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LEGAL INSIGHTS

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Legislation and case law updates

4th Quarter

LEGISLATIVE NEWS

DECREE-LAW 112/2025 OF 23 OCTOBER

This Decree-Law amends Article 43(3) of the Public Contracts Code to state that the design-and-build model for public works is no longer exceptional, but instead a free choice within the limits of the contracting entities' administrative discretion. Public entities may now use this model, provided that the public interest at stake is respected.

This law also increased the value limits for contracts involving public or controlled-cost housing tenders, for which prior consultation and direct award procedures are permissible.

For further details on the amendments introduced in the Public Contracts Code please refer to our Informative Note.

DECREE-LAW 123/2025 OF 21 NOVEMBER

This Decree-Law, which came into force on 21 December 2025, introduces significant amendments to the legislation governing temporary accommodation for construction workers (Decree 46427 of 10 July). The new law applies to entities in the private, cooperative and social sectors, as well as to central, regional and local public administrations, public institutes and other legal persons governed by public law.

We would like to highlight the obligation for all temporary accommodation, whether designed or already in existence on 21 December 2025, to be adapted to this new law by 21 December 2026.

For more details on the changes introduced, please refer to our Informative Note here.

MINISTERIAL ORDER 424/2025/1 OF 27 NOVEMBER

This Ministerial Order approves the new technical regulation for the design, construction, operation, use and maintenance of piped fuel gas installations in buildings and repeals Ministerial Order 361/98 of 26 June. It will come into force on 27 February 2026.

The regulation establishes the technical conditions applicable to the design, execution and operation of piped fuel gas installations in individual or collective buildings, provided that the installed power per fire or per place of consumption does not exceed 500 kW. All extensions, alterations, conversions or reconversions of installations in buildings that existed on 27 February 2026 (the date on which the regulation comes into force) must also comply with these technical conditions.

COMMISSION DELEGATED REGULATION (EU) 2025/2273 OF 30 JUNE 2025, PUBLISHED ON 06.11.2025

Delegated Regulation (EU) 2025/2273 establishes a framework for a comparative methodology to calculate the optimal cost-effectiveness levels of minimum energy performance requirements for buildings. A delegated regulation is a non-legislative instrument that supplements or amends certain non-essential aspects of a prior legislative act. In this case, Delegated Regulation (EU) 2025/2273 supplements Directive (EU) 2024/1275 of the European Parliament and of the Council ("Directive"), which requires Member States to establish minimum energy performance requirements for buildings and building components with the aim of achieving cost-optimal levels.

The Directive is currently being transposed by Member States, and they have until 29 May 2026 to complete this. In Portugal, partial transposition has resulted in the approval of Decree-Law 11/2025 of 19 February. This amends Decree-Law 101-D/2020 of 7 December and determines that financial incentives for installing autonomous fossil fuel boilers will no longer be granted.

We are now waiting for the Directive to be fully transposed, taking into account the framework and rules for its application provided by Delegated Regulation 2025/2273.

Although the transposition period for the Directive has not yet ended, Delegated Regulation 2025/2273 will be applicable from 1 January 2026 for calculating the optimal levels of cost-effectiveness of the minimum energy performance requirements for buildings and building components. These must be communicated to the Commission by 30 June 2028.

MINISTERIAL ORDER 471/2025/1 OF 26 DECEMBER

For the purposes of Article 39 of the Municipal Property Tax Code, which will be in force in 2026, the average construction value per square metre has been set at EUR 570.00.

GOVERNMENT BILLS

GOVERNMENT BILL 48/XV/1

The government presented Draft Law 48/XVII/1 to the Assembly of the Republic, amending the Legal Framework for Urban Development and Construction. The bill (draft law) aims to streamline urban planning processes and encourage the supply of more housing, building on the Simplex Urbanístico (Urban Planning Simplex) initiative.

In summary, the bill:

Adapts measures introduced by the Simplex Urbanístico, to ensure the continued flexibility of procedures and the streamlining of time limits.

- Clarifies certain concepts such as 'reconstruction works', 'alteration works', 'extension works', 'building works' and 'minor works'.
- Amends the scope of application of licensing and prior notification procedures by modifying the criteria for each procedure.
- Reintroduces the alvará de licença de construção (construction licence document) for urban development works, now renamed título (title).
- It places an obligation on those carrying out works exempt from prior notification to notify the City Council before starting work, under penalty of sanctions.

This law now requires approval by the Assembly of the Republic.

