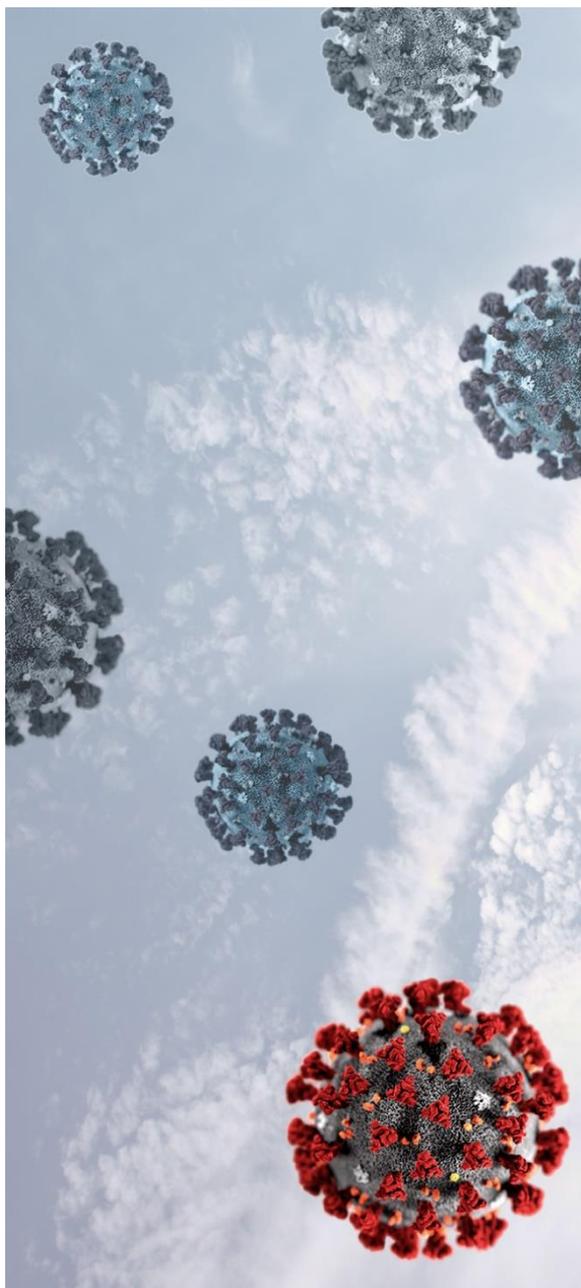

COVID-19: Administrative measures

Newsletter | Portugal

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Exceptional and temporary administrative measures

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Exceptional and temporary administrative measures established in response to the pandemic

In response to the epidemiological situation caused by the Covid-19 outbreak, the public authorities approved several measures with impact on the Public Administration and on the relations between the latter and citizens.

- **Decree-Law 10-A/2020, of March 13**, establishing exceptional and temporary measures concerning the COVID-19 pandemic (ratified by Declaration of Ratification 11-B/2020, of March 16, and amended by Decree-Law 10-E/2020, of March 24).
- **Presidential Decree 14-A/2020, of March 18**, declaring a state of emergency, based on a situation of public emergency.
- **Law no. 1-A/2020, of March 19**, establishing exceptional and temporary measures in response to the epidemiological situation caused by the SARS-CoV-2 coronavirus and the Covid-19 disease.
- **Decree 2-A/2020, of March 20**, executing the state of emergency declaration under Presidential Decree 14-A/2020, of March 18 (ratified by Declaration of Ratification 11-D/2020, of March 20).
- **Decree-Law 10-E/2020, of March 24**, creating an exceptional regime authorizing expenditure in response to the pandemic of Covid-19 pandemic and introducing amendments to Decree-Law 10-A/2020 of March 13.

Let us now turn to the measures concerning public procurement, the validity of licences, authorisations and other administrative acts and the operating rules of local authorities and intermunicipal bodies.

PUBLIC PROCUREMENT

I. Public Procurement Proc

With respect to public procurement procedures to be launched during this period, aiming to prevent, contain, mitigate and treat the epidemiological infection by Covid-19, as well as restoring normality, we would highlight the following changes, **approved by Decree-Law no. 10-A/2020, which affect Contracting Authorities:**

- Direct awards for reasons of extreme urgency can now be used, but they are strictly limited to what is necessary, and for (i) public construction works contracts; (ii) contracts for acquiring movable property; (iii) rental contracts; and (iv) provision of service contracts.



