

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | PUBLIC LAW

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PUBLIC LAW NEWSLETTER

I LEGISLATION

1. State Budget and Major Planning Options for 2016-2019

1.1. Law No. 7-A / 2016 of March 30 and Decree-Law No. 18/2016, of April 13

Approved the State Budget for 2016 (hereinafter SB) and entered into force on March, 31. It was, in the meanwhile, published, in April 13, the Decree-Law No. 18/2016, establishing the rules for budget execution.

Highlight below are some of the most important aspects, particularly in the field of activity of the State corporate sector entities.

i) Hiring of new workers

The SB provides that for 2016, public companies and public corporate entities of the public corporate sector can only recruit workers for the establishment of employment relationships of indefinite duration or term duration, in justified situations. The hiring of workers carried out in breach of the preceding are null.

ii) Personnel Tables

The SB also provides that during this year the companies of the public corporate sector and its subsidiaries shall pursue an adjustment policy of its staff, adapting them to the actual needs of an efficient organization, and may only be an increase of staff costs relative to 2015 values, adjusted the burden of wage replacement in exceptional cases, duly justified, in accordance with decree-law of budget execution.

iii) Operating expenses and debt limit

During the year 2016, public companies (except public corporate entities hospitals) should pursue a policy of optimization of the structure of operating expenses to promote the operating balance, in accordance with Decree-Law of budget execution. The growth of debt by public companies, considering the funding paid fixed by executed share capital, is limited to 3%.

iv) Service acquisition

The 2016 SB provides that the amounts paid for services acquisition contracts that, in 2016, will renew -If or to be held with the same object and or current contract counterparty in 2015, may not exceed the amounts paid in 2015. This rule applies in particular to public corporate entities, public companies with exclusive or mostly public capital and local and regional corporate sector entities. For this purpose, it should be considered the aggregate amount of

contracts where, in 2016, the same counterparty provided more than one service to the same purchaser.

v) Regularization of local authorities debts

Local authorities that have outstanding debts to the managing bodies of multi-municipal systems of water supply, sanitation and urban waste or partnerships between the state and local authorities must submit a plan for its settlement, to conclude a payment agreement which cannot exceed a period of five years. The plan must be submitted within 60 days (from March 30). The obligation does not apply to municipalities that establish a debt restructuring plan for access to the Municipal Support Fund, also easing the prohibition of municipalities to enter into agreements with financial institutions or directly with creditors, for the purposes of paying recognized debts in court final decision.

vi) Settlement of debts to concessionaries of public water supply or sanitation services

The SB provides that the limit of the total debt of budgetary operations of the municipality may not exceed, on the 31 of December of each year, 1.5 times the average of the current net revenue collected in the previous three years, established by Law 73/2013 , September 3, may exceptionally be exceeded by a loan contraction used exclusively for the finance of the compliance of the judicial or arbitration final decision on exploration concession contract and management of municipal services of public water supply and or urban wastewater sanitation or the repurchase of exploration and management concession agreement of those services that determine the extinction of all municipal responsibilities to the concessionaire.

vii) Prior Inspection by the Court of Auditors

Are exempt from prior inspection by the Court of Auditors the acts and contracts, considered individually or together with others who appear to be related to each other, whose amount does not exceed the value of € 350,000, similar to that contained in the SB for the year 2015.

viii) State Guarantees

The ceiling for authorizing the granting of State guarantees in 2016 is fixed in terms of annual net flows in € 3,000,000,000.

To this limit are added other amounts, namely, the provided for case, exceptionally, the State provides guarantees to strengthen financial stability and the availability of liquidity in the financial markets for the financing of the economy, up to a maximum of € 24,670 000 000, being the beneficiary subject to supervision and monitoring measures provided for by law, and, in the event of default, the protective measures of the equity interest of the State provided for in the respective regulations.

Under the provisions of the budget execution Decree-Law, for the purposes of enforcement of the ceiling for the granting of guarantees, public law legal persons must (i) request the DGTF

prior information about the appropriateness of the guarantees to be granted, (ii) inform the DGTF quarterly, until the 10th of the month following the quarter to which they relate, of all movements relating to financial transactions it guarantees.

ix) Procedures for the award of works contracts

The budget execution Decree-Law provides rules for the conclusion of works contracts and acquisition of services of goods. According to this decree-law, one can adopt the procedure of urgent public tender provided for in the Public Procurement Code (PPC) in concluding works contracts, provided that (i) it is a co-funded project by European funds (ii) the contract value is less than that referred to in paragraph b) of Article 19 of the CCP [currently € 5,225,000], and (iii) the criteria of the award is the lowest price.

