

# Las formalidades registrales en la actividad agraria en Portugal: introducción al problema \*

## The registration formalities in agricultural activity in Portugal: introduction to the problem

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**Resumen:** El presente trabajo pretende identificar de forma sumaria los principales actos de registro del sector agrario en Portugal, sus características más importantes y algunos de los problemas actuales de la actividad registral.

**Palabras clave:** Agricultura; Portugal; actividad registral; registro mercantil; registro de la propiedad.

**Abstract:** This work aims to briefly identify the main acts of registration of the agricultural sector in Portugal, its most relevant characteristics and some of the current problems within the register activity.

**Keywords:** Agriculture; Portugal; registry activity; commercial registry; land registry.

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## INTRODUCTION

In Portugal the external services of registration and notary comprise the Central Registry Office, the civil registry offices, the land registry offices, the commercial registry offices, the vehicle registry offices, the

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public notary offices and the central archives.<sup>1</sup> None of these entities include registration services for agriculture, an option adopted by the legislator in 1979 and which has remained unchanged to this day. Such circumstance does not mean that the agricultural sector does not keep its own registers and procedures for the organisation of its activity, but in fact there is no single public body that regulates the completeness of all agricultural activities.

We can see that, for example, in the case of civil register, this is of a mandatory nature<sup>2</sup> and serves to define and publicise facts and acts on the civil status and capacity of individuals. The purpose of land register is essentially to give publicity to the legal status of buildings, with a view to securing legal transactions in real estate.<sup>3</sup> The purpose of the commercial register is to disclose the legal status of sole traders, commercial companies, civil law companies having a commercial form and individual establishments of limited liability, with a view to ensuring the safety of legal trade.<sup>4</sup> And the purpose of vehicle register is essentially to publicise the legal status of motor vehicles and their trailers with a view to securing legal trade.<sup>5</sup>

It is interesting to note that, with the exception of the civil register, all other registers (land, commercial and vehicle) are created to ensure that legal trade is conducted in a secure manner. And the same criterion could also be applied to the registration of agricultural activity. Even though this is not centralised under the tutelage of a single entity, the primary purpose of licensing agricultural activity before the several public bodies applicable to each sector is also to protect trade between the various agribusiness agents (although in some cases complementary purposes can also be added, such as environmental safeguard, protection of species and soils or fight against rural desertification, to name but a few).

However, the main feature that differs the first type of registers (land, commercial and vehicle) from the agricultural register is that they all have in common the registration of a *thing* (real estate, companies or

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<sup>1</sup> Article 1, *Decreto-Lei n.º 519-F2/79, de 29 de Dezembro* (Approves the New Organic Law of the Services of Registration and Notary)

<sup>2</sup> Article 1.1., Civil Register Code (approved by *Decreto-Lei n.º 131/95, de 06 de Junho*)

<sup>3</sup> Article 1, Land Register Code (approved by *Decreto-Lei n.º 224/84, de 06 de Julho*)

<sup>4</sup> Article 1.1., Commercial Register Code (approved by *Decreto-Lei n.º 403/86, de 03 de Dezembro*)

<sup>5</sup> Article 1.1., Vehicle Register (approved by *Decreto-Lei n.º 54/75, de 12 de Fevereiro*)

vehicles) and not the registration of an *activity*. The registers subject to registry offices are practically essential to the agricultural activity (and most often precede it), but they are not the constituent registers of the activity *itself*. With this distinction cleared-up, we can then demonstrate how registers such as the commercial or land registers contribute to the completion of the agricultural activity from the very first moment.

The registration of the agricultural activity in Portugal is divided through several public entities<sup>6</sup>, depending on the activity sector involved. The fact that it is so segmented affects the farmer in terms of money, time and bureaucracy and attempts have been made to fight against this lack of organisation, as we will see later.

## 1. STARTING ACTIVITY – COMMERCIAL REGISTER

The requirements for starting any agricultural activity in Portugal can be found at the “*ePortugal*” portal (<https://eportugal.gov.pt/>). This website is the electronic access channel to the Portuguese State services where can be found all the requirements for starting activity in the different agricultural sectors.

