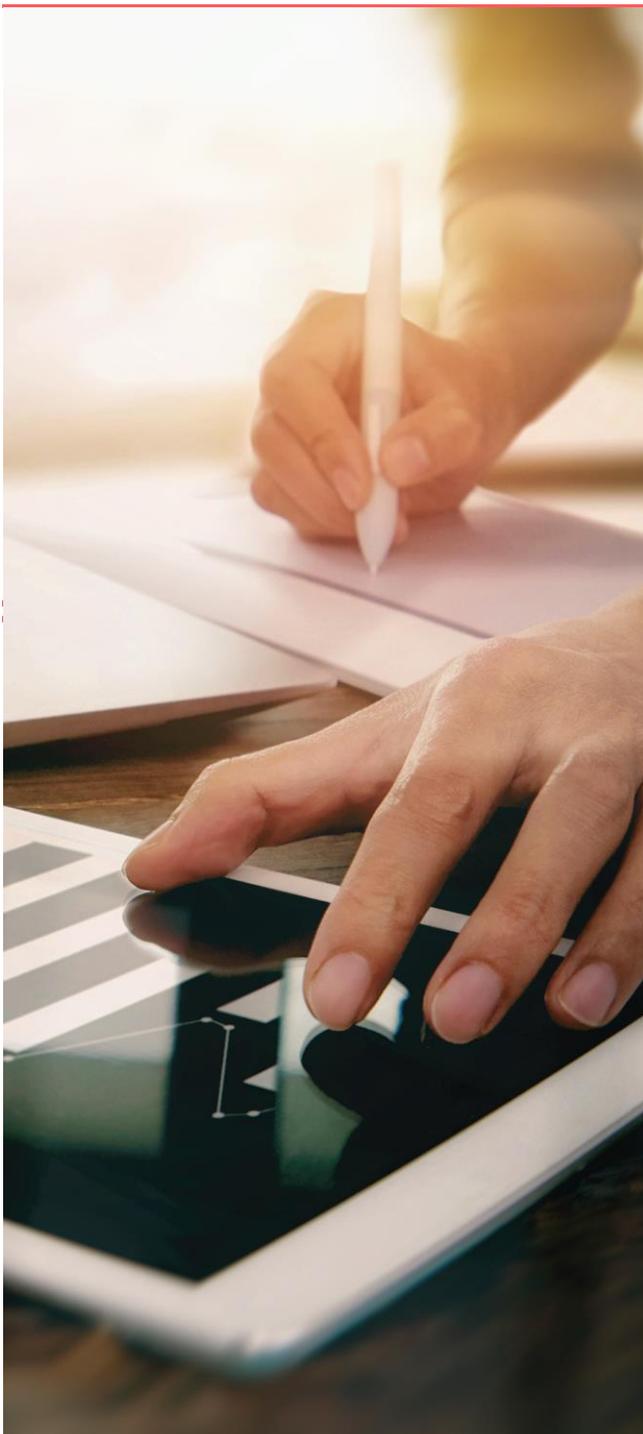

Public Law

Newsletter | Portugal

4th Quarter 2018



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I. The approval of the State Budget for 2019

On the last day of 2018, the State Budget for 2019 was approved (from now on “SBL”), and entered into force on January 1st 2019. Some of the most relevant aspects are highlighted below:

I Operating expenses and indebtedness limit of Public Companies

In accordance with Article 58 of the SBL, during the year of 2019, public companies must pursue a policy of optimizing the structure of operating expenses that promotes operational balance, in accordance with the provisions of the budget execution decree-law, and the growth of its indebtedness, considering the remunerated financing adjusted by the capital stock and excluding investments, is limited to 2%.

II Provision of Services

In Article 60, the SBL establishes that the amounts paid for the provision of services agreements which, in 2019, will be renewed or concluded with the same object and/or counterparty that the agreements in force in 2018, may not exceed the amounts paid in 2018.

This provision applies, in particular, to public business entities, public companies with exclusive or majority public capital, entities of the local and regional business sector, various public institutes and public foundations under public and private law.

