Tribunal de Contas
EUROSA TFMA Seminar
Functions performed by Municipalities

*The most recent developments of the decentralisation process in Portugal*

10-11 October 2019
Summary

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2. Municipalities, Civil Parishes and intermunicipal entities: facts and figures
3. The ongoing decentralisation process
   1. Basic principles, general rules and funding
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   1. Education
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The Portuguese Constitution sets the following framework:

- Portugal is composed by the territory historically defined in the European continent and by the archipelagos of Açores and Madeira.
- It is a unitary State which respects the autonomy of the insular regions and of municipalities and civil parishes.
- Açores and Madeira constitute autonomous regions, with their own political-administrative statutes and own governing bodies, in view of its geographical, economic, social and cultural specific features and of the historical will for autonomy of their population.
- The autonomous regions have a Representative of the Republic, appointed and dismissed by the President of the Republic, their own Parliaments, although they have to respect some limitations deriving from the exclusive competences of the national Parliament. These Parliaments may be dismissed by the President of the Republic, under the conditions imposed by the Constitution.
The Portuguese Constitution sets the following framework:

- In the continent, there are municipalities, civil parishes and administrative regions. The latter have not yet been implemented.

- In the Autonomous Regions of Açores and Madeira there are municipalities and parishes. However, the decentralisation pack we are about to approach does not comprise them.
308 municipalities, 30 of which in the Autonomous Regions of Açores and Madeira.

3092 civil parishes, 210 in the Autonomous Regions of Açores and Madeira.

Source: National Association of Portuguese Municipalities
Law 75/2013, of 12 September sets the statute of local authorities, intermunicipal entities and associations of municipalities or of civil parishes with specific goals.

• **Intermunicipal entities** comprise:
  
  • **Metropolitan Areas** (set by the law; two, one for Lisboa and one for Porto, the first gathering 18 municipalities and the second 17 municipalities)
  
  • **Intermunicipal Communities** (may be settled by the common will of municipalities; 21, gathering from 5 to 19 members, average of 12 members)
The ongoing decentralisation process

The Portuguese Constitution recognizes the principle of administrative decentralisation. Consequently, legal acts setting the statute of local authorities and intermunicipal entities have progressively enlarged over the years the set of competences committed to them.

The ongoing decentralisation process formally started with Law 50/2018, of 16 August, although the whole process had begun in 2016, with the development of Government studies and negotiations with the National Association of Portuguese Municipalities and with the National Association of Portuguese Civil Parishes.

Law 50/2018 encompasses the following types of decentralisation:

- From the State to municipalities;
- From the State to intermunicipal entities;
- From the State to civil parishes;
- From municipalities to civil parishes.
The decentralisation obeys the following principles and guarantees:

• Subsidiarity;

• Preservation of the local administrative, financial and organisational autonomy of local authorities;

• Quality of the public delivery of services, which will be permanently monitored;

• Cohesion across the territory, universality and equality of treatment in the access to public services;

• Efficiency and effectiveness of public management;

• Transfer to the local authorities of suitable financial, human and real estate resources, considering the ones formerly used by the Central Administration for the same purposes, thus ensuring the financial neutrality of the operation;

• Funding stability.
The ongoing decentralisation process – basic principles and general rules

The transfer encompasses the universe of competences established by law and it should occur in 2019. However, the law allows local authorities and intermunicipal communities to postpone the transfer of competences until 1 January 2021, given certain communication procedures. 244 municipalities accepted the transfer of at least one of the areas for the year 2020.

A Monitoring Commission was settled, composed by members of Parliament, of the Government and of the National associations of Municipalities and of Civil Parishes, which will assess the suitability of the resources transferred, regarding each area.
In the specific context of decentralisation laws, their beneficiaries were also granted specific financial resources regarding each area of transferred competences. The global estimated amount of annual transfers from the State Budget to local authorities is of 952,2 million €.

The assets, real estate and human resources previously used to the accomplishment of the transferred tasks should also be passed on to local authorities.
The ongoing decentralisation process – areas and competences

The law identifies the areas of competences to be transferred, but it should be stressed that only some of the competences of each area are transferred. In fact, Law 50/2018 and a set of other complementary laws clearly define the specific competences that will be transferred to each of the entities mentioned below.

<table>
<thead>
<tr>
<th>Entities involved</th>
<th>Areas</th>
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</table>
| From the State to municipalities | • Education  
• Social welfare  
• Health  
• Civil protection  
• Culture  
• Public real estate  
• Urban renting and rehabilitation  
• Seaports and urban areas of economic or tourism development  
• Cadastral information, forest management and protected areas  
• Transports and roads  
• Citizen services  
• Proximity police services  
• Animal health and protection  
• Ensuring food quality  
• Fire safety  
• Public parking  
• Residual gambling |
### The ongoing decentralisation process – areas and competences

<table>
<thead>
<tr>
<th>Entities involved</th>
<th>Areas</th>
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<tbody>
<tr>
<td>From the State to intermunicipal entities</td>
<td>Depending on the agreement of the municipalities that compose such entities and always in an intermunicipal point of view and in most of the areas at the planning level:</td>
</tr>
<tr>
<td></td>
<td>• Education and professional qualification</td>
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<td>• Social welfare</td>
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<td>• Health</td>
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<td>• Civil protection</td>
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<td>• Justice</td>
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<td>• Tourism promoting</td>
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<td>• Management of regional ports</td>
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<td>• Management of projects financed by European funds</td>
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<td>• Management of programmes for investment fundraising</td>
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## The ongoing decentralisation process – areas and competences