The page on “*Agriculture, Livestock, Hunting, Forestry and Fishing*” is divided by the following activities:

*011- Temporary crops*

*012 - Permanent crops*

*013 - Growing of vegetative propagating materials*

*014 - Animal production*

*016 - Support activities to agriculture and post-harvest crop activities*

*017 - Hunting, trapping, game propagation and related service activities*

*024 - Forestry and logging related service activities*

*031 - Fishing*

*032 - Aquaculture*

For each activity a different window is displayed, identifying the services and licenses applicable to each case. A general reference is

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<sup>6</sup> Vid. MUÑIZ ESPADA, E., *Hacia unas nuevas relaciones entre el Registro mercantil y la actividad agraria*, Madrid, 2020.

always made to the necessity of choosing the legal form and setting up a company to start business, followed by the specific sectorial requirements, such as licenses, registers, applications, etc. Finally, there is also a final note of “*When carrying out your activity you may need*” which may include certificates, measuring or technical instruments and industrial property, whenever applicable.

We will focus on the first and more generic requirement, applicable to practically all cases, which uses the commercial register as a necessary tool to achieve its purpose. The formation of a commercial company has been significantly simplified since 2005 with the creation of special regimes for (i) immediate incorporation<sup>7</sup>, foreseeing the possibility of creating companies “on the spot” (“*na hora*”) at the commercial registry offices, and (ii) online incorporation of companies<sup>8</sup> through the website <https://eportugal.gov.pt/espaco-empresa/empresa-online>.

Commercial companies are essentially defined by the responsibility undertaken by its members and its organizational structure. In Portugal they can be divided into four types<sup>9</sup>:

- Partnership (“*sociedade em nome colectivo*”);
- Private limited company (“*sociedade por quotas*”);
- Public limited company (“*sociedade anónima*”);
- Limited partnership / partnership limited by shares (“*sociedade em comandita simples*” / “*sociedade em comandita por acções*”).

Private and public limited companies are the most frequent types of companies, especially because shareholders have limited responsibility. In the agricultural sector, the vast majority of companies are private limited companies.

Once the company is formed, the commercial registry office will ensure the communication and subsequent formalities to all entities that must be notified, without the interested parties being burdened with such a task. This has constituted an important element of debureaucratisation

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<sup>7</sup> *Decreto-Lei n.º 111/2005, de 8 de Julho* (Special Regime for Immediate Incorporation of Companies)

<sup>8</sup> *Decreto-Lei n.º 125/2005, de 29 de Junho* (Special Regime for Online Incorporation of Companies)

<sup>9</sup> Article 1.2., Commercial Companies Code (approved by *Decreto-Lei n.º 262/86, de 02 de Setembro*).

and simplification of administrative procedures, with inherent advantages for citizens, companies and the Public Administration itself.

At the time of its incorporation, the future agricultural company should pay attention to its corporate purpose, which must include all the economic activities that it will carry out during its existence, although it can be extended or diminished at later stage. The same applies to the economic activity codes (“CAE”), which must comply with the applicable requirements for each agricultural sector. Other elements may also be determinant for the new company, such as the amount of share capital (in case the company develops activities or requires special licensing that presuppose a certain economic capacity). But also, the type of shareholders that will hold its capital or the percentage held by each (in case some special requirements on age or qualifications are determinant for benefiting from special financial incentives).

After its formation, the company should be registered before the Tax Authority and subsequently before the Social Security. Managers or directors may also be subject to the same formalities.