Special rules are provided, namely relating to the guarantee.

x) Extraordinary update of the price of contracts for the acquisition of services

The budget execution Decree-Law also provides that the multiannual acquisition of services contracts signed prior to January 1, 2016, for which, arguably, the hand labor component indexed to the Monthly Minimum Remuneration Guaranteed has been the determining factor in the formation of the contract price and have suffered substantial impacts resulting from the entry into force of Decree-Law No. 254-A/2015 of December 31 (which set the value of the minimum wage in € 530) is permitted, to the extent strictly necessary to restore the value of the contracted services, a special upgrade price, in accordance with this article.

xi) Other relevant content:

Finally, it should also be noted that the following aspects are relevant, although they were not developed above:

- a) Christmas subsidy payment in twelfths to employees of public companies with exclusive or mostly public capital, public corporate entities and local and regional corporate sector entities;
- b) Prohibition of remuneration valuations to employees of public companies with exclusive or mostly public capital, public corporate entities and local and regional corporate sector entities;
- c) Regulation of the personnel tables of the Administration;
- d) Reduction of the debt of local authorities;
- e) Authorization for the assumption of multi-year commitments.

Other provisions - legislative changes

i) Decree-Law No. 144/2008, of July 28 - powers transfer framework for municipalities in education

Article 189 shall amend Articles 4, 7, 8, 10 and 11 of Decree-Law No. 144/2008 of July 28, which develops the frame powers transfer to municipalities for education, changing the rules of funds transfers and predicting that from 2017 they are included in the Municipal Social Fund and updated according to the rules applicable to transfers to local authorities.

ii) Law No. 50/2012, of August 31 - The legal regime of the local business activity and local participations

The legal regime of the local business activity and local participation is also changed by the SB. Will now be provided, in the number 15 of Article 62 of Law No. 50/2012 of 31 August, that the provisions of paragraphs a) and b) of number 1 of Article shall not apply to local companies engaged, primarily, in the equipment management activities and services in the field of culture. These paragraphs state that local companies are mandatorily dissolution decision object, within six months if it is found that the sales and services performed during the last three years do not cover at least 50% of the total spending in the respective exercises and when it is found that in the last three years, the contributory burden of operating subsidies allocated by the participating public entity exceeds 50% of its revenues.

iii) Law No. 52/2015 of June 9- legal regime of passenger transport public service

Law No. 52/2015 of June 9, which approves the legal framework of passenger transport public service is changed by updating the transitional arrangements for funding in accordance with the entry into force of the SB 2016.

iv) Law No. 73/2013, of September 3 - financial regime of local authorities and intermunicipal entities

Law No. 73/2013, of September 3, establishing the financial arrangements of local authorities and intermunicipal entities is subject to changes, on municipal revenues, the limit of total debt and own revenues.

v) Law No. 169/99 of September 18 - operating system of the municipalities and parishes bodies

Article 193 of the SB amends article 27 of Law No. 169/99 of September 18, establishing the competence framework, as well as the operating system of the municipalities and parishes bodies, regulating the exercise regime of full-time functions and part-time members of parish councils.

vi) Law No. 75/2013 of September 12 - Legal Regime of Local Authorities

The status of the local authorities is also changed, providing the possibility of sub-delegation in any of the members or hold middle management positions of the powers of the parish

councils delegated to the president, also adapting accordingly to this fact, with regards to the revocation and appeal of such acts.

vii) Decree-Law No. 47/2005 of February 24 - Ministry of Finance and Public Administration Organic

Article 202 of the SB shall amend Article 22 of Decree-Law No. 47/2005 of February 24, which approved the Ministry of Finance and Public Administration Organic. It provides that the FET revenues are transferred from the State budget subsector.

viii) Decree-Law No. 178/2006 of September 5- Legal Framework for Waste Management

The SB amends Decree-Law No. 178/2006 of September 5, approving the general regime of waste management, in respect of fees payable by the bodies responsible for waste management (Article 58).

ix) Decree-Law No. 172/2006, of August 23 - Legal Regime Applicable to Electricity Production, Transportation, Distribution and Sales Activities

Decree-Law No. 172/2006 of August 23, approving the legal regime applicable to the electricity production, transport, distribution and sales activities, is also changed. The changes result in that municipalities of the autonomous regions have the right to compensation or remuneration for the use of public or private municipal property within the framework of the concession or the development of the activity of transport and distribution of electricity, adapting to this effect if and when necessary, the respective concession contracts granted by regional governments.

In line with this amendment to Decree-Law No. 172/2006 of August 23, also the Decree-Law No. 230/2008 of November 27, establishing the necessary income to municipalities by the concession of electricity distribution exploration in low voltage is changed. It is now stated that for the use of property in the public or private municipal domain a payment or an annual fee is due to the municipalities of the autonomous regions, by the concessionaire or the entity operating the electricity distribution activity in low voltage in the autonomous regions. This contribution or compensation is due from 2016 inclusive.

