

PUBLIC
LAW

LEGISLATIVE AUTHORISATION FOR THE APPROVAL OF THE NEW CODE OF ADMINISTRATIVE PROCEDURE

On 11 July 2014 Law no. 42/2014 was published. This Law **authorises the Government to approve the new Code of Administrative Procedure (CAP)**. This authorisation aims at replacing one of the key pieces of legislation in Portuguese administrative law, which has been in force for over 20 years.

The legislative authorisation granted to the Government comprises **several aspects** of the legal regimes set out in the CAP. **Let us highlight the main features that can be expected from the revision of the CAP:**

- In what relates to the **general principles of administrative activity**, the Law authorises the Government to expressly provide, in the CAP, for legal principles such as the principle of *protection of the interested parties' personal data* or the principle of *loyal cooperation with the European Union*. On the other hand, the Law authorises the government to further elaborate on general principles already enshrined in the current CAP, such as the principles of *equality, proportionality* or *impartiality*.
- Regarding the regime of the **administrative procedure**, the Government is authorised to provide for the possibility of agreements being entered into between the Public Administration and the interested parties with the purpose of agreeing upon certain terms of the procedure (so-called *endo-procedural agreements*).

In order to foster the efficiency, economy and promptness of administrative activity, the Law also empowers the Government to set forth the regime of the so-called *procedural conferences* in which, in one single moment, different administrative entities involved in a certain decision intervene, thus avoiding the cumbersome “journey” from one administrative entity to the other.

- Concerning the **forms of administrative actions**, we highlight the authorisation granted to the Government to establish – for the first time – a substantive regime of administrative regulations, i.e., of the general and abstract rules enacted by the Public Administration, covering issues such as the legal authorisation for issuance, the relation between regulations, the prohibition of retroactive effectiveness of certain regulations, as well as the expiry, revocation and challenge.

Regarding administrative acts, the legislative authorisation brings about important innovations related to the administrative *review* of such decisions. Thus, for

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entities involved*

instance, the Government may establish that acts which create rights are subject to *administrative revocation* on the grounds of supervening technical and scientific knowledge or in case of an objective change of factual circumstances, in light of which, in either case, such acts should not have been issued. Concerning these cases, the Law also refers to a right to compensation for the *bona fides* beneficiaries.

- In what concerns **administrative remedies**, the Government is authorised to expressly establish that administrative complaints and appeals are purely *optional* (the interested party may bring the matter directly before a Court), unless the law classifies them as *mandatory*. In this regard, the Law authorises the Government to clarify the cases in which pre-existing remedies will be deemed *mandatory*.

Finally, it should be mentioned that the authorisation granted to the Government for the approval of the new CAP has a term of 180 days.

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