For this purpose, when the same counterparty provides more than one service to the same acquirer, the total aggregate value of the agreements should be considered

III Municipalities obligations concerning the decentralization process of administrative powers

Regardless of the term of the additional debt resulting from the process of decentralization of powers, under the terms of Law no. 50/2018, of August 16th, Article 87 of the SBL establishes that the municipalities may enter into new loans, in order to pay the referred debts, with a maximum term of 20 years as from the effective date, since the new loan complies, cumulatively, with the following conditions:

- a) The non-increase of the total debt of the municipality; and
- b) When it is intended to pay current loans or finance leases, the updated value of the total costs with the new loan, including principal, interest, commissions and penalties, is less than the updated value of the total costs on the loan or lease to be settled in advance, including, in the latter case, the residual value of the asset leased.



IV Debts settlement of local authorities

Article 90, paragraph 1 of the SBL stipulates that, during 2019, local authorities, municipal or intermunicipal services and municipal or intermunicipal companies that have debts overdue and recognized to the management entities of inter-municipal and multi-municipal systems of supply water, wastewater treatment and urban waste management, to entities managing partnerships between the State and local authorities under the terms of Decree-Law no. 90/2009, of April 9th, and to the management entities referred to in Decree-Law no. 230/91 of June 21st, in its current version, and in Decree-Law no. 171/2001 of May 25th, may enter into agreements to regularize these debts with these entities, whose payment period does not exceed 25 years.

Article 90, paragraph 6 of the SBL establishes that, if in the context of the conclusion of the settlement of debts of local authorities agreements, they recognize in the accounts a debt which, until December 31rd, 2018, was not recognized and was not considered for the purposes of the limit established in article 52, paragraph 1 of Law no. 73/2013, of September 3rd, including the debt of municipal or intermunicipal services and municipal or intermunicipal companies, exceeding the limit established therein, or worsening the respective default, may exceptionally be authorized by order of the members of the Government responsible for the areas of finance, local authorities and environment.

V Audit of municipal public-private partnerships

Article 93 of the SBL establishes the obligation for the Government to promote, in accordance with international audit recommendations, the implementation of an independent audit of agreements entered into by local authorities in the form of public private partnerships that are in force.

VI Prior Ruling by the Court of Auditors

According to paragraph 1 of article 255 of the SBL, and similar to what was stated in the SBL for the year 2018, the acts and agreements, alone or jointly considered with others that appear to be related to each other, whose amount does not exceed the value of 350,000 €, are exempt from prior inspection by the Court of Auditors

VII State guarantees

According to paragraph 1 of article 142 of the SBL, the maximum limit for the authorization of the guarantees granting by the State in 2019 is fixed, in terms of annual net flows, at 4,000,000,000 €.

Under paragraph 5 of the same article, the maximum limit for the granting of guarantees by other legal entities governed by public law is fixed, in terms of annual flows, at 500,000,000 €.



VIII Energy

There are several relevant budgetary provisions in the field of Energy, with the most important ones being mentioned below:

- In accordance with article 237, the Government shall, by the end of the first quarter of 2019, review the regulatory mechanism that aims to ensure the balance of competition in the wholesale electricity market in Portugal, provided for in Decree-Law no. 74/2013, of June 4th, adapting it to the new rules of the Iberian Electricity Market, with the objective of creating harmonized regulatory mechanisms that reinforce competition and the protection of consumers;
- Accordingly article 238, the Government shall develop the necessary legislative and regulatory changes to create green certificates based on the guarantees and certificates of origin provided for in Decree-Laws no. 23/2010 of March 25th, and 141/2010, of December 31st, both in its current draft;
- In the terms of Article 239, the Government shall approve a special regime for electricity traders, national or local, which are subject to the obligation to purchase energy produced by producers under special market remuneration, known as aggregators market, being the respective license for this activity subject to attribution through a competitive procedure;
- Finally, according to article 241, the costs arising from the application of the social tariff to natural gas customers, under the article 121 of Law no. 7-A / 2016, of March 30rd, and the Order no. 3229/2017, of April 18th, shall be supported by natural gas transportation and sales companies, in proportion to the volume of gas traded in the previous year.

