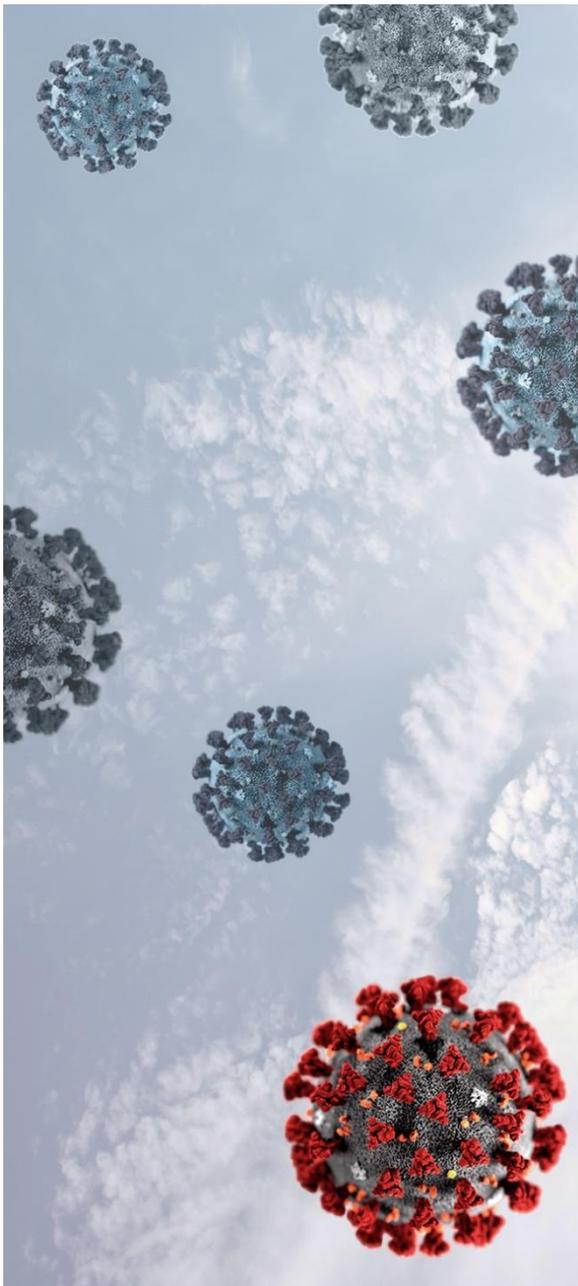

COVID-19: Deadlines and procedures

Newsletter | Portugal

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The impact of COVID-19 on courts and administrative bodies: special temporary rules on deadlines and procedures



Special temporary rules on deadlines and procedures

Since declaring the state of alert on March 13 and the state of emergency on March 18, the Portuguese Government has passed a range of special temporary measures to address the current political, social and economic situation caused by the COVID-19 pandemic.

Initial measures were set out in Decree Law 10-A/2020, of March 13 (DL 10-A/2020) and were subsequently ratified and added to by new measures approved in Law 1-A/2020, of March 19 (Law 1-A/2020).

Both acts establish provisions on how courts and administrative bodies should work. However, they have been interpreted in different ways, particularly regarding the scope of the suspension of deadlines in proceedings and procedures and the date on which the legislation in question comes into force.

Therefore, to clarify the special temporary rules (mainly relating to proceedings and procedures), on April 6, the *Diário da República* published Law 4-A/2020, introducing the first amendment to Law 1-A/2020 and the second amendment to Decree Law 10-A/2020.

It amends section 7 of Law 1-A/2020 and includes a new section (7-A), which specifically relates to deadlines in pre-contractual contentious matters and public procurement.

Below are the rules resulting from the amendments.

I. **Deadlines for submissions and for holding proceedings and procedures (section 7)**

A) **Deadlines, proceedings and procedures suspended**

All deadlines for submissions and for holding proceedings and procedures before the judicial courts, administrative and tax courts, the constitutional court, the court of audit and other jurisdictional bodies, arbitral tribunals, the public prosecutor, lay courts, alternative dispute resolution bodies and tax enforcement bodies **are suspended until the end of this exceptional period**, on a date that will be established in a decree law.

Limitation periods and expiry will continue to be stayed on all kinds of procedures.

The legislation also clarifies that the deadline for a **debtor to file for insolvency** is suspended, as are **all enforcement procedures, namely concerning sales, ranking of creditors in enforcement proceedings, judicial foreclosures of properties and attachment orders and their preparatory proceedings**, with the exception of those that would seriously hinder the livelihood of the enforcing party or, if not carried out, would



cause serious or irreparable damage, which shall be determined by a prior court decision.

