



# Portugal

## PPP Units and Related Institutional Framework

January 2014



## Terms of Use of this Report

The European PPP Expertise Centre (EPEC) is a joint initiative involving the European Investment Bank (EIB), the European Commission, Member States of the European Union, Candidate States and certain other States. For more information about EPEC and its membership, please visit [www.eib.org/epec](http://www.eib.org/epec).

This publication has been prepared to contribute to and stimulate discussions on public-private partnerships (PPPs) as well as to foster the diffusion of best practice in this area.

The findings, analyses, interpretations and conclusions contained in this publication do not necessarily reflect the views or policies of the EIB, the European Commission or any other EPEC member. No EPEC member, including the EIB and the European Commission, accepts any responsibility for the accuracy of the information contained in this publication or any liability for any consequences arising from its use. Reliance on the information provided in this publication is therefore at the sole risk of the user.

EPEC authorises the users of this publication to access, download, display, reproduce and print its content subject to the following conditions: (i) when using the content of this document, users should attribute the source of the material and (ii) under no circumstances should there be commercial exploitation of this document or its content.

## **Table of Contents**

1.	Introduction .....	4
2.	PPP Market.....	6
2.1.	PPP Activity by Size and Value .....	6
2.2.	PPP Programme Developments and Challenges for the Future .....	6
3.	The PPP Unit .....	9
3.1.	History.....	9
3.2.	Location .....	9
3.3.	Governance and Accountability.....	9
3.4.	Senior Management and Staffing .....	10
3.5.	Structure .....	10
3.6.	Tasks .....	11
3.7.	Coverage .....	11
3.8.	Role of the PPP Unit in the Project Cycle .....	11
3.9.	Funding.....	12
4.	Other Key Entities in the PPP Framework.....	13
4.1.	Ministry of Finance .....	13
4.2.	Tribunal de Contas.....	13
4.3.	Estradas de Portugal S.A. ....	13
4.4.	Other National PPP Entities .....	14
4.5.	Subnational PPP entities.....	15
5.	Legal and Policy Framework .....	16
5.1.	PPP Legislation.....	16
5.2.	Contractual Forms.....	17
6.	Overview of the Project Cycle .....	18
6.1.	Project Identification and Preparation.....	18
6.2.	PPP Procurement .....	18
6.3.	Implementation and Monitoring of Contracts .....	19
6.4.	Information Publicly Available.....	20
	Annex - PPP Unit Overview.....	22

## 1. Introduction

Portugal has a long history of public service concessions that started in the 1970s, initially in the transport and water sectors. However, financial close of the Vasco de Gama bridge concession contract in the mid-1990s signified the development of greater PPP activity. At this time, the Government launched a first wave of road PPP schemes, out of which 10 reached financial close between 1999 and 2006: three real toll motorways, largely in the more densely populated coastal areas, and seven shadow toll motorways – the so-called toll-free SCUTs (*Sem Cobrança ao Utilizador*). Other PPPs included urban rail and port terminal concessions.

A second wave of seven road PPP schemes for a total length of around 2,000 km, this time with a mix of real toll and availability payments, reached financial close between 2007 and 2010.

Between 2008 and 2011 Portugal further widened the scope of PPPs to the health sector, developing a hospital PPP programme, which involved, in a first phase, the delivery of both infrastructure and clinical services<sup>1</sup>.

PPP activity also took place at regional and municipal levels where a number of municipal water distribution, waste management and car parking PPPs were developed.

At an institutional level, Parpública (the state-holding company whose primary purpose is the management of state equity holdings) was mandated in 2003 to provide PPP technical support to the Ministry of Finance (MoF)<sup>2</sup>. PPP teams were also established at the MoF itself and in the Transport, Health and Environment Ministries. The PPP technical team at Parpública was subsequently discontinued and, as part of the new framework law, a new unit – Unidade Técnica de Acompanhamento de Projetos (UTAP) – was established in May 2012 and a team formally appointed in November 2012, under the umbrella of the MoF. One of UTAP's current principal activities is to support the MoF in the renegotiation of the road sector PPP contracts (see below). More recently, UTAP has also started supporting the Ministry of Home Affairs (in relation to a civil protection and emergency PPP) and assisting procuring authorities in the autonomous region of Madeira. UTAP is also providing expertise to the committees established for the reappraisal of certain hospital PPP projects.

In response to the financial and fiscal crisis and the fiscal reform process agreed between the Portuguese State, the European Commission, the International Monetary Fund and the European Central Bank in 2011, the development of new PPP projects was put on hold pending a review of existing major PPPs and the

---

<sup>1</sup> A structure involving the use of separate SPVs for the delivery of infrastructure and clinical services was deployed for some projects in this programme.

