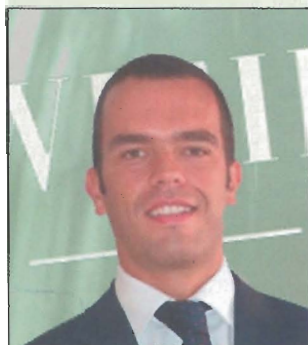


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La implantación de las Directivas 2004/17/EC y 2004/18/EC significará la modificación de los procesos de concesión pública en Portugal. El objetivo de estas directivas es la modernización, la simplificación y una mayor flexibilidad de los procesos de concesión, además de la adaptación de las sentencias del Tribunal de Justicia de la Unión Europea. Sin embargo, hay que remarcar que la esencia de los principios legales originales, como la igualdad de trato, la transparencia y la competitividad, se mantienen.

Important changes in public procurement

Public procurement in Portugal is currently governed by three important laws, although this is about to be modified.

These are Decree-Law no. 59/99, of March 2, 1999, concerning public works contracts, Decree-Law no. 197/99, of June 8, 1999, regarding public supply of goods and services and Decree-Law no. 223/2001, of August 9, 2001, which applies to public contracts in the water, energy, transport and telecommunication sectors.

Implementation of Directives 2004/17/EC and 2004/18/EC, which should be completed by January 2006, will imply the modification of Portuguese public procurement.

Directive 2004/18/EC, on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (Directives 2004/18/EC), replaces the three current Directives on this matter. At the same time, Directive 2004/17/EC, on the procurement procedures of entities operating in the water, energy, transport and postal services sectors, replaces the preceding Directive known as the Special Sectors Directive.

One of the Directives' most significant innovations is the exclusion of the telecommunications sector where there is considered to already be sufficient competition. On the other hand, the postal services sector is now treated as a special sector under the Directive.

The major goal of these Directives is the modernisation, simplification and increased flexibility of the award procedures, and also the adaptation of legal solutions by the courts, in particular those of the Court of Justice of the European Communities.

The essential legal principles remain equal treatment, transparency

and competition.

In addition to open, restricted and, in some specific cases, negotiated procedures, Directive 2004/18/EC introduces a new concept - the competitive dialogue. This is a type of procedure in which the awarding entity enters dialogue with the selected candidates, to develop one or more satisfactory solutions. This system, open to any business requesting it, may be used in the case of particularly complex contracts provided the awarding entities consider that the use of the open or restricted procedure is not appropriate.

Other novelties are also foreseen, such as the possibility of using dynamic purchasing systems, executing public contracts via central purchasing bodies, executing framework agreements, organising electronic auctions and, in general, a diversified use of electronic purchasing techniques. This Directive also foresees the specification of environmental requirements to assess tenders and special regulations on contracts reserved to specific entities in which most of the employees are handicapped.

Although a new public procurement code was expected at the end of 2005, it has not been enacted yet by the Portuguese Government. It is important to note, therefore, that the non-implementation of the Directives within the given time frame may imply that some rules may, in certain cases, have direct effect to public entities or other entities considered as "longa manus" of the State and accordingly, be invoked by a third party against them.

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