Environmental law and practice in Portugal: overview

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A Q&A guide to environmental law in Portugal.

This Q&A provides a high level overview of environmental law and practice, and looks at key practical issues including emissions to air and water; environmental impact assessments; waste; contaminated land and environmental issues in transactions.

To compare answers across a number of jurisdictions, to assist in the management of cross-border transactions, visit the Environmental law and practice *Country Q&A comparison tool*.

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Environmental regulatory framework

1. What are the key pieces of environmental legislation and the key regulatory authorities?

Legislation

The key pieces of environmental legislation are the:

- Criminal Code.
- Environmental Framework Law.
- Environmental Misdemeanour Law.
- Environmental Liability Regime.
- Water Law and Water Resources Use Regime.
- Environmental Impact Assessment Regime.
- Industrial Emissions Regime.

- Regime of Prevention and Control of Pollutant Emissions into the Air.
- Waste Management Regime.
- Noise Regulation.
- Nature and Biodiversity Conservation Regime.
- National Ecological Reserve Regime.
- Sea Management and Planning Law.

In addition, sustainable finance matters and ESG requirements have been subject to intense discussions since mid-2019 and several major companies are now focusing on these issues although no such requirements have to date have been made legally binding, except for Regulation (EU) 2019/2088 on sustainability#related disclosures in the financial services sector.

Regulatory authorities

The Ministry of Environment and Energy Transition is the government body responsible for carrying out and enforcing environmental policies.

The main regulatory authorities are the:

- Water and Waste Regulatory Authority (ERSAR).
- General Inspection of Environment, Spatial Planning, Agriculture and Sea (IGAMAOT).
- Portuguese Environment Agency (APA).
- Institute for Nature Conservation and Forests (ICNF).
- Regional Spatial Planning Commissions (CCDR).

The Industrial Emissions Regime, approved by Decree Law 127/2013, enacting Directive 2010/75/EU on industrial emissions (Industrial Emissions Directive), contains the main thresholds for pollutants that are, in general, quite strict. The enactment of this Directive did not determine a significant change for industrial operators as their activity was already carried out under environmental licences. The Industrial Emissions Regime is similar to the previous integrated pollution and prevention control legal regime but with stricter thresholds. As regards contamination of groundwater and soil, the new requirement to deliver a baseline report to assess potential contamination has made operators more aware of these issues and led them to initiate the monitoring of pollutants. This obligation depends on the industrial activity involving the use, production or discharge of "relevant hazardous substances". The baseline report must be drafted and delivered to the APA whenever the activity is initiated or whenever an environmental licence is renewed or updated, or in cases where a substantial change to the industrial installation occurs.

Regulatory enforcement

2. To what extent do regulators enforce environmental requirements?

Industrial operators, companies and single persons are under the obligation to send different kinds of information to the Portuguese Environment Agency (APA) throughout the year depending on their activity or on the use of natural resources they carry out. This information can include, among others:

- Monitoring of pollutants.
- Waste produced.
- Use of water.
- Environmental reports.

There is also a large set of licences and authorisations that must be previously obtained with the APA.

In cases of non-compliance with their obligations under the environmental legal framework the APA will usually notify the IGAMAOT and a misdemeanour procedure will be initiated.

IGAMAOT is the main environmental inspection body. It can carry out inspections regarding all activities and operators at any time (without having to be previously informed of a possible breach by other entities) and has been granted permission by law to enter any premises and carry out the inspections it deems necessary. It is normal for industrial operators to have their installations inspected without previous notice at least once every three years.

Additionally, the APA, the Institute for Nature Conservation and Forests (ICNF) and the Regional Spatial Planning Commissions (CCDR) have inspection services and will normally inspect any activities within their territory that can be subject to a licence or authorisation, or whenever they receive a complaint from third parties regarding a breach of the environmental legal framework.

Under the legal regime on the control of major-accident hazards involving dangerous substances, the functioning of the installation can be suspended or prohibited if it is considered that the measures adopted by the operator for the prevention and reduction of an accident are clearly insufficient.

When environmental crimes are involved, the public prosecutor will be notified and proceedings will be carried out by the courts.

Further, the government approved a new legal framework (Law no. 52/2018 of 20 August 2018) on mandatory air quality controls for the detection of Legionella bacteria. This is a very sensitive issue, as a recent Legionella outbreak that originated in an industrial installation resulted in 12 human deaths and the infection of 400 people, with significant coverage by the media and criminal prosecution of the liable company, one of its directors and other employees.