<sup>2</sup> Despacho Normativo nº 35/2003 20 August 2003.

implementation of a number of significant legal and institutional reforms. These were aimed at strengthening the assessment, management and reporting of PPP fiscal risks. The Government also initiated a process to renegotiate certain PPP contracts. This has largely focused on the road sector with the objective of reducing future Government financial obligations and safeguarding the long-term sustainability of the existing road projects. This followed the introduction of real tolls on the SCUTs road projects in 2010 and 2011. Prudent management of PPP contracts is an increased priority for Government and a key component of the current fiscal adjustment programme.

The Portuguese PPP framework covers a broad range of contractual forms including public works and public services concession arrangements and service contracts and covers both authority and user pay schemes. Accordingly a broad definition of PPP is used in this report.

The principal aim of this report is to provide an overview of the PPP institutional set up in Portugal at a particular point in time (January 2014) recognising that PPP arrangements and processes are dynamic and change over time.

The report has the following structure:

- Section 2 provides a brief history of PPPs conducted in Portugal to date;
- Section 3 describes the role and structure of UTAP;
- Section 4 presents the role of other key public sector entities in PPPs;
- Section 5 provides a summary of the policy and legal framework for PPPs; and
- Section 6 outlines the PPP project cycle, with a focus on the role of UTAP.

The Annex provides an overview of the roles and responsibilities of UTAP.

## 2. PPP Market

### 2.1. PPP Activity by Size and Value

Prior to the onset of the fiscal crisis and the fiscal reform process, Portugal had been very active in the PPP market over the previous two decades. 44 PPPs reached financial close between 1995 and 2011<sup>3</sup>. This represented about 3% of the total European PPP market in terms of project number in this period. In value terms, with some EUR 21 bn worth of projects closed, Portugal accounted for about 7% of the European PPP market in the same period. To date, only one project has reached financial close since 2011.

As set out in Table 1 below, the road sector represents by far the largest sector both in terms of number of projects and value. Health and water are the other main sectors.

**Table 1 – Number and value of PPPs which have reached financial close between 1995 and 2013**

	Road sector	Water, waste and energy distribution sectors	Health sector	Other sectors	Total
Number of PPP projects closed	26	9	6	4	45
Total capital investment (EUR million)	19,158	742	626	338	20,864

The Poceirão to Caia project, which was intended to be the first section of Portugal's EUR 8.5 bn high speed rail link between Lisbon and Madrid (including a third Tagus river crossing dedicated to rail) and which reached financial close in 2010 with a value of EUR 1.6 bn, has since been cancelled as a consequence of the fiscal reform programme.

### 2.2. PPP Programme Developments and Challenges for the Future

The fiscal reform process has led to some significant changes to the PPP institutional structure and processes (detailed below). It has also included further renegotiations between Government and the private partners on a number of existing large road

<sup>3</sup> The figures used in this section are based on EPEC data and are compiled in accordance with the data collection and methodology as set out in the EPEC Market Updates.

projects. Coordinating and supporting this process has been, and continues to be, one of UTAP's most important activities.

Specifically concerning PPPs in the road sector, the renegotiation process includes the following motorway PPPs:

- “State concessions”, in which the Portuguese State acts as the grantor: (i) Costa de Prata, (ii) Grande Porto, (iii) Beira Litoral / Beira Alta, (iv) Norte Litoral, (v) Beira Interior, (vi) Interior Norte, (vii) Algarve, (viii) Norte and (ix) Grande Lisboa; and
- “Sub-concessions”, in which Estradas de Portugal, S.A. (EP) - a wholly publicly owned entity - acts as grantor: (i) Algarve Litoral, (ii) Baixo Alentejo, (iii) Baixo Tejo, (iv) Litoral Oeste, (v) Transmontana and (vi) Pinhal Interior.

It is important to note the history of a number of significant changes to the contractual arrangements for these projects prior to the current renegotiations:

- Costa de Prata, Grande Porto, Beira Litoral/Beira Alta, Norte Litoral, Beira Interior, Interior Norte and Algarve were originally established as shadow toll motorways (under the SCUTs programme). In 2010/2011 the payment regimes for these projects were converted into real tolls. Under this arrangement it is particularly interesting to note that the private partner only collects the toll on behalf of the State with the revenues collected being transferred to EP;
- The contracts for Costa de Prata, Grande Porto, Beira Litoral/Beira Alta and Norte Litoral now involve the private partner being paid under an availability-based regime. The payment regimes for the Beira Interior, Interior Norte and Algarve motorways are subject to temporary arrangements as the longer term arrangements are currently under negotiation; and
- Norte and Grande Lisboa were originally established as real toll roads, but were made subject to availability payment regimes in 2010.