## 2. REGISTRATION OF PROPERTY – LAND REGISTER

In Portugal there are three entities responsible for the management of property and rural and urban buildings: the land cadastre (“*cadastro predial*”), the property tax records (“*matriz predial*”) and the land register (“*registo predial*”). The land cadastre accurately defines the characteristics of each rural or urban building, namely the location, configuration, limits and areas of the property and its built social parts, based on orthophotomaps with official validity. This information is available online at <https://www.dgterritorio.gov.pt/cadastro/cadastro-predial> and is under the responsibility of the General Directorate of the Territory (“*Direcção Geral do Território*”). The property tax record, which is divided into rural and urban tax records, constitutes the tax inventory of all rural and urban properties in each parish and municipality, to which it is necessary to communicate, before or afterwards, any changes on the characteristics of the property, the use, the owner, etc., in order to make such changes official. The land register, which is performed in the land registry office, is the official archive where all property rights and other rights and encumbrances on real estate are registered and confirmed, without up-to-date knowledge of

which no legal act (purchase, sale, mortgage, etc.) can be performed on a rural or urban property.

The fact that each of these database's information is organized, held and managed by different entities mean that does not exist a general vision of interconnection and harmonisation of information between them. The inexistence of a property register standardisation leads naturally to several divergences on the description and identification of the property and even between the real area of the property and the information registered on the land register and on the property tax record.

The current Land Registry Code has promoted the de-formalisation and de-bureaucratisation in the public services and encouraged property owners to register and/or regularise their properties. Thus, more simplified legalisation processes were established for harmonising the information contained in the land register and the property tax record.<sup>10</sup> The harmonization of the identifying elements of the property is also required for the purposes of formalization of agreements in which the sale or encumbrance of real estate subject to land register is involved.<sup>11</sup>

### 3. THE “*AGRICULTURE SINGLE PORTAL*” – AGRICULTURAL REGISTER

If standardisation is seen as a challenge in property registration, given the three different entities that regulate it, in the registration of agricultural activity the problem is much more complex. With no less than 14 independent public entities regulating the different agricultural sectors, harmonising procedures, deadlines, fees and quality of service between them all can hardly be considered an easy task. The public entities attached to the Ministry of Agriculture include directorates-general, regional directorates and institutions:

#### Central Services

- GPP (*Planning, Policy and General Administration Office*) – Central Service of Direct State Administration
- DGAV (*Directorate-General for Food and Veterinary*) – Central Service of Direct State Administration
- DGADR (*Directorate-General for Agriculture and Rural Development*) – Central Service of Direct State Administration

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<sup>10</sup> Article 28.1, Land Register Code

<sup>11</sup> Article 58, Notary Code (approved by *Decreto-lei n.º 207/95, de 14 de Agosto*)

- IFAP (*Agriculture and Fisheries Financing Institute, I.P.*) – Indirect Administration Body of the State
- IVV (*Vine and Wine Institute, I.P.*) – Indirect State Administration body
- IVDP, IP (*Douro and Port Wine Institute, I.P.*) – Indirect State Administration body
- INIAV (*National Institute for Agricultural and Veterinary Research, I.P.*) – Indirect State Administration body
- AG PDR 2020 (*Managing Authority of PDR2020*)

### **Regional Directorates**

- DRAP Norte (*Regional Directorate of Agriculture and Fisheries of the North*) – Peripheral Service of Direct State Administration
- DRAP Centro (*Regional Directorate of Agriculture and Fisheries in the Centre*) – Peripheral Service of Direct State Administration
- DRAP LVT (*Regional Directorate of Agriculture and Fisheries of Lisbon and the Tagus Valley*) – Peripheral Service of Direct State Administration
- DRAP Alentejo (*Regional Directorate of Agriculture and Fisheries of Alentejo*) – Peripheral Service of Direct State Administration
- DRAP Algarve (*Regional Directorate of Agriculture and Fisheries of the Algarve*) – Peripheral Service of Direct State Administration

### **Corporate Sector**

- EDIA (*Alqueva Dam Development and Infrastructure Company, S.A.*) – State Business Sector

But in 2020 a first attempt of solving some of the problems in the agricultural register sector was presented by the government, within the national €93M Recovery and Resilience Plan (PRR) – the Innovation Agenda for Agriculture 2020-2030 (“**Agenda**”)<sup>12</sup>, with the purpose of making the agri-food sector grow and innovate, in an agile and appropriate response to its various challenges<sup>13</sup>. This Agenda was aligned with the priorities established in the government program – the

