

Public procurement and European funds: changes to the special regime

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As a result of Bill no. 20/XVI/1.^a, initiated by the government, the Portuguese Parliament approved the introduction of **important changes to the special public procurement regime**. For what it's worth, this regime comes into force on 16 December 2024 and applies to contracts for the implementation of projects financed or co-financed by European funds, including those under the PRR.

Therefore, articles 17-A, 25-A, 25-B and 25-C have been added to Law no. 30/2021, of 21 May, with the following being of particular interest:

- **Article 17a - Supervision by the Court of Auditors of acts and contracts financed by European funds:** creates a special inspection regime applicable to acts and contracts (co)financed by European funds with a value equal to or greater than €750,000.00.

With this change, **the Court of Auditors' approval (or declaration of conformity) is no longer a condition for the production of all the effects of contracts, including payments.**

In terms of inspection, four hypotheses are anticipated:

contract in accordance with the laws in force	favourable decision
contract with illegality that alters or may alter the respective financial result	judgement upheld, accompanied by recommendations
void contract	referral of the file for concomitant inspection and clearance of financial liabilities
total cancellation of procedure	unfavourable decision, with immediate cessation of effects
assumption of costs not covered by the appropriate budget allocation	

It applies to contracts awarded under special public procurement measures and also to contracts awarded under the CCP procedural regime.

- **Article 25-A - Exceptional regime for urgent administrative action in pre-contractual litigation:** the possibility of preventing the automatic suspensive effect of the contested act is provided for.

In cases where the action challenging the award is brought within 10 working days of notification of the award, the defendant (the contracting authority) may ask the court, by attaching a document proving the decision to finance the project of which the contract is part, to provisionally lift the automatic suspensive effect.

This withdrawal is made by the court, without the prior hearing of the opposing party (the plaintiff).

In these cases, and without prejudice to the plaintiff's later right to exercise the right to be heard on the decision taken, **the automatic suspensive effect will be provisionally lifted when the court summarily verifies, within a maximum of 48 hours**, that the following cumulative requirements have been met:

- (a) the expiry of a period of 10 working days from notification of the award decision to all tenderers;
- (b) risk of loss of funding in a contract for the execution of a project financed or co-financed by European funds.

It applies to contracts awarded under special public procurement measures, contracts awarded under the CCP and contracts awarded under other public procurement legislation (amendment to Draft Law no. 20/XVI/1.^a).

Furthermore, this exceptional regime is in force until the end of the respective European funding programmes.

- **Article 25b - Recourse to arbitration:** in the event of disputes that may jeopardise the fulfilment of contractual deadlines or the loss of funds, public works contracts, contracts for the supply of goods or services (financed or co-financed by European funds) may be subject to arbitration, regardless of whether the contracts provide for the dispute to be settled by the administrative courts.

- **Application of the law over time:**

Article 17a	applicable to acts and contracts intended for the implementation of projects financed or co-financed by European funds, including those pending a decision by the Court of Auditors
Article 25a	applicable to urgent administrative pre-contractual litigation actions that are pending , as well as to those that are brought after the date of entry into force of this law.
Article 25b	applicable to contracts in execution, as well as to those concluded after the date of entry into force of this law



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