Finally, the new greenhouse gas emissions legal regime, recently published through Decree-Law 12/2020 of 6 April 2020, enacting EU Directive 2018/410, and setting the rules for the 2021-2030 period, came into force.

Environmental NGOs

3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active?

Environmental NGOs often co-operate with the government and with the Ministry of Environment and Energy Transition in studies and projects and in the drafting of reports. They also sometimes carry out studies and projects at the industry's request.

Portuguese law grants environmental NGOs the right to issue their opinion prior to a major environmental legal regime being approved by the government at the Council of Ministers, to access information regarding administrative procedures and to initiate judicial proceedings regarding environmental matters.

Over the last few decades these NGO's have been increasingly active, having played significant roles in the discussion of sensitive issues including:

- The effects on human health due to the incineration of hazardous waste in cement plants.
- The national dam construction plan.
- Large-scale tourism and road-building projects in coastal zones and in protected areas.
- Air quality problems in cities.
- Soil contaminated sites in the vicinity of housing and population.
- Air quality controls regrading legionella bacteria.

In some cases, the pressure applied and the opposition to these projects resulted in their cancellation, in their reduction to a smaller scale or in changes to reduce their environmental impact.

It is common for NGOs to exercise their influence to set environmental policies and legislation, and to enforce certain priorities. NGOs often present legislative proposals to political parties and to the government regarding key environmental issues or legal regimes. Further, NGOs frequently issue public statements on major environmental problems and risks, and develop their own projects focused on specific protection and prevention.

Recently, NGOs have been very active in relation to major public infrastructure projects such as the new Lisbon airport and the extension of the Lisbon subway network.

Environmental permits

4. Is there a permitting regime for polluting emissions to land, air and water? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

Integrated/separate permitting regime

The first integrated permitting regime was created in 2000 with the enactment of Directive 96/61/EC concerning integrated pollution prevention and control (IPPC Directive), through the integrated pollution prevention and control legal regime. This regime established a single environmental licence for certain industrial activities regarding different types of emissions but was recently replaced by Decree-Law 127/2013, enacting Directive 2010/75/EU on industrial emissions (Industrial Emission Directive) and establishing the Industrial Emissions Regime. According to this regime, industrial emissions to the water, air and soil are regulated by a single environmental licence (*licença ambiental*), containing all legal requisites and thresholds for these emissions. However, in some cases specific titles are also required (including emissions to water, use of water resources and greenhouse gas emissions, among others).

In 2015, a new legal regime was approved, establishing the Single Environmental Licensing Regime (*licenciamento único ambiental*), through Decree-Law 75/2015. However, this regime does not replace the licences and authorisations issued under the ten environmental legal regimes within its scope. Instead, a single environmental title (*título único ambiental (TUA)*) will be issued, containing all information and history regarding each industrial installation, with a list of all licences, authorisations and relevant events.

Single/separate permits

Companies also need additional licences for specific uses and activities, even though they have an environmental licence.

The main activities and uses subject to the issue of single or separate permits are, among others:

- Waste management operations.
- The use of water resources and the occupation of public hydric domain areas.
- Greenhouse gas emissions.
- Air emissions.

These permits, although issued separately, are always mentioned in the Environmental Licence.

5. What is the framework for the environmental permitting regime?

Permits and regulator

The necessary permits are:

- **An operation permit (*título de exploração*).** This is issued by the Co-ordinating Licensing Authority that can vary according to the specific industrial activity at stake.
- **An environmental licence (*licença ambiental*).** This is issued by the Portuguese Environment Agency (APA).

The operation permit will only be issued after the environmental licence is issued or after the term for a decision regarding the environmental licence elapses and nothing was said by the competent authorities. Industrial activity must not be initiated before the issue of the above licences.

However, if the main industrial activity concerns waste incineration or co-incineration, the issue of an environmental licence is not necessary and the APA will only issue an operation licence (*licença de exploração*). If the main industrial activity is not related to waste management, the operation licence will not be necessary and the APA will only issue an environmental licence containing, whenever applicable, the specific rules regarding the licensing of waste management installations, combustion plants and titanium dioxide plants.

