of the agency agreement (Decree-Law 178/86, of 3 July) is geared to be applied, analogically, to the commercial concession agreement, particularly in the part concerning termination of the agreement, the requirement of Article 33 nr. 1, paragraph c) of Decree-Law 178/86, regarding goodwill indemnity, does not apply to concession agreements, since this is a specific requirement of the agency agreement.

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