With regard to the current renegotiations, preliminary agreement on revised lower levels of availability payments for the majority of the availability-based road contracts has now been reached<sup>4</sup> (but intended still to ensure that European road maintenance standards are adhered to). Negotiations continue for the remaining contracts, including the EP sub-concessions. With an overall publicly stated objective to reduce annual costs in 2013 by EUR 300 m on these projects<sup>5</sup>, representing a payment reduction in excess of 30%, the negotiations focused on a downward adjustment of the return on equity and a reduction in operational costs through changes to certain service level requirements. The negotiations have also included elimination of the need to build up advance funding in the project company for major refurbishment costs such as repaving. Major refurbishment costs will instead be financed as and

---

<sup>4</sup> UTAP: Boletim Trimestral PPP – 2.º Trimestre de 2013.

<sup>5</sup> A potential reduction over EUR 3 bn over the lifetime of the contracts.

when necessary with agreement of Government. Negotiations on the termination of certain projects have also been conducted (e.g. for the Marão tunnel project).

Since 2011, there has been some PPP activity on new projects but at much lower levels than previously: the Tagusgas gas distribution network PPP has since reached financial close and the Vila Franca de Xira hospital PPP has recently reached physical completion.

The Lisboa Oriental hospital project, originally launched in 2008 and put on hold during the last phase of the tender process in 2010, has recently been reviewed by a committee involving UTAP. Following the recommendations of the committee, the Government has recently decided to cancel the 2008 tender. The project however is expected to be re-launched under the umbrella of the 2012 PPP legislation in early 2014. The CMFRS (*Centro de Medicina Física e Reabilitação do Sul*) project is also proposed for re-tendering during 2014. This PPP contract is for a 55-bed hospital unit in the south of Portugal involving facility management and the provision of specialised therapy, rehabilitation treatment and ambulatory services. A project team, composed of members of the Health Ministry and UTAP, has been appointed and is now working on project preparation.

Challenges for the future of Portugal's PPP programme include the management of the continued high level of availability payments, which are projected to peak in 2014, and continuing to ensure effective management of existing PPP contracts.

### **3. The PPP Unit**

#### **3.1. History**

Since the 2003 PPP legislation, the MoF has been assigned a central role in the development and subsequent monitoring of PPP projects. Due to capacity restrictions within the Ministry, and the need to develop a source of appropriate PPP skills and experience, the Portuguese Government had originally delegated a number of PPP activities in 2003 to Parpública (*Parpública - Participações Públicas, S.A.*), the state-holding company whose primary purpose is the management of state equity holdings. Under this arrangement, Parpública provided advice and technical assistance to Government entities. Specialist PPP technical input was also available in other entities such as *Parcerias Saúde*, the PPP team in the Ministry of Health, the former high speed PPP rail development team at RAVE, a team in EP, a team at InIR (*Instituto de Infra-Estruturas Rodoviárias*, the road infrastructure regulator based in the Ministry of Public Works) and, within the MoF itself, the PPP monitoring unit of GASEPC (*Gabinete de Acompanhamento do Sector Empresarial do Estado, Parcerias e Concessões*)<sup>6</sup>. The skills and experience in the private sector advisory community of largely Portuguese banks (which established strong project finance teams), financial and legal advisory firms (some of which drew initially from the UK experience) also contributed to the depth of the Portuguese PPP skill base and consistency of approach across the programme.

However, MoF was concerned that technical support was still too dispersed within the public sector and that coordination could be further improved. MoF also wished to strengthen the retention of accumulated experience and negotiating capability in the public sector and reduce reliance on external consultants. As a consequence, Parpública's role as the main PPP unit was ceased and in 2012 the MoF established UTAP under its direct authority.

#### **3.2. Location**

UTAP has been established as an autonomous administrative entity under the umbrella of the MoF.

#### **3.3. Governance and Accountability**

As an administrative entity wholly funded by the MoF, UTAP is governed by public sector administrative and organisational rules. The head of UTAP reports directly to the Secretary of State of Finance in the MoF.

---

<sup>6</sup> Currently, the activity of GASEPC is mostly devoted to the analysis and control of state equity holdings.