COURT OF AUDITORS

RESOLUTION 2/2025-PG

On 15 December 2025, Instructions 1/2025 came into force regarding the organisation, documentation and submission to the Court of Auditors, via the eContas Platform, of additional acts and contracts relating to public works contracts (already approved or with a decision to proceed). These include extra work, corrections to errors and omissions, or complementary work ('additional acts or contracts'), together with the corresponding requests.

These new instructions apply to requests from the Court of Auditors, as well as to responses and the submission of documents relating to additional acts and contracts that have already been submitted for concurrent inspection.

CASE LAW

JUDGMENT OF THE COURT OF APPEAL OF PORTO OF 15.09.2025, CASE NO. 1170/24.8T8AVR.P1

Damage caused by the contractor and expiration

The rules on expiry do not apply in relation to the right to demand the removal of defects arising from the performance of the works when damage to property that was not included in the scope of the works contract is involved. The court held that these are not defects in the work in such situations, and therefore the expiry provided for in the works contract does not apply.

The court also reinforced the idea that the contractor's acknowledgement of the right constitutes grounds for preventing expiry and that the possibility of demanding the repair of defects remains.

JUDGMENT OF THE SUPREME COURT OF JUSTICE OF 02.10.2025, CASE NO. 69471/23.3YLPRT.P1.S1

Defective performance

The Supreme Court of Justice has reaffirmed that, in the event of defects in the work, the law governing construction contracts grants the owner the following rights under Articles 1220 to 1223 of the Civil Code:

- Elimination of defects or execution of new work (Article 1221(1) of the Civil Code).
- Reduction of the price or termination of the contract if the defects render the work unsuitable for its intended purpose (Article 1222(1) of the Civil Code);
- Compensation for loss and damage caused (Article 1223 of the Civil Code).

In order to exercise these rights, the law requires that defects be reported in a timely manner.

The court also held that, if the contractor has not remedied the defects within a reasonable timeframe (taking into account the urgency of the repairs), the owner may hire a third party to do so, and is entitled to reimbursement of costs and interest (Article 805(3) of the Civil Code). Urgent situations, such as the risk of structural collapse, justify immediate action without prior warning.

Finally, if the contractor definitively fails to remedy the defects or rebuild, the owner of the work is entitled to a reduction in price, termination of the contract, or compensation for the costs of repairs carried out by themselves or a third party (Article 798 of the Civil Code).

JUDGMENT OF THE COURT OF APPEAL OF ÉVORA OF 16.10.2025, CASE NO. 30070/20.9YIPRT.E1

Defective performance

Failure to install a rubbish bin constitutes a defect in performance if the missing material element does not have an independent function from the rest of the works, or a partial defect in performance if it does.

These situations are therefore distinct from failure to complete the work, which occurs when work that is still in progress is interrupted or abandoned.

In cases of defective performance of the contract, the client may refuse to pay the price until the defects are corrected. However, for this 'refusal' to be legitimate, the defects must have been reported, and the project owner must indicate which rights they intend to exercise (see the ruling of the Supreme Court of Justice, 02/10/2025, supra).

Conversely, if the client accepts the work without reporting the defects and there is no agreement to the contrary between the parties, Article 1211(2) of the Civil Code applies: the obligation to pay expires upon acceptance. In that case, payment cannot be refused.

JUDGMENT OF THE COURT OF APPEAL OF COIMBRA OF 28.10.2025, CASE NO. 235/22.5T8TND.C1

Defective property sale

In a property sale, the seller's obligation is not limited to handing over the property and receiving the purchase price. They must also hand over a property that is free of defects and in the agreed condition (Article 913 of the Civil Code).

In this context, the Court of Appeal of Coimbra emphasised that:

- It is up to the buyer to prove the defects in the property (Article 913 of the Civil Code). Defects will only be characterised as such when they reveal a non-conformity with what was expected (e.g. the property being advertised as new or of a certain quality). It is certain that where there are defects which have been deliberately concealed. for example, under carpets or furniture to prevent them being checked before purchase, the buyer will always be protected.
- To rebut the presumption of fault (Article 799 of the Civil Code), the seller must demonstrate that the defects resulted from external causes, that is, causes that are unrelated to the construction and materials used.

JUDGMENT OF THE SUPREME COURT OF JUSTICE OF 29.10.2025, CASE NO. 3254/22.8T8PRT.P1.S1

Bank guarantee

The Supreme Court of Justice reaffirmed the nature of the autonomous guarantee: it is a mechanism whereby the 'guarantor' institution undertakes to pay the beneficiary a certain amount in the event of alleged non-performance or poor performance of the underlying contract, without being able to invoke exceptions or defences related to that contract.

