

## COMMERCIAL LICENSING NEW REGIME

### PUBLIC LAW

### NEW LICENSING REGIME FOR SHOPS AND SHOPPING CENTRES

On April 19<sup>th</sup>, Decree-Law 21/2009, which sets out the new legal regime for the creation and modification of retail and wholesale commercial establishments and shopping centres, entered into force.

In essence, the decree-law brings new elements of flexibility, celerity and liberalisation to the regime, simplifying procedures and shortening the timeframe for decision-making. Amongst the innovations introduced, we would highlight the following:

- The **reduction** in the number of the commercial establishments subject to the regime of commercial licensing. This results, on the one hand, from the increase in the total surface area beyond which commercial establishments are subject to authorization and, on the other hand, from the **exclusion** of wholesale commercial establishments and micro-companies from the regime;
- Application of the licensing regime to the **modification** of commercial establishments and shopping centres;
- The creation of a **communication procedure**, according to which less significant alterations and modifications will not be subject to the more exigent authorisation procedure;
- The obligation of obtaining, prior to the licensing process, a report supporting the proposed location from the local competent council, as well as a **favourable environmental impact statement** (in those cases covered by the legal regime on environmental impact assessment);
- The abandonment of the system of fixed entry periods for new processes and its replacement with a **continuous system** of entry;
- The amendment of **decision-making criteria**, attributing special relevance to the positive contribution of commercial establishments in the promotion of environmental improvements (eco-efficiency), the development of job opportunities and social responsibility on the part of the promoting companies;
- The obligation to communicate the opening and the closure of commercial establishments and shopping centres. In the case of an opening, the communication shall be accompanied by a **liability declaration** abolishing the **inspection procedure**.

The procedures shall be conducted through electronic means.

Regarding the official entities involved in the licensing procedure, there is an absorption by the Directorate General for Economic Activities (DGAE) of the functions of **co-ordination and instruction of procedures**. The DGAE shall delegate its competence to the territorially competent Directorate General of the Economy (DRE). The creation of the role of **procedure manager** is also a relevant development; this manager is appointed by the co-ordinator entity for the purposes of verification of the instruction of the authorization request and the accompaniment of several phases of the process. The procedure manager acts as a **privileged interlocutor** of the applicant.

On the other hand, there is a focus on one entity - the Commercial Assessment Committee (COMAC) - which has **the authority to take licensing decisions**. This entity meets on a monthly basis to consider any requests that have been submitted to it by the co-ordinator entity. The rules of operation of COMAC have already entered into force, according to Orders 417/2009 and 418/2009, both of April 16<sup>th</sup>.

Pending processes shall be decided according to the new regime.

We would highlight that the above-described procedures shall be conducted through electronic means as soon as the information system is effectively operating.

Finally, regarding pending processes:

- Pending processes relating to commercial establishments and shopping centres, which will no longer be covered by the authorisation regime, will be **terminated**;
- The remaining processes, which at the date of entry into force of the referred decree-law, are still pending **shall be decided according to Decree-Law 21/2009** and the co-coordinator body may request the relevant details for their assessment in accordance with the new parameters and decision-making criteria;
- The new decree-law applies to **modification requests** submitted subsequent to the initial licensing decision as well as to renewals of licences granted under the previous law.

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