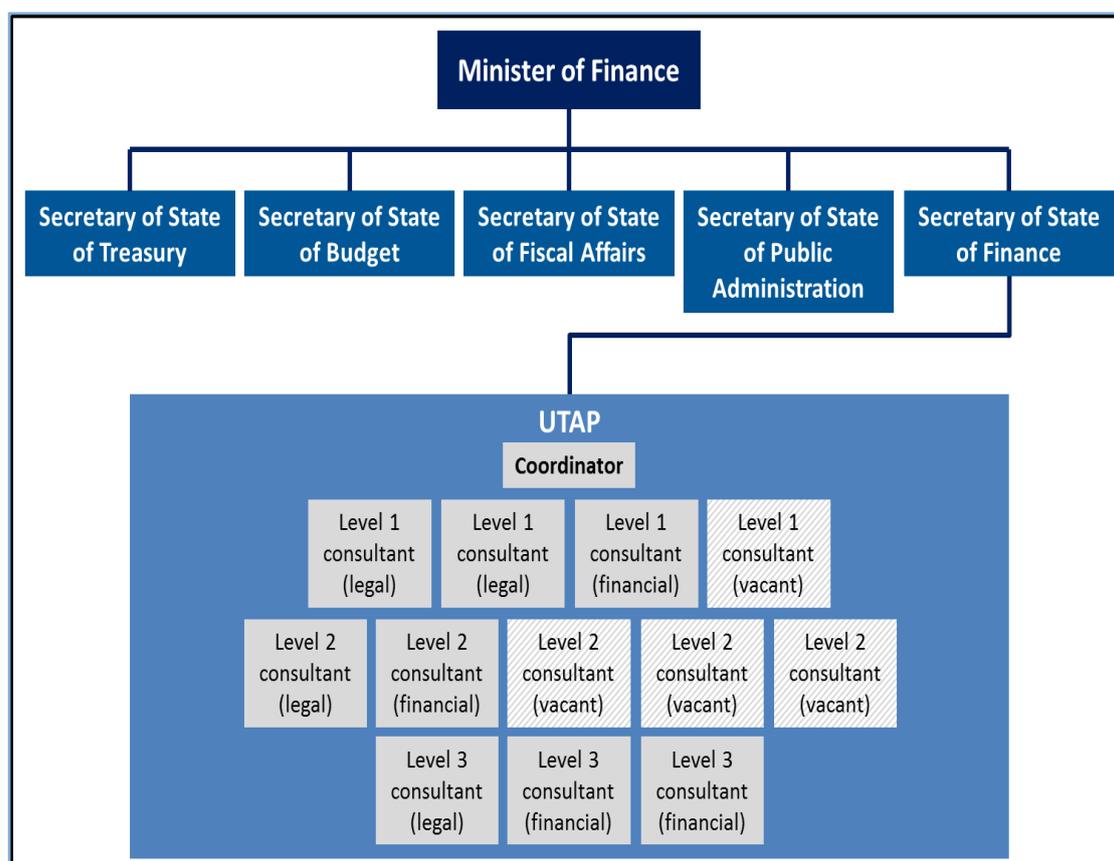
### 3.4. Senior Management and Staffing

UTAP currently comprises eight full time professional staff (with the regulations currently permitting a unit head and up to 12 staff)<sup>7</sup>. The team has a background in law, project finance, economics and public sector administration. Staff are appointed on the basis of three-year renewable contracts and a high proportion of staff has been recruited from the private sector. The team is led by a ‘Coordinator’, a senior position in the Portuguese public administration, equivalent to a Director General/Permanent Secretary level appointment. The Coordinator has particular responsibility, *inter alia*, to appoint members of the teams in charge of the preparation of PPP projects and contract renegotiations (see Section 6 below).

### 3.5. Structure

The structure and reporting of UTAP are set out in Figure 1 below:

**Figure 1 – Reporting lines and organogramme of UTAP**



<sup>7</sup> Given the current focus on existing contracts and lower activity currently on new project development.

### 3.6. Tasks

UTAP's role is formally defined under Decree-Law 111/2012 (the '2012 PPP Law') to enhance the Government's capacity to prepare PPP projects, ensure more knowledge remains within Government and the associated public sector partners and reduce reliance on external consultants. UTAP is also mandated to monitor and, if necessary, manage and support the negotiation or renegotiation of PPP contracts. UTAP is therefore expected to play a central role in the PPP process. As such, its tasks include to:

- provide technical support to, *inter alia*, the various project teams and committees for the development, contracting and monitoring of PPPs (and large<sup>8</sup> infrastructure projects not necessarily defined as PPPs in the legislation), to the MoF and, if the MoF so requests, to other entities;
- monitor public sector financial obligations of PPPs and provide real time information to the MoF Treasury and Budget Directorates;
- publish a quarterly report on financial obligations and other updates on contracts and make these publicly available on the UTAP website;
- act as the central information point on PPP contracts and collect, analyse and hold economic and financial information on PPP contracts;
- appoint and, in some cases, lead the various project teams and committees throughout the project cycle;
- monitor and provide technical support on contract management negotiations and other issues and, where necessary, assume the role of the contract manager; and
- disseminate experience on PPPs and promote and provide PPP training.

### 3.7. Coverage

Under the 2012 PPP Law, UTAP is expected to be involved in PPP projects that have a discounted value of future payments or investment above EUR 10 m or EUR 25 m respectively, in all sectors.

### 3.8. Role of the PPP Unit in the Project Cycle

UTAP is expected to play a central role throughout the project cycle providing the majority of the members that comprise the teams in charge of the different PPP tasks. Such tasks include the structuring, appraisal, tendering and (when needed)

---

<sup>8</sup> Projects involving an investment over EUR 25 m or, for other forms of contract, a gross cost to the public sector of over EUR 10 m.

renegotiation of PPP contracts. More precisely, this involves activities at the following project stages:

- **Project identification and preparation phase:** UTAP appoints members of the project preparation team and provides technical support to the process;
- **Procurement phase:** UTAP leads and appoints some of the members of the committee established to oversee the development of the contract and evaluate PPP tender submissions; and
- **Implementation and monitoring phase:** in addition to providing support for contract management, UTAP appoints and, if requested by the MoF, leads the team established to manage contract renegotiations. This is a significant part of UTAP's current activity.