Still concerning the national electricity system, should be highlighting that the SB provides that the Government proceed, within three months, to the assessment of the incentive award scheme for the power guarantee provided by the electric producers centers to the national electrical system, aiming to reduce costs for the state and consumers.

1.2. Law No. 7-B / 2016 of March 31

The law approves the Major Planning Options for 2016-2019, in accordance with the twenty-first Constitutional Government Program, which integrates policy measures and investments that allow them to achieve, which are highlighted as follows:

- a) Re-launch the "Zero Licensing" initiative
- b) Programming and execution of public works
- c) Public procurement and public administration efficiency
- d) Administrative Decentralization
- e) Creation of the "Sea Platform"
- f) Water, sanitation and waste
- g) Environmental licensing and environmental impact assessment
- h) Energy Market

2. Legislation and other Regulations

Law No. 7-C/2016, of March 31

Approves the Multiannual Framework of the Budget Programming for the years 2016-2019

Public Procurement:

Order No. 3290/2016, of March 3, the Secretary of State for Infrastructures

Determines the creation of the Public Procurement Code Review Committee

Order No. 3486/2016, of March 9, the Ministry of Finance

Regulates the terms and procedure of the dismissal of binding preliminary opinion of the Government member, regarding the commissioning and contract renewals

Public finances

Notice No. 87/2016, of January 6, the *Agência De Gestão Da Tesouraria E Da Dívida Pública – IGCP, E. P. E.*

Settles the interest rate for late payment applicable to debts of the State and other public entities in 5,168%.

Order No. 867/2016, of January 19, the Ministry of Finance

Authorizes the granting of a counter guarantee from the State to the Resolution Fund under its guarantee granted to Naviget, S. A., amounting to 746 M.

Energy

Regional Legislative Decree No. 1/2016/M, of January 14

Adapts to Madeira Autonomous Region the Decree-Law No. 118/2013 of August 20, which approved the Building Energy Certification System, the Energy Performance Regulation of Residential Buildings and the Energy Performance Regulation of Trade and Services Buildings, and transposes Directive No. 2010/31/EU of the European Parliament and of the Council of May, 19 2010 on the energy performance of buildings.

Regional Legislative Decree No. 4/2016 / A, February 2

Adapts to the Azores Autonomous Region the Building Energy Certification System, the access and exercise regime of the qualified expert activity for energy certification and of installation and maintenance technician of buildings and systems and the exceptional and temporary regime applicable to the rehabilitation of buildings or fractions, whose construction has been completed for at least 30 years or located in areas of urban rehabilitation, where they are intended to be wholly or predominantly affected to residential use.

Order No. 17-A/2016 February 4, the Ministry of Labour, Solidarity and Social Security and the Ministry of Economy

First amendment to Order No. 349-D/2013 of December 2, establishing the design requirements for the thermal quality of the environment and efficiency of the technical systems for new buildings, buildings subject to major intervention and existing buildings.

Order No. 27-B / 2016 of February 16, the Ministry of Economy

Third amendment to Order No. 662/96 of November 14, approving the Regulation of the Activity and Recognition of the National Association for Inspecting Electrical Installations, the Regulation of the Activity of the Regional Entities for Inspecting Electrical Installations and Regulation for the Selection and Recognition of the Regional Entities for Inspecting Electrical installations

Order No. 3156/2016, of March 1, the Director-General of Energy and Geology

Replacing the calculation program for determination of the energy produced by the solar thermal and solar photovoltaic systems, under the Building Energy Certification System, as well as the replacement of the responsible entity of the program

Order No. 39/2016, of March 7, the Ministry of Economy

Proceeds to the second amendment of Annex IV of Order No. 349-A / 2013 of November 29, which determines the powers of the managing body of the Buildings Energy Certification System (ECS), regulates the activities of the technicians of SCE, establishes the categories of buildings for energy certification purposes, as well as the types of pre-certified and certified SCE and the responsibility for their issue, fixes the registration fees in the SCE and establishes the quality verification criteria of the certification processes of the SCE, as well as the elements that should be included in the report and in the note in the individual record of Qualified Expert (QE)

Directive No. 6/2016, of March 8, the Regulation Entity for Energy Services

Recording and reporting of electrical energy transactions by market participants in specific remuneration schemes

Decree-Law No. 13/2016, of March 9

Establishes security arrangements for oil and gas operations in the oil and gas offshore, transposing Directive No. 2013/30/EU of the European Parliament and of the Council of June, 12 2013

Order No. 45/2016, of March 18, the Ministry of Economy

Establishes the single form template for the purpose of conveying information about the fuel prices practiced in filling stations as well as on the amount of product sold

Agriculture, Forestry and Sea

Order No. 24-B / 2016 of February 11, the Ministry Agriculture, Forestry and Rural Development

Proceeds to the second amendment to Order No. 57/2015 of February 27, approving the regulation of application of the base payment scheme, payment for agricultural practices beneficial for the climate and the environment, payment for young farmers, specific payment for cotton and small farming regime.

