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# URÍA MENÉNDEZ

## PROENÇA DE CARVALHO

Concession of a new container terminal in  
the Sines Seaport, Portugal

August 2019

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# The new Vasco da Gama Terminal

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## THE SINES SEAPORT

Built in 1978, the Sines Seaport is an open deep-water seaport with exceptional features to host and operate all types of vessels. It is the main entrance point for Portugal's energy supply (oil and derivatives, coal and natural gas) and a significant seaport in terms of general and container cargo.

The Sines Seaport authority is the APS – Administração dos Portos de Sines e do Algarve, S.A. (“**APS**”) a limited liability company wholly owned by the Portuguese State.

The Sines Seaport qualifies as a landlord port, as operations are not carried out by the APS but rather by licenced entities or concessionaires. In particular, the Sines Seaport currently boasts the following main terminals:

- a container terminal (Terminal XXI), operated under a public service concession by PSA Sines – Terminal de Contentores, S.A. (Port Singapore Authority Group);
- a liquid bulk terminal, operated by CLT – Companhia Logística de Terminais Marítimos, S.A. (Galp Energia Group) under a public service concession for cargo shipment;
- a multipurpose terminal, operated by Portsines – Terminal Multipurpose de Sines, S.A., under a public service concession;
- a petrochemical terminal, operated by Repsol Polímeros, S.A. under a private use concession;
- a LNG terminal, operated by REN Atlântico, Terminal de GNL, S.A., under a private use concession.

**Schedule I** to this document includes the Sines Seaport operational data for 2017 and 2018.

## THE NEW VASCO DA GAMA TERMINAL

Decree-Law no. 103/2019, of 6 August (“**DL 103/2019**”), approved the basis of the concession, under a public service regime, for the design, finance, construction and operation of a new container terminal in the Sines Seaport (the “**Vasco da Gama Terminal**”). This is the first step towards the launch of an international public tender for the award of the concession for the Vasco da Gama Terminal.

The Vasco da Gama Terminal will have an annual cargo handling capacity of 3 million TEU and will boast a cargo dock of 1.375 m length and with three berthing positions, enabling the simultaneous berthing of three of the largest ships worldwide. The embankment area will be circa 46 hectares, -7.5 ZH in depth and have 15 gantry cranes. The Vasco da Gama Terminal shall be built alongside the existing Terminal XXI in the Sines Seaport, which will also undergo an expansion.

According to the publicly available information, the concession will entail a **total estimated investment of EUR 642 million**, to be fully financed by the concessionaire.

### **MAIN DRIVERS**

The Portuguese Government has expressed its desire to modernise port infrastructure and connections with international hinterlands, with the aim of increasing Portugal's competitiveness and taking advantage of new opportunities, including those arising from the change in global sea container trade due to the enlargement of the Panama Canal.

In this context, Resolution of the Council of Ministers no. 175/2017, of 24 November, approved a strategic programme to enhance the activity of Portuguese seaports, aiming at increasing investment, decreasing costs and relaunching the national economy: the Strategy for the Increase of Competitiveness of the Mainland Commercial Ports' Network – Horizon 2026 (“**SICCPN 2026**”).

In respect of the Sines Seaport, the SICCPN 2026 identified the Vasco da Gama Terminal as one of the main drivers in order to achieve its strategic goals (the other one being the Terminal XXI expansion).

According to ASP's forecasts for 2016-2026, these two projects combined, together with an increase in demand from Asian markets, will allow for a substantial increase in cargo movement in the Sines Seaport. In the worst-case scenario, global cargo movement is expected to increase by 56%; in a moderate-case scenario, this increase would be of 73%; and in the best-case scenario, this figure would reach 150%.

Moreover, the Portuguese Government expects that the Vasco da Gama Terminal will have an economic impact of EUR 524 million, representing 0.28% of the Portuguese GDP and 0.33% of the Portuguese GVA.

## Concession features and next steps

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### MAIN FEATURES

This section highlights some of the most relevant provisions of DL 103/2019, which shall serve as a basis for the concession agreement of the Vasco da Gama Terminal. These provisions will be further detailed upon the launch of the competitive tender procedure.

