

## Is more law the best medicine for business?

Next issue:  
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### Distressing times

Ashurst balancing the downturn

### Knowledge is power

The increasing success of Gamesa

## More relevant public procurement and projects code



João Amaral e Almeida

La revisión del nuevo Código de Contratos Públicos portugués ha significado más que la transposición de las directivas de la UE: ha modernizado y simplificado todos los reglamentos que eran relativos a los contratos públicos y a la procura, apunta João Amaral e Almeida, socio de Sérvulo & Associados y uno de los redactores. El resultado es una legislación que ofrece más transparencia y a la vez refleja los nuevos métodos jurídicos, financieros y de negocios.

The enactment in Portugal of a new Public Contracts Code (PCC) has dramatically altered regulation surrounding major public projects and procurement in the country, says João Amaral e Almeida, partner at Sérvulo & Associados, one of the authors of the reform.

"Among the key drivers behind the renewal of the legislation was the need to implement the EU Directives on public procurement (Directives 2004/18/EC and 2004/17/EC), however the PCC's scope goes far beyond this. It also provides for the complete regulation of public contracts' performance."

The new legislation embodies not only a modernisation effort, encompassing provisions related to e-procurement, ecological procurement, and modern financing techniques such as project finance, but also to simplify processes, he explains. "This contributes to a greater guarantee of transparency, achieved mainly by the compulsory use of electronic means through every stage of the public procurement procedure."

Perhaps the most significant feature of the new regime is its breadth, believes Amaral e Almeida. "It applies to all contracts, regardless of their nature or designation, which are undertaken by contracting authorities – whose nature, characteristics or background are (or could be) subject to market competition."

The new PCC covers all contracts encompassed by the EC Directives as well as others like concession contracts and memorandums of association, which were not subject to procurement rules until now, he explains.

"Broadly, the new public procurement rules have been extended with the aim of promoting market competition in order to allow the best public acquisitions. The Portuguese legislator was very thorough, but nevertheless the future practical experience may of course determine the need to improve some provisions."

A task force has therefore been appointed by the Government to manage future issues and to follow up on enforcement. But clear benefits already now exist for operators in the projects and procurement arenas, he believes, as they now have to reference only a single piece of legislation, rather than many sources. In addition, the emphasis on electronic communication and disclosure should lead to shorter legal and real procedural time limits.

"Fundamentally, the aim of the PCC is to provide greater soundness and swiftness in public procurement procedures," says Amaral e Almeida.