Decree No. 42/2016 of March 8, the Ministry Agriculture, Forestry and Rural Development

Second Amendment to the Regulation of the Permanent Forest Fund, approved by Order No. 77/2015, of March 16

Decree-Law No. 16/2016, of March 9

Creates Blue Fund

Resolution of the Council of Ministers No. 13/2016, of March 16

Concretizes the implementation of the Mar2020, by establishing deadlines to publish the specific regulations of the support measures provided for in Operational Programme Mar2020 and determines the opening of tender proceedings for the LDCB - local development community based in the Autonomous Regions

Resolution of the Council of Ministers No. 14/2016, of March 16

Establishes the operating conditions of the Interministerial Committee on Maritime Affairs

Resolution of the Council of Ministers No. 15/2016, of March 16

Creates the Interministerial Working Group "Energy at Sea"

Order No. 50/2016 of March 23, the Ministry of the Sea

Approves the Regulation regarding the Support for Sustainable Aquaculture Development Regime in Innovation Domains, Counseling and Productive Investment Operational Programme (OP) Mar 2020 for mainland Portugal

Order No. 52/2016, of March 24, the Ministry of the Sea

Approves the Regulation of the Support Regime for Community Based Local Development in Preparation Support and Operating Costs and Animation Domains

Order No. 53/2016 of March 24, the Ministry of the Sea

Approves the Regulation of the Regime to Support Production Plans and Marketing of fishery and aquaculture producers organizations of, under the Operational Programme (OP) Mar 2020

Order No. 54/2016, of March 24, the Ministry of the Sea

Approves Regulation for the Measure Application of "Technical Assistance" of the Operational Programme (OP) Mar 2020

Order No. 55/2016, of March 24, the Ministry of the Sea

Establishes national provisions relating to the compensation regime for additional costs for fishery and aquaculture products from the Azores and Madeira Autonomous Regions

Order No. 61/2016 of March 30, the Ministry of the Sea

Approves the Regulation of the Regime of the on Board Investments on Energy Efficiency, Safety and Selectivity Domains

Public services

Decree-Law No. 7/2016, of February 22

Proceeds to the third amendment to Decree-Law No. 195/99 of June 8, extending the deadline for the submission by consumers, of the value restitution claims regarding securities deposits of essential public services

Environment

Order No. 1-C / 2016 of February 11, the Ministry of Agriculture, Forestry and Rural Development,

Establishes the environmental certification regime within the agricultural practices beneficial for the climate and the environment

Regulatory

Regulation No 177/2016, of February 19, the Entidade Nacional Para o Mercado dos Combustíveis, E. P. E.

Defines the treatment and the type of information that the actors of the National Petroleum Sector referred to in subparagraphs a) to e) of Article 13 of Decree-Law 31/2006 of February 15, provide to ENMC within and for the effect of the exercise of supervisory and monitoring powers

Directive No. 7/2016, of March 11, the Regulation Entity for Energy Services

Complementary provisions of the electricity sector

II CASE LAW

Constitutional Court

Ruling No. 3/2016

Declares the unconstitutionality with generally binding force of the provisions of Article 80 of Law No. 82-B/2014 of December 31 (lifetime monthly grants to former political appointees)

Ruling No. 106/2016

Interprets the rules of paragraph b) of Article 9 of the Portuguese Nationality Law and of paragraph b) of number 2 of article 56 of the Portuguese Nationality Regulation as meaning that the impediment to the acquisition of Portuguese nationality, provided in them, due to the conviction in a maximum prison sentence equal to or greater than three years, must take into account the legislature's consideration made in the seat of the expiry of the criminal conviction in the criminal record and its cancellation and corresponding legal rehabilitation

Ruling No. 577/2015

Do not hold unconstitutional the rule in paragraph i) of number 1 of Article 27, of the Process Code in the Administrative Courts (PCAC), interpreted as meaning that the sentence handed down by administrative and fiscal court in single judge, based on the mere invocation of the powers conferred by that provision is not subject to judicial review, but only subject to a claim for the conference in accordance with number 2 of this Article

Supreme Administrative Court

Ruling No. 1/2016

Standardizes the case law as follows: the mere possibility of a particular rule come to be considered unconstitutional in the main proceedings is not necessarily in order to fund the completion of the fumus boni iuris case requirement in its negative formulation, as shown in paragraph b) of number 1 of Article 120 of the PCAC

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