



PUBLIC LAW | CONSTRUCTION

Legislation and case law updates

1st Quarter

HIGHLIGHTS

4TH CONSTRUCTION LAW CONGRESS

PLMJ organised, in partnership with Alameda, the 4th edition of the Construction Law Congress on 17 and 18 March. The event brought together regulators, decision-makers and key figures from across the industry. Attendees discussed an unprecedented investment cycle in Infrastructure, transport and housing, estimated at €60 billion over the next decade. Against the backdrop of an urgent need for public-private collaboration, the congress also addressed critical challenges such as the shortage of skilled labour, cost volatility, bureaucratic hurdles in the licensing process, and the planned review of key legislation, including the Public Contracts Code, the Court of Auditors Act, and the RJUE.

A video summary of the 4th edition of the Construction Law Congress is available [here](#).

LEGISLATION

LAW 3/2026 OF 6 JANUARY

This finalises the transposition of [Directive 2005/36/EC](#) regarding the recognition of professional qualifications within the construction and building project sector. It also amends Law 3/2009 of 3 July, which regulates the professional qualifications of technicians responsible for project design, supervision, and site management.

Key changes:

- Article 5 – Review of designs: public authorities and public contracting bodies must have qualified staff to review designs who are registered with public professional associations where required. They may also engage external entities with qualified technicians.
- Article 25 – Acquired rights of civil engineers. Civil engineers who hold the degrees listed in Annex V and who, between 1 November 2009 and 1 November 2017, signed off approved architectural projects may continue to prepare projects as set out in Decree No. 73/73, provided they meet the conditions therein. Those who established themselves in another Member State during that period are exempt from proving such experience. Registration with IMPIC, I.P., demonstrating compliance with the legal conditions, is mandatory, however.

DECREE-LAW 40-A/2026 OF 13 FEBRUARY

Decree-Law 40-A/2026 has been approved, establishing an exceptional, temporary scheme for administrative and financial simplification. This scheme is aimed at the reconstruction and rehabilitation of heritage sites and infrastructure in municipalities affected by Storm Kristin.

The scheme covers any contracts subject to public procurement rules (e.g. public works contracts), regardless of the contracting authority's nature, provided the contracts are intended for necessary interventions and support for the population.

Among other measures, the decree-law relaxes procedural and financial rules to speed up the contracting and execution of works. It also allows for an exceptional increase in construction companies' qualifications. For contracts covered by the scheme, companies holding a public works contractor's licence or private contractors may carry out work up to one class higher than their licence permits. This is intended to facilitate a rapid response on the ground.

LAW 9-C/2026 OF 12 MARCH

Supplementing Decree Law No. 40 A/2026 (mentioned above), this law establishes an exceptional and temporary administrative simplification scheme applicable to reconstruction and rehabilitation works on heritage sites and infrastructure in municipalities affected by Storm Kristin.

The scheme covers the following matters: (i) declarations of public utility and the urgent expropriation of property necessary for the works, (ii) special solutions for works on classified cultural heritage or heritage in the process of being classified, riverbeds and banks of public waterways, the felling of tree species, and the use of public land, and (iii) rules on subsequent controls, a stricter penalty regime for administrative offences and crimes related to reconstruction procedures, as well as specific forest management measures and stamp duty exemptions for certain transactions.

LAW 9-A/2026 OF 6 MARCH

This law authorises the government to adopt a package of tax relief measures aimed at increasing the housing supply. This will be achieved by amending the VAT Code, the Personal Income Tax Code, the Tax Benefits Statute, and the Property Transfer Tax Code. Three specific schemes are also created: investment contracts for letting (CIA); a scheme for the partial refund of VAT on buildings works for owner-occupied, permanent residences; and a simplified affordable letting scheme (RSAA).

The law provides for exemptions and reductions in IMT (Municipal Property Transfer Tax), IMI (Municipal Property Tax) and the IMI surcharge, as well as VAT, for the construction, renovation and purchase of owner-occupied permanent housing and affordable letting projects.

LAW 9-B/2026 OF 6 MARCH

This law authorises the government to review and amend the Legal Framework of Urban Development and Construction (RJUE) and urban regeneration.

