

PUBLIC
LAW

SECOND AMENDMENT TO THE LEGAL REGIME OF MUNICIPAL SERVICES OF PUBLIC WATER SUPPLY, URBAN WASTE WATER TREATMENT AND URBAN WASTE MANAGEMENT

On 6 March 2014 Law no. 12/2014 was published. This Law **amends, for the second time, the legal regime of municipal services of public water supply, urban waste water treatment and urban waste management**, which was approved by Decree Law no. 194/2009, 20 August, and first amended by Decree-Law no. 92/2010, 26 July.

It should be noted that the amended legal regime now expressly provides in Article 4 that **it is mandatory for users to be connected to the relevant municipal systems**. A “user” for these purposes is any natural or legal person, public or private, whose place of consumption is located within the territorial scope of the system. However, this obligation does not apply “when important reasons of public interest justify its non-application and such is recognized by a municipal council’s resolution”.

Among the **amendments regarding tariffs**, reference should be made to the new article 11-A. According to this provision, setting tariffs for municipal services follows the rules of the *tariff regulations* approved by the Water and Waste Services Regulation Authority (ERSAR) for upstream services and for services to end-users; said tariffs are subject to annual updates which come into force on 1 January of every year. Such *tariff regulations* are governed by the new ERSAR statute, approved by Law no. 10/2014, also published on 6 March.

With regard to ERSAR’s activity when facing possible **infringements concerning tariffs**, reference should be made to the repeal of Paragraphs 10 and 11 of Article 11 and to the new Article 11-B. Under this provision, whenever ERSAR, based on available information, considers that there is evidence indicating that the tariffs approved “do not comply with the applicable laws and regulations”, a procedure is commenced and may lead to the issuing of a **binding instruction indicating the amounts to be charged** and, in the case of services which are managed by contract, to the determination on whether there is a need to review said agreement. If the tariffs are not adjusted as indicated by ERSAR within 30 days after the *binding instruction* has been issued, such tariffs will be set by the regulator and communicated to the entities managing the service as well as to the entities originally responsible for the service.

Among the **rules inserted with regard to invoicing** we highlight the following:

- The entities managing municipal systems must issue **detailed invoices** to end-users that include the breakdown of the cost components related to the service provided to such users, be it water supply, waste water treatment or waste management. This breakdown obligation only encompasses the main aggregate costs, particularly, in the case of systems which are bound to multi-municipal or inter-municipal systems

Setting tariffs for municipal services follows the rules of the tariff regulations approved by the Water and Waste Services Regulation Authority (ERSAR) for upstream services and for services to end-users

The application of tariffs different from those that, in case of non-compliance with the tariff regulation, were set forth by the regulator, constitutes an administrative offence punishable by a fine ranging from € 200.000,00 to € 2.500.000,00

(including those managed through public partnerships), the portion related to the services provided by the entity managing such systems.

- The amended legal regime establishes a **percentage of the collection proceeds of each invoice** issued by the entity managing the municipal system **which is to be used for the payment of services rendered by the entity managing the multi-municipal or inter-municipal system**. The value obtained accordingly must be transferred by the end of the month of the relevant collection and may not be used for any other purposes (this rule does not apply when the entity managing the municipal system has already paid the due amounts to the entity managing the multi-municipal or inter-municipal system, nor regarding the portion exceeding such amounts).
- The **entities managing municipal systems must submit**, at the end of each month, to the entities managing the multi-municipal or inter-municipal systems to which they are bound, **information on the amounts collected from end-users in the immediately preceding month**. If this obligation is not complied with, these entities can use, without the need for prior request, a (judicial) injunction procedure. It should be also noted that the informative documents enable the entities managing multi-municipal or inter-municipal systems to enforce collection, using the (judicial) enforcement procedure for the payment of fixed amounts.

Finally, and with regard to sanctions, we highlight the significant increase of the fines applicable to several administrative offenses committed by legal persons. We also stress the new Paragraph 3 of Article 72, pursuant to which **the application of tariffs different from those that, in case of non-compliance with the tariff regulation, were set forth by the regulator**, constitutes an administrative offence punishable by a **fine ranging from € 200.000,00 to € 2.500.000,00**.

Law no. 12/2014 came into force on 11 March.

Contact
Pedro Costa Gonçalves | pgon@mlgts.pt



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ASSOCIADOS
SOCIEDADE DE
ADVOGADOS

LISBON

Rua Castilho, 165
1070-050 Lisbon
Telephone: (+351) 213 817 400
Fax: (+351) 213 817 499
mlgtslisboa@mlgts.pt

Luanda, Angola (in association)
Angola Legal Circle Advogados

PORTO

Av. da Boavista, 3265 - 5.2
Edifício Oceanvs – 4100-137 Porto
Telephone: (+351) 226 166 950
Fax: (+351) 226 163 810
mlgtsporto@mlgts.pt

Maputo, Mozambique (in association)
Mozambique Legal Circle Advogados

MADEIRA

Avenida Arriaga, 73, 1º, Sala 113
Edifício Marina Club – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

Macau, Macau (in association)
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