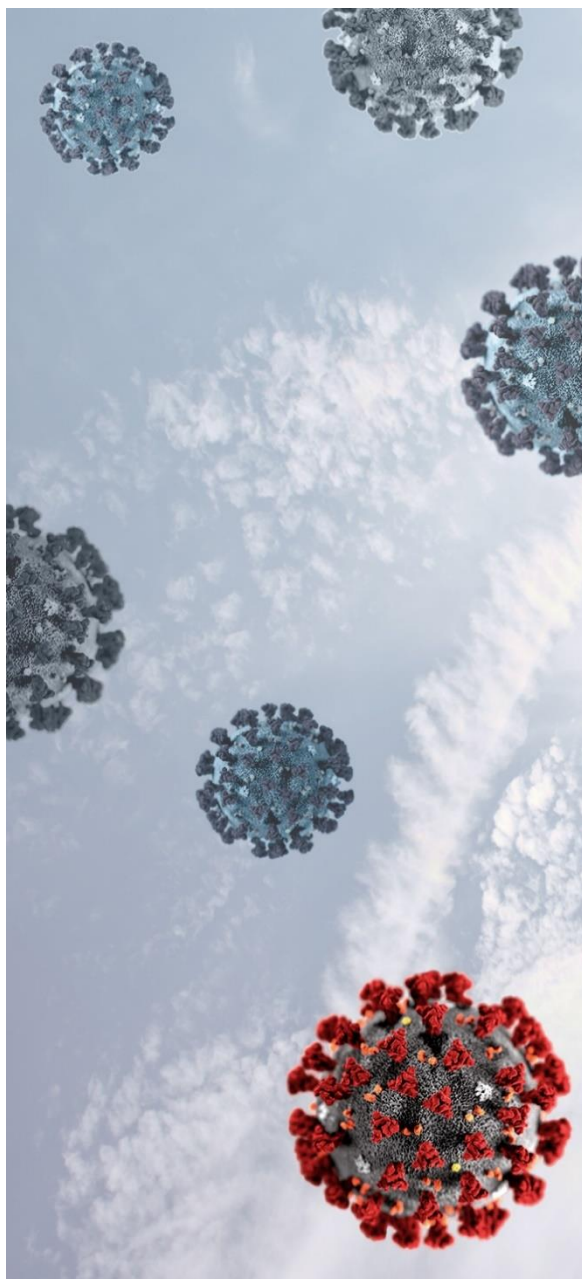

COVID-19: End of the suspension of judicial and administrative deadlines

Newsletter | Portugal

June 3, 2020



- > **End of the suspension of (almost all) judicial and administrative deadlines: Law 16/2020 of May 29**



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Following the declaration of the state of alert on March 13, 2020, and of the state of emergency on March 18, the Portuguese government approved a large number of exceptional and temporary measures to face the pandemic caused by the novel coronavirus, some of which concern the functioning of courts and administrative bodies.

The vast majority of court and administrative proceedings were stayed, from March 9. In general, urgent proceedings and processes continued, with no suspension or interruption to their deadlines, acts, or procedures (for more details see our [Newsletter of April 8: COVID-19 Procedural deadlines and processes](#)).

The favorable evolution in the number of COVID-19 infections in Portugal made it viable to not extend that state of emergency and to start easing the restrictive measures implemented, allowing a return to normal social life and economic activity, without forgetting the fight against the pandemic.

To do this, the government approved a gradual deconfinement strategy, establishing a three-phase calendar to evaluate the impact of each phase on the evolution of the pandemic and to introduce adjustments or new measures where required.

As the end of phase two of deconfinement loomed, and the evolution of the pandemic remained under control, the government believed that the conditions were given for courts and administrative bodies and proceedings to go back to normal, so Law 16/2020 of May 29 was published. This law ends the suspension of most deadlines for judicial and administrative acts and proceedings, establishing at the same time a transitional procedural system that specifies how those acts and proceedings are to be carried out while the exceptional situation caused by the epidemiological crisis lasts. It also maintains the suspension of certain proceedings and procedures.

We examine the changes introduced by Law 16/2020 below.

I. End of the suspension of deadlines to carry out acts and proceedings

Under article 7 of Law 1-A/2020 of March 19, in the wording of Law 4-A/2020 of April 6, all deadlines to conduct procedural acts as part of non-urgent proceedings and procedures in judicial, administrative, and fiscal courts, the Constitutional Court, the Court of Auditors and other jurisdictional courts, arbitration tribunals, the Public Prosecutor's Office, justices of the peace ("*juílgados de paz*"), alternative conflict resolution bodies and fiscal enforcement bodies **were suspended until a date to be specified by decree law**.

The limitation and prescription periods for all kinds of proceedings and procedures were also suspended, as well as the **deadline to file for insolvency** and any other **executive acts, including**



those relating to sales, ranking of creditors in enforcement proceedings, judicial surrender of real estate, and attachment orders and their preparatory acts, with the exception of those that would cause serious damage to the creditor's continued existence or the failure to perform that would cause the creditor serious or irreparable harm to be determined by the court.

Evictions were also halted, as well as special eviction proceedings and proceedings to surrender leased real estate when the tenant, following a final court ruling, could be placed in a vulnerable situation due to the lack of housing or any other imperative social reason.