Length of permit

An environmental licence has a maximum term of ten years and its renewal must be requested at least six months before the expiry date. An operation licence (*licença de exploração*), issued in cases where the main industrial activity concerns waste incineration or co-incineration, has a maximum term of seven years and its renewal must be requested at least six months before the expiry date.

The validity term of an operation permit (*título de exploração*) will depend on the specific rules established in the legal regime applicable to the activity at stake.

Restrictions on transfer

The transfer of environmental licences and operation licences is subject to a request made by the transferor or by the transferee, addressed to the Co-ordinating Licensing Authority and filed with the APA, with the following information:

- Identification and details of the transferor.
- Written declaration expressing the transferor's intention to transfer the licence.
- Written declaration by the transferee undertaking to carry out the activity according to the licence.
- Identification of the person responsible for environmental management of the installation.

Penalties

Fines. Non-compliance with the rules provided in the Industrial Emissions Regime is considered an environmental misdemeanour that can be considered light, serious or very serious, depending on the gravity of the infraction.

Examples of very serious environmental misdemeanours include the:

- Operation of an industrial installation without the necessary licences.
- Failure to not obtain a new licence when the installation is subject to substantial changes.
- Failure to comply with the procedures regarding amendment or renewal of licences.

The applicable fine ranges between EUR10,000 to EUR200,000 (for individuals) and between EUR24,000 to EUR5,000,000 (for companies).

Examples of serious environmental misdemeanours include the:

- Failure to operate an industrial installation according to the general good practice rules.
- Failure to notify authorities of changes to the installation.
- Failure to update the licence whenever requested.

The applicable fine ranges between EUR2,000 to EUR40,000 (for individuals) and between EUR12,000 to EUR216,000 (for companies).

Examples of light environmental misdemeanours include the:

- Failure to comply with information duties.
- Failure to comply with reporting duties.

The applicable fine ranges between EUR200 to EUR4,000 (for individuals) and between EUR2,000 to EUR36,000 (for companies).

Ancillary penalties can also be applied alongside very serious and serious environmental misdemeanours, comprising, among others, the:

- Prohibition to apply to subsidies and public benefits.
- Prohibition to participate in public tenders.
- The suspension of licences and authorisations.

Criminal penalties. Criminal penalties may apply where certain conduct causes damage to the environment or to nature, and that conduct is considered to be an environmental crime.

The following Articles of the Criminal Code apply:

- Article 278 (damage against nature):
    - damage to biodiversity and serious damage to subsoil resources: up to five years' imprisonment;

    - trading of protected wild fauna or flora species, alive or dead: up to two years' imprisonment or a set fine for up to 360 days. Possession of those species is punished with up to one year's imprisonment or with a fine of up to 240 days.

- Article 279 (pollution):
    - pollution of the air, water and or soil: up to five years' imprisonment;
    - the conduct does not cause pollution but may affect the air, water or soil quality, or fauna or flora: up to three years' imprisonment or a fine of up to 600 days.

- Article 279-A (dangerous activities to the environment):
    - if the agent executes shipments of waste in breach of Regulation (EC) No. 1013/2016 on shipments of waste: up to three years' imprisonment or a fine of up to 600 days;
    - If the agent, in breach of the applicable legislation, produces, imports, exports, places in the market or uses ozone-depleting substances: up to one year of imprisonment or a fine of up to 240 days.

- Article 280 (pollution with common danger): where any Article 279 conduct (*see above*) causes danger to life or physical integrity, to other people's assets with a high value, or to cultural or historical monuments:
    - one to eight years' imprisonment if the conduct and the creation of danger is intentional;
    - up to six years' imprisonment if the conduct is intentional but the creation of danger is due to negligence.

Companies may be considered subject to criminal liability if they commit an environmental crime under the Criminal Code.

Civil liability. Whoever, with wilful misconduct or negligence, causes damage to a third party must pay compensation to that party. Therefore, should any action resulting from an industrial or another type activity cause damages to a third party, the latter will be entitled to request compensation.

Water pollution and abstraction

6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?

Permits and regulator

The use of water resources and the occupation of the public hydric domain is subject to the previous obtainment of a water use title (*título de utilização dos recursos hídricos*) which, depending on the type of use, can be a licence, a concession or an authorisation, issued by the Portuguese Environment Agency (APA), which is also the National Water Authority.

Whenever an industrial installation, subject to an environmental licence, carries out the use of water resources, it must separately obtain a water use title that will be annexed to the environmental licence and mentioned in the Single Environmental Title (TUA) (*see Question 4*).

