



Significant recent developments in terms of administrative procedure

Law No. 39/2015, of 1 October, on the Common Administrative Procedure of Public Authorities comes into force

On 2 October, Law No. 39/2015, which regulates the common administrative procedure of Public Authorities (LPAC) comes into force. This Law revokes various other laws and regulations. Amongst the foregoing, the most relevant is Law No. 30/1992, on the Legal System applicable to Public Authorities and Common Administrative Procedure. The legislator, on this occasion, has chosen to break up the provisions of Law No. 30/1992 into two laws: Law No. 39/2015, the most important new features of which will be dealt with below, and Law No. 40/2015, which regulates the Legal System applicable to the Public Sector (LRJSP), which will be addressed on another occasion.

For the most part, the LPAC inherited the system that was previously set forth in Law No. 30/1992. However, it also introduces important new provisions in line with the demands of today's society.

Faster processing

The new Law introduces the possibility of simplifying the processing of the common administrative procedure when, on the grounds of public interest or when the procedure's lack of complexity makes it reasonable to do so. Such simplified procedure may be applied directly by the public authority or upon a party's request and, if a request is made, the ruling must be rendered in a maximum period of thirty days.

It also establishes several new provisions in terms of time limits.

Firstly, Saturdays are no longer considered as business days for the purposes of calculating the terms by days (as is already the case for judicial terms). Furthermore, it provides for the calculation of terms by hours and establishes that all the hours in one business day are considered business hours and that, in this case, terms will be calculated from the exact hour and minute at which the notification or publication of an act takes place.

On the other hand, the maximum term for resolving a procedure may be suspended under certain circumstances that, until now, had not been considered: when a European Union procedure, on which the content of the resolution of the procedure in question depends, remains unfinished, or when a preliminary ruling must be obtained from a judicial authority.

Finally, concerning administrative silence, a provision has been included that forces Public Authorities to issue ex-officio an affirmative certificate of silence within 15 days following the day on which the time limit for the resolution elapsed. To date, Public Authorities had only issued said certificate at the request of the interested party.

Use of electronic means

The new Law generalises the use of electronic means, both between different Public Authorities and between these authorities and citizens. When it comes to citizens, the Law recognises their right to choose the channel via which they interact with the Public Authorities (electronic or traditional means).



However, the Law requires the use of electronic means when the parties involved are legal entities; persons performing professional activities for the purposes of which they are required to retain an affiliation, or those representing a person required to use electronic means. Public Authorities may extend the obligation of using electronic means to other groups.

Preferably, the notification shall be served by electronic means. It shall be considered as having been issued 10 calendar days after it is made available, even when its content has not been accessed.

In order to allow for an adequate implementation, these provisions on electronic means shall not enter into effect until 2 October 2018.

Penalty procedure

The most significant new development has been that the new law provides for the generalization of the application of the so called mercy procedure for cases in which the person that reveals an infringement was involved in the infringement but other persons were also involved. Its application forces the competent authority to resolve the procedure exempting the person that reveals the infringement from penalties when the following requirements are met: (i) such person is the first to provide evidence that makes it possible to start the procedure or demonstrate the infringement; (ii) when providing said evidence, there was no sufficient evidence already available to open proceedings; (iii) such person makes good on the damages caused; and (iv) refrains from continuing to participate in the infringement and has not destroyed evidence relating to the subject of the complaint. Even when all the foregoing conditions are not met, but the plaintiff provides evidence that has “significant added value” with respect to the evidence already available to the

Public Authorities, the penalty amount shall be reduced. To this end, however, the person that reveals an infringement must have refrained from continuing to participate in the infringement and must not have destroyed evidence relating to the subject of the complaint.

Furthermore, this procedure may also be simplified when the sanctioning authority deems that the penalty to be imposed will be small. Furthermore, the new Law includes the provision that filing a complaint shall not, in itself, grant the status of being a party concerned in the procedure.

Greater public participation

The new Law provides for two ways in which the citizens can participate in the creation of laws and regulations. Firstly, prior to their creation, it sets out a public consultation procedure, on the website of the corresponding Public Authority, via which public opinion is sought concerning the problems to be resolved, the need and possibility for its approval, the objectives of the regulation and potential alternative solutions. Subsequently, once the draft regulation is available, it must also be published on the aforementioned website, in order to give the public or entities affected thereby the opportunity to be heard. However, it also states that these procedures may be omitted under certain circumstances, among which when “serious grounds of public interest justify doing so”.

Public Authorities must periodically assess whether the regulations in place fulfil the objectives underpinning their approval and whether the calculation of costs and charges associated to each regulation is appropriate. The result of this assessment must be reflected in a published report.