

PORTUGAL: An Introduction to Public Law

Contributors:



[Ana Marta Castro](#) [View profile](#)



[Rodrigo Esteves de Oliveira](#) [View profile](#)



[View firm profile](#)



Introduction to the current economic, legal and political trends

2020 in Portugal began with an optimistic atmosphere. After a long 10-year period of difficult times, Portugal had finally managed to overcome one of its most serious crises with the economic indicators finally returning to pre-crisis levels.

Portugal's economy was doing better than many other EU countries, with a 2.1% GDP growth. Portuguese exports had increased by 1.3% to a record EUR5.83 billion and tourism had seen the number of visitors coming to Portugal hit EUR21 million.

Portugal's recovery had been largely fuelled by the real estate and tourism boom and, at the same time, foreign direct investment from multinationals and investment in property and from property funds had increased substantially over the previous three years with a 20% year-on-year increase in 2018, netting around EUR4 billion annually.

The Government Programme for 2019-2023 proposed by the recently elected Government of the Socialist Party had been approved in Parliament at the end of 2019 and the perspectives for the following four years were very encouraging.

There was a very strong commitment on the part of the Portuguese Government to grow public investment well above 23% by 2023 in order to meet two fundamental goals: to increase public services' supply and improve the infrastructures that would lead to greater competitiveness of the Portuguese economy.

COVID-19 Pandemic

Suddenly, with no prior notice, the country was strongly struck by the arrival of the COVID-19 pandemic and all the plans of the Portuguese Government had to be put on hold since all governmental strengths had to be exclusively directed into protecting public health and maintaining the recovery and resilience of the economy and society.

For the first time in the Portuguese democracy, the exceptional measure of State of Emergency was decreed and subsequently renewed by the President, from 19 March until 2 May.

In May, the State of Emergency was relieved to the State of Calamity, which lasted until 30 July. But, after a relative calm period during August and September, the situation began to worsen and Portugal saw a new State of Emergency being decreed by the President, for the second time in the same year, which started on 9 November, was consequently renewed for several times until the end of 2020, and extended so far into the first months of 2021...

Due to the pandemic, 2020 was marked by the approval of a wide range of legal acts aimed at establishing a legal framework appropriate to the exceptional reality that the country was going through, which had an enormous impact on the public sector and on the interactions between private individuals and public authorities, of which the three most relevant are outlined below.

The first major set of measures approved regarded the adoption of a series of rules related to the various constraints caused by the pandemic in the development of judicial and administrative activity. With this purpose, a specific regime of fair impediment and suspension of administrative and judicial deadlines was approved and was in force from the beginning of March until June 2020.

The second large group of measures approved was related to the establishment of an exceptional regime for public procurement and public expenditure, which reconciled the required procedural celerity with the safeguard of the State's interests and strict transparency related to public expenditure.

The third, and also the most controversial legal framework approved, was the exceptional regime approved at the end of April 2020, which established, in the context of the COVID-19 pandemic, an exceptional regime for the financial rebalance of long-term contracts to which the State or any other public entity is a party (including public private partnerships) and an exceptional regime that limits the non-contractual liability of the State.

Action beyond the Pandemic

Although the COVID-19 pandemic and the mitigation of its consequences focused most of the efforts of the members of the Government and of the Parliament throughout 2020, there were, however, some relevant and structural measures approved, and which were in line with the objectives contained in the Government Programme for 2019-2023.

Two of the matters that deserved greater relevance during 2020 were the topics of public-private partnerships and public procurement, as well as the administrative modernisation and digitalisation.

Nevertheless, in relation to the first two topics, two symptomatic setbacks occurred in the intended legislative developments.

Indeed, one of the most defining moments of 2019 had been the review of the legal framework applicable to the State in the field of public-private partnerships, with the aim of adapting it to the current social reality, but in March 2020 the Portuguese Parliament repealed that same regime.

2020 was also marked by a legislative procedure launched by the Government with a view to the approval of special public procurement procedures for projects co-financed by European funds, which led to the approval of a draft law by the Parliament that contained certain amendments to the Public Contracts Code and the Code of Procedure in Administrative Courts.

However, after several public discussions and criticisms around the draft law approved by Parliament, such project was ultimately vetoed by the President in December 2020.

Notwithstanding the veto, given the importance of the legal measures at stake, it is expected that in the first half of 2021 a new legal act will be approved with a similar content.

Finally, with a more successful outcome, in November 2020, the Parliament approved the revision of the Administrative Procedure Code, which established some rules focused on the administrative modernisation and digitalisation.

What to expect from the Public Law sector in 2021

Despite the difficult year of 2020 and the remaining signs of the pandemic, 2021 may once again become a year of optimism for the country and the public sector.

In October 2020, the Government approved two fundamental documents for the years ahead, Portugal 2030 Strategy, which establishes the implementation of several policy instruments to be adopted in the near future, such as the Multiannual Financial Framework (Portugal 2030) and the Next Generation EU, a temporary European instrument – which includes the national Recovery and Resilience Plans (RRP) – designed to boost economic and social recovery, bearing in mind the damage caused by the COVID-19 pandemic, and the National Investment Programme 2030, which is the planning instrument for the next cycle of strategic and structuring investments.

According to the information available so far, Portugal can have access to an unprecedented financial envelope commonly referred to as the European Union's financial bazooka, which will reach EUR50 billion in grants (non-repayable), to which around EUR14.2 billion in the form of loans can also be added.

With the decrease in the number of people infected by COVID-19, the start of the vaccination process, and the arrival of the European Union's financial bazooka, Portugal is looking forward to the months ahead and is confident that it can soon actively resume the implementation of the ambitious Portugal 2030 Strategy and National Investment Programme 2030.