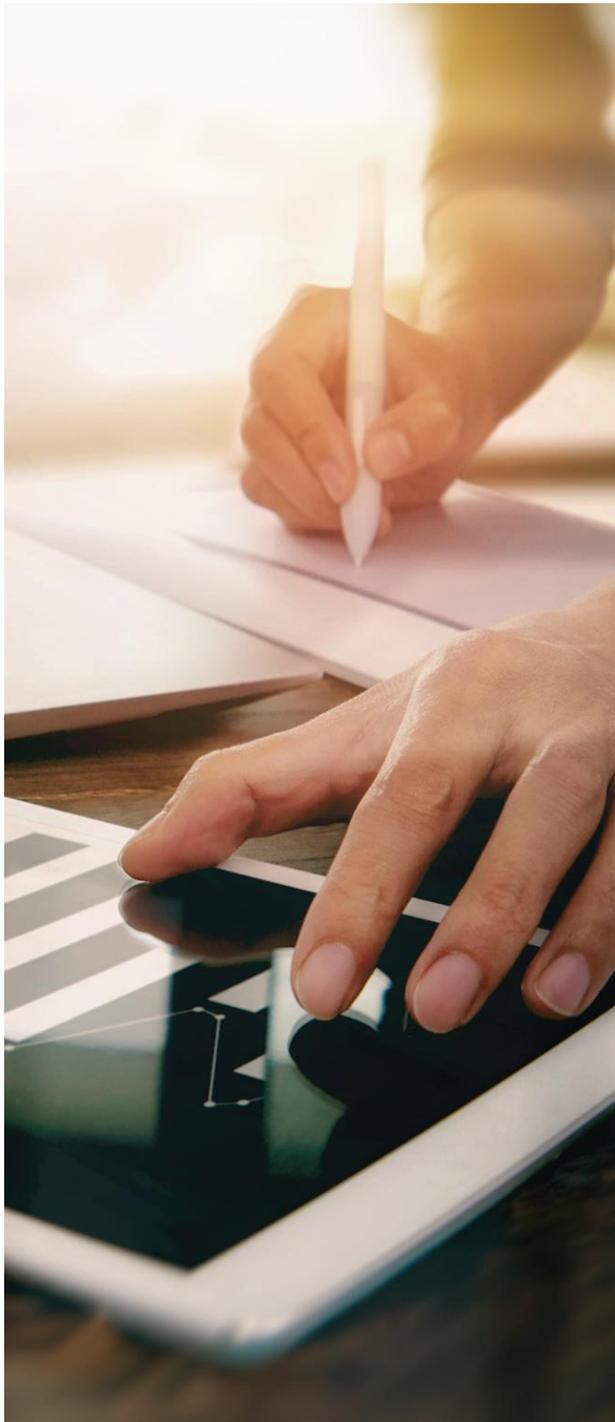

Public Law

Newsletter | Portugal

3rd Quarter 2019



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I. New rules on public procurement litigation

Law 118/2019 was published on September 17, 2019, introducing significant changes to the Code of Administrative Court Procedure in matters of pre-contractual litigation.

This is a legislative amendment to the automatic suspensive effect and provisional measures on challenging a decision awarding a contract, specifically amending articles 103-A and 103-B.

Before this legislative amendment, filing a pre-contractual dispute action to challenge an award decision implied the suspensive effect on the decision under article 103-A (1).

However, under paragraph 2 of the same provision, requesting this automatic suspensive effect to be lifted was possible, based on two arguments:

- > the deferment would be seriously detrimental to the public interest; and
- > the deferred performance would have clearly disproportionate consequences for other interests involved (i.e., where the damage that would result from the automatic suspensive effect would be greater than performing the contract, given that it could not be avoided or mitigated).

As of the entry into force of Law 118/2019 (i.e., 60 days after its publication), the suspensive effect of the award decision will only be automatic when:

- > the provisions of article 95 (3) of the Public Procurement Code apply; and
- > the provisions of article 104(1)(a) of the Public Procurement Code apply.

The legislator has also introduced a significant change in terms of timing: **the automatic suspensive effect will only take place when the challenge action is filed within ten business days from the date the award is notified to all bidders.**

Under article 103-A (2), the request to lift the suspensive effect can be made while the action is pending, which resolves the questions regarding the applicable deadline. Article 103-A(4) also maintains the criteria applicable to the decision.

To obtain the suspensive effect or other provisional measure, the party must request an interim measure from the court, as provided in article 103-B (1). To adopt an interim measure, the criteria includes assessing the damages suffered by the parties. Interim measures are refused where the damages resulting from adopting them are greater than from not adopting them, to the extent that they cannot be prevented or mitigated by adopting other measures.

To conclude, it is expected that situations where the plaintiff can temporarily prevent the performance of the contract will be less frequent, which may result in more compensations being awarded.



II. Legislation

> Energy

Decree-Law 104/2019 – Official Gazette 152/2019, Series I of 2019-08-09

Amending the regulatory mechanism that tends to keep the competition balance in the wholesale electricity market in Portugal.

