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## Local Charges on Water and Wastewater Services

Dalila Romão - Lawyer

**F4LM**

FERREIRA DE ALMEIDA, LUCIANO MARCOS & ASSOCIADOS  
SOCIEDADE DE ADVOGADOS, RL.



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# Local Charges on Water and Wastewater Services

Executing the fundamental right to  
water and sanitation  
through prices' legal framework

## Step one: the Fundamental Law

- Water is a public good. Art. 84.º of the Portuguese Constitution.
- Adopting a National Water Policy is a State priority task. Art. 81.º of the Portuguese Constitution.
- The right to the protection of health. Art. 64.º of the Portuguese Constitution.

# Executing the fundamental right to water and sanitation through prices' legal framework

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**Step two:** think global, act local.

Water services management is a local government's legal incumbency.

## **Step three:** provide tools

Municipalities benefit from constitutional finance autonomy and therefore may lay charges on water and wastewater services. Or they may not...

**Step four:** let the stakeholders work it through

## **The water bill – good practices experienced**

- “Prices”, “tariffs”, “charges”, taxes”, “retribution”? Regardless the “name”, water tariffs have the legal nature of local charges.
- Considering the legal design of the charge, the monopoly of the activity, the absolute need of the service and the trade relation established, the charge on water services is not a market price but a local public charge.

## The water bill – good practices experienced

- Negative court conflicts (contractual vs public service). Recent Superior Court decisions. Academic discussion. Certainty as to the legal framework (enforceability / accountability).
- The tax courts are the ones to judge the legal conformity of any local charges and/or the regulations that approve such charges, regardless the private or public nature of the entity managing the service and charging the “price”.

## The water bill – good practices experienced

- Local charges have rules. Rules may change. “One size does not fit all”. Trial and error. Accountability.



## The water bill – good practices experienced

- Rules to limit charges:
  - Services must offer high quality levels at the lowest effort of the consumers.
  - Charges may not exceed its effective cost.
  - “Prices” must not be under the effective cost.
  - Charges should guarantee the sustainability of the service.

## The water bill – good practices experienced

- Rules to lay charges.

The Municipal Executive must ask the Municipal Assembly to approve all regulations that lay charges. The regulation must hold an economic-financial study justifying the value of the charge and define specifically how the charge is determined.

It must have a previous public discussion and be published in the official gazette, websites.

## The water bill – not so good practices experienced

- Rules to lay charges have changed.  
The Municipalities have been “eased” from their task to determine the value of the charge, which is now an incumbency of the Regulator.
- This option raises a Constitutional issue, as Municipalities must have the autonomy and powers to regulate on their local attributions and define by themselves how to manage them.

## The water bill – not so good practices experienced

- Budgetary rules expressly forbid the assignment of taxes/charges to specific expenses.
- Water tariffs/prices/charges do not guarantee (directly) the sustainability of the water services. Formerly “prices” could be assigned; since Law 73/2013, only tariffs from concession contracts may be assigned.
- Nevertheless, Law 12/2014 determined a 50% mandatory revenue assignment to the payment of debt of the Municipalities for water supply.
- Lack of coordination; coherence; accountability troubled.

## The water bill – not so good practices experienced

### “Blaming” the regulator.

- Charges increase is limited by inflation. Otherwise the rise must be approved by a new regulation, with a specific economical and financial justification of the causes for increase. Accountability.
- Adopting the regulator's recommendations or determinations (only) when benefiting from it.
- “Repercussion” of taxes/ charges on consumers. 100 % cost transfer. European Court of Justice (VAT).

## Conclusion:

The fundamental right to water and sanitation must be assured (also) through a framework that regulates how the services are remunerated.

Such framework shall allow the participation of consumers, their full knowledge of the services costs and adequate legal means of reaction when their bill shows default of those rules.

# Executing the fundamental right to water and sanitation through prices' legal framework

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**Thank you for your interest.  
dromao@falm.pt**