So that procedures can continue in certain circumstances, the Law states that the **suspension of deadlines will not prevent:**

- The course of procedures and the carrying out of non-urgent in-person and remote proceedings when **all the parties** consider that they have means to ensure that they can take place digitally or through appropriate remote means, such as telephone, video conference or equivalent.
- The issue of a final decision in procedures in which the court and other bodies consider that no further steps are necessary.

The **suspension of deadline rule** also applies to **the following procedures**, with the necessary adaptations:

- Procedures in notarial and registry offices.
- Administrative infringements, sanctions and disciplinary procedures, including court challenges to final or provisional decisions of direct, indirect, regional and local administration, and other administrative organizations, including the *Autoridade da Concorrência*, *Autoridade de Supervisão de Seguros e Fundos de Pensões*, *the Banco de Portugal* and *Comissão do Mercado de Valores Mobiliários*, and those of professional public associations.
- Administrative and tax procedures relating to proceedings brought by individuals (the controversial reference to “*deadlines that favor individuals*” has been removed). In terms of tax procedures, the only deadlines suspended are those for filing a court challenge, appeals for reversal, hierarchical appeals or others of the same nature, and their subsequent proceedings and procedures.

Eviction orders remain suspended, as well as special procedures to vacate and the enforcement of orders to handover leased properties when the final court decision taken may leave the tenant in a vulnerable situation because of a lack of own residence or other material social grounds.

B) Deadlines, proceedings and procedures not suspended

Deadlines, proceedings and procedures in urgent processes are not interrupted or suspended, as follows:

- Procedures that require the physical attendance of the parties, their representatives or other parties to the process will take place through appropriate remote means, namely telephone, video conference or equivalent.



- If procedures that require the physical attendance of the parties, their representatives or other parties to the procedure cannot be carried out remotely, and the matter concerns the life, physical integrity, mental health, freedom or immediate livelihood of the parties, the procedure may take place, provided it is not attended by a greater number of persons than the maximum recommended by the health care authorities, based on the guidance given by senior authorities.
- **The suspension rules will apply to urgent proceedings** when it cannot be guaranteed, or it is not appropriate to guarantee, the holding of those acts requiring the physical attendance of the parties as described above.

Under the new Law, **the following are considered urgent and can continue** without suspension or interruption of deadlines, proceedings or processes:

- Processes and proceedings to defend rights, freedoms and safeguards that have been violated or compromised by an unconstitutional or unlawful measure (as provided for in section 6 of the Regulation on the state of siege and the state of emergency, under Law 44/86, of September 30), specifically the Habeas Corpus principle in the event of unlawful detention or arrest.
- The urgent service set out in section 53.1 of Decree Law 49/2014, of March 27 (which includes the urgent service set out in the Criminal Procedure Code, the law on international judicial cooperation in criminal matters, the mental health law, the law on the protection of at-risk minors and young people and the legal rules on the entry, stay, exit and expulsion of foreign nationals in Portugal, which must be carried out on Saturdays, public holidays falling on Monday, and the second day of a public holiday where they fall consecutively).
- The processes and proceedings required to prevent irreparable damages, such as those concerning at-risk minors, urgent educational protection processes and convicts who have been accused of an offense (in investigation stage and judicial stage).

As an exception to the suspension of processes and proceedings in administrative organizations, the new Law states that deadlines relating to proceedings held exclusively electronically under the powers of the *Instituto Nacional da Propriedade Industrial* **will not be suspended**.

II. Public procurement (section 7-A)

Law 4-A/2020 includes a new section (7-A) in Law 1-A/2020, establishing rules on court processes and proceedings relating to public procurement and amending the special public procurement rules under Decree Law 10-A/2020.



The new rules are examined in our newsletter available [here](#).

III. Entry into force and effects

The new legislation **enters into force on April 7, 2020, the day after it is published.**

In terms of its **legal effects**, Law 4-A/2020 clarifies and sets out the following:

- Generally, the Law will come into force on March 12, 2020, when Decree Law 10-A/2020 was enacted.
- Article 7 of Law 1-A/2020, in its **new wording**, will be considered in force as of **March 9, 2020.**
- The above will not apply to **rules on urgent proceedings**, which **will be effective only once the Law comes into force** on April 7, 2020.
- The regulation establishing that deadlines will not be waived for hearings carried out exclusively electronically, in the scope of the powers of the *Instituto Nacional da Propriedade Industrial*, will come into force only when Law 4-A/2020 does; i.e., on April 7, 2020.



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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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