

Technology-based innovation - The Tech-Free Zones (TFZs)

Legal Framework

What is the scope of the creation of the TFZs?

Much of the Fourth Industrial Revolution, associated with social and economic development, is based on a focus on technology-based innovation, in which the creation of Tech-Free Zones (TFZ) stands out as an essential initiative for the promotion of innovation in Portugal.

Council of Ministers Resolution No. 29/2020, of April 21, establishes the general principles for the creation and regulation of TFZ, for the safe experimentation of innovative technologies.

The Decree Law No. 67/2021, of July 30 (Diploma) creates the legal framework for the governance model for the promotion of technology-based innovation through the creation of the TFZs, and their establishment and governance will be later determined by legislative act or ordinance. This Diploma does not create, as of now, the TFZs, but defines the conditions for their creation with the aim of installing several TFZs in Portugal, each one of them specially focused on certain technologies or sectors and thus contributing to the dynamization of the regions of Portugal by promoting their specific characteristics.

What are the TFZs?

The TFZs are physical spaces for testing of innovative technologies, products, services, and technology-based processes, by their promoters, in a safe manner, in a real or quasi-real environment, with the support and monitoring of the respective competent authorities. This is the existing concept of regulatory sandbox, i.e., an experimental environment that allows the testing of technological novelties by means of a set of rules.

What new technologies are targeted by the TFZs?

The TFZs aim to take advantage of the opportunities brought by new technologies, from artificial intelligence to blockchain, bio and nanotechnology, 3D printing, virtual reality, robotics, and the Internet of Things, including Big Data and the 5G network, among others, promoting and facilitating the safe testing of innovative technologies, services, products, and processes.

How will the TFZs be structured?

The TFZs (or TFZs network) will be created in accordance with the technologies and sectors they are aimed at, according to their specificities, and should be subject to specific treatment and a possible framework of their own, to be defined by the Government member responsible respectively and in articulation with the respective supervisory authorities.

Who are the subjects involved in the TFZs?

The subjects involved in the TFZs are as follows:

"Testing Authority" - entity responsible for the follow-up and monitoring of the TFZs, which is the exclusive competence of the National Innovation Agency, S.A.;

"Managing entity" - entity responsible for the management, operation and maintenance of the respective TFZs;

"Regulatory entity" - entities covered by the scope of application of the Framework Law on Regulatory Entities, approved by Law No. 67/2013, of 28 August, as amended, as well as any others that have administrative regulatory or supervisory powers;

"Test participant" - any natural or legal person, public or private, regardless of their legal nature, who collaborates with the promoters in conducting tests of innovative technology, products, services and technology-based processes;

"Test promoter" - are the natural or legal persons, public or private, regardless of their legal nature, who request the performance of tests of innovative technology-based technologies, products, services, and processes.

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What are the general guiding principles of the TFZ?

The general guiding principles, according to the Diploma, are the following:

- Test trials must be carried out through a free and continuous application, to be submitted to the managing entity or through programs for innovation specifically created for this purpose.
- Test promoters must seek, whenever necessary, the free, informed, and express consent of participants, in accordance with the applicable legal framework.
- The entities involved should appoint contact points for coordination between all entities.
- The protection of intellectual property, trade secret and personal data, as well as safeguarding the security of classified information.
- Employees of the testing authority and of the managing entity of the TFZs, as well as of other entities that have access to the tests and to information about them, are subject to secrecy about it in the course of their duties.

- Minimum requirements of the Innovation Programs (the programs are created by specific regulation, which should regulate, among others, the eligibility requirements of the test promoters, namely those related to their technical, economic, and financial capacity, and the eligibility requirements of the tests, which must necessarily correspond to something innovative and demonstrate potential technical, economic, or commercial capability, their duration, among others).

What are the most relevant points of the TFZs regime?

-Civil liability - civil liability for damages caused in the scope of the tests, belongs to the promoter, except in cases where civil liability for damages caused by the resources or services made available to the promoters by the testing authority, the regulatory authority, and the managing entity of the TFZ is theirs.

- Depending on the situation, another civil liability regime may be applicable, namely the State's extra-contractual civil liability regime set out in Law 67/2007, of December 31, 2007, in its current wording.

- Civil Liability Insurance - the promoters should have a civil liability insurance policy adequate to cover possible damages arising from the performance of tests.

- The promoters' obligations vis-à-vis the entities with monitoring and surveillance competences for the tests - the promoters are obliged to allow and facilitate free access to information relative to the technologies, products, services, and processes under test, provide all information and the necessary assistance for the performance of monitoring and surveillance functions, keep a duly organized and updated archive, as well as obligations in the supervision and surveillance of the tests.

- The obligation to report accidents and incidents - the promoters must report to the TFZ management entity, within 24 hours, from the moment they have knowledge of the occurrence, the accidents, and incidents, including safety incidents, occurring within the scope of the tests.

Are the tests carried out in the TFZs subject to inspection?

The managing entities are responsible for monitoring and supervising the tests, in coordination with the testing authority, in line with the supervision of the regulatory authorities.

Do TFZs provide an opportunity for foreign investment and national development?

Yes, the TFZs will contribute to "accelerating the country's competitiveness and attractiveness for foreign investment in research and innovation projects, as well as for the transition of new products and services to the market and their appropriate regulation", as well as for local and regional business development.

When does the Diploma come into effect?

The Diploma comes into force the day after its publication, i.e., on July 31, 2021.