<sup>12</sup> *Resolução do Conselho de Ministros n.º 86/2020, de 13 de Outubro*

<sup>13</sup> MUÑIZ ESPADA, E., “Las llamadas donaciones de alimentos en la proyectada normativa de seguridad alimentaria”, en *Seguridad alimentaria y Medioambiente*, Valencia, 2022, ps. 65 y ss.

fight against climate change, the blurring of inequalities, the change in demographic structure and the digital transition – but also in the guidelines and commitments of the United Nations Sustainable Development Goals<sup>14</sup>, the European Green Deal<sup>15</sup> and, specifically, the strategy “From farm to fork”<sup>16</sup>.

One of the fifteen flagship initiatives of the Agenda, to be implemented by 2030, was the “*Agriculture Single Portal*” (“*Portal Único da Agricultura*”), under the strategic axis “*Modernisation and simplification*”. This initiative aimed to promote the simplification and streamlining of the relationship with farmers, citizens, businesses and other economic agents, functioning as an online service point, with progressive availability of all the information and services provided by the organisms of the governmental area of agriculture. This digital platform would consolidate the projects developed and underway within the scope of the SIMPLEX programme – a programme for administrative modernisation in Portugal –, representing inclusively, the measure of this governmental area for the 2020-2021 edition.

The two operational objectives consisted in centralise and facilitate the farmer’s contact points with the Ministry of Agriculture and simplify the processes with the Public Administration. The three lines of action were (i) evaluation (to map all services provided and evaluate their procedures), (ii) re-engineering (to redesign circuits and procedures relating to services provided and digitalize administrative processes, so as to simplify the relationship with the Public Administration) and (iii) implementation (integrating processes and platforms into the Single Agriculture Portal in order to create a single point of contact).

On 10 September 2021 the Portuguese Ministry of Agriculture launched the new website of the Agriculture Single Portal – <https://agricultura.gov.pt/>. The platform was created with the objective of centralising information on agricultural activity, tendering proceedings, National and Community support schemes and incentives, documents and forms, public entities and online services.

Information is available on the various areas of activity within the Ministry of Agriculture’s sphere of intervention. It is possible to consult information on the production, feed, commercialisation, adding value to

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<sup>14</sup> <https://sdgs.un.org/>

<sup>15</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en)

<sup>16</sup> <https://www.consilium.europa.eu/pt/policies/from-farm-to-fork/>



production, production organisation, structures and equipment, environment, research and innovation, rural development and agricultural policy.

The services available in the platform include applications for various programs such as the single application for aid (“*Pedido Único das Ajudas (PU)*”), PDR2020, VITIS - PNA 2019-2023, market intervention, the National Irrigation Programme, other assistance with poultry, pigs, eggs and milk, support for energy costs and exemption from audio-visual tax and insurances. Registrations and notifications are also available for procedures that can be carried out almost entirely through digital means in several areas, such as family agriculture, professional training, activity in various sectors, structures and operators, veterinary and animal production, phytopharmaceutical and phytosanitary products, National Agricultural Warning Service and IFAP Beneficiary. With regard to the procedures in force, associated to the presentation of documents, namely certificates and declarations, detailed information is provided covering a range of animal production issues, including the herd declaration (SNIRA), veterinary medicines, communication of deliveries of raw cow milk, certification contract and declarations of the wine sector.

Equally available is the online licensing of livestock activity, under the New Regime for the Exercise of Livestock Activity (NREAP)<sup>17</sup>, which considers livestock activities all facilities for breeding, production, holding, trading, exhibition and others relating to animals of livestock species; so are in this concept not only livestock farms, but also animal assembly centres (market facilities, animal auctions; exhibition; semen production centres; etc.) or animal warehouses (animal traders’ facilities; etc.). It is also possible to find out information on inspections and controls to which plant protection product application equipment is subject and establishments controlled under the SIPACE (Establishment Approval and Control Plan Information System).