Under the RJUE, the law empowers the government to: (i) review the criteria for licensing or prior notification, with transitional arrangements of up to five years; and (ii) intervene in the rules governing the invalidity and revocation of urban planning acts, the automatic suspension of works, the provisional acceptance of works, and arbitration.

Regarding urban regeneration, the authorisation clarifies the obligation to compensate the municipality if no land is made available for social, cost-controlled or affordable letting housing.

GOVERNMENT BILLS

GOVERNMENT BILL 47/XVII/1

Following the enactment of [Law 9-A/2026](#), which authorised the government to introduce tax relief measures aimed at increasing housing supply, the government approved the decree-laws regulating the tax package for housing and the 'Simplex' town planning initiative at a meeting of the Council of Ministers. The aim is to increase supply and facilitate access to housing.

Incentives for construction and renovation of properties

A reduction in the VAT rate from 23% to 6% is proposed for construction or renovation works relating to:

- Properties intended for sale at moderate prices for the purchaser's own permanent residence, provided that the property is sold within 24 months of the occupancy licence being issued.
- Residential properties intended for letting at moderate prices, provided that (i) the property is let within 24 months of the occupancy licence being issued and (ii) letting contracts are maintained for at least 36 months, consecutively or intermittently, over the following five years.
- Properties (including self-contained units) intended for residential letting or subletting, provided that they are covered by the investment letting contract scheme.

The reduction in the VAT rate, as set out in points (i) and (ii), will remain in force until 31 December 2032. To benefit from the scheme, it is necessary that:

- The planning procedure is started between 25 September 2025 and 31 December 2029 and the "start date" is defined as the submission of one of the following:
 - A licensing application.
 - A prior notification.
 - A prior opinion.
 - Information regarding the start of works.
- The tax will be chargeable from 1 January 2026.

It is also proposed that 50% of VAT incurred on architectural services, designs and studies related to the construction or renovation of properties will be refunded. However, this tax benefit is restricted to residential properties (including self-contained units) covered by the Investment Contracts for Letting (CIA) scheme.

According to media reports, the bill has been approved in committee. It transfers responsibility for ensuring that properties built with a 6% VAT rate are used as the buyer's permanent residence or rented out at affordable rates for at least one year to buyers. Clarification is awaited regarding the precise nature of this responsibility.

CASE LAW

JUDGMENT OF THE COURT OF APPEAL OF PORTO OF 16/01/2026, CASE NO. 1232/22.6T8PRD.P1

CIVIL LIABILITY, DUTY OF SUPERVISION, CONTRIBUTORY CAUSATION

The court was asked to rule on liability for the collapse of the claimant's boundary wall, which was situated at a lower level, following the collapse of the defendant's retaining wall, which was situated at a higher level, in a dispute between neighbouring properties.

It was established that the defendant's wall had structural defects, including inadequate foundations and insufficient strength to fulfil its supporting function. These defects caused the wall to collapse, putting pressure on the ground and resulting in the fall of the claimant's wall.

The court emphasised the duty of supervision and maintenance incumbent upon owners of structures capable of harming third parties (Articles 493 and 1350 of the Civil Code), noting that failing to exercise due diligence gives rise to civil liability.

It was also demonstrated that the claimant had contributed to the increased risk of collapse and that her actions could not be disregarded when assessing causation. Consequently, the court concluded that both the defendant's poor workmanship and lack of supervision and the claimant's intervention on the ground were decisive in causing the damage. The court therefore recognised contributory causation (Article 570 of the Civil Code) and apportioned liability between both parties.

Accordingly, the Court of Appeal overturned the initial decision and ordered the defendant to cover half the cost of repairing the claimant's wall and gate. The defendant was also ordered to rebuild his retaining wall in accordance with the applicable technical and safety regulations.

JUDGMENT OF THE COURT OF APPEAL OF PORTO OF 16/ 01.01, CASE NO. 15540/23.5T8PRT.P1

LIMITATION OF THE RIGHT TO BRING AN ACTION

The Court of Appeal of Porto has reaffirmed that:

- The limitation period for bringing an action expires one year after the work has been refused or accepted with reservations, or after the defects have been reported or acknowledged by the contractor (Article 1224 of the Civil Code).
- In consumer contracts relating to immovable property, a special limitation period of three years applies (Article 5-A(3) of Decree-Law 67/2003).