Consolidated case law (Supreme Court of Justice rulings of 17 June 2012, 19 October 2017 and 21 March 2023) confirms that, even in the face of allegations of fraud, bad faith or abuse of rights, the guarantor must fulfil its obligation, leaving the dispute to the parties to the underlying contract.

In this specific case, the court emphasised that the central issue is to confirm whether or not the claimant breached the works contract and, if so, to what extent. Once confirmed, it is then necessary to decide whether or not there are grounds for enforcing the guarantee. This issue must be assessed and decided by reference to the rules governing the contract for services and not those governing the independent guarantee contract. This determination is also decisive in assessing any alleged abuse of rights.

JUDGMENT OF THE COURT OF APPEAL OF PORTO OF 24.11.2025, CASE NO. 7321/21.7YIPRT.P1

Tacit acceptance of works

In a contract for works, acceptance of the work should not be confused with the physical handover of the work or payment for it. Accepting the work means the client is declaring that it complies with the contract.

The Civil Code (Article 1218(1) and (2)) establishes that the owner of the work must inspect it before accepting it. This inspection must take place within a reasonable period of time from when the contractor makes the work available for inspection. If no declaration of acceptance or notification of defects is made within this period, tacit acceptance is presumed (see Article 1218(5)).

However, if it cannot be proven that the owner of the work has paid all or part of the invoices relating to works in which defects were detected, or that the owner of the work has communicated the existence of such defects, the court must conclude that there was no tacit acceptance of the work.

JUDGMENT OF THE COURT OF APPEAL OF PORTO OF 27.11.2025, CASE NO. 9260/22.5T8PRT.P1

Disruption to work caused by the Covid-19 pandemic

The measures taken to combat the pandemic and its economic effects constitute force majeure (Article 8 of Decree-Law 19-A/2020 of 30 April). If the event of force majeure exceeds the risks inherent in the contract, the contractor's liability is excluded. Instead, the principles of temporary impossibility of performance (Article 792(1) of the Civil Code), unenforceability, and acting in good faith (Article 762(2) of the Civil Code) apply. Thus, performance of the obligation is 'suspended' during the impediment and resumes after its cessation.

Furthermore, if force majeure is the reason and the owner of the work has accepted the delayed start, they cannot terminate the contract for breach of contract by the contractor for exceeding the deadline, under penalty of abuse of rights.

Acceptance of the works

Once the works have been completed, the contractor must allow the owner to check that they comply with the agreed conditions and that there are no defects (Articles 1218(1) and (2) of the Civil Code). This verification process should not be confused with an inspection, as inspections carried out during the execution of the work are provisional. The process of checking the work is as:

- A right because it gives the owner the opportunity to check the conformity of the works.
- A duty, because failure to check the works or communicate any defects found implies unreserved acceptance by the owner (Article 1218(5) of the Civil Code).

However, failure to accept does not render payment of the price unenforceable when the contract provides for instalment payments, thereby overriding the supplementary rule of the Civil Code.

Defects and faults: liability and burden of proof

Any breach of the contractual duties, including the obligation to remedy defects or faults arising from inadequate performance, gives rise to contractual liability on the part of the contractor (Article 798 of the Civil Code). A breach is deemed to have occurred when the work, or its repair, cannot be carried out because, at the end of the reasonable period set for this purpose, the owner of the work has lost interest in the contractual performance (Article 808(1) of the Civil Code). In this case, the owner may terminate the contract and claim compensation (Article 801(2) of the Civil Code).

Regarding the burden of proof, the owner of the work only needs to demonstrate defective functioning without having to prove the cause. It is then up to the contractor to prove that the defects are not their responsibility by demonstrating a cause external to their actions.

Exercise of rights and price reduction:

If the work is performed incorrectly, the contract should be maintained if possible. The rights conferred by the Civil Code should therefore be exercised successively, giving priority to those that allow the contract to be maintained. These rights are: (i) elimination of defects or execution of new work (Article 1221(1) of the Civil Code); (ii) reduction of the price or termination of the contract if the defects render the work unsuitable for its intended purpose (Article 1222(1) of the Civil Code); and (iii) compensation for losses caused (Article 1223 of the Civil Code).

A reduction in price is only possible once the breach has become definitive. The aim is to restore the equivalence of the services by adjusting the price to reflect the devaluation of the work caused by the defects (Articles 1222 and 884 of the Civil Code).

