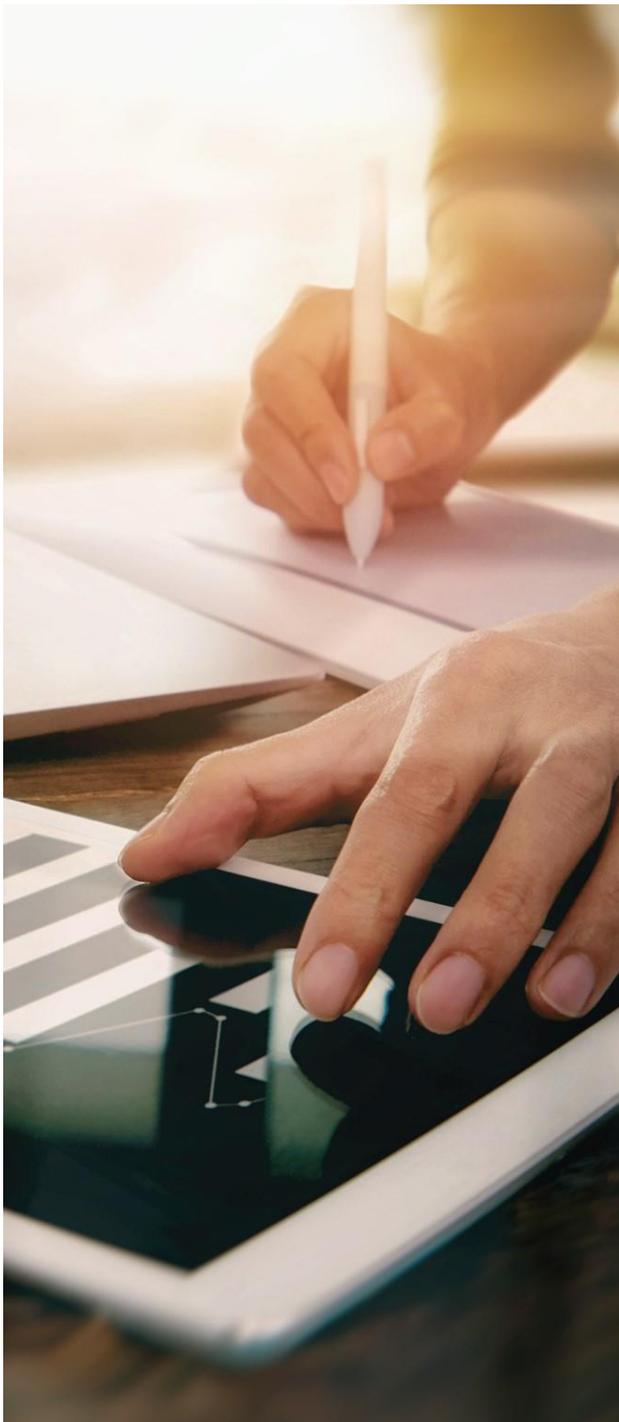

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**Procedural Code of Administrative
Courts amended for pre-contractual
litigation and arbitration matters**



Procedural Code of Administrative Courts amended for pre-contractual litigation and arbitration matters

On September 18, 2019, Law no. 118/2019 approved a new legal regime, **entering into force last week** and introducing significant changes to the automatic suspensive effect regarding pre-contractual litigation.

Previously, under article 103-A of the Procedural Code of Administrative Courts, the automatic suspensive effect was applied. This meant that, generally, any pre-contractual litigation action challenging the act of award benefited from a suspensive effect.

From now on, the automatic suspensive effect will only be applied to pre-contractual disputes concerning pre-contractual procedures of public tender, public tender limited by prior qualification, negotiation, competitive dialogue or innovation partnership, with publication of the contract notice in the OJEU, except when only one proposal is submitted. **Also, the dispute must be brought within 10 working days from the date the award to all tenderers is notified.**

The respondent, or the opponents, may request that the automatic suspensive effect be lifted. The court will then have to assess all the interests involved, including those of the opponents. The court will only lift the suspensive effect if it concludes that doing so would cause no serious harm to the public interest or disproportionate harm to the other parties. However, the parties may still start pre-contractual litigation within one month.

- › When there is no automatic suspension, but the plaintiff intends to suspend the effects of the award, this suspension must be subject to a protective order, which accompanies the pre-contractual litigation action and is processed as it occurs.

The provisions regarding arbitration in pre-contractual disputes have also changed significantly. Arbitration awards in disputes with a value of up to €500,000 may be appealed in the competent administrative court, provided it is established in the procedural documents, or the intention is declared by candidates in their proposal. It is enough that a competitor, or a candidate, declares his will in the referred terms for other competitors and candidates to be able to take advantage of it.

This means that, when tender documents provide for arbitration without referring to the appeal of the decision, and tenderers or candidates want to have the possibility of challenging the award act in the administrative courts, they must state this in their proposals.



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