Decree-Law 105/2019 - Official Gazette 152/2019, Series I of 2019-08-09

Amending the calculating methods of crude oil and petroleum products storage obligations, transposing the Commission Implementing Directive (EU) 2018/1581.

Decree-Law 120/2019 - Official Gazette 160/2019, Series I of 2019-08-22

Amending the specific and extraordinary legal regime for the installation and operation of new biomass plants.

Decree-Law 129/2019 - Official Gazette 165/2019, Series I of 2019-08-29

Ensuring the enforcement of EU Regulation 2016/426 on gas appliances in the Portuguese legal system.

Regional Legislative Decree 12/2019/M - Official Gazette 155/2019, Series I of 2019-08-14

Setting out the legal regime for combustible gas installations in buildings and gas appliances, except for the equipment directly supplied by gas cylinders placed at the point of consumption, and defining the supervision and regulation system of associated activities.

Regional Legislative Decree 19/2019/A - Official Gazette 149/2019, Series I of 2019-08-06

Approving the Energy Efficiency Program in Public Administration for the Autonomous Region of the Azores.

Ordinance 281/2019 - Official Gazette 166/2019, Series I of 2019-08-30

Setting out road traffic restrictions for heavy goods vehicles carrying dangerous commodities in tanks.

Ordinance 282/2019 – Official Gazette 166/2019, Series I of 2019-08-30

Setting out the procedure, including timing, for studying the impact of non-market measures and events registered in the European Union, repealing Ordinance 288/2013 (which previously regulated this matter).

Ministerial Order 8521/2019 – Official Gazette 185/2019, Series II of 2019-09-26

Approving the amounts payable on account for electric energy producers covered by the competitive balancing mechanism in 2019.

Rectification 36/2019 – Official Gazette 144/2019, Series I of 2019-07-30

Amending Decree-Law 76/2019, of June 3, on Environment and Energy Transition, which amends the legal regime applicable to electricity production, transmission, distribution and trading activities and to the organization of electricity markets.



Regulation 737/2019 – Official Gazette 182/2019, Series II of 2019-09-23

Regulating the process of storing, collecting and exchanging liquefied petroleum gas bottles between operators.

Directive 13/2019 – Official Gazette 136/2019, Series II of 2019-07-18

Approving the terms and conditions of the mechanism of the last resort supplier's advance purchase of electricity.

Directive 15/2019 – Official Gazette 142/2019, Series II of 2019-07-26

ERSE's approval of natural gas consumer profiles and daily average consumption, effective from July 1, 2019 to June 30, 2020.

➤ **Territorial and urban planning**

Decree-Law 94/2019 – Official Gazette 134/2019, Series I of 2019-07-16

Approving the public assets refurbishing plan for affordable leasing.

Decree-Law 95/2019 – Official Gazette 136/2019, Series I of 2019-07-18

Setting out the legal regime applicable to refurbishing buildings and apartments.

Decree-Law 121/2019 – Official Gazette 160/2019, Series I of 2019-08-22

Setting out the legal regime of local metropolitan companies for mobility and transport in the metropolitan areas of Lisbon and Porto.

Regional Legislative Decree 17/2019/A – Official Gazette 140/2019, Series I of 2019-07-24

Approving the first amendment to the Regional Legislative Decree 13/2010/A, of April 7, regarding the partial suspension of the Tourism Planning Plan of the Autonomous Region of the Azores (POTRAA).

Regional Legislative Decree 20/2019/A – Official Gazette 150/2019, Series I of 2019-08-07

Approving the second amendment to the regional agricultural reserve's legal regime for the autonomous region of the Azores.

Ordinance 301/2019 – Official Gazette 175/2019, Series I of 2019-09-12

Defining the project method for improving accessibility for people with disabilities in existing residential buildings.

Ordinance 302/2019 – Official Gazette 175/2019, Series I of 2019-09-12

Defining the terms under which extension, change or reconstruction works are subject to drafting a seismic vulnerability assessment report, as well as the situations in which a seismic reinforcement project is required.



Ordinance 303/2019 – Official Gazzete 175/2019, Series I of 2019-09-12

Setting out the standard costs defined by technology, system, or construction elements to quantify the cost of refurbishing works.

Ordinance 304/2019 – Official Gazzete 175/2019, Series I of 2019-09-12

Defining the functional requirements of housing and joint construction applicable to refurbishing buildings or parts of buildings with construction licenses issued before January 1, 1977, whenever these are intended entirely or predominantly for residential use.

Ordinance 305/2019 – Official Gazzete 175/2019, Series I of 2019-09-12

Setting out the standard acoustic technical requirements in existing residential buildings.

Ministerial Regulation 5/2019 – Official Gazzete 186/2019, Series I of 2019-09-27

Updating technical concepts in the areas of territorial and urban planning.