Prohibited activities

According to the Water Law (Law 58/2005) and to the water use legal regime (Decree-Law 226-A/2007) there are several prohibited activities, such as the:

- Use of water resources without the necessary title.
- Deliberate dilution of wastewater, to comply with emission limit values.
- Discharge of sludge in superficial or in underground waters.
- Immersion of waste in breach of the environmental objectives for the water bodies.
- Abandonment or unauthorised discharge of radioactive waste in superficial, underground, transition, coastal and sea waters and in wastewater drainage systems.

Further, Decree-Law 236/98 establishes the rules, criteria and quality objectives with the purpose of protecting water quality. The various annexes of the legal regime set the:

- Emission limit values to be observed in relation to the discharge of wastewater to the water or to the soil.
- Maximum values for the different parameters in water.
- Environmental objectives for water resources.

The direct discharge into groundwater of certain hazardous substances listed in Decree-Law 236/98 is prohibited.

Clean-up/compensation

Under the Environmental Framework Law and the legal framework regarding the use of water resources, any person or operator that causes water pollution and environmental damages to the water is under the obligation to carry out clean up measures. Additionally, in certain cases, they must also pay compensation, due to the polluter-pays principle and the obligation to restore the environment to its previous state. These are general rules under Portuguese law.

The environmental liability regime determines that in case environmental damages to the water occur, remediation and compensation measures must be carried out. Additionally, mandatory financial guarantees must be put in place by operators that carry out activities that are more likely to cause water pollution to guarantee these measures. Third parties are also entitled to request compensation under the general rules of civil liability.

Decree-Law 236/98 determines that whoever, with wilful misconduct or negligence, breaches the applicable provisions, causing damage to the environment and, in particular, affecting the quality of water, must pay compensation to the state for the damage caused.

Further, under the Water Law and water use legal regime, an environmental recovery bond must be put in place for water use titles corresponding to licences or concessions. This bond is a guarantee for Public Administration if the operator causes damage to water resources and environmental recovery or restoration is necessary.

Penalties

The breach of the legal framework regarding use of water resources is an environmental misdemeanour that can be considered light, serious or very serious, depending on the gravity of the infraction and subject to fines (*see Question 5, Question 5*).

Light environmental misdemeanours. Examples include the:

- Failure to notify the competent authority in the case of a title sale.
- Failure to comply with the communication of termination of a water use title.

The applicable fine ranges between EUR200 and EUR4,000 for individuals, and between EUR2,000 and EUR36,000 for companies.

Serious environmental misdemeanours. Examples include the:

- Destruction or the modification, partial or total, of the hydraulic infrastructures, river or maritime, of any nature, without the respective water use title.
- Title transfer without the respective communication or authorisation.

The applicable fine ranges between EUR2,000 and EUR40,000 for individuals, and between EUR12,000 and EUR216,000 for companies.

Very serious environmental misdemeanours. Examples include the:

- Use of water resources without the required licence.
- Breach of obligations imposed by a water use title.

The applicable fine ranges between EUR10,000 and EUR200,000 for individuals, and between EUR24,000 and EUR5,000,000 for companies.

The ancillary penalties mentioned can also be applied in relation to very serious and serious environmental misdemeanours (*see Question 5, Penalties*).

Apart from the above misdemeanour liability, civil and criminal liability rules may also apply (*see Question 5, Penalties*).

7. What is the regulatory regime for water abstraction (whether part of an integrated regime or separate)?

Permits and regulator

The use of water resources under the form of water abstraction is subject to the previous obtainment of a water use title by the Portuguese Environment Agency (APA) (see *Question 6, Permits and regulator*).

Prohibited activities

According to the Water Law (Law 58/2005) and to the water use legal regime (Decree-Law 226-A/2007) the abstraction of water without the necessary title or the breach of the conditions set forth in the title is an is a very serious environmental misdemeanour (*see Question 6, Prohibited activities*).

Compensation

See *Question 6, Clean-up/compensation*).

Penalties

The breach of the legal framework regarding use of water resources is an environmental misdemeanour that can be considered light, serious or very serious, depending on the gravity of the infraction and subject to fines. Ancillary penalties may also apply (*see Question 6, Penalties*).

Apart from the above-mentioned misdemeanour liability, civil and criminal liability rules may also apply (*see Question 5, Penalties*).

