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PUBLIC LAW

Coronavirus: Law 1-A/2020 and the Exceptional Rules on Public Procurement

Decree-Law 10-A/2020 of 13 March created exceptional public procurement rules on spending authorisations and administrative authorisations. These rules are intended to ensure the immediate availability of the goods and services needed to respond to the current state of emergency.

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TRENDING TOPIC

However, under article 7(6)(c) of Law 1-A/2020 of 19 March, it seems that all administrative time limits in favour of private parties are suspended. There is little doubt that this will include at least the suspension of the time limits to submit proposals and to present a defence in preliminary hearings.

In fact, under the letter of the law, the scope of this rule would cover all administrative procedures (the only exceptions are in tax matters). This would mean the suspension of all procurement procedures by all contracting authorities. At worst, the procedures arising from the exceptional public procurement rules on spending authorisation and administrative authorisation would also be suspended. This would obviously mean a shut-down of the State. This imposes a special duty of diligence on interpreting those rules.

Therefore, it seems clear to us that it will be necessary to at least reconcile the above pieces of legislation. Otherwise, the exceptional public procurement rules on spending authorisation and administrative authorisation will simply not have any effect. Of course, this reconciliation can only be achieved by deeming that the effects of article 7(6)(c) of Law 1-A/2020 do not apply to procurement procedures under these exceptional rules. Indeed, the fact that article 7(6)(c) of Law 1-A/2020 states that it applies with the necessary adaptations seems to be sufficient for this reconciliation.

"Under article 7(6)(c) of Law 1-A/2020 of 19 March, it seems that all administrative time limits in favour of private parties are suspended."

However, the interpretation set out above may not be enough to ensure that contracting authorities can continue to operate. Therefore, we lean towards a restrictive (or even corrective) interpretation of article 7(6)(c) of Law 1-A/2020. This interpretation would restrict its scope to the open procedures (public tenders and public tenders with pre-qualification, among others). However, it would not apply to closed procedures (direct award, whether normal or simplified, or prior consultation). If this were not the case, the State and the market itself would cease to function. In the same way, it seems to us that the suspension of procedural time limits for the private parties may not apply to all (future) administrative procedures that have been announced and which are intended precisely to have immediate effects ■