However, the court noted that:

- The limitation periods do not apply to the right to compensation for the cost of rectifying defects or rebuilding the work in the event of the contractor definitively breaching their obligations. In this case, the general limitation period of 20 years applies.
- Conversely, where the client's decision to carry out the works results solely from an emergency situation, without definitive non-performance, the limitation periods set out in Articles 1220 and 1224 of the Civil Code remain applicable.
- Regarding collateral losses caused by defects in the work, insofar as they constitute independent damages arising from contractual liability, only the general limitation regime applies.

In this case, definitive breach by the contractor was not demonstrated as the following were not proven: (i) the formal notice; (ii) the setting of a reasonable deadline for rectifying the defects; and (iii) the objective loss of interest on the part of the client (Article 808 of the Civil Code). As the client immediately engaged third parties to carry out the repairs, the court concluded that the right of action had lapsed in light of both the statutory time limits and any potentially more extensive contractual warranty.

JUDGMENT OF THE COURT OF APPEAL OF LISBON OF 22/01/2026, CASE NO. 2016/25.5YRLSB-2

UNILATERAL VARIATIONS, ERRORS AND OMISSIONS, SUPERVENING CHANGES IN CIRCUMSTANCES, TERMINATION DUE TO DELAYS

In a dispute concerning a 'turnkey' construction project, the Lisbon Court of Appeal addressed the following four key points:

Unilateral variations

As the parties had agreed on a lump-sum price for the contract, making any deviation (i.e. changes to the works or supplies) subject to a written agreement, the contractor is not entitled to a price increase for unilaterally introduced modifications to the works.

The Court of Appeal further clarified that the client's knowledge of such alterations, in the context of supervising the works, does not constitute authorisation, nor does it dispense with the requirement for a written agreement. Supervision does not replace the written agreement required by the contract, so alterations not covered by the agreement remain unilateral and do not entitle the contractor to additional payment.

Errors and omissions

The court emphasised that, as this was a contract for works between private legal entities, the legal framework derives from the contractual terms and, where these are insufficient, from the Civil Code. Public procurement rules do not apply. The Public Contracts Code only applies if the parties have expressly agreed to it.

In this context, the court dismissed the argument that the contractual clause attributing liability to the contractor for errors, omissions or discrepancies in the design was invalid. The court held that such a stipulation corresponds to the definition of the design-build contractor's liability for preparing a technically feasible design. The court also held that this stipulation does not contravene public policy in contractual matters or the balance of the contract.

Regarding the alleged lack of information about the land, the court considered that, while this circumstance was technically relevant, it had been accommodated by the parties, who had agreed on the allocation of costs arising from the solutions adopted following the geotechnical study. Furthermore, the contractor took responsibility for errors and omissions in the design, preparing the engineering plan despite having no prior knowledge of the geological constraints. This does not, in itself, justify revising the overall price or transferring risk to the client.

Change of circumstances

The court reiterated that a change in circumstances requires events that are both abnormal and unforeseeable. Mere disappointments regarding economic expectations are not sufficient.

In this case, the disruptions to supply chains and prices, as well as the procurement of information regarding the land, were not considered to be outside of the ordinary at the time the contract was entered into, particularly given that the contractor was aware that the contract depended on this information.

Termination for delay

As contracts for works involve executing a project, failing to complete it within the agreed timeframe does not necessarily constitute a breach of obligation. It merely places the contractor in default.

Definitive non-performance may be established in various ways, including:

- the impossibility of performance due to the destruction or disposal of the subject matter to a third party without reservation (Article 801 of the Civil Code);
- objective loss of interest on the part of the beneficiary of the obligation (Article 808 of the Civil Code);
- the expiry of an absolute contractual deadline; or
- clear and definitive refusal by the debtor to perform.

In this case, the parties agreed that termination for definitive non-performance could only be initiated if the contractor was responsible for a delay exceeding 120 days. However, this period was not stipulated as absolute or non-extendable, nor did its expiry automatically imply termination; this remained dependent on the client's subsequent actions.

