

LEGAL ALERT

NEW FRAMEWORK FOR ECONOMIC-RELATED ADMINISTRATIVE OFFENCES

[Decree-Law 9/2021](#), which approved the **legal framework for economic-related administrative offences**, was published in *the Official Portuguese Gazette* on 29 January 2021 and amended various pieces of legislation related to the penalties framework in the economic field.

The purpose of the aforementioned decree-law is the **consolidation and “codification” of several separate laws governing the access to and engagement in economic activity for the sake of uniformity and clarity in their practical application**, establishing some essential common parameters both in terms of substance and of procedure for the so-called **economic-related administrative offences**. Such offences, according to the provisions of the respective article 1(2), include “any unlawful and reprehensible fact that fulfils a legal description corresponding to the infringement of legal and regulatory provisions relating to the access to or performance of economic activities in the food and non-food sectors, by any natural or legal person, and which entails a fine”.

The matters encompassed by this framework include, but are not limited to, offences in the fields of **consumer law, sport, health, pharmaceuticals, copyright and related rights, gambling, the winemaking sector** and the **prevention of money laundering**.

Administrative offences in the environment, finance, tax and customs, communications, competition and social security fields are excluded from its scope.

We would like to draw attention to the main innovations brought by this framework:

I. Substantive aspects

- **Several pieces of legislation** (in particular in the areas of consumer law, sport, health, pharmaceuticals, copyright and related rights, gambling, the winemaking sector and the prevention of money laundering) **are amended** to accommodate the general rules resulting from the new legal framework, as well as the typification of new offences in some of those areas;
- Economic offences are **classified** as “minor”, “serious” and “very serious” **according to their gravity and the relevance of the protected legal interests**;
- **A more comprehensive system of accountability** has been enacted **for legal persons** which will be held liable for their actions, whether in their name or on their behalf, by the members of their governing bodies, by the members of boards, managers and by their employees, as long as they are acting in the performance of their duties or because of them, as well as for the infringements committed by agents and representatives;
- A special framework for **limitation periods** has been established, with several grounds for interruption and suspension (different to and in greater number than those that are typified in the General Framework of Administrative Offences), with a standard limitation period of five years for serious and very serious administrative offences and three years for minor administrative offences.

II. Procedure

- **ASAE** is the agency with authority to supervise, manage the proceedings and issue decisions;
- The **reporting officers or complainants** cannot also perform duties in the inquiry in the same case, in compliance with the principle of **impartiality**;
- The **system of notifications** is simplified, establishing the possibility of notifying the defendant by standard letter sent by post or by e-mail;

- The **continuity of deadlines** becomes the rule, and that set forth in [the Code of Criminal Procedure](#) applies (with the resulting suspension of deadlines during court holidays and, seemingly, allowing the extension of deadlines in exceptionally complex cases);
- A **fully electronic procedure** is possible, according to administrative regulation to be enacted;
- **Enforced collection of fines** is carried out under tax enforcement proceedings.

III. Cooperation, intrusive and evidence-taking measures

- Persons responsible for and any others assigned to support the relevant activities are subject to the following **duties of collaboration**: (i) allow the regulatory agency to enter and remain on the premises; (ii) hand over, immediately or within the timeframe granted them, such documentation, books, records, living beings, property and any other elements that are demanded; and (iii) provide any information requested from them;
- The **right of free access by the competent regulatory agencies** to establishments and places where the activities subject to inspection are carried out or suspected to be carried out has been established;
- The catalogue of applicable **preventive measures** has been increased and includes, in cases of activities or practices carried out via online websites: (i) removal of content; (ii) restriction of access to an online interface; (iii) required placement of warnings for consumers when they access the online interface; and (iv) blocking the *website*;
- If there are reasonable grounds to suspect that a very serious offence has taken place in a residence or that evidence is hidden there, the administrative authority may carry out **searches of private premises** after obtaining approval from the Public Prosecutor's Office, in the event of prior consent from the proprietor(s) or if authorised beforehand by a judge supervising the investigative phase.

IV. Defence

- A **general principle of right of defence** is enshrined, under which all decisions, orders and other measures taken by the administrative authorities in the course of the procedure can be challenged in the courts;
- The requirement to **appoint counsel** during the judicial stage of the administrative offence procedure is laid down, when the amount of the fine exceeds EUR 10,000;
- The **(general) rule of suspensive effect** of the appeal in the courts to challenge a final decision holding the defendant liable is confirmed;
- The **(general) prohibition of *reformatio in pejus*** during the judicial phase is also confirmed.

V. Penalties

- **Minimum and maximum limits for variable fines** are defined according to the classification of the administrative offence and whether the liable party is a natural or legal person and, with regard to legal persons, according to their size – distinguishing between “micro-enterprise”, “small enterprise”, “medium-sized enterprise” or “large enterprise” (following the criteria set out in [the Commission Recommendation](#) of 6 May 2003 (2003/361/EC) – the fine may range from EUR 150 (minimum fine applicable to natural persons for minor administrative offences) to EUR 90,000 (maximum fine applicable to large enterprises for very serious administrative offences);
- In the event of **attempted or negligent offences**, the fines imposed are usually reduced by half;
- For serious and very serious administrative offences, fines **are doubled** when they harm the health or safety of people or property or when the economic benefit of the infringement exceeds the maximum amount of the applicable fine and there are no other means of eliminating that benefit;

- The following are established as **applicable ancillary penalties**: (i) confiscation of objects and living beings related to administrative offences in favour of the State or another entity; (ii) being barred from performing occupations or professions; (iii) being barred from participating in conferences, fairs or national or international markets in order to perform transactions or advertise products or activities; (iv) being barred from participating as a candidate, bidder or a member of a group of candidates or group of bidders in any procedure adopted for the public procurement of contracts; (v) closure of an establishment; (vi) loss of the right to tax benefits, credit benefits and credit lines; (vii) suspension of licences, permits or authorisations related to their activity; and (viii) publication of the conviction;
- The fine can be **specially mitigated**, which corresponds to a reduction to half of the applicable minimum and maximum limits, when circumstances occur that markedly reduce the unlawfulness of the act, the fault of the person/entity or the need to levy a fine. Mitigation is mandatory if the defendant remedies the losses and ceases the unlawful conduct;
- The possibility of **a warning** has been enshrined, instead of a fine, for minor regulatory offences;
- The enforcement of the ancillary penalties imposed can be **suspended**;
- In cases of **voluntary payment of the fine**, prior to the administrative decision, the minimum amount of the fine is reduced by 20%, regardless of the classification of the infringement, and the payment of the costs is reduced by half when the defendant makes the payment during the period granted for submitting the defence.

Decree-Law 9/2021 enters into force 180 days after its publication, i.e. on 28 July 2021.

Morais Leitão's **Criminal, Misdemeanour and Compliance team** is available for any further clarification you may require.

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