IX Public Purchases

Finally, pursuant to article 338 of the SBL, Article 3rd, paragraph 3rd of Decree-Law no. 37/2007, of February 19th, was amended, which establishes the National Public Procurement Agency (EPE) and approves the respective Statutes, which now provide that SNCP, as voluntary purchasing entities, may include public services and entities not referred to in article 3, paragraph 2, including the Presidency of the Republic, the Assembly of the Republic, the Prosecutor General's Office, courts, independent administrative entities with regulatory functions, public sector entities and public higher education institutions provided for in Law no. 62/2007, of September 10th, regardless of its nature.



II. Legislation

> Energy

Order no. 9217/2018 – Official Gazette no. 189/2018, Series II of 2018-10-01

Determines the discount to be applied to tariffs for access to electricity networks, since January 1st, 2019.

Opinion of the European Committee of the Regions no. 2018/C361/09 – European Official Journal of 2018-10-05

Proposal for a Directive of the European Parliament and of the Council amending the Directive 2009/73/EC that establishes common rules for the natural gas internal market.

Regulation (EU) 2018/1504, of the European Parliament and of the Council of October 2nd, 2018 - European Official Journal of 2018-10-15

Revoke Regulation (EU) no. 256/2014 concerning the notification to the Commission of investment projects in energy infrastructure in the European Union.

Implementing Directive (EU) 2018/1581, of the European Parliament and of the Council, of October 19th, 2018 - European Official Journal of 2018-10-22

Amends Directive 2009/119/EC, of the Council, as regards methods for calculating storage obligations (maintenance of minimum stocks of crude oil and / or petroleum products).

Order no. 10346/2018 – Official Gazette no. 215/2018, Series II of 2018-11-08

Determines the amendment to Order no. 15793-H/2013, of December 2nd (building energy certification national system - calculate energy production).

Order no. 11392-B/2018 – Official Gazette no. 230/2018, 2nd Supplement, Series II of 2018-11-29

Compensation of five-year deferral of extra costs with the acquisition of electricity to producers under special regime.

Decree-Law no. 109-A/2018 – Official Gazette no. 160/2018, 1st Supplement, Series I of 2018-12-07

Amends the Fund for the Systemic Sustainability of the Energy Sector.

Directive no. 15/2018 from ERSE– Official Gazette no. 237/2018, Series II of 2018-12-10

Procedures of change of supplier in the electricity and natural gas sectors.

Directive no. 16/2018 from ERSE – Official Gazette no. 240/2018, Series II of 2018-12-13

Labelling of electricity energy.



Directive (EU) 2018/2001, of the European Parliament and the Council, of December 11th, 2018 – European Official Journal of 2018-12-21

Promotion the use of renewable energy sources.

Directive (EU) 2018/2001, of the European Parliament and the Council, of December 11th, 2018 – European Official Journal of 2018-12-21

Amends the Directive 2012/27/UE on energy efficiency.

> **Territorial Planning**

Ministerial Order no. 303/2018 of the Ministry of Agriculture, Forestry and Rural Development - Official Gazette no. 227/2018, Series I of 2018-11-26

Determines amendments to many Ministerial Orders of the “Programa de Desenvolvimento Rural do Continente 2020(PDR2020)”.

Decree-law no. 121/2018 of the Presidency of the Council Minister - Official Gazette no. 250/2018, Series I of 2018-12-28

Amends the Legal Regime of Urban Planning and Building.

> **Infrastructures**

Ministerial Order no. 510/2018 of the Ministry of Environment and Energy Policy - Official Gazette no. 194/2018, Series II of 2018-10-09

Authorizes Metro do Porto, S.A, Reclassified Public Entity, to proceed with the payment of the amounts related to the contracting of the general review of thirty-two vehicles of the Eurotram fleet.

Resolution of the Council of Ministers no. 131/2018 – Official Gazette no. 195/2018, Series I of 2018-10-10

Approves the Acquisition Plan of Rolling Stock by CP - Comboios de Portugal, E. P. E., and authorizes their respective distribution of burdens.