Taking the contractual provisions together with Article 808 of the Civil Code into account, the court held that the right to terminate did not arise automatically after the initial delay. Instead, if the works had not been provisionally handed over within 120 days for reasons attributable to the contractor, the client was required to issue formal notice granting an additional reasonable period for performance. Only a failure to meet that additional deadline would entitle the client to terminate the contract. In any event, termination was always dependent on the delay being effectively attributable to the contractor.

JUDGMENT OF THE COURT OF APPEAL OF LISBON OF 15/01/2026, CASE NO. 18875/21.8T8LSB.L1-8

OBJECTIVE IMPOSSIBILITY

Article 1215 of the Civil Code regulates when the proposed solution is technically unfeasible. This provision covers alterations necessitated by objective reasons, such as interference with third-party rights or compliance with technical regulations and safety standards. In other words, it covers modifications that are essential to prevent defects or performance failures in the works.

In this case, the parties must negotiate the following: (i) the changes to be made to the project/works, and (ii) the new contractual terms (e.g. deadline, price and liabilities). If they cannot reach an agreement, the courts may determine the changes.

Nevertheless, the client may always terminate the contract (Article 1229 of the Civil Code), provided they compensate the contractor for work carried out and costs incurred.

However, if the works are objectively impossible to perform for reasons not attributable to either party, the obligation is extinguished due to objective impossibility of performance (Article 790 of the Civil Code). In such a case, the client cannot terminate the contract 'due to the contractor's fault' nor claim compensation for termination.

JUDGMENT OF THE NORTHERN CENTRAL ADMINISTRATIVE COURT OF 22/01/2026, CASE NO. 518/12.2BEPRT

SUSPENSION OF WORKS

If the client fails to pay the invoices, the contractor may suspend the works (Article 185 of the Legal Framework for Public Works Contracts, or RJEOP).

In the event of a suspension due to non-payment, of which the client has been notified, the contractor is entitled to compensation for any direct losses incurred during the suspension period, in accordance with Article 189(4) of the RJEOP. This includes site costs (e.g. staff, facilities and logistical equipment), daily bank guarantee/insurance costs and all other costs directly associated with this stoppage.

Compensation is payable only for the period between notification of suspension and notice to resume work, plus the strictly necessary days for recommissioning the site.

JUDGMENT OF THE NORTHERN CENTRAL ADMINISTRATIVE COURT OF 22/01/2026, CASE NO. 189/05.OBELRAL.CS1

ADDITIONAL WORK

Any additional work carried out to rectify design errors and omissions that have been formally acknowledged by both parties is payable to the contractor. In accordance with Articles 15 and 16 of the RJEOP, the client is required to make the corresponding payment.

JUDGMENT OF THE NORTHERN CENTRAL ADMINISTRATIVE COURT OF 09/01/2026, CASE NO. 00275/23.7BEMDL

PRICE REVIEW

The signing of the final account usually means that the right to a price review is lost. However, the court recognises an exception where the economic indices used do not correspond to the legally established figures. In such cases, even after the final account for the works has been drawn up, the price adjustment must be recalculated on the basis of the corrected indices, provided that the correct indicators were only published subsequently by the competent authority.

JUDGMENT OF THE SUPREME ADMINISTRATIVE COURT OF 17/03/2026, CASE NO. 12/24.9BALSB

TAX RULES FOR URBAN REGENERATION CONTRACTS

For a contract to qualify for the reduced 6% VAT rate, it must be part of a strategic urban regeneration plan carried out by the local authority. Simply being located within an Urban Regeneration Area is not sufficient. Under the Legal Framework for Urban Regeneration (ARU), urban regeneration requires the approval of both the ARU's delimitation and an Urban Regeneration Operation (ORU) that falls within a municipal urban regeneration strategy or programme.

Therefore, only urban regeneration works that meet both of these requirements are eligible for the reduced VAT rate of 6% (Item 2.23 of List I, as set out in the CIVA).

- They must, in fact, be urban regeneration works.
- They must be carried out on properties situated in an Urban Regeneration Area for which an Urban Regeneration Operation has previously been approved.

Regarding the timeframe, the legal admissibility of there being no temporal overlap between the demarcation of the ARU and the approval of the ORU does not exempt the taxable person from complying with the conditions for the tax benefit. Therefore, although works in an ARU are permissible prior to the ORU's approval, the reduced VAT rate cannot apply if the works are carried out before the relevant ORU has been approved.