The suspension of deadlines also applied, with the necessary adjustments to:

- i) **notarial and registry proceedings;**
- ii) **administrative and disciplinary proceedings**, including legal appeals against final and interlocutory rulings in direct, indirect, and regional administration services and other administrative entities, including independent administrative entities; and
- iii) **administrative and fiscal proceedings initiated by private individuals.**

Law 16/2020, published now, repealed article 7 of Law 1-A/2020, which means that **all these deadlines, procedures, and proceedings will cease to be suspended and will be processed normally again**, with some exceptions.

II. Exceptions to the end of the suspension

The new law **expressly maintains the suspension of the following deadlines:**

- i) **Filing for insolvency**, under article 18.1 of the Portuguese Insolvency and Business Recovery Code (*Código da Insolvência e da Recuperação de Empresas*);
- ii) **Executive or insolvency acts regarding the implementation of orders for judicial surrender of the family home;**
- iii) **Evictions, special evictions and proceedings to surrender a leased real estate property** when the tenant, following a final court ruling, could be placed in a vulnerable situation due to the lack of housing or any other imperative social reason;
- iv) **Limitation and prescription** of the above procedures and proceedings; and
- v) **Limitation and prescription of proceedings that cannot be conducted face to face or by remote communication.**

Law 16/2020 also **requires the suspension of executive and insolvency acts regarding the sale or judicial surrender of real estate properties** that may endanger the continued existence of the party subject to enforcement or insolvency, if the suspension does not cause serious harm to the continued existence of the creditor or cause it irreparable damage. The limitation and prescription periods for these proceedings are also suspended.



III. Transitional and exceptional procedural system for judicial acts and proceedings

Since the health crisis in Portugal continues, despite being under control, court activity cannot start again without making sure that all the procedures to contain the pandemic and mitigate infection are followed, in particular regarding protection of the health and safety of the parties involved.

Law 16/2020 establishes a transitional and exceptional system for procedural acts to be conducted in procedures and proceedings in judicial, administrative, and fiscal courts, the Constitutional Court, the Court of Auditors and other courts, arbitration tribunals, the Public Prosecutor's Office, justices of the peace (*"julgados de paz"*), alternative conflict resolution bodies and fiscal enforcement bodies.

- Hearings for discussion and judgment, as well as witness' hearings, **must be conducted in person**, following the health and safety and sanitary rules given by the Directorate General for Health, including the maximum number of individuals in a hearing.
- If these procedures cannot be conducted following the above rules, they may be conducted through adequate remote communication, e.g., conference calls, video calls or similar means, provided that this is feasible and adequate and does not endanger the success of the proceedings.
- However, **testimony by a defendant and witness evidence or depositions** must be given before a court, unless the parties agree to give it by remote communication.
- Any other procedures that require the physical presence of the parties, their representatives, and any other parties involved in the proceedings, as well as any other procedural acts, will be preferably conducted by means of adequate remote communication, in particular conference calls, video calls or equivalent means, and they should only be conducted in person when these means are not available.
- If the parties, their representatives, or other parties involved in the proceedings are regarded as **individuals at risk**, because they are, e.g., over 70, immunocompromised, or suffer from a chronic condition, **they will not be required to go to court and the proceedings will be conducted through adequate remote communications** from their legal or professional address.
- To ensure the protection of defendants' rights, Law 16/2020aw expressly states that their presence in the fact-finding hearing and at the trial when giving their testimony and the witness evidence is required.
- Prisons are also required to ensure the health and safety and sanitary conditions for lawyers to talk with defendants in person to prepare their defense.
- Law 16/2020 also adds a new paragraph to article 14 of Decree Law 10-A/2020 taking into account the statements of a health authority in favor of a party to the proceedings and its representatives to justify the impossibility of conducting the procedural acts in person as the



basis to claim the impossibility of conducting procedures that can be carried out remotely when the party has no access to means for remote communication or is unable to participate due to COVID-19 infection.

IV. Administrative deadlines

- > Law 16/2020 includes an innovative provision regarding the calculation of administrative deadlines for suspension purposes, which changes the way those deadlines are calculated under general legal rules.
- > Rather than the deadline simply running up to the suspension and continuing after it ends, the following has been established:
 - (i) Any deadlines that originally ended during the suspension established under article 7 of Law 1-A/2020 will now end on the twentieth business day after the entry into force of the new Law;
 - (ii) The deadlines that originally ended during this period of 20 business days will also end on the twentieth business day after the entry into force of the new Law;
 - (iii) Finally, deadlines that originally ended after the twentieth business day from the entry into force of the new Law are calculated in the same way, without considering that any suspension took place.
- > However, this rule does not apply to deadlines in the **administrative phase of administrative infractions' proceedings**.
- > Law 16/2020 also repealed numbers 1 and 2 of article 7-A of Law 1-A/2020, but this did not specifically change pre-contractual review proceedings and public procurement proceedings. It established that these procedures and proceedings would not be suspended, but as the suspension in general has now ended, repealing these rules is irrelevant.

V. Limitation and prescription periods

Law 16/2020 also establishes that the limitation and prescription periods that cease to be suspended as a result of the changes now made must **be extended by the period of time for which they were suspended**.

VI. Entry into force

The new law will come into force on the fifth day from its publication, on June 3, 2020.



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