### 3.9. Funding

UTAP is wholly funded by the MoF.

## 4. Other Key Entities in the PPP Framework

### 4.1. Ministry of Finance

The MoF is mandated to play an active role throughout the PPP project cycle. UTAP's role in the project development process ensures that most decisions are systematically communicated to the MoF during the development of a project, enabling it to halt a project or request modifications when certain risks are considered too great for budgetary purposes or the project is assumed to be unaffordable.

More concretely, the MoF:

- must be notified of a new project to be developed and can designate the head of UTAP as the project preparation team leader and, via UTAP, appoint the other project team members;
- must approve a project (jointly with the sponsoring Ministry) before it can go to tender;
- via UTAP, assigns up to two members of the committee at the project launch stage to oversee contract development and evaluation of tenders;
- must approve any tender decision (together with the sponsoring Ministry);
- approves (together with the sponsoring Ministry as applicable) and co-signs contracts; and
- must approve any renegotiation (together with the sponsoring Ministry).

### 4.2. Tribunal de Contas

The *Tribunal de Contas* (State Auditing Body) is required to give approval ('visto') at financial close of a PPP and this is usually a condition precedent to drawdown under the financing arrangements. Without this approval, the public authority's payment obligations will, as a rule, not be enforceable. The *Tribunal de Contas* confirms that all the required procedures have been carried out correctly (such as completion of a value for money analysis and that the required environmental approvals are in place) and that adequate State budget allocations have been made for the project. The *Tribunal de Contas* can also, as required by the applicable legal framework, be asked to validate any subsequent renegotiations.

### 4.3. Estradas de Portugal S.A.

EP is a limited liability company established in 2005 to serve as grantor for the third wave of motorway PPP contracts. 100% publicly owned, it was set up under a 75-

year master concession agreement, with the mandate to issue sub-concessions for new projects. There are currently 22 people working full-time on PPPs within EP.

Under the 2012 PPP Law, it has now been clarified that any project developed or managed by EP is subject to the same procedures as PPPs developed by other public authorities (see Section 5.1 below).

#### **4.4. Other National PPP Entities**

##### Transport

Under a recent reorganisation of the Government of Portugal, responsibility for infrastructure, transport and communications now falls under a State Secretariat located within the Ministry of Economy.

*Instituto da Mobilidade e dos Transportes* (IMT I.P.) is an administrative entity under the umbrella of the Ministry of Economy. Its mandate requires it to regulate, monitor, coordinate and plan the transport sector (including roads) and to supervise the execution, management and exploitation of the associated infrastructure (IMT I.P. took over those activities originally belonging to the now extinguished *Instituto de Infra-Estruturas Rodoviárias* referred to in Section 3.1 above). As a rule, IMT I.P. also acts formally as the representative of the Portuguese State for those road contracts where the State is the grantor.

In relation to the railway sector, IMT I.P. has an independent technical department referred to as the '*Unidade de Regulação Ferroviária*' and a similar department, the '*Unidade de Regulação Marítimo-Portuária*', in relation to the maritime transport sector.

RAVE (*Rede Ferroviária de Alta Velocidade*) was established for the purposes of developing high-speed rail in Portugal. Its mission was to develop and co-ordinate the tasks and studies necessary to take decisions regarding the planning and construction, funding, supply and operation of a high-speed rail network in Portugal. RAVE possessed a significant pool of expertise in PPPs. Many of its staff, including the unit head, also had experience in other sectors, such as roads and health. It was able to offer staff market competitive salaries but also engaged external specialist consultants. RAVE answered to REFER (*Rede Ferroviária Nacional*) which has been managing Portugal's railway infrastructure (including new construction projects) since 1997. In 2010, following the suspension of Portugal's high speed rail programme, RAVE was dissolved and its staff integrated into REFER.

##### Health

Until its absorption into the Central Health Administrative System (*Administração Central do Sistema de Saúde*) in 2011, Health Partnerships (*Parcerias Saúde*) was a PPP unit set up by the Department of Health in 2001. Health Partnerships' role was mainly focused on providing support to the hospital PPP project tender boards and relied on the use of external consultants.

#### **4.5. Subnational PPP entities**

Local municipalities have launched concessions relating to matters of local interest, such as light rail as well as water distribution, sewage and waste water services. Equally, the Autonomous Regions of Madeira and Azores have launched their own PPPs: two road projects in Madeira and one road project and one hospital project in Azores. In accordance with the current legal framework, UTAP is not formally mandated to act in relation to these subnational PPPs.