- **Grantor:** the grantor of the concession will be the APS.
- **Scope of the concession:** the construction and operation, under a public service regime, of the Vasco da Gama Terminal, including all services, works, supplies and additional supplementary actions necessary, useful or convenient to that effect. Moreover, the concession shall also encompass the design and construction of the seaport and land infrastructure, facilities and equipment making up the Vasco da Gama Terminal.
- **Nature of the concession:** the concession shall have the nature of a public service concession, entailing that the activities of the concessionaire must be performed in accordance with the demands of a regular, continuous and efficient public service, and also entailing the adoption of the best quality standards, practices and available techniques.
- **Duration:** the concession shall have a duration of 50 years. Although the concessionaire does not have a right of extension of the concession agreement, the parties may agree to an extension period of ten years or less, provided that the concessionaire has complied with its legal and contractual obligations.
- **Construction milestones:** by the 48th month as from the date of approval of the design project by the ASP, a cargo dock with a minimum length of 940 m, an embankment area with a minimum of 25 hectares and ten dock gateways must be built and operating. The remaining infrastructure and facilities must be operating within the 14th year as from the start of the concession.
- **Remuneration of the concessionaire:** the concessionaire shall be entitled to an annual remuneration comprised of a fixed component and a variable component indexed to the container shipping numbers of the Vasco da Gama Terminal. The concessionaire is to propose a regulation on tariffs subject to the approval of the ASP.

- **Transshipment agreements:** the concessionaire may enter into transshipment agreements with its clients.
- **Financing:** the concessionaire shall be fully responsible for the financing of the activities encompassed by the concession agreement.
- **Restrictions on the disposal and encumbrance of assets:** as a rule, the concessionaire cannot dispose or encumber the assets making up the concession. Nevertheless, exceptions to encumbrance in favour of financing entities apply.
- **Risk:** the concessionaire shall bear the risks inherent to the concession, with the exception of those specifically set out in the Tender Specifications.

#### **NEXT STEPS: THE LAUNCH OF AN INTERNATIONAL TENDER PROCEDURE**

The award of the concession for the design, construction, finance and operation of the Vasco da Gama Terminal will be made through an international competitive tender procedure to be launched by ASP.

For this purpose, under DL 103/2019 the Government has authorised the APS to launch the competitive tender procedure for the award of the concession agreement.

According to recent statements of the Minister of the Sea, the tender procedure documents are at the approval stage by the Council of Ministers and the **tender procedure is expected to be launched soon.**

## Uría Menéndez - Proença de Carvalho

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### OVER 70 YEARS ADVISING CLIENTS

**Uría Menéndez** is a law firm with more than 70 years of experience. We currently have 14 offices in Portugal, Spain, London, Brussels, the Americas and Asia.

We advise on Portuguese, Spanish and EU law in business-related matters and assist our clients in their international transactions through our network of offices and our close links with prestigious law firms around the world.

Uría Menéndez first invested in the Portuguese legal market in 1997 and, shortly afterwards, established a permanent presence in Portugal, where we now operate as **Uría Menéndez - Proença de Carvalho**.

After almost two decades in Latin America, where we have a longstanding relationship with key players, we have further strengthened our ties to the region with the creation of the first major Ibero-American law firm, Philippi, Prietocarrizosa, Ferrero DU & Uría ("**PPU**"), arising from the merger between leading firms in Chile, Colombia and Peru.

Through Uría Menéndez and PPU combined, we can offer our clients a global team of 1,000 lawyers as well as privileged relationships with the most renowned firms in the most important jurisdictions.

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*"We are one of the most prestigious law firms in Continental Europe and have adhered at all times to our core principles: rigorous analysis of the law, professional services of the highest quality and long-lasting relationships with clients, capacity for innovation and honesty, decency and strict compliance with high ethical and professional standards; in a nutshell, we strive to excel at all levels".*

Rodrigo Uría Meruéndano

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## A FIRM WITH GLOBAL REACH

Our international profile enables us to offer our clients the highest-quality advice in any part of the world.



- Presence in 10 countries of Europe, the Americas and Asia.
- Top-tier multidisciplinary teams in all the strategic sectors.
- Combination of knowledge of the local market and international experience.
- Local resources and cultural affinity, on-the-ground presence in each market.

We advise our clients on their business in the international markets in which we operate, as well as advising them on their investments and interests within the Iberian Peninsula. We are directly present in the following ways:

- For over 20 years, we have had teams in the main financial centres across the world, **including New York, London and Brussels**, the decision-making hub of the European Union.
- An office in **Beijing** since 2009, featuring a multi-disciplinary Hispanic-Chinese team.
- Joint ownership of the first major Ibero-American law firm, **PPU**, plus a network of offices across the entire region, including Bogotá, Santiago, Mexico City and Lima.

PPU was set up in January 2015 following the merger of Philippi (Chile) and Prietocarrizosa (Colombia) and grew in January 2016 with the incorporation of the Peruvian law firms Ferrero

Abogados and Delmar Ugarte. PPU now has more than 400 lawyers and offices in Chile (Santiago), Colombia (Bogotá and Barranquilla) and Peru (Lima).

