

PUBLIC  
LAW

## RULES APPLICABLE TO THE PROCEDURES RELEVANT FOR THE IMPLEMENTATION OF THE LAW OF COMMITMENTS AND DELAYED PAYMENTS

Decree-Law no. 127/2012, of 21 June establishes, according to and for the effects of article 14 of “**Law of Commitments**” (Law no. 8/2012, of 21 February<sup>1</sup>), the rules relevant for the application of this law and the operationalization of the render of information, applicable to the entities listed in article 2 of Law of Commitments<sup>2</sup>.

This diploma reaffirms, in some matters, what was already stated in the Law of Commitments, underlining that public entities **may only assume financial commitments<sup>3</sup> to the extent of the availability of their funds<sup>4</sup>** (article 7, no. 2 of Decree-Law no. 127/2012), whose verification is performed through electronic declarations issued by the respective entities (article 7, no. 5 of Decree-Law no. 127/2012), provided they have met the following requirements, under penalty of the consideration of the commitment as void:

- (i) Verification of legal compliance and financial regularity of expenditure, in accordance with the law;
- (ii) Registration in the computer system of budget execution support;
- (iii) Issuance of a valid and sequential commitment number reflected in the purchase order, order form or equivalent document.

Regarding the **agreements whose term is limited to the calendar year**, regardless of its form or legal nature, the **assumption of commitments** must be made by its total value when signing the respective agreement, issuing the purchase order or order form or equivalent document. If the due amount cannot be determined in the signing of the agreement, namely, for its dependence on the consumption of the contracting authority, this commitment shall be made by the effective value to be paid during the period of determination of available funds.

<sup>1</sup> Law of Commitments has set tight rules regarding the assumption of financial commitments by the entities subject to it for the purposes of avoiding delayed payments, as well as the assumption of commitments that they cannot comply with.

<sup>2</sup> The Law of Commitments is applicable to the entities referred to in article 2 of the Law of Budgetary Framework (LEO), approved by Law n.º 91/2001 of 20 August and the public entities of the National Health Service. Under LEO's article 2, no. 1, this law is applicable to the State Budget, which covers, within the administrative public sector, the budgets of the central administration subsector including the services and departments that do not have administrative and financial independence, the services and autonomous funds and the social security as well as the corresponding accounts. The principles conveyed in this law are also applicable to sub-regional and local subsectors, including public authorities reclassified therein. No. 5 of article no. 2 of LEO considers integrated in the public administrative sector, as autonomous services and funds, in their respective central, regional and local sub-sectors and social security, entities, regardless of its nature and form, that have been included in each subsector within the European System of national and Regional Accounts in the last sector accounts published by the national statistical authority for the year preceding the budget presentation.

<sup>3</sup> Pursuant to article 3, paragraph a) of the Law of Commitments, **commitments** are considered “the obligations to make payments to third parties in consideration for the supply of goods and services or for the satisfaction other conditions.”

<sup>4</sup> Also the concept of available funds is clarified, admitting in its scope, as did the Law of Commitments, transfers not yet incurred arising from programs and projects of the National Strategic Reference Framework (QREN) as well as the other structural programs, corresponding to payment requests submitted on the electronic platforms of their programs, provided that the beneficiary has not had, within the past six months, a correction rate of submitted payment requests equal or above 10%. Moreover, the funds available carried forward from previous years are also in the concept of available funds, the use of which has been authorized and receipts in arrears between the entities covered by the Law of Commitments, if integrated in the plan of liquidation of arrears of the entity debtor in the respective month of payment.

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*Public entities may only assume financial commitments to the extent of the availability of their funds*

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The assumption of commitments regarding **urgent and undelayable expenditures** can be made within 48 hours after its occurrence, as long as it is (i) dully grounded and (ii) does not exceed the amount of € 5.000,00 per month (if it refers to expenditures of the same type or nature) or, within 10 days after expenditure takes place, if an exceptional public interest or human life preservation is concerned.

The prior authorization of the members of the Government responsible for finance and the relevant sector for the **assumption of multi-annual commitments**<sup>5</sup> is done as follows:

- (i) in the situations in which the assumption of multi-annual commitments depends on an ordinance of incumbency extension, after approval and signing of this ordinance to which no. 7 of article 22.º of Decree-Law no. 197/99, of 8 July refers to;
- (ii) in the situations not covered in the previous paragraph, by generic order, joint or individual members of the Government responsible for finance and the relevant sector.

