
Public Law

Newsletter | Portugal

1st Quarter 2020



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State Budget for 2020

Law 2/2020 of March 31 approved the State Budget for 2020 ("SB"), which entered into force on April 1, 2020.

During its implementation, the SB will be influenced by the emergency situation the country has been in since mid-March 2020. There is a high probability that the SB will be amended throughout 2020, particularly regarding indebtedness of local authorities.

(i) Provisions regarding the Public Administration ("PA") and state business sector

According to SB, the digitalization of the PA is an objective, which the government is expected to make several investments in throughout the legislature.

The government is also expected to promote an energy efficiency program for the PA, to (i) strengthen European and national funds; (ii) amend energy service contracts to accommodate technological advances, mainly in solar and photovoltaic energy; and (iii) equip State buildings with small photovoltaic and solar electricity production units.

Regarding **state-owned enterprises**, specifically their operating expenses and debt limits, the SB anticipates that they should pursue a policy that optimizes the operating expenses structure, according to the provisions of the SB execution decree-law and their respective budgets.

The indebtedness of state-owned enterprises, considering the remunerated financing corrected by the paid-up capital and excluding investments, is limited to 2%.

Public managers' contracts must provide objective, quantified and measurable targets for 2020 that can be evaluated. Depending on the evaluation, the remuneration will have a variable performance component, to be paid in 2021. This will not occur in state-owned companies that, at the end of 2020, are in arrears, or do not have their business plan and budget approved during the first half of 2020, unless otherwise authorized by the member of government responsible for finance.

For this purpose, there is an increase in arrears, when the balance of payments outstanding at the end of 2020 (for more than 90 days), plus additional budget appropriations, is higher than the balance of the arrears at the end of 2019, bearing in mind the original approved SB.



If, in 2020, there is an increase in arrears compared to 2019, the state-owned company management body mandate automatically ceases.

Regarding **purchases of services**, the total sum paid for contracts and the commitments assumed that will be renewed in 2020 must not exceed the amount paid in 2019. This rule is also applied to new contracts with the same object.

This rule is addressed to (i) the direct and indirect State Administration; (ii) regional and local government departments, with the necessary adaptations; (iii) the bodies and support services of the President of the Republic, the courts, and the public prosecution service and their bodies (taking into account their respective powers); (iv) bodies and services supporting the parliament (taking into account their respective powers); (v) various public institutes; (vi) several public and private law foundations; and (vii) the offices of the members referred to in article 2.9.l) of Law 75/2014 of September 12.

Studies, opinions, projects and consulting services, as well as any specialized work and the judicial representation and forensic mandate, should be carried out through the contracting entities' own resources. This will not occur in substantiated exceptional situations, where it has been shown that the expense cannot be satisfied through the contracting entity's own resources and after the member of government responsible for the area has provided authorization.

It also is established that the reversal of retirement and disability pensions paid after the death of the pensioner must be requested within three months after the payment.

(ii) **Local finance**

Regarding **obligations taken on by municipalities in the process of decentralizing powers**, without prejudice to other legally stipulated terms, the municipalities may take out new loans, with a maximum term of 20 years from the date the new loan takes effect. The new loans must meet the following conditions:

- a) They must not increase the municipality's total debt.



- b) Where it is intended to pay loans or finance leases in force, the discounted value of the total charges for the new loan¹ is less than the discounted value of the total charges for the loan or finance lease to be settled in advance.²

Regarding **payments to concessionaires arising from a judicial or arbitral award or redemption of the concession contract**, the debt generated by these payments may not exceed 1.5 times the average net current revenue collected in the three previous years.

However, this limit may exceptionally be exceeded when the loan is exclusively for **(i)** the performance of a final judicial or arbitration award related to a contract for a concession to operate and manage municipal water supply, urban wastewater sanitation or urban waste management services; or **(ii)** the redemption of a concession contract that terminates all the municipality's obligations toward the concessionaire. In the latter case, the limit can only be exceeded when preceded by the opinion of the member of government responsible for the area of finance, certifying its compatibility with the debt limits set by parliament.

The SB also provides for **the closure of interventions under the Polis program and the winding-up of Polis companies**. Therefore, (i) original powers over the coastline, which were limited with the creation of the Polis Litoral Companies, are returned to the Portuguese Environment Agency, I. P. ("APA"); and (ii) the rights and obligations of the companies arising from the Litoral Polis program (approved by Council of Ministers Resolution 90/2008 of June 3) are transferred to the APA, with some exceptions.

