



Sérvulo & Associados | Sociedade de Advogados, SP, RL

Update

Public Law

February 2023

The new governance model of European funds

Daniel Castro Neves | dcn@servulo.com
Sara Teixeira Pinto | svi@servulo.com

I. The Decree-Law No. 5/2023 entered into force on the 26th of January. It sets out the governance model of European funds for the 2021–2027 programming period.

The new governance model paves the way for the implementation of Portugal 2030 and for its articulation with the Recovery and Resilience Plan. All in all, the decree aims to implement a financial envelope of more than 40 billion euros.

II. The funds included in the realm of the Decree-Law are the following:

- i)* European Regional Development Fund (ERDF);
- ii)* European Social Fund Plus (ESF+);
- iii)* Cohesion Fund (CF);
- iv)* Just Transition Fund (JTF);
- v)* European Maritime, Fisheries and Aquaculture Fund (EMFAF);
- vi)* Asylum, Migration and Integration Fund (AMIF); and
- vii)* Territorial Cooperation Programs (INTERREG) and other funds (*mutatis mutandis*).

In addition to these, the Decree-Law also refers to the funds provided for in the CAP Strategic Plan for Portugal (PEPAC):

- i)* European Agricultural Guarantee Fund (EAGF); It is

ii) European Agricultural Fund for Rural Development (EAFRD).

III. The implementation of these funds will be based on five strategic objectives and will be aligned with the national and European political priorities:

i) A more competitive and intelligent Portugal (OP1): investment in innovation, digitization, competitiveness of companies, skills for smart specialization and entrepreneurship;

ii) A greener Portugal (OP2): investment in the implementation of the Paris Agreement, energy transition, renewable energies and the fight against climate change;

iii) A more connected Portugal (OP3): investment in strategic transport networks;

iv) A more social and inclusive Portugal (OP4): investment in the implementation of the European Pillar of Social Rights, in quality employment, education, access to culture, social inclusion and equal access to health care; and

v) A more territorially cohesive Portugal (OP5): investment in local development and sustainable urban development.

These strategic objectives will be met through an operational structure based on 12 programmes: four thematic programmes (demography, qualifications and inclusion; innovation and digital transition; climate action and sustainability; and maritime affairs), five regional programmes (corresponding to NUTS II regions of mainland Portugal), two programmes for the Portuguese Autonomous Regions of Azores and Madeira, and one programme for the purposes of technical assistance.

IV. The new governance model also sets out the rules for the Portugal 2030 governance bodies.

At the technical level, the coordination continues to be ensured by the national Agency for Development and Cohesion (Agência, I.P.). The Inter-ministerial Coordination Commission (CIC Portugal 2030) remains the highest body for general political coordination.

The plenary of CIC Portugal 2030 is responsible, namely, for establishing strategic guidelines regarding the programming, implementation and budgetary management of Portugal 2030. Therefore, this body is chaired by the member of the Government responsible for the overall management of European funds and composed of a member of the Government from each governmental area. The representatives of the regional governments of the Azores and Madeira also have a seat in the plenary CIC Portugal 2030, should matters of regional competence be at stake. The National Association of Portuguese Municipalities (ANMP) and other entities may also take part in the agenda of the CIC Portugal 2030 plenary session.

V. Furthermore, the Decree-Law refers to the several bodies responsible for the management, monitoring, certification, payment, audit, follow-up of regional dynamics and functional articulation the governance bodies of the Portugal 2030 programs.

With regard to the monitoring function, the legislator assigns a more relevant role to the National Association of Parishes (ANAFRE), which becomes part of the monitoring committee for fund allocation programs.

VI. In the field of transparency, the new governance model creates communication, information, management and control systems, while establishing relevant measures, such as the following:

- i)* Creation of a Funds Line: a multichannel service platform to support the interaction with beneficiaries and potential beneficiaries in all matters related to European funds;
- ii)* Development of a Funds Desk: a single access channel that aggregates information and simplifies the application processes; and
- iii)* Mandatory publication of approved operations on the European Funds Portal, as well as on the More Transparency Portal.

VII. The legal implementation of the new governance model is foreseen to be complex.

First of all, because it implies the articulation of this diploma with the provisions of Regulation (EU) 2021/1060, of the European Parliament and of the Council, which establishes the common provisions regarding various European funds. Secondly, because the governance model for the Portugal 2020 funds (Decree-Law No. 137/2014) not only remains in force, but also becomes subsidiary applicable to the new programming period.

In the field of incompatibilities and impediments, the new governance model seems to have some controversial contours. On the one hand, the Decree-Law prevents the members of governance bodies from intervening in the selection procedures for operations in which they have an interest. On the other hand, the decree provides that, in those bodies, the prevention of possible conflicts of interest must be particularly ensured by considering the provisions of the Portuguese Code of Administrative Procedure. Moreover, the Decree-Law determines the application of the Public Manager Statute to various holders of management bodies.

The harmonization of these diplomas will thus be of paramount importance for the new fund governance model to be proven as “*clear, efficient, transparent, agile and flexible*” as announced by its preamble.

VIII. The new Decree-Law sets out the normative basis for the implementation of Portugal 2030 and for “*a concerted, robust and unprecedented response*” to the challenges faced by the country. Following this first step, the publication of new diplomas is expected to ensure greater synergy between the various sources of financing of the Portuguese economy through the European budget.