JUDGMENT OF THE COURT OF APPEAL OF GUIMARÃES OF 12/02/2026, CASE NO. 5490/22.8T8VNF.G1

DEFECTS

The client must notify the contractor of any defects within 30 days of becoming aware of them. Failure to do so will result in the right to claim rectification lapsing (Article 1220(1) of the Civil Code). Acknowledgement of the defect by the contractor is deemed to constitute such notification. If the defects were not known at the time of acceptance of the work, the right to have the defects remedied must be exercised within one year of notification (Article 1224 of the Civil Code). In no case may this right be exercised more than two years after the handover of the work.

However, the special provisions of Article 1225 of the Civil Code apply to properties intended for long-term use (such as residential buildings) where repair works are concerned. Article 1225 provides for extended time limits. These are one year for termination following discovery of the defects and one year for legal action, within a maximum limit of five years from delivery.

Under both provisions, the contractor's acceptance of the defects and their promise to repair them prevent the client's rights from lapsing, even if the notice is late (Article 331(2) of the Civil Code).

The contractor's liability for defects is limited to the works contracted for and carried out. They cannot be ordered to repair defects in areas of the property where they did not carry out work or assume a contractual obligation.

However, the client need only prove the existence of the defect, not its technical cause. It is the contractor's responsibility to prove that the defect originated beyond their control.

JUDGMENT OF THE COURT OF APPEAL OF PORTO OF 26/03/2026, CASE NO. 802/23.0T8PVZ.P1

DEFECTS

The concept of 'defect' encompasses any characteristic of the work that should not be present in its current form. This is determined by considering the terms of the agreement, applicable technical standards, the nature of the work and its economic and social function, and the standard expected of a diligent contractor.

The contractor assumes an obligation of result, not merely of means. According to Article 1208 of the Civil Code, the contractor is obliged to deliver work that is fit for satisfying the contractual purpose.

According to Article 3(1) of Decree-Law 67/2003, the contractor is liable to the consumer for any lack of conformity at the time of delivery. The consumer may demand repair, replacement, a price reduction or termination of the contract, in no particular order. In addition: (i) the right to withhold payment while the conditions for the defence of non-performance remain; (Article 428 of the Civil Code), and (ii) the right to compensation for loss or damage resulting from defective performance (Article 12 of Law 24/96).

Until the contractor remedies the defect, the conditions for claiming non-performance remain in force, in principle. These conditions cease to apply when the client decides that the contractor is no longer able to carry out the repair, for example if the client transfers the repair to a third party.

Therefore, the client cannot simultaneously: (i) opt for a third-party repair and seek compensation from the contractor for the cost; or (ii) refuse to pay the price on the grounds of a failure to repair, when the client no longer allows the contractor to carry out the repairs themselves.

JUDGMENT OF THE COURT OF APPEAL OF LISBON OF 24/03/2026, CASE NO. 130417/23.0T8LSB.L1-7

PENALTY CLAUSES

Penalty clauses are permissible under Article 810(1) of the Civil Code.

However, Article 811(1) of the Civil Code prohibits the combination of the obligation to perform and the payment of a penalty clause, unless the latter is intended to penalise a delay in performance (i.e. penalty clauses for delay).

However, it is prohibited to combine a penalty clause of a compensatory nature, intended as compensation in lieu of performance, with the simultaneous demand for performance of the principal obligation.

Given the function of penalty clauses as compensatory sanctions, legal doctrine distinguishes between two types:

- if stipulated for definitive non-performance, it is a compensatory penalty clause.
- if provided for mere delay, it is a penalty clause for delay.

Legal doctrine also identifies:

- Punitive or coercive clauses (penalty clauses), which aim to penalise the debtor's wrongful conduct and pressure them into compliance. These clauses may not have a direct link to the loss or damage suffered.
- Liquidated damages clauses facilitate proof of loss by setting the amount of compensation or its minimum limit in advance.