- Our firm is a part of the “**Best Friends Group**”, which comprises six leading international law firms headquartered in the major European business centres: **BonelliErede** (Italy), **Bredin Prat** (France), **De Brauw Blackstone Westbroek** (the Netherlands), **Hengeler Mueller** (Germany), **Slaughter and May** (the United Kingdom) and **Uría Menéndez** (Spain and Portugal). We created this group two decades ago with independent European firms, each of them recognised as the leader in its jurisdiction. The Best Friends Group gives us a pan-European presence, where we are able to handle a client’s case seamlessly across several jurisdictions. We work through internationally integrated teams made up of some of the best lawyers from each country.
- Additionally, Uría Menéndez is the exclusive member firm in Spain for **Lex Mundi** – the world’s leading network of independent law firms with in-depth experience in 100+ countries worldwide. As part of the Lex Mundi global network, we can provide our clients with preferred access to more than 21,000 lawyers around the world – all from a single point of contact.

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*“Uría Menéndez is praised for ‘its high-quality service, great negotiation skills and proven knowledge of the sector’.”*

The Legal 500 2017

*“It is a magnificent firm for several reasons: their rigorous approach, proactive manner and technical know-how.”*

Chambers Europe 2017

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## Our Public Law practice

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The key features of Uría Menéndez - Proença de Carvalho's Public Law practice are:

### VERSATILITY AND BROAD SPECTRUM OF CLIENTS, TYPES OF WORK AND ABILITIES:

- Longstanding clients include public entities, private operators, financial institutions and major international funds.
- The matters we handle are often of the most sensitive and complex nature and include (i) public contracts (including project finance), (ii) judicial review of administrative actions and banking / regulatory litigation, (iii) liability of public entities and related litigation, (iv) public-sector M&A and privatisations, (v) regulatory and administrative proceedings and related litigation, (vi) public sector financing (including sophisticated financial products contracted by public entities), and (vii) environmental, energy and urban planning law.
- Our recurrent types of work include (i) all varieties of legal advice, (ii) negotiation, (iii) issuance of legal opinions, (iv) judicial and arbitral litigation.
- We offer a unique combined (i) Public Law / Project Finance practice, and (ii) Public M&A practice (especially in regulated sectors and in particular when public entities or public contracts are involved). The team is at ease and has extensive experience in advising grantors / sellers, sponsors / purchasers and lenders (requiring very different advisory skills and approaches).
- We perform our work in Portuguese, Spanish, English and French.

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*"This Iberian titan is renowned for its project finance expertise."*

Chambers Europe

*"The team has profound knowledge of public law and strong negotiation skills."*

Chambers Europe

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**DOMESTIC AND INTERNATIONAL RECOGNITION:**

- Leading Portuguese clients;
- Leading European clients;
- Leading North-American clients;
- Leading South-American clients;
- Leading Asian clients.

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*“Very professional and reliable team with a deep knowledge of the industry. Interactions are positive due to the quality of the lawyers, who give clients all alternatives and are open-minded.”*

Chambers Europe

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## Contact lawyers

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This newsletter provides general information and does not constitute legal advice.

## Annex I – Sines Seaport operational data

## Sines Seaport operational data

According to the APS data, the Sines Seaport's cargo movement generally increased by 76% between 2005 and 2015.

The table below includes the Sines Seaport's 2018 and 2017 operational data:

	2018	Variation (%)	2017
<b>Vessels</b>	<b>2,107</b>	<b>5.26% increase</b>	<b>2,224</b>
Total GT	87,593,288	2.90% increase	90,211,737
<b>Cargo handling (tons)</b>	<b>47,881,860</b>	<b>4.02% increase</b>	<b>49,885,558</b>
Load	18,560,783	2.86% increase	19,106,67
Unload	29,321,077	4.74% increase	30,778,881
<b>Type of cargo (tons)</b>			
Liquid bulk	20,503,340	8.87% increase	22,497,986
Dry bulk	5,185,626	18.48% increase	6,360,999
General cargo	22,192,893	5.55% decrease	21,026,573
<b>Containers</b>			
TEUS	1,750,445	4.88% decrease	1,669,057
Number of containers	1,111,369	6.89% decrease	1,039,686
<b>Countries of origin / destination (tons)</b>			
Continent and Autonomous Regions	3,654,195	6.98% increase	3,928,574
Other EU countries	10,783,781	4.57% decrease	10,312,326
Non-EU countries	33,443,885	6.17% increase	35,644,659
<b>Bunker supply (tons)</b>			
Bunkering	418,026	8.43% increase	456,508

Source: APS

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