Regarding **loans from municipalities for housing and urban rehabilitation operations**, in 2020, the 20% percentage referred to in article 52.3.b) of Law 73/2013 of September 3, may be extended to 30% for the sole purpose of loans to finance urban rehabilitation operations. Rehabilitation operations are defined in paragraphs h), i) and j) of article 2 of Decree-Law 307/2009 of October 23.

The possibility of **signing agreements to settle local authority debts** during 2020, between the management entities and the user entities,³ is also established (according to Decree-Law 5/2019, of January 14), provided the payment period does not exceed 25 years.

¹ Including principal, interest, commissions and penalties.

² Including the residual value of the leased asset.

³ Local authorities, municipal and intermunicipal services and municipal and intermunicipal companies that carry out water distribution and wastewater sanitation activities.



(iii) Facilities

During 2020, the government will promote the necessary measures with the Metropolitano de Lisboa, E. P. E. to suspend the construction of the Circular Line between Cais Sodré and Campo Grande. Priority will be given to expanding the underground network to Loures, as well as to Alcântara and the western part of Lisbon. To this end, several investments are expected.

(iv) Energy

The SB establishes that the **costs of the social tariff for natural gas** are borne by the companies that transport and supply natural gas, in proportion to the volume of gas marketed in the previous year.

The legal regime for **transitional tariffs for the supply of normal low voltage electricity** to final customers is extended to December 31, 2025.⁴

The **social tariff for electricity and natural gas** was also extended to unemployed workers.

The SB, like previous state budgets, maintains the extraordinary contribution to the energy sector, although with some changes:

- All references to 2020, except those in Annex I, paragraph 1, referred to in article 3.6 and 7 of that legal regime, will be considered to refer to 2015.
- The reference to 2020 in article 7.4 of that legal regime will be considered to refer to 2017.
- Article 4 now has a new wording, of which paragraph 2 should be highlighted: The exemption provided for in paragraph 1.p) will not apply to taxable persons in all the electricity generating centers they hold when, using renewable energy sources, they exceed an installed capacity of 60 MW, covered by guaranteed remuneration regimes.

(v) Preliminary supervision by the Court of Auditors

In 2020, the value referred to in paragraph 1 of article 48 of the Law of Organization and Procedure of the Court of Auditors (approved by Law 98/97 of August 26), which establishes the contracts' subjection to prior approval, is set at €350,000.

⁴ After the publication of the SB, Ordinance 83/2020 of April 1 was published, which brought forward to December 2021 and December 2022, respectively, the extinction of transitional tariffs for electricity supplies in MT and BTE.



Legislation

> Energy

Ministerial Order 15/2020 - Official Gazette 16/2020, Series I of 2020-01-23

Ministry of Environment and Climate Action

Establishes the fees due as part of the administrative procedures relating to electricity generation and supply activities

Rectification 5/2020 - Official Gazette 28/2020, Series I of 2020-02-10

Amends Ministerial Order 15/2020, of January 23, of the Ministry of Environment and Climate Action, which establishes the fees due as part of the administrative procedures relating to the electricity generation and supply activities

Ministerial Order 16/2020 - Official Gazette 16/2020, Series I of 2020-01-23

Ministry of Environment and Climate Action

Establishes the fees due as part of the administrative procedures relating to self-consumption activity and to Renewable Energy Communities (RECs)

Ministerial Order 40/2020 - Official Gazette 26/2020, Series I of 2020-02-06

Ministries of Finance, State Modernization and Public Administration and Environment and Climate Action

Extends to December 31, 2020, the transitional regime applicable to supplies in or to installations for self-consumption

Ministerial Order 41/2020 - Official Gazette 31/2020, Series I of 2020-02-13

Ministry of Environment and Climate Action

Establishes the tariff applicable to power stations that use urban waste as a source of electricity production, under the scheme of guaranteed remuneration

Ministerial Order 50/2020 - Official Gazette 41/2020, Series I of 2020-02-27

Ministries of Finance, Environment and Climate Action and Agriculture and Sea

Establishes the formalities and procedures applicable to recognition and control of exemptions and reduced tax rates on petroleum and energy products (ISP)