The assumption of multi-annual commitments in the case of public institutes with a special regime, of superior education public schools with foundational nature, as well as corporate public entities that have no delayed payments, is of the responsibility of the directive bodies.

This diploma clarifies that employee's expenditure, regardless of the bond's nature, is excluded from the scope of application of article 6, no. 1 of Law of Commitments.

The rule in article 12 of this law is especially relevant for it allows the assumption of multi-annual commitments by municipalities to be made when the multi-annual investment plans are approved.

Regarding **entities with late payments**<sup>6</sup>, this law clarifies that in the **end of each month the late payments cannot surpass those of the previous month**<sup>7</sup>.

In this context, this law establishes that the application of article 8 of Law of Commitments<sup>8</sup> is suspended in relation to the beneficiaries of programs of economic assistance until their completion. In the execution of programs of economic assistance the beneficiaries cannot increase the overall value of late payments, under penalty of a monthly and progressive fine when they equal or exceed € 500,00.

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*Commitments regarding urgent and undelayable expenditures can be made within 48 hours after its occurrence*

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Regarding the render of **information**, the entities referred in article 2 of LEO, and the public entities of the National Health Service shall conduct a monthly registration of the information regarding available funds, commitments, initial balance of the accounts to pay, monthly movement and balance of the accounts to be carried forward to the next month and late payments in electronic form of the institutions referred in article 7, no. 5 of Decree Law 127/2012.

<sup>5</sup> Pursuant to article no. 3, paragraph b), of Law of Commitments, multi-annual commitments are commitments that create the obligation to make payments in more than one economic year.

<sup>6</sup> Article 4, no. 2, of this law excludes from the concept of delayed payments (article 3, paragraph e) of the Law of Commitments): (i) payments subject to judicial review until a final and enforceable judicial ruling, (ii) the situations of impossibility of performance by an act attributable to the creditor and (iii) the amounts subject to payment arrangements if the payment is made within the agreed deadlines.

<sup>7</sup> Article 7 of Law of Commitments determines that budget execution cannot lead, at any time, to an increase of the accumulated late payments over those in the previous month.

<sup>8</sup> Please note that this provision determines that entities with arrears on December 31, 2011 are subject to the following limitations/obligations, which cease only when such entities no longer have payments overdue:

- (i) The prevision of own revenues to collect in the following 3 months has a superior limit of 75% of the average of collected revenue in the last 2 years in similar periods, deducted from the amount of revenue with extraordinary character;
- (ii) Presentation of a liquidation plan regarding late payments until 90 days after the entering into force of Law of Commitments, to the Budget General Directorate and, in case of local administration, to the Local Administration General Directorate.

*Determination of the obligation to provide information regarding available funds*

However, given the need to simplify procedures to recognize good practices, entities that have no arrears **are exempted from the obligation to provide information regarding available funds.**

Moreover, the entities with late payments recorded on 31 December 2011 and between January 1 and February 21, 2012 are required to prepare a **plan of liquidation of late payments with an indication of the amounts to liquidate in each period**<sup>9</sup>, which shall have a maximum term of 5 years and may be extended up to 10 years, as long as 50% of the debt is paid within a period not exceeding 5 years, when the entity can show, reasonably and in clear and unambiguous terms, that such period will lead to breaches of the Law of the commitments. The entities that benefit from the National Health Service extraordinary debt settlement program are only required to submit a liquidation plan after the end of the program.

Finally, a transitional period of 45 days is established to upgrade or acquire the necessary computer systems for the application of this law and the Law of Commitments<sup>10</sup>. During this period, the registration of funds available (article 5, no. 3 of Law of Commitments) will be executed manually by entering the number of sequential commitment in the purchase order or equivalent document.

<sup>9</sup> The information on the maps of settlement payments must always be updated with the identification of the original lenders, the total amount payable, expected payments, those made each year and, if the amounts payable are transferred to financial institutions, information concerning the conditions of transfer and their type.

<sup>10</sup> The Law of Commitments implies that the entities under its scope must equip themselves with informatic systems in which the following information is registered: available funds, commitments, liabilities, payments to be made, late payments and accountancy systems to support the execution of the budget, in order to issue a valid commitment number, unique and sequential, which shall be reflected in the purchase order or equivalent document. Without this commitment number, the contract or the obligation is null and void (this effect may be removed by judicial or arbitration decision, when it is considered that the annulment is not proportional or it is contrary to the good faith).

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