- Situations in which simplified direct awarding is allowed are now extended to contracts for (i) acquiring movable property; (ii) leasing movable property; and (iii) contracts for provision of services, with contract values of up to EUR 20,000.
- Procedures started under these exceptional terms are exempt from the limitations on the choice of co-contractor established in article 113 (2) to (5) of the Public Procurement Code; i.e., (i) entities that have already been awarded contracts by direct award or by prior consultation in that economic year or in the two preceding years above the respective thresholds may now be invited to submit a tender; (ii) it is also possible to invite to direct award or prior consultation entities that have made donations to the contracting entity and, for this reason, were previously prevented from being invited.
- Contracts entered into under these exceptional terms may enter into force as soon as they are awarded (including before the Court of Auditors' approval or declaration of conformity), without prejudice to its publication.
- Contracts entered into under these exceptional terms are also exempt from the Court of Auditors' prior supervision, when applicable (but the contracts must still be sent to the Court of Auditors within 30 days).

However, regarding **the public procurement procedures in progress**, although there are no regulations on this matter, it is essential that both the contracting entities and the participants in the procedure consider exceptional scenarios, even though these procedures should not be considered suspended.

I am a contracting entity. What should I be careful of?

- Possible need to change the procedure framework to consider the latest measures to mitigate the pandemic (e.g., measures to disinfect spaces in construction works, or in the case of services provided on the contracting authority's premises).
- Extending tender deadlines, due to the increasing difficulty to access services and the contingencies associated with teleworking.

I am a participant in the procedure. What can I do?

- Apply for an extension of deadlines (e.g., the mandatory confinement measure prevents the person responsible from meeting a deadline).
- Possibly amend the proposal submitted due to substantial and unforeseeable changes in the cost structure considered, caused by the pandemic.
- Consider withdrawing tenders already submitted, during the submission period, when the contracting entity does not allow the amendment, and the consequent submission of a new tender, considering new demands.



II. Public Purchasing Groups

Entities linked to the National Public Purchasing System may only acquire goods and services under the centralised framework agreement, except when a **prior authorization** is obtained allowing them to acquire goods and services outside the framework agreement.

In this exceptional framework, **the related entities are no longer obliged to obtain prior authorization** and may acquire goods and services outside the centralized framework agreement.

III. Performance of Public Contracts

Although this exceptional situation has a significant practical impact on ongoing public procurement procedures, **it represents even greater and significant challenges in the performance of public contracts.**

I am a contracting entity. What should I be careful of?

- Where possible, allow the extension of the period for fulfilling contractual obligations, ensuring that contracts are maintained and that public needs are met.
- According to the Recommendations of the Council of Ministers, it should be ensured that payments are made as soon as possible, to facilitate compliance with all contractual obligations (see Resolution of the Council of Ministers 10-A/2020).
- Admit the suspension of the contract for reasons of *force majeure* or in the event of a significant change in circumstances.

I am a participant in the procedure. What can I do?

- Use this exceptional emergency and pandemic scenario declared by the World Health Organization to request advance payments from contracting entities, to mitigate the increased costs.
- Analyze the possibility of resorting to a **FORCE MAJEURE**¹ situation to justify delays or even full or partial non-fulfilment of obligations arising from the contract.
- Analyze the possibility of resorting to a situation of **CHANGE OF CIRCUMSTANCES**, to justify a request to (i) alter contractual clauses; (ii) restore the contract's financial equilibrium, prejudiced by the altered cost structure; or even to (iii) terminate the contract, if it cannot be maintained in any way.

***Note:** these possible solutions must be analyzed case-by-case and involve considering the contractual clauses, the will of the parties and the causality between the pandemic and the escalation of the co-contractor's position.*

¹ Which underlies an idea of inevitability, corresponding, according to the dominant jurisprudential orientation, to "any natural event or human action which, although predictable or even intended, cannot be avoided, either in itself or in its consequences."



VALIDITY OF LICENSES, PERMITS AND OTHER ADMINISTRATIVE ACTS

While Decree 2-A/2020 is in force, **licenses, authorizations or other administrative acts remain valid**, which means that licenses, permits and other administrative acts expiring after March 13, 2020, will be considered **valid** during this emergency period.

LOCAL AUTHORITIES AND INTERMUNICIPAL ENTITIES

Considering the need to contain the spread of the disease, measures were also approved regarding ordinary meetings of executive bodies of local authorities and intermunicipal entities (e.g., municipal assemblies or municipal councils), as follows:

- Meetings scheduled for April and May can take place until June 30, 2020.
- Obligation to hold public meetings is suspended until June 30, 2020 (without prejudice to these meetings being recorded and placed on the municipality's website where technically feasible).

Meetings can be held by videoconference, or other suitable digital means, ensuring the necessary technical conditions.



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Cuatrecasas has set up a Coronavirus Task Force, a multidisciplinary team that constantly analyses the situation emerging from the COVID-19 pandemic. For additional information, please contact our taskforce by email TFcoronavirusPT@cuatrecasas.com or through your usual contact at Cuatrecasas. You can read our publications or attend our webinars on our [website](#).

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