## 5. Legal and Policy Framework

### 5.1. PPP Legislation

The **2001 Budgetary Framework Law 91/2001** was the first piece of legislation referring to PPPs and established the principle that PPPs must show value for money compared to publicly procured projects. The Budgetary Framework Law also provided for multi-year and activity based budgeting, established common principles for government accounts, budget planning and an auditing requirement for specific appropriations for PPPs.

The **PPP Decree-Law 86/2003 (amended in 2006 by Decree-Law 141/2006)**, provided general, largely procedural, guidance on PPPs and allowed for the establishment of sector specific regulation.

As a consequence of the fiscal reform process, the 2003/06 Decree-Laws and certain provisions of PPP Health Law 185/2002, have been updated and replaced by **Decree-Law 111/2012** (referred to above as the 2012 PPP Law), providing further amendments to the legal framework and including the establishment of UTAP. The 2012 PPP Law also broadens the scope and application of the PPP framework to include a wider group of 'public partners' and thus remove any ambiguity about separate treatment of such entities. The 2012 PPP Law also provides for yet closer monitoring and additional requirements with regard to the analysis of fiscal impact, budgetary affordability, risk analysis/allocation and cost-benefit analysis of projects for new or amended contracts. The 2012 PPP Law supports increased transparency, requiring mandatory publication of PPP documentation. It also allows, if required, for separate tendering of the financial component of PPP projects. The definition of PPP is more widely drawn within some requisites but excludes contracts where the discounted value of future payments and investment is below EUR 10 m and EUR 25 m respectively, together with certain water and waste water treatment concessions or intra public sector concessions.

Rules governing the procurement process of public contracts, including public services concessions, are set out in the **Public Contracts Code (Decree Law 18/2008, as amended from time to time)**, implementing the relevant EU directives. The 2008 Public Contracts Code also includes substantive provisions for public service concessions, some of which are mandatory provisions of law (e.g. step-in, redemption and termination of the contracts by the public authority) whilst others are default provisions to be used in the absence of an expressed contract provision or which may be covered by the Portuguese Civil Code, such as those relating to *force majeure* and change in circumstances.

## 5.2. Contractual Forms

The 2012 PPP Law contemplates, among others, six contract types namely, public works concession or sub-concession agreements, public services concession or sub-concession agreements, continuous supply agreements, service agreements, management agreements and/or cooperation agreements.

### Box 1 – Select Contractual Provisions Found in PPP Contracts

There are several key contractual provisions of PPP contracts in Portugal although, as the programme has developed over time, these have evolved and may not apply to all existing PPP contracts. Two provisions, financial balance and change in law, are briefly outlined below:

#### Financial balance

As in Spain and some other civil law countries, ‘financial balance’ is a key concept which underpins PPP agreements. It aims to accommodate the conflicting interests of the public authority – which wishes to retain flexibility – and the private partner and investors who wish to avoid changes in scope that detrimentally alter the risk profile and financial return of the project.

Adjustment of terms under financial balance varies according to the contract, but is generally available in the following circumstances:

- unilateral variations imposed by the public authority, which result in an increase in costs or loss of revenue;
- *force majeure* events (unless the contract is terminated as a result);
- specific change of law;
- delay caused by expropriation (where the cost and delivery risk remains with the public authority);
- construction delays caused by the public authority; and
- in road projects, the introduction of competing roads.

#### Change in law

Changes in law typically sub-divide into ‘specific’ change in law and ‘general’ change in law. Specific change covers changes of law that have a direct impact on the costs or revenues of the project. General change comprises any change to the general law (including – without limitation – tax and environmental law) that is not a specific change in law.

The private partner may claim an adjustment under financial balance in respect of any specific change in law but will typically take the risk of general change in law both in the construction and operational phase of the project.

## 6. Overview of the Project Cycle

The 2012 PPP Law envisages three main stages to the PPP project cycle comprising (i) an identification/preparation stage, (ii) a project procurement stage and (iii) an implementation/monitoring stage. The process is summarised in Figure 2 below at the end of this Section.

### 6.1. Project Identification and Preparation

PPP projects/contracts may be developed and granted by central government Ministries, local municipalities and autonomous regions (Madeira and Azores), as applicable. If a public entity wishes to develop a PPP project, the project first has to be submitted to its relevant line Ministry (known henceforth in the project cycle as the 'sponsoring Ministry'). The sponsoring Ministry must then notify the MoF with a view to establishing a project team.

Once the MoF and, subsequently, UTAP, have been notified of a project, the head of UTAP is required to appoint a project team (*equipa do projeto*) of five to seven members. The project team must comprise members from the sponsoring Ministry. The MoF may appoint the head of UTAP as the project team leader (it is too early to say if this would be the case for all projects given that the number of new PPP projects being developed is still limited).