➤ **Environment**

EU Regulation 2019/1242 of the European Parliament and of the Council, of June 20, 2019

Setting out CO₂ emission performance standards for new heavy-duty vehicles.

Decree-Law 101/2019 – Official Gazzete 148/2019, Series I of 2019-08-05

Ensuring the implementation of EU Regulation 2017/852 on mercury in the Portuguese legal system.

Decree-Law 119/2019 – Official Gazzete 159/2019, Series I of 2019-08-21

Setting out the legal regime for the production and use of water obtained from the treatment of wastewater.

Decree-Law 124/2019 – Official Gazzete 164/2019, Series I of 2019-08-28

Amending the National Ecological Reserve's legal regime.

Regional Legislative Decree 10/2019/M – Official Gazzete 154/2019, Series I of 2019-08-13

Approving the fifth amendment to Regional Legislative Decree 17/2014/M, of December 16, which (i) restructures the regional public business sector in the area of water and waste management through the merger of concession companies, and (ii) creates a single multi-municipal system in the autonomous region of Madeira.

Ordinance 266/2019 – Official Gazzete 162/2019, Series I of 2019-08-26

Approving the information and signage to be used by the producers and users of water to reuse.

Ordinance 336/2019 – Official Gazzete 185/2019, Series I of 2019-09-26

Approving the revision of the national and regional strategic guidelines of the National Ecological Reserve legal regime.



Order 7290-B/2019 – Official Gazette 156/2019, 3rd Supplement, Series II of 2019-08-16 124044585

Considering the multi-municipal system concessionaire liable for selective waste collection activity.

Notice 12599/2019 – Official Gazette 150/2019, Series II of 2019-08-07

Supporting the incentive system for returning non-reusable plastic beverage packaging.

➤ **Public finances**

Ordinance 223/2019 – Official Gazette 135/2019, Series I of 2019-07-17

Is the first amendment to the exceptional legal regime on the submission of payment claims for expenditures paid in cash by beneficiaries to their suppliers under the mainland Rural Development Program (PDR2020).

Order 6541-A/2019 – Official Gazette 137/2019, 1st Supplement, Series II of 2019-07-19

Amending the national implementing regulation of the European Union Solidarity Fund.

Resolution of the Parliament 154/2019 – Official Gazette 161/2019, Series I of 2019-08-23

Approving the 2030 National Investment Program.

Resolution of the Council of Ministers 156/2019 – Official Gazette 177/2019, Series I of 2019-09-16

Approving, for this year, the award of compensatory allowances to public service companies.

➤ **Administrative organization**

Law 56/2019 – Official Gazette 148/2019, Series I of 2019-08-05

Repealing Decree Laws enacted between 1981 and 1985.

Law 114/2019 – Official Gazette 175/2019, Series I of 2019-09-12

Approving the twelfth amendment to the Statute of Administrative and Fiscal Courts, approved by Law 13/2002, of February 19.

Law 118/2019 – Official Gazette 178/2019, Series I of 2019-09-17

Modifying administrative and tax procedural regimes, making several legislative changes.

Rectification 44/2019 – Official Gazette 182/2019, Series I of 2019-09-23

Rectifying Regional Legislative Decree 10/2019/M of August 13, making it the fifth amendment to Regional Legislative Decree no. 17/2014/M of December 16, that restructures the public sector of the Business Region in the area of water and waste management, through the merger of the concessionaire companies. It also creates a single



multi-municipal system in the Autonomous Region of Madeira, published in the Official Gazzete, 154, 1st series, of August 13.

> Regulatory

Law 51/2019 – Official Gazzete 143/2019, Series I of 2019-07-29

Including passenger transportation service in the list of essential public services, making it the sixth amendment to Law 23/96, of July 26.

Decree-Law 103/2019 – Official Gazzete 149/2019, Series I of 2019-08-06

Approving the requirements for the concession of the operation, under the public service regime, of a new container terminal in the port of Sines, including its project and construction.

Decree-Law 107/2019 – Official Gazzete 153/2019, Series I of 2019-08-12

Amending the bases for the concession of the operation, under the public service regime, of a specific terminal for container handling at the port of Sines.

Decree-Law 116/2019 – Official Gazzete 159/2019, Series I of 2019-08-21

Defining the protected areas co-management model.

Decree-Law 131/2019 – Official Gazzete 166/2019, Series I of 2019-08-30

Approving the Regulation for the Installation and Operation of Simple Pressure Vessels and Pressure Equipment.

Decree-Law 140/2019 – Official Gazzete 179/2019, Series I de 2019-09-18

Regulating the conditions of access and the public service's operation of express passenger transportation.

Decree-Law 98/2019 – Official Gazzete 144/2019, Series I of 2019-07-30

Amending the procedures for the transfer and movement of defense-related products by transposing EU Directive 2019/514.

Decree 20/2019 – Official Gazzete 144/2019, Series I of 2019-07-30

Approving the Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR), on the electronic dispatch declaration, adopted in Geneva on February 20, 2008.



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