
Public Law

Newsletter | Portugal

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I. New rules on public-private partnerships

On December 5, Decree-Law 170/2019 of December 4 came into force, making three main changes to the legal framework applicable to public-private partnerships (“PPPs”), which are **(i)** approving the constitution and modification of partnerships; **(ii)** the procedure for establishing and modifying partnerships; and **(iii)** the legal regime applicable to cases where the public partner modifies the contract unilaterally.

The entry into force of this decree-law amended the provisions of the Public Procurement Code (“PPC”) and Decree-Law 111/2012, of May 23, which approved the general PPP legal regime.

These amendments apply to all PPPs, even to contracts that have already been entered into, with the following specific aspects: **(i)** article 2 – PPPs definition and its new legal framework, which will only apply to PPPs’ preparation and launch procedures started since December 5, 2019; **(ii)** PPP agreements already in force cannot be amended or derogated under the rules already established, nor can PPP procedures launched before December 5, 2019, be modified; and **(iii)** the amendments cannot be applied to previous phases of the current PPP procedures.

Regarding the PPC, the joint competence of the member of government responsible for finance and the member of government responsible for the sector that makes the decision to start the process to study and prepare for launching a PPP, or the decision to contract or modify a PPP, has become the competence of the Council of Ministers.

Regarding Decree-Law 111/2012 of May 23, **(i)** it no longer specifically defines the conditions for launching and awarding a PPP, and it has become the responsibility of the Council of Ministers, which does so by resolution, considering the specific case; **(ii)** it now excludes the concessions for multi-municipal water supply, wastewater sanitation and urban waste management systems, partnerships aimed at developing housing policies (under its Basic Law), and partnerships that do not oblige the public partner to pay charges to the private partner, except for contingent or penalty payments; **(iii)** an objective modification of the PPP contract now relies on the resolution of the Council of Ministers, at the joint proposal of the member of government responsible for finance and the member of government responsible for the area of the project in question; and **(iv)** it determines that, unless expressly grounded in a Resolution of the Council of Ministers, the termination of a PPP procedure is mandatory when only one proposal has been submitted.

The current wording has also clarified that **(i)** the PPPs’ legal regime **does not apply** to municipalities and autonomous regions, and **(ii)** the public partner must first obtain the



report notifying the start of a PPP procedure, which must state the permits and administrative opinions, particularly those on the environment and urban planning.

II. Legislation

> Energy

Decree-Law 160/2019 – Official Gazette 205/2019, Series I of 2019-10-24

Chooses the managing entities and approves the conditions and the special terms of the concession agreements for management of hydraulic infrastructures

Decree-Law 162/2019 – Official Gazette 206/2019, Series I of 2019-10-25

Approves the legal regime applicable to self-consumption of renewable energy, partially transposing Directive 2018/2001

Regional Legislative Decree 23/2019/A – Official Gazette 213/2019, Series of 2019-11-06

Approves the Legal Regime of Fuel Gas Installations in Real Estate in the Autonomous Region of Azores

Regional Legislative Decree 29/2019/A – Official Gazette 228/2019, Series of 2019-11-27

Establishes the legal licensing regime to which private service electrical installations are subject in the Autonomous Region of the Azores

Ordinance 398-A/2019 – Official Gazette 229/2019, 1st Supplement, Series I of 2019-11-28

Establishes the fees applicable to the functioning of and simple pressure vessels and pressure equipment.

Resolution of the Council of Ministers 188/2019 – Official Gazette 234/2019, Series I of 2019-12-05

Delegates powers to conduct centralized procurement procedures and award the respective contracts under the framework agreements for electricity, natural gas and road fuel

Regulation 854/2019 - Official Gazette 211/2019, Series II of 2019-11-04

Approves the Electric Mobility Regulation

Directive 16/2019 – Official Gazette 133/2019, Series II of 2019-12-06

Establishes the coding for the individualized agent register

> Spatial planning

Law 123/2019 – Official Gazette 201/2019, Series I of 2019-10-18

Approves changes to the legal regime on fire safety in buildings



Decree-Law 149/2019 – Official Gazette 194/2019, Series I of 2019-10-09

Reinforces the mechanisms for publicizing procedures for identifying and acknowledging rustic or mixed buildings without a known owner

Decree-Law 161/2019 – Official Gazette 206/2019, Series I of 2019-10-25

Creates the *Fundo Revive Natureza*, a fund to promote the recovery of unoccupied property forming part of the natural heritage

> **Administrative organization**

Decree-Law 157/2019 – Official Gazette 203/2019, Series I of 2019-10-22

Regulates the act of institution and the Foundation Registration Scheme

Decree-Law 169-B/2019 – Official Gazette 232/2019, 1st Supplement, Series I of 2019-12-03

Approves the regime for the organization and functioning of the XXII Constitutional Government

Decree-Law 170/2019 – Official Gazette 233/2019, Series I of 2019-12-04

Approves amendments to the Public Procurement Code and to the legal regime of Public-Private Partnerships

Decree-Law 173/2019 – Official Gazette 240/2019, Series I of 2019-12-13

Adapts the vocational training scheme to local government

Decree-Law 174/2019 - Official Gazette 240/2019, Series I of 2019-12-13

Creates new specialized courts according to the recent amendments to the Administrative and Tax Courts Statute

Ordinance 341/2019 - Official Gazette 188/2019, Series I of 2019-10-01

Regulates the models to be followed by pleadings in the context of mass claims procedures, as well as the models to be followed by requests of the judicial fee applicable to administrative proceedings

Ordinance 366/2019 – Official Gazette 195/2019, Series I of 2019-10-10

Establishes geographical areas according to the recent amendments to the Administrative and Tax Courts Statute

> **Regulatory**

Decree-Law 158/2019 - Official Gazette 203/2019, Series I of 2019-10-22

Creates the *Janela Única Logística*, transposing Directive 2010/65/EU



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Decree-Law 169-A/2019 - Official Gazette 230/2019, 1st Supplement, Series I of 2019-11-29

Approves amendments to the Public Passenger Transport Service legal regime

Decree-Law 174-A/2019 - Official Gazette 243/2019, 1st Supplement, Series I of 2019-12-18

Approves amendments to the bases for the concession agreements to operate the north-south rail passenger service in the region of Lisbon

Regional Legislative Decree 8/2019/M - Official Gazette 210/2019, Series I of 2019-10-31

Approves the Regulation of the Electricity Transmission and Distribution Network of the Autonomous Region of Madeira



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