Statement of Rectification no. 36/2018 – Official Gazette no. 199/2018, Series I of 2018-10-16

Rectifies the Resolution of the Council of Ministers no. 107/2018, of August 30th, which modifies the modality of acquisition of rolling stock and the signaling system of Lisbon Metro and authorizes the Metropolitano de Lisboa , EPE, to proceed to the respective distribution of burdens, published in Official Gazette no. 167, Series I, of August 30th.

Resolution of the Council of Ministers no. 172/2018 – Official Gazette no. 241/2018, Series I of 2018-12-14

Authorizes the expenditure related to the construction of new sections of the Light Metro System of the Metropolitan Area of Porto.



Resolution of the Council of Ministers no. 173/2018 – Official Gazette no. 241/2018, Series I of 2018-12-14

Authorizes the expenditure related to the Expansion Plan of Lisbon Metro.

Ministerial Order no. 328-A/2018 of the Minister of the Interior and the Deputy Minister of Economic - Official Gazette no. 244/2018, 1st Supplement, Series I of 2018-12-19

Amends and extends the modulation regime of the value of toll rates in favor of Class 2, 3 and 4 vehicles for the transport of goods by road for hire or reward or public, established by Ministerial Order no. 41/2012, of February 10th.

Resolution no. 1406-A/2018 of the Ministries of the Interior, the Planning and Infrastructures, the Environment and Energy Policy and Sea - Official Gazette no. 244/2018, 1st Supplement, Series II of 2018-12-19

Tool Rates, implementation of vehicle classes.

Decree-law no. 124-A/2018 of the Presidency of the Council Ministers - Official Gazette no. 251/2018, 1st Supplement, Series I of 2018-12-31

Amends the legal regime applicable to the rail passenger transport agreement, the legal regime applicable to CP - Comboios de Portugal, E.P.E., and the regime for the management and use of national railway infrastructure, transposing Directive (EU) 2016/2370.

Resolution of the Council of Ministers no. 188-A/2018 – Official Gazette no. 251/2018, 2nd Supplement, Series I of 2018-12-31

Delegates the power to approve the draft of the public service contract to be entered into with CP - Comboios de Portugal, E. P. E., and authorizes the expense of the respective compensatory allowance.

> Environment

Law no. 63/2018– Official Gazette no. 195/2018, Series I of 2018-10-10

Removal of asbestos from buildings, installations and equipment of companies.

Commission Implementing Decision (EU) 2018/1522 of October 11th, 2018 - European Official Journal of 2018-10-12

Establishes a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants.

Corrigendum to Commission Implementing Decision (EU) 2018/1522 of October 11th, 2018 - European Official Journal of 2018-10-16

Establishes a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants.



Decree-Law no. 84/2018 of the Presidency of the Council Ministers - Official Gazette no. 204/2018, Series I of 2018-10-23

Sets the national commitments to reduce the emissions of certain air pollutants transposing Directive (EU) 2016/2284.

Commission Implementing Regulation (EU) 2018/2067 of December 19th, 2018 - European Official Journal of 2018-12-31

Verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council.

> **Sea**

Ministerial Order no. 305/2018 of Sea Ministry - Official Gazette no. 288/2018, Series I of 2018-11-27

Amends Article 7 of Regulation of the Support Regime for the Sustainable Development of Aquaculture, in matters of Innovation, Advice and Productive Investments, approved by Ministerial Order no. 50/2016 of March 23rd.

> **Public Finances**

Law no. 71/2018 - Official Gazette no. 251/2018, Series I of 2018-12-31

State Budget for 2019.

Law no. 70/2018 - Official Gazette no. 251/2018, Series I of 2018-12-31

Major Planning Options for 2019.

> **Administrative Organization**

Decree-Law no. 97/2018 of the Presidency of the Council Ministers - Official Gazette no. 228/2018, Series I of 2018-11-27

Implements the framework for the transfer of powers to municipal bodies in matters of maritime, river and lake beaches

Decree-Law no. 98/2018 of the Presidency of the Council Ministers - Official Gazette no. 228/2018, Series I of 2018-11-27

Implements the framework for the transfer of powers to municipal in the field of authorization to operate the related modalities of gambling and other forms of gambling.