The project team will, *inter alia*, carry out an economic, financial, risk and affordability analysis of the project, identify the public sources of funding and assess the budgetary impact of the project. The project team is empowered to request support from the sponsoring Ministry/authority to carry out this work. The project team however must also involve those public entities or services that will be engaged with the execution of the eventual contract.

### 6.2. PPP Procurement

The project team then presents to the MoF and the sponsoring Ministry a decision paper on the project and the Ministries jointly have up to 30 days to decide whether or not to launch the procurement stage of the project.

The 2008 Public Contracts Code sets out relevant procurement procedures including limited tender by pre-qualification, the negotiated procedure and competitive dialogue.

The applicable legal framework also requires a public sector comparator ('PSC') to be computed prior to project approval and this is included in the tasks to be developed by the project team for the proposal with respect to the launching of the project. Bidders on projects are usually aware of the PSC analysis before submitting their offers.

Following the decision of the Ministries, a committee (*júri do procedimento*) is established to oversee the next stage in the process which will also include both the final development of the contract and management of the tendering process. The committee is then required to provide a report on the evaluation of tender proposals, including an analysis of the forecast payment commitments and their affordability, as well as the potential impact of risks for the public sector. This report is presented to the MoF and the sponsoring Ministry for a decision to be taken within 30 days.

In terms of composition, the 2012 PPP Law stipulates a requirement for three or five members of which one or two members respectively are appointed by the sponsoring Ministry, one or two respectively by the head of UTAP and the leader of the committee is appointed from one of the team of UTAP itself. UTAP provides administrative and technical support to the committee without prejudice to support that may also be requested from the sponsoring Ministry or authority.

Depending on the project, as a rule, the 'procuring authority' can formally be the MoF and the sponsoring Ministry or the authority jointly or just the sponsoring Ministry or authority, as applicable. However, if the procuring authority is the sponsoring Ministry only, key process decisions, including approval of the contract, still require the joint approval and signature of both the sponsoring Ministry and the MoF.

### **6.3. Implementation and Monitoring of Contracts**

For the implementation of complex contracts, the MoF and the sponsoring Ministry may appoint a monitoring or, if necessary, a renegotiation team. As with the project team, UTAP is expected to play the leading role in constituting and leading any monitoring or renegotiation team. Recommendations of the renegotiating team require joint approval of the MoF and the sponsoring Ministry (within 30 days).

As mentioned in 4.2 above, the *Tribunal de Contas* is also required to carry out a review of the executed contracts and if positive, issues a '*visto*' confirming that it is satisfied that procedures have been carried out correctly and the necessary budget allocations have been made.

Contract management and monitoring principally rests with the procuring authority, which typically hires a contract manager to meet these requirements. Both the Inspector General of Finance and the *Tribunal de Contas* (in its capacity for tracking both how Government money is spent as well as reviewing operational performance), may also review projects from time to time.

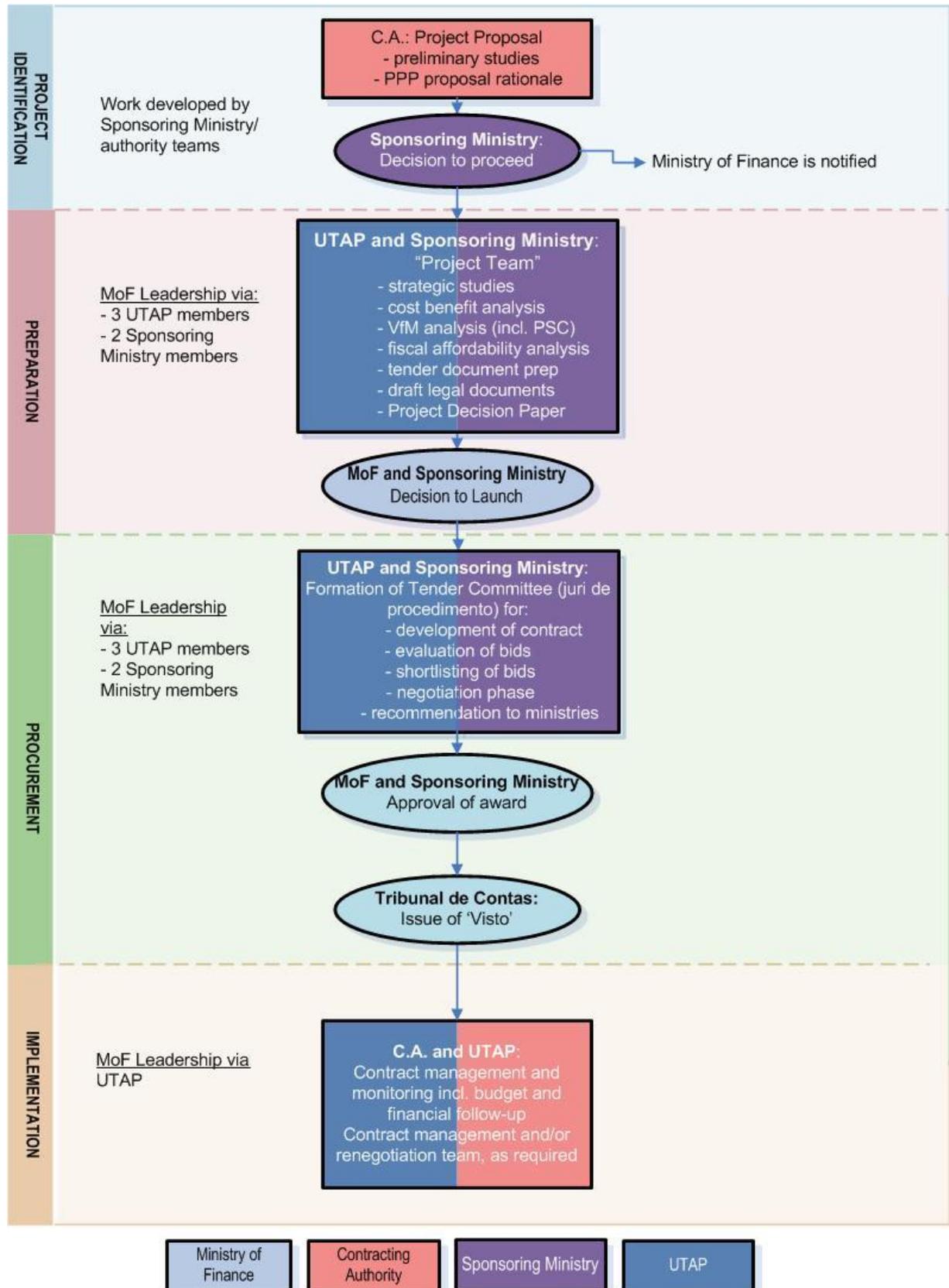
In accordance with the 2012 PPP Law, UTAP is in any case required to monitor the PPP contracts and projects, especially with regard to any economic and financial aspects, collect information and report regularly on contract management issues. It may also be required to lead any renegotiations, especially for complex contracts and as directly requested by the MoF.