JUDGMENT OF THE COURT OF APPEAL OF PORTO OF 13.11.2025, CASE NO. 18936/23.9YIPRT.P1

Reporting apparent defects and the defence of non-performance

If the owner of the work does not provide prompt notification of obvious defects (those that can be detected by a simple visual inspection), they cannot demand their repair or refuse to pay the agreed price.

The report must describe the defects in the work. The owner can only exercise their rights in relation to the reported defects and not in relation to any others that may exist (see the Supreme Court of Justice ruling of 2 October 2025 above for more information on this).

Once the work has been completed, the defects identified and the contractual relationship not terminated by termination of the works contract, the situation is one of defective performance, not definitive non-performance of the contract. The work has been carried out, but with non-conformities and defects.

In the event of defective performance, the owner may refuse to pay part of the price until the contractor remedies the non-conformities and defects (Article 428 of the Civil Code). This is because the works contract is a true contract of reciprocal obligations, so the defence of non-performance may be invoked.

However, the obligation to pay the price must not have expired before handover of the work and the amount withheld must be proportionate to the devaluation caused by the defects.

JUDGMENT OF THE COURT OF APPEAL OF PORTO OF 23.10.2025, CASE NO. 5055/21.1T8VNG.P1

Contractor's liability

The contractor is liable to the project owner for any faults or defects in the work, even if they result from work carried out by a subcontractor. For the owner of the works, the contractor guarantees that the work complies with the agreement, regardless of how the work is organised. Therefore, the contractor is primarily responsible.

However, this does not prevent the contractor from exercising their right of recourse against the subcontractor responsible for the damage.

JUDGMENT OF THE SUPREME COURT OF JUSTICE OF 16.12.2025, CASE NO. 9991/20.4T8LSB.L1.S1

Termination clause

Any clause that allows the owner of the work to terminate the contract if the contractor "fails to comply with the instructions of the supervisory body" is invalid due to its vagueness, as it does not specify any particular breaches or their severity.

Therefore, any termination of the contract based on such an invalid clause is unlawful.

Termination clauses serve to define breaches whose severity justifies termination of the contract. The aim is to provide legal certainty to the contractual relationship, so they cannot be generic or state that any breach gives rise to the right to terminate.

JUDGMENT OF THE COURT OF APPEAL OF GUIMARÃES OF 27.11.2025, CASE NO. 52601/22.0YIPRT.G1

Invoking the defence of non-performance

This defence can be invoked in situations where the obligations of the parties involved fall due at different times. However, it can only be invoked by the party whose obligation is due later, that is, the party that is obliged to perform second. A party invoking this defence will not be in default for failing to perform their obligation while the other party has not yet performed their corresponding obligation.

JUDGMENT OF THE COURT OF APPEAL OF LISBON OF 04.12.2025, CASE NO. 1770/21.8T8LRS.L1 -6

Probative value of the invoice

The invoice is an accounting document used for commercial transactions and the provision of services. It must detail the goods supplied or transferred and the services provided, as well as their prices. However, the invoice itself does not prove that the services described in it have been provided, and its probative value is subject to the court's discretion.

In this case, the contract stated that the final payment would be made to the contractor upon completion of the work, even if the invoice had already been issued. Therefore, the court ruled that payment would only be made after proof of completion had been provided.

JUDGMENT OF THE COURT OF APPEAL OF GUIMARÃES, OF 17.12.2025, CASE NO. 316/23.8T8CBT.G1

Consumer works contract

When work is carried out by a construction company for the private home of an individual, this us treated as a consumer works contract. This means that the Consumer Protection Law (Law 24/96) and Decree-Law 84/2021, which transposed European standards on consumer rights, apply.

Under this law, the consumer has specific rights relating to defects or non-conformities. However, immediate termination of the contract is only permitted if doing so does not amount to an abuse of rights.

In the case before the court, the defects did not prevent the house from being lived in and were considered minor. For that reason, the court ruled that the termination of the contract was unlawful.

JUDGMENT OF THE COURT OF APPEAL OF GUIMARÃES OF 17.12.2025, CASE NO. 6244/24.2T8GMR.G1

Application of contractual penalties for delays attributable to the project owner

The contractor cannot be penalised with contractual fines for delays resulting from the project owner's failure to obtain the necessary building permit in good time, even if the project is not completed within the timeframe stipulated in the works contract. The purpose of municipal licensing is to ensure compliance with public law in the construction of buildings. As a result, any such delay is attributable only to the project owner. ■