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# New Portuguese Competition Act

**On September 16, 2022, Law 17/2022 of August 17, which transposes Directive (EU) 2019/1 and amends the Portuguese Competition Act, entered into force, granting new powers to the Portuguese Competition Authority**

Legal Flash | Competition and EU Law

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## Key aspects

**Law 17/2022 of August 17 introduces several changes to competition law that affect companies directly.**

**We highlight the following changes:**

- The applicable fines have been increased as they now cover business groups' worldwide turnover.
- The search for and selection of information at dawn raids can now be carried out at the premises of the Portuguese Competition Authority.
- The statute of limitations can now be extended indefinitely while judicial appeals are pending.
- The period for lodging an appeal against the Portuguese Competition Authority's final decision has been extended from 30 to 60 business days.
- Judicial appeals will now only be able to be suspended by providing 50% of the fine as security.



## New Portuguese Competition Act enters into force

On August 17, 2022, Law 17/2022 was published. This law transposes Directive (EU) 2019/1 of December 11, 2018, which (i) empowers the competition authorities of Member States to be more effective enforcers, and (ii) ensures the proper functioning of the internal market (“ECN+ Directive”).

The transposition of the ECN+ Directive was the subject of broad public discussion, which prevented compliance with the transposition period (which should have occurred at the beginning of 2021) and resulted in Law 17/2022 of August 17 (“Law 17/2022”). This law introduces significant changes to the competition law regime, even going beyond the ECN+ Directive itself in several aspects.

Specifically, Law 17/2022 makes significant changes to time limits, imposition and waiver of fines, dawn raids, statutes of limitation, and appeals.

### > **Primacy of European Union law**

With the entry into force of the new law, it is clear that the Portuguese Competition Act (“PCA”) should be interpreted in accordance with the principle of the primacy of European Union (“EU”) law (i.e., in light of EU law and in accordance with the Court of Justice of the European Union’s case law).

### > **Higher fines for infringing PCA**

The fines for restrictive competition practices and gun-jumping infringements (not notifying the Portuguese Competition Authority about transactions that meet the notification requirements established in the PCA) will now have a maximum limit of 10% of the company’s total worldwide turnover (i.e., they will include the turnover of the business group to which the infringer company belongs and will no longer be limited to Portuguese territory).

The same will apply to associations of companies, and the maximum applicable fine may reach 10% of the total aggregate worldwide turnover.

It will also be more difficult to qualify for leniency programmes, as the new wording of the PCA establishes a more stringent set of requirements for companies to benefit from a waiver of the fine.



## ➤ Starting an infringement procedure for restrictive competition practices

The Portuguese Competition Authority may now refuse to follow up on complaints on the grounds that it does not consider them a priority.

The new PCA now expressly states that the person who made the complaint may withdraw it at any time.

## ➤ Portuguese Competition Authority's investigation powers

The new law establishes the Portuguese Competition Authority's inquiry powers separately in article 17-A of the Portuguese Competition Act, listing the key requirements for summoning an inquest.

Law 17/2022 also emphasizes the Portuguese Competition Authority's competence to enter a company's premises without notice. The Portuguese Competition Authority's powers have been extended so that it can access "*devices or equipment belonging to the company or allocated to it,*" "*to inspect the books and other records of the company, irrespective of the format in which they are stored, with the right to access any information accessible to the inspected entity.*"

This may alter the methodology that has been followed until now of searching and selecting information at the company's premises where the search is being carried out. We will have to wait and see how the Portuguese Competition Authority will use this new power in practice, specifically the way in which it will allow the company's lawyers to accompany the process, as they are entitled to do so.

Within the scope of dawn raid procedures, the express reference to the seizure of emails that was initially contained in the bill introduced by the government was not incorporated into the new law, leaving open the issue of its admissibility and possible (un)constitutionality.

## ➤ Suspension of statute of limitations

Law 17/2022 also makes an addition to the list of situations in which the statute of limitations can be interrupted or suspended, established in article 74 of the PCA: the suspension of the statute of limitations for infringement procedures for the period that the Portuguese Competition Authority's decision is under appeal, without a specified time limit.

The previous wording of the PCA already included this suspension, but it was limited to a maximum period of three years. With the new wording, there is no defined limit for the statute of limitations, making it devoid of purpose and creating a situation of legal uncertainty for all companies involved.



## > Suspension of court and administrative deadlines

The new wording of the Portuguese Competition Act extends the period for lodging an appeal against final decisions from 30 to 60 business days. The new law also clarifies that the period for lodging appeals against interim decisions is 20 business days.

The periods set by law, or by a decision of the Portuguese Competition Authority (as in the case of the period for responding to a request for information), can still be extended but now only once and for a maximum period of 30 days (as opposed to the possibility of an *ad hoc* extension established by the Portuguese Competition Authority).

## > Appeals

The rule on lodging appeals against final or interim decisions was also subject to other amendments. Specifically, the new law eliminates the reference to the requirement to prove “considerable harm” to obtain the suspensory effect of the appealed decision.

Also, under the previous law, the court was responsible for setting the security deposit amount and the period in which it should be provided. Now, article 84.5 of the new PCA establishes that the security deposit amount should be 50% of the imposed fine and should be provided within 20 days.

Article 86-A was also introduced to clarify that all secondary motions, nullity pleas and motions regarding the search and seizure procedure must be sent to the judicial authority that authorized it within 10 business days of its conclusion.

To conclude, the transposition of Directive (EU) 2019/1 introduces several changes to competition law that companies must be aware of. Particularly, companies must ensure they have compliance programs in place so they can prevent and detect possible antitrust infringements.



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