INFRASTRUCTURE IN PORTUGAL
Brief Overview of the Times Ahead

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The Covid-19 pandemic, or at least its socio-economic consequences, is here to stay. We face the deepest global recession since World War II, international economies are heavily affected and recessions of around 10% are predicted by the end of 2020. And winter has not yet even begun.
The infrastructure sector is obviously not immune to this crisis.
In Portugal, due to budgetary restrictions, a significant share of public infrastructure is on concession to private entities though Public Private Partnerships (PPPs) and under project finance regimes.
These infrastructures are thus regulated by long-term performance public contracts that clearly define the main risks (events) that may affect the normal development of the projects during their respective lifetimes, as

well as the party liable for the consequences of these events. Both the pandemic and the measures adopted by the Portuguese Government in this context have led to a significant reduction in the use of infrastructure – whether in the road, railway, airport, port or health sectors – and, in some cases, has even compromised their financial sustainability. Considering the rules applicable to most of these PPPs, the pandemic constitutes an event of *force majeure* that may entitle to restoring the financial balance of the relevant contracts through monetary compensation or the extension of their term. However, during the peak of the pandemic in March/April, the Portuguese Government approved a legal instrument (Decree-Law no. 19-A/2020), which imposes serious constraints to the exercise of this right by private partners. This controversial measure of dubious constitutionality has generated a great deal of criticism and may, dangerously, affect the confidence of national and foreign investors in contracting with the Portuguese State. This will certainly be a source of litigation in the future.
However, crises also bring new opportunities.
The European Union has approved a EUR 750 billion scheme for the next ten years to relaunch eurozone economies. Portugal will receive approximately EUR 26 billion, which on top of the already planned EUR 29 billion, means that the Portuguese State will dispose of a total EUR 55 billion over the next ten years. Such an enormous amount should certainly not be squandered.
Portugal has already submitted a first version of its Recovery and Resilience Plan ("RRP") to the European Commission and has proposed investing these funds in three major areas: Resilience (which includes health service, housing and the creation of social responses, as well as a commitment to competitiveness and territorial cohesion), Climate Transition (which includes sustainable mobility, decarbonisation and bio-based economy) and Digital Transition. Although a significant part of this amount is devoted to health expenditure, social support and aid to businesses in the utmost affected sectors, a few hundred million euros will be invested in transport infrastructure that may bring about structural changes in society.
Thus, under the RRP, the Portuguese Government plans to invest:

a). EUR 833 million in cohesion infrastructures, including links to inland business areas, missing links, cross-border links and increasing the capacity of the structuring road network; and
b). EUR 936 million in public transport infrastructure, including the expansion of the Lisbon and Porto metro network.

Apart from the RRP, yet benefiting from other agreed EU funding, the Government will focus on railway infrastructure. According to the recently presented 2030 National Investment Plan (NIP), 10 510m will be invested in railway infrastructure over the next ten years. Special emphasis will be given to the Lisbon-Oporto high-speed train and the modernisation and electrification of the existing network.
In the port sector, according to the 2021 State Budget, the new Sines container terminal is intended to advance. This terminal is planned to be built and financed exclusively by private capital.
Considering the sluggishness in contracting with the public administration, and the tight schedule associated with the implementation of EU funds, the Government has submitted a proposal to simplify and reduce bureaucracy in the public procurement system, when it comes to projects benefitting from EU funds.
After much controversy and extensive political debate, the proposal will, in fact, be approved and should cover a large share of new public investment projects.
Although public procurement is expected to accelerate, new legislation will introduce a fourth level of scrutiny in the use of EU funds by creating a new independent committee, which will be appointed by Members of Parliament and will monitor and supervise the contracts covered by this simplified regime.
Let us see whether Portugal can keep up with this enormous challenge.