

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | PUBLIC LAW

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NEWSLETTER PUBLIC LAW

I HIGHLIGHTS

Law No. 80/2013 of 28th November

Law n. ° 80/2013 of 28th November, establishes the legal framework for requalification of workers in public functions and has entered into force last December 1st, 2013.

This law comes in the wake of one of the most controversial reforms of the current Government, with reference to compliance and suitability for judgment n. ° 474/2013, in which some of the provisions included in the previous draft law were deemed unconstitutional, including the determination that civil servants could only be waiting for placement for a maximum period of 12 months.

This law takes into account the difficulties encountered in the application of Law n. ° 53/2006, that is now revoked.

The main principles of this Law are reflected in a better allocation of human resources and the extension of its scope to all sectors of the public administration, including teachers and health professionals.

So much so that the new scheme is applicable to all workers performing public functions, as well as the bodies and the direct and indirect State administration services, public institutions of higher education, local government services and agencies and regional administration services.

Generally, this new legal framework introduces a complete overhaul of the common system of mobility of employees and agents of Public Administration between departments.

Establishes the procedures for workers in public services and functions of bodies or organic subunits subject to reorganization or rationalization.

Furthermore, it legislates on vocational preparation for the resumption of duties of employees in public functions that are subject to requalification, by integrating them in a training plan that will allow a better professional use – competence of the Directorate-General for Qualification of Workers in Public Functions (INA).

II NATIONAL LEGISLATION

Energy

Order No. 12955-A/2013 of 10th October

Establishes under Decree-Law n. º 74/2013, of 4th June, the payment to be made by the power generation centers.

Ordinance No. 301-A/2013 of 14th October

Third amendment to Ordinance no. º 96/2004, of 23rd January, which determines that holders of production licenses associated with hydroelectric or thermoelectric production centers should proceed to acquire or lease from the concessionaire, the National Transport Energy Network (RNT), the land constituting the site.

Ordinance No. 349-A/2013 of 29th November

Sets out the powers of the managing body of the Energy Certification of Buildings System (SCE), regulates the activities of SCE technicians, establishes the categories of buildings for energy certification, as well as the types of SCE pre-certification, certification and accountability, determines SCE registration fees and establishes the criteria for quality verification of SCE certification, as well as the elements that must be reported and noted in the individual record of the Qualified Expert (PQ).

Ordinance No. 349-B/2013 of 19th November

Defines the methodology for determining the class of energy performance for the type of SCE pre-certification and certification as well as the requirements for technical performance and efficiency of technical systems in new buildings and buildings undergoing major intervention.

Town planning

Ordinance No. 302/2013 of 16th October

Identifies the form's formal requirements and the instructive elements that must follow the procedures for prior authorization, prior notification with term and mere communication relating to the installation, operation and modification of industrial establishments.

Law No. 79/2013 of 26th November

Fourth amendment to Law n. º 91/95 of 2nd September, regarding the process of conversion of urban areas of illegal origin.

Ordinance No. 349-C/2013 of 2nd December

Establishes the elements that should be included in the licensing procedures or prior notification for urban building operations and authorization of use.

Public Contracts and Privatisation

Resolution of the Council of Ministers No. 62-B/2013 of 11th October

Constitutes a special monitoring committee for the privatization of CTT - Correios de Portugal, S. A., approved by Decree-Law n.º 129/2013 of 6th September.

Regulatory

Regional Legislative Decree No. 30/2013/M of 10th December

Establishes in the Autonomous Region of Madeira an exceptional and transitory system of release and reduction of bail on celebrated contracts, or to be celebrated, with public contractors, until December 31st, 2016.

Environment

Decree-Law No. 151-B/2013 of 31st October

Establishes the legal framework for environmental impact assessment (AIA) of public and private projects likely to have significant effects on the environment, transposing Directive no.º 2011/92/EU of the European Parliament and of the Council, of 13th December, on the assessment of the effects of certain public and private projects on the environment.

Public Administration

Order No. 15797/2013 of 4th December

Amendment to number 2 of article 12. regarding the Rules of Recruitment and Selection Procedures for Positions of Senior Management in Public Administration.

Resolution of the Council of Ministers No. 96/2013 of 30th December

Establishes the procedure for identification and provision of buildings of private domain of the State and public institutions in the land grant referred in No. 2 of Article 6. of Law no.º 62/2012, of 10th December.

III COMMUNITARY LEGISLATION

Council's Decision No. 2013/756/EU of 2nd December

Establishes the position to be adopted on behalf of the European Union, under the Committee for Public Contracts, in respect of decisions implementing certain provisions of the Protocol that amends the Agreement on Public Contracts.

Communication from the Commission No. 2013/C 353/05 of 3rd December

Pursuant to paragraph 4 of Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council, on common rules for the operation of air services in the Community -Establishment of public service obligations in respect of regular air services (Portugal).

Communication from the Commission No. 2013/C 355/05 of 5th December

Pursuant to paragraph 5 of Article 17 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council, on common rules for the operation of air services in the Community - Call for proposals regarding the operation of regular air services in accordance with public service obligations (Portugal).

Regulation (EU) No. 1336/2013 of Commission of 13th December

Amends Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council, regarding the thresholds of application in the context of awarding contracts. Overall the changes are the following: the amount of 400 000 EUR is replaced by 414 000 EUR; the amount of 5 000 000 EUR is replaced by 5 186 000 EUR; the amount of 130 000 EUR is replaced by 134 000 EUR; and amount of 200 000 EUR is replaced by 207 000 EUR.

Decision of EFTA's Surveillance Authority No. 522/12/COL of 19th December

Amends, for the eighty seventh time, procedural and substantive rules in the field of State aid by introducing a new chapter on State aid measures under the trade for licenses' framework for greenhouse gas emissions after 2012.

IV NATIONAL CASE LAW

Judgment of the Constitutional Court No. 636/2013, Case No. 87/13

The public prosecutor, before the Constitutional Court, requested an assessment and a generally binding declaration of unconstitutionality of the provision in Article 70, paragraph 1, point a) of the Code of Administrative Procedure, as follows: "*Notifications can be made: a) by post, provided there is home delivery in the locality of residence or place of notifying;*", this being interpreted as "*existing home distribution in the notified location of residence it is sufficient to send the letter by ordinary post for notification of the decision to cancel legal aid*" on the basis of article 10. of Law no. 34/2004 of 29th July.

In this regard, the Applicant argued that Judgments No. 439/2012, 467/2012 and 545/2012, has deemed this law unconstitutional.

Thus, the requirements provided by Article 281 of the Constitution of the Portuguese Republic (CRP) and Article 82. ° of the Law of the Constitutional Court are met.

In the same line of these judgments, the Constitutional Court ruled that when one is faced with a situation in which it is assumed the actual knowledge of an administrative act, the formalities laid down by the law does not provide minimum and reasonable assurance of safety and reliability.

Therefore, it was considered impossible to say that, before the provided notification method, it is proven that the knowledge of the act of notification of the decision of cancellation of legal aid is sufficiently safeguarded.

That said, it was agreed, in plenary by the Constitutional Court, to declare, for the violation of articles 20, No. 1 and 268., No. 3 of the CRP, the generally binding unconstitutionality of the norm in article 70., no. 1, point a) of the Code of Administrative Procedure (CPA).

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