Ministerial Order 53/2020 - Official Gazette 42/2020, Series I of 2020-02-28

Ministry of Environment and Climate Action

Establishes the amounts to be charged by the originator of guarantees (EEO) for services carried out in the course of its duties



Ministerial Order 73/2020 - Official Gazette 53/2020, Series I of 2020-03-16

Ministry of Environment and Climate Action

Provides the non-exhaustive requirements for connecting generator modules to the Public Service Power Network (RESP)

Ministerial Order 80/2020 - Official Gazette 60/2020, Series I of 2020-03-25

Ministry of Environment and Climate Action

Establishes the reference tariff and its duration for producers of electricity from renewable energy sources and the maximum annual quota for guaranteed remuneration

Regulation 266/2020 - Official Gazette 57/2020, Series II of 2020-03-20

Energy Services Regulatory Authority (ERSE)

Approves the Electricity Self-Consumption Regulation

Directive 5/2020 - Official Gazette 57/2020, Series II of 2020-03-20

Energy Services Regulatory Authority (ERSE)

Approves the network access tariffs to be applied to self-consumption of electricity through the RESP for 2020

> **Town planning**

Regional Legislative Decree 8/2020/A - Official Gazette 63/2020, Series I of 2020-03-30

Establishes the legal regime for the process of delimitation and disengagement from the public water domain in the Autonomous Region of Azores

Ministerial Order 5/2020 - Official Gazette 9/2020, Series I of 2020-01-14

Ministry of Environment and Climate Action

Amends Ministerial Order 268/2016, of October 13, which approves the delimitation of the protection perimeters of groundwater abstraction for public supply located in the municipality of Chamusca

Implementing Decree 1/2020 - Official Gazette 53/2020, Series I of 2020-03-16

Ministry of Environment and Climate Action

Classifies as special areas of conservation sites of Community importance in the national territory

> **Environmental**

Ministerial Order 42/2020 - Official Gazette 32/2020, Series I of 2020-02-14

Ministry of Finance

Sets the rate of addition on CO emissions (index 2) provided for in article 92a of the ICESC and the value of the addition resulting from the application of that rate to the addition factors for each product



> Public finances

Law 3/2020 - Official Gazette 64/2020, Series I of 2020-03-31

Major Plan Options for 2020

Law 4/2020 - Official Gazette 64/2020, Series I of 2020-03-31

Multiannual budgetary programming framework for 2020 to 2023

Regional Decree-Law 1-A/2020/M - Official Gazette 22/2020, 1º Suplemento, Series I of 2020-01-31

Approves the Budget of the Autonomous Region of Madeira for 2020

Regional Decree-Law 1/2020/A - Official Gazette 5/2020, Series I of 2020-01-08

Approves the Budget of the Autonomous Region of Azores for 2020

Regional Decree-Law 7/2020/A - Official Gazette 48/2020, Series I of 2020-03-09

Approves amendments to the Budget of the Autonomous Region of Azores for 2020

> Administrative organization

Parliament Resolution 16/2020 - Official Gazette 56/2020, Series I of 2020-03-19

Termination of Decree-Law 170/2019, of December 4, which approved the eleventh amendment to the Public Procurement Code, approved in the annex to Decree-Law 18/2008, of January 29, and the second amendment to Decree-Law 111/2012, of May 23, restoring the rules revoked by Decree-Law 170/2019

Ministerial Order 4/2020 - Official Gazette 8/2020, Series I of 2020-01-13

Ministry of Justice

Amends Ministerial Order 380/2017, of December 19, which regulates the electronic processing of cases in administrative courts, tax courts, central administrative courts and the Supreme Administrative Court

Case law

Constitutional Court Ruling 775/2019 - Official Gazette 24/2020, Series I de 2020-02-04

Declares unconstitutional, with general mandatory force, the rules contained in articles 2(1), 4(2), and 5(1) of the Municipal Civil Protection Tax Regulation, of the Municipality of Aveiro, concerning the municipal civil protection tax

Constitutional Court Ruling 4/2020 - Official Gazette 25/2020, Series I de 2020-02-05

Considers unconstitutional, with general mandatory force, the rules contained in articles 2(1), 3(2) and 4(2) of the Municipal Civil Protection Tax Regulation, of the Municipality of Odemira, concerning the municipal civil protection tax



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