Among the online services available to farmers are those related to geographic information, which is essential to ensure an increasingly efficient management of the territory and to facilitate the implementation of agricultural projects, in order to participate in the promotion of economic and social development. In this context, detailed information is

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<sup>17</sup> *Decreto-Lei n.º 81/2013, de 13 de Junho*

provided on a set of services and respective procedures to support the functionalities implemented by the bodies of the Ministry of Agriculture.

In order to contribute to comprehensive and up-to-date information on the productive activity of the agri-food sector and to support decision-making by producers, services and associated activities, support for analysis and communication activities, statistical data and indicators are provided in the areas of structures, production, markets, economic, international trade, insurance, applications and payments and professional training.

Finally, it is also possible to find out the information available on the various areas of activity within the sphere of intervention of the Ministry of Agriculture, as well as the public entities involved in monitoring them, which include production, food, marketing, production enhancement, production organisation, structures and equipment, environment, research and innovation, rural development and agricultural policy.

However the Agriculture Single Portal may have been praised as a single entrance door to all bodies of this governmental area, with 14 independent entities connected with the Ministry of Agriculture currently in existence, this website hardly makes the life easier for farmers who still need to deal with different entities for each of their agricultural activities.

We can appreciate the measure of centralising access to the entities of the agricultural sector, but the basic problem has not ceased to exist: each activity is regulated by a different entity, with different criteria for operation, quality of service, speed of response and efficiency. Perhaps as a new advance in response to this problem, Ministerial Order 6-A/2022 of 5 January from the Minister of Agriculture authorised the Instituto de Financiamento da Agricultura e Pescas, I.P. (“*IFAP*”) to incur expenses up to a global maximum amount of €4,860,000 to contract specialised information technology services to implement the projects included in the Agenda, namely 14 sub-projects, three of the five structuring projects and the digital-cloud innovation hub, namely: the Digital Transformation Action Plan, Data Lake & Analytics and Cloud. Even though the Agriculture Single Portal is expressly excluded from the scope of this new expenditure, we can observe that the remaining projects for a digital transformation programme are of fundamental importance in the goals proposed by the Ministry of Agriculture.

The Agriculture Single Portal is however expressly mentioned within the 2022 SIMPLEX programme<sup>18</sup> for the government area of agriculture and food. The objective, to implement until the 2<sup>nd</sup> quarter of 2023, consists in providing a registration system of agricultural activity in the Agriculture Single Portal that allows support and advice to the farmer within the scope of his activity namely on crops, application of phytopharmaceuticals, application of nutrients in soils, samples, production, water consumption, among others.

If this measure is fully implemented, the registers of agricultural activity in Portugal could undergo a positive evolution towards their simplification and harmonisation, to the benefit of farmers and other users.

## CONCLUSION

None of the traditional register services are exclusive to agriculture. Rather, one could say that they are related or complementary acts that support agricultural activity. Without the land register, it would not be possible to organise land ownership and the division and classification of land. Without recourse to the commercial register, agricultural activity could not be carried out through companies. And even the vehicle register is essential when it comes to register the agricultural machinery operating on a property. The registers for agricultural activity are under the authority of various public bodies responsible for regulating agricultural activities according to the different existing sectors. The farmer thus registers, or enters, or obtains a licence for his professional activity with the applicable regulatory body and through such process he may benefit from any applicable economic support.

Unfortunately, with the current number of registers and permits required for each type of agricultural activity, and with the increasing bureaucratisation of licensing processes and receipt of national and community support, the Portuguese farmer today can be seen more as a technical specialist in subsidy programmes than as an essential active agent of the rural environment. We hope that the future brings a more harmonized solution for all the professional requirements on the

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<sup>18</sup> <https://www.simplex.gov.pt/>

agricultural activity and rescues the farmer from bureaucracy and returns him to the land.

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