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<tr>
<td>From the State to civil parishes</td>
<td>Settlement and management of citizen services, in cooperation with the State and the municipalities</td>
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<td>From municipalities to civil parishes</td>
<td>The law identifies 13 areas of transfer of competences, like management and maintenance of gardens, markets, cleaning of public areas, authorizing occasional camping, fire pits and fireworks, etc.</td>
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<td>The Law also allows the delegation of competences, which may cover all areas of specific interest of the population residing in the civil parish’s territory, and which is granted through a contract.</td>
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In the Education area, the one with the most significant estimated financial transfers, 858 million € the competences that will be transferred to municipalities are mainly the following, according to Law 50/2018:

- Participating in the planning, management and investment regarding public schools until the 9th grade (construction, equipment and maintenance);
- Ensuring school meals;
- Supporting pupils in the context of social welfare;
- Participating in the management of educational resources;
- Granting public contracts for the provision of goods and services related with the schools and their educational and sports activities;
- Recruiting and managing non-teaching staff.
The exercise of these decentralised competences is based on cooperation with the management organs of the schools involved, which have, themselves, certain degrees of autonomy, also defined by law.

Intermunicipal entities were also assigned competences in this regard, as the planning of the intermunicipal public school transport and the planning of educational offer at a supramunicipal level.

Decree-Law 21/2019 contains the developments for the transfer of competences in the Education area, setting several principles that may be seen as limitations to the action of municipalities related to the equality of pupils across the country and to the autonomy of public schools, recognized by law.
Furthermore, it contains substantive rules, about the contents and procedures regarding, namely, basic planning instruments to be designed by the municipalities and intermunicipal entities, but also the management of school cafeterias, construction and rehabilitation of public school facilities, social welfare, non-teaching staff management, etc.

New organs are created by this Decree-Law:

- **Municipal education councils**, that are committed the task of monitoring how the educacional system is working and of proposing the adequate measures so that it achieves better patterns of efficiency and effectiveness. This organ is composed by the presidents of the executive and the deliberative organs of the municipality, a president of a civil parish chosen by the latter, representatives of the central administration, school managers and others.
Education

➢ A **monitoring commission** in each municipality, targeted at monitoring the implementation of these competences and proposing measures to enhance certain strategic goals. It is composed by the president of the executive organ of the municipality, a representative of the central administration and the managers of the schools based in the municipality.

➢ A **technical development commission**, that will develop the financing formulas for these competences in what concerns the equipment and the maintenance of school buildings and school residences and school transport and regarding the formula for setting the maximum number of reference of non-teaching staff. It is composed of representatives of the members of Government responsible for the areas of Education, Finances, Local Government, and of the National Municipalities Association.

106 municipalities accepted the transfer of competences in this field for 2020
In the Health area, the second one with the most significant estimated financial transfers, the competences that will be transferred to municipalities are mainly the following, according to Law 50/2018:

- Participating in the planning, management and investment regarding new units of primary healthcare, including their construction, equipment and maintenance;
- Managing, maintaining and preserving other facilities allocated to primary healthcare;
- Managing the workers of a specific career of non-medical staff when working in units of primary healthcare;
- Managing the logistical support units related to primary health care units;
- Participating in programmes for promoting public health, healthy living and active aging.
According to the same law, there are competences in this area that will be exercised by intermunicipal entities, basically the ones of participating in the definition of the primary healthcare and continued care networks with intermunicipal scope.

The Law 50/2018 was complemented, for the Health area, with Decree-Law 23/2019, of 30th January, containing the exhaustive regulation of the competences mentioned above, but also setting that all those competences will be exercised by the executive organ of municipalities, ruling the relationships between those organs and other pre-existing or new organs, determining the transfer for the municipalities of facilities and non-medical equipment, identified in an appendix, allocated to the exercise of the transferred competences and the conditions they are submitted to.
New organs were created, in each municipality, by Decree-Law 23/2019:

➢ A **health council**, gathering representatives from the executive and deliberative organs of the municipality, from the central administration, from the public health care units involved and from institutions of the civil society. Consultative functions are assigned to this Council.

➢ A **monitoring commission**, gathering, in its smallest composition, the president of the executive organ of the municipality a member of the central administration and a representative of the health care units involved. The mission of this commission is to assess the development and evolution of the functions now performed by the municipality and to propose the adoption of measures to attain the strategic goals of the transfer of competences. It meets at least every 3 months.
In addition to the above mentioned laws, the 3 Secretaries of State representing all the Ministries involved in the process issued a document containing the cost, per municipality, and per type of expense (buildings, logistics and staff) deriving from the decentralisation in this field for the years of 2019 and 2020.

Total amount: 92,951,638 €
For tasks regarding real estate: 11,492,736 €
Logistics: 60,523,554 €
Staff: 20,935,348 €

Obviously, the financial transfers will only take place for municipalities that accept to exercise the competences in these years.

91 municipalities accepted the transfer of these competences for the year 2020.
The ongoing decentralisation process implies risks that may be seen as relevant and immediate challenges for the Court of Auditors, with a direct impact on its activities. We may highlight the following:

➢ Increasing risks deriving from weaker internal controls, especially in smaller local authorities, than the ones implemented in Central Administration;

➢ Possible breaches of efficiency and effectiveness originated in the fact that strategic management and administrative and logistical management are not pursued by the same entity (for instance, a municipality manages just a part of a school’s staff but the responsibility of the overall school management belongs to a different public entity);
Challenges for the Court of Auditors

➢ Risk of duplication of expenses;

➢ Risks arising from possible deviations of contractual clauses - for the provision of goods and services – granted by the Central Administration during their execution by local authorities;

➢ Increased number of entities to be audited in the context of each area of decentralisation: from a central public service to a wide set of local authorities, spread throughout the country, and their remaining relationships with the central administration.
Thank you for your attention!