Decree-Law no. 99/2018 of the Presidency of the Council Ministers - Official Gazette no. 229/2018, Series I of 2018-11-28

Implements the framework for the transfer of powers to intermunicipal entities in matters of tourism promotion



Decree-Law no. 100/2018 of the Presidency of the Council Ministers - Official Gazette no. 229/2018, Series I of 2018-11-28

Implements the framework for the transfer of powers to municipal bodies in the field of communication routes.

Decree-Law no. 101/2018 of the Presidency of the Council Ministers - Official Gazette no. 230/2018, Series I of 2018-11-29

Implements the framework for the transfer of powers to municipal bodies and intermunicipal entities in justice.

Decree-Law no. 102/2018 of the Presidency of the Council Ministers - Official Gazette no. 230/2018, Series I of 2018-11-29

Implements the framework for the transfer of powers to municipal bodies and intermunicipal entities concerning projects financed by European funds and investment attract programs.

Decree-Law no. 103/2018 of the Presidency of the Council Ministers - Official Gazette no. 230/2018, Series I of 2018-11-29

Implements the framework for the transfer of powers to municipal bodies and intermunicipal entities in the field of support to voluntary fire brigades.

Decree-Law no. 104/2018 of the Presidency of the Council Ministers - Official Gazette no. 230/2018, Series I of 2018-11-29

Implements the framework for the transfer of powers to municipal bodies in the citizen assistance structures.

Decree-Law no. 105/2018 of the Presidency of the Council Ministers - Official Gazette no. 230/2018, Series I of 2018-11-29

Implements the framework for the transfer of powers to municipal bodies in housing sector.

Decree-Law no. 106/2018 of the Presidency of the Council Ministers - Official Gazette no. 230/2018, Series I of 2018-11-29

Implements the framework for the transfer of powers to municipal bodies in the field of management of unused public property.

Decree-Law no. 107/2018 of the Presidency of the Council Ministers - Official Gazette no. 230/2018, Series I of 2018-11-29

Implements the framework for the transfer of powers to municipal bodies in public parking.

> **Public Procurement**

Opinion no. 3/2018 of the Advisory Board of the Prosecutor General's Office – Official Gazette no. 199/2018, Series II of 2018-10-16

Interpretation/Amendment of concession agreement of games of chance.



Decree-Law no. 85/2018 of the Presidency of the Council Ministers - Official Gazette no. 206/2018, Series I of 2018-10-25

Establishes the exceptional direct award procurement measures related to the damages caused by Leslie Hurricane occurred on October 13rd and 14th, 2018.

Order no. 10563/2018 - Official Gazette no. 219/2018, Series II of 2018-11-14

Amendment of the air transportation licence - TAP - Transportes Aéreos POrtugueses, S.A.

Decree-Law no. 123/2018 of the Presidency of the Council Ministers - Official Gazette no. 250/2018, Series I of 2018-12-28

Defines the governance model for the implementation of electronic invoicing in public procurements.

III. Relevant Case Law

Ruling by Constitutional Court, 1st Chamber, of October 2nd, 2018 (Case no. 1329/17), available at www.tribunalconstitucional.pt

Declares unconstitutional the rule that determines that, in the calculation of emoluments due in previous audits by the Court of Auditors, regarding certain acts and agreements provided for in this rule, there is no fixing of a maximum limit.

Ruling by the Court of Justice of the European Union, of October 18th, 2018 (case no. C-606/2017), available at curia.europa.eu

It rules that it is not consistent with EU law to treat 'classified' private hospitals as public hospitals because they have different ordinary accreditation relationships, national public health planning and conventions.

Ruling by the Court of Justice of the European Union, of October 18th, 2018 (Case no. C-124/2017), available at curia.europa.eu

In the context of public procurement, it is possible to require an economic operator which fully clarify the facts and circumstances relating to the criminal offense or misconduct, with the maximum exclusion period calculated from the date of this authority's decision.

Ruling by the Supreme Administrative Court, of November 8th, 2018 (Case no. 01414/15.7BALSB), available at www.dgsi.pt

For the purpose of requesting an extension of the building licence and in order to avoid its expiry, the silence of the Administration should be read as an implicit rejection.



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