#### **6.4. Information Publicly Available**

Certain PPP documents are now required to be published by law including:

- the quarterly report on financial obligations and update on contracts;
- composition of project teams and committees and the identity of experts in any arbitration;
- evaluation reports on PPP proposals; and
- executed PPP contracts and any amending documents (excluding any information that is legally protected from publication by law).

Figure 2: Outline PPP Project Cycle



## Annex - PPP Unit Overview

### 1. General Structure of the PPP Unit

Location within government	Ministry of Finance
Reporting and accountability	Secretary of State of Finance, Ministry of Finance
Part of general procurement unit	No
Sectors	All
Coverage	National PPP above EUR 10 m in total payments or EUR 25 m in investment costs. National concessions and subnational PPP/concessions by joint request of Ministry of Finance and contracting authority
Funding	Public sector budget
User fees	No
Success-based fees	No
Staffing	8 full time (up to 12 permitted)
Secondments	No
Public-private mix	Yes
Difficulties in attracting staff with PPP expertise	No
Difficulties in retaining staff	No

## 2. Operational Framework for the PPP Unit

Business planning	
Involved in identification/planning	No
Develop business case/feasibility study	Yes*
Assess feasibility	Yes*
Approve/qualify as PPP	No
If so, is this binding?	n/a
Provide recommendations to approval bodies	Yes
Assist in finding advisers	No
Sit on steering/oversight committee for the project	Yes*
Sit on project team/group*	Yes

\* Work developed by Project Team appointed by and with majority of Members from UTAP staff. UTAP may be asked by the MoF to chair the Project Team. No separate oversight committee and project team

Procurement process	
Act as procuring authority for the project	No
Approve tender documentation	Yes*
Sit on steering/oversight committee for the project	Yes*
Sit on project team/group	Yes*
Involved in contract negotiation	Yes
Bid evaluation	Yes*
Bid approval	No
Involved in post-preferred bidder negotiations	Yes*
Involved in financial close	Yes*
Approve final contract	No
Sign final contract	No
Approve the financing documentation	No

\* As part of a committee (*Júri de Procedimento*) which might be the same as the project team

Project implementation	
Approve renegotiation during construction	No*
Approve renegotiation during operation	No*
Payment oversight	Yes
Contract management	Yes**
Monitor implementation	Yes

\* Work developed by negotiation team appointed by and with majority of Members from UTAP staff. UTAP may be asked by the MoF to chair the Project Team. Negotiation team reporting final results for approval by the MoF/Sponsoring (Line) Ministry

\*\* If requested to act as contract manager

Market development	
Determine and share best practice (e.g. guidance, lessons learned)	Yes
Develop PPP policy	No
Develop standard documentation (e.g. RFP, contracts)	Yes
Promotion of PPPs (e.g. market awareness)	Yes
Training	Yes
Project database development and management	Yes