In any case, the penalty clause appears in the Portuguese legal system as a predetermined amount of compensation, whether for non-performance or delay, intended to remedy any loss or damage. However, nothing prevents it from also performing a coercive function under the principle of contractual freedom, pressuring the debtor to comply, since non-compliance entitles the creditor to demand a more onerous payment.

It is common for the penalty clause to set compensation in excess of the actual damage, which is lawful. This is justified by the aim of avoiding disputes over the quantification of losses, as well as by the coercive and deterrent functions that the clause may fulfil.

The legal limit is set out in Article 811(3) of the Civil Code: if the creditor has opted for the general compensation regime, they may not claim compensation in excess of the losses resulting from the breach.

Furthermore, Article 812(1) of the Civil Code permits the equitable reduction of the penalty clause if it is manifestly excessive due to circumstances that have arisen since the contract was made, and any stipulation excluding such a possibility is void.

However, it must be borne in mind that:

- The reduction of the penalty clause cannot be ordered ex officio. Rather, it is for the liable party to request it by alleging and proving facts that demonstrate the manifestly excessive nature of the clause in light of the subsequently ascertained damages.
- Regardless of the validity of the clause, exercising the right it confers may be considered unlawful on the grounds of abuse of rights (Article 334 of the Civil Code) if the holder manifestly exceeds the limits of good faith, public policy, or the social or economic purpose of the right.

JUDGMENT OF THE COURT OF APPEAL OF COIMBRA OF 24/03/2026, CASE NO. 1694/23.4YIPRT.C2

DEFENCE OF NON-PERFORMANCE

This constitutes a means of defence for a contracting party in the event of a delay to the performance of the contract by the other party. Its purpose is to compel the defaulting party to perform, not to penalise them.

In a construction contract, invoking the defence on the grounds of defects is subject to the principle of proportionality. The client may withhold only that portion of the price that is proportional to the reduction in value caused by the defects until the defects have been remedied, new work has been carried out or the client has been compensated for losses incurred.

The criteria for calculating the price reduction due to defects that have not been remedied determine proportionality. If there are insufficient facts to quantify this, the judge may use their discretion to determine the portion of the price corresponding to the reduction in the value of the work resulting from the defects.

The client cannot withhold payment entirely for minor defects or finishing touches (Articles 793, 802 and 1222 of the Civil Code).

JUDGMENT OF THE COURT OF APPEAL OF GUIMARÃES OF 12/03/2026, CASE NO. 58988/23.0YIPRT.G1

RECTIFICATION OF DEFECTS

Defective performance occurs when the debtor breaches the principles of punctuality or conformity by performing the obligation in a way that differs from what was agreed, which is likely to prevent the creditor from being adequately satisfied (Articles 799(1), 913 et seq, and 1218 et seq, of the Civil Code).

Defective performance occurs when the defect or irregularity in the performance:

- causes damage to the creditor.
 - devalues the performance; or
 - prevents, hinders, or frustrates the purpose for which the performance is intended.
- Defective performance occurs when the performance does not correspond to the requirements of the obligation as set out in the contract and in accordance with the principles of correctness and good faith.
- The inaccuracy may be:
- quantitative, in cases of partial performance, whereby the effects of non-performance apply to the unperformed part (delay or definite non-performance); or
 - qualitative, resulting in a deviation from the performance, i.e. a defect or lack of quality.
- In a building contract, the contractor's primary duty is to carry out the work in accordance with the agreement, free from defects that reduce its value or suitability for ordinary or specific intended use (Articles 1207 and 1208 of the Civil Code), and to perform and deliver within the agreed timeframe (Article 406 of the Civil Code).
- If defects are found, the client must notify the contractor within 30 days of becoming aware of them; otherwise, the right to claim expires (Article 1220(1) of the Civil Code).
- If the defects are remediable, the client may demand their repair. If the defects are not remediable, the client may demand that the work be redone (Article 1221(1) of the Civil Code).
- If the defects are neither remedied nor new work carried out, the client may demand a reduction in price or termination of the contract, provided the defects render the work unsuitable for its intended purpose (Article 1222(1)).
- The right to a reduction in price or termination presupposes that the contractor has failed to remedy the defects or carry out new work.
- Exercising these rights does not preclude the right to compensation for damages suffered in accordance with the general principles of contractual civil liability (Article 1223 of the Civil Code). ■