Air pollution

8. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

Permits and regulator

The new legal framework approved in 2018 (Regime of Prevention and Control of Pollutant Emissions into the Air) requires certain installations that are subject to the continuous monitoring of at least one pollutant to obtain an air

emissions title (TEAR). The TEAR is part of the Single Environmental Licence. The operation permit and, whenever applicable, the Single Environmental Licence, usually contain a specific reference to or chapter with the emission limit values for emissions of pollutants into the air. The values are set by the Portuguese Environment Agency (APA) and/or the Regional Spatial Planning Commissions (CCDR).

The following installations must obtain a TEAR:

- Combustion installations with a rated thermal input ranging between 1MW and 50MW (medium combustion installations (MIC)).
- Complexes of new MIC.
- Industrial activities in accordance with Annex I, Part 2 (for example, extractive, food and beverage, tobacco, textiles, clothing and leather industries and production of paper pulp, chemical products, pharmaceuticals, machinery, computing equipment, vehicles and furniture, among others).
- Combustion installations that burn refinery fuel for the production of energy within oil and gas refineries.
- Furnaces and burners of industrial activities with a rated thermal input ranging between 1MW and 50MW.

Two new ministerial orders were published in 2018, further to the publication of the Regime of Prevention and Control of Pollutant Emissions into the Air, approved by Decree-Law 39/2018, of 11 June:

- Ministerial Order 190-A/2018, setting the height of chimneys and its calculation.
- Ministerial Order 190-B/2018, setting the emission limit values for specific industrial sectors.

Prohibited activities

The open-air burning of any waste and of any type of material normally designated as scrap (metal materials), as well as the dilution of gaseous emissions, is prohibited by law.

Clean-up/compensation

Under the polluter-pays principle and the Regime of Prevention and Control of Pollutant Emissions into the Air, an operator that causes damages to the environment through air pollution is under an obligation to pay compensation to the state and may also have to pay compensation to third parties under civil liability rules.

The environmental liability legal regime does not apply directly to damages caused to the air.

Penalties

A breach of air quality laws constitutes an environmental misdemeanour, which can be considered light or serious depending on its gravity, and determines the payment of the following fines:

- For a light misdemeanour, a fine ranging between EUR200 to EUR4,000 (for individuals) and between EUR2,000 to EUR36,000 (for companies).

- For a serious misdemeanour, a fine ranging between EUR2,000 to EUR40,000 (for individuals) and between EUR12,000 to EUR216,000 (for companies).

Where there is serious danger to the environment or to human health, the General Inspector of IGAMAOT and the CCDR can adopt the necessary measures to prevent or eliminate the dangerous situation, such as suspending an activity, closing down all or part of the installation, or seizing equipment.

Climate change

9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and/or the Paris Agreement? How are the requirements under those international agreements implemented or being implemented?

Portugal is part of the UNFCC and the Kyoto Protocol.

Under the Kyoto Protocol, for the period 2008 to 2012, Portugal was permitted to increase its emissions to 27% in relation to 1990 and was not permitted to exceed 382 million metric tonnes of carbon dioxide equivalent (MtCO2e), corresponding to an annual average of 76.39 MtCo2e.

Portuguese emissions regarding the year 2012 (without considering carbon capture in activities for the use of soil, changes in the use of soil and forests (LULUCF)), were above 13% in relation to 1990. However, the emissions represented a reduction of about 22% in relation to 2005.

The Kyoto Protocol and, currently, the Paris Agreement are being implemented into national climate change and energy efficiency legal framework through various instruments, including the:

- National Climate Change Programme (PNAC 2020/2030).
- National Climate and Energy Plan 2030 (PNEC 2030).
- National ETS (CELE).
- National Action Plan for Renewable Energies (PNAER).
- National Action Plan for Energy Efficiency (PNAEE).
- National Air Strategy.

The Paris Agreement on climate change was adopted in December 2015. The Paris Agreement's central aim is to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees celsius above pre-industrial levels, and to pursue efforts to limit the temperature increase even further to 1.5 degrees celsius. Additionally, the agreement aims to strengthen the ability of countries to deal with the impacts of climate change.

The Paris Agreement entered into force on 4 November 2016. Portugal ratified the Paris Agreement on 30 September 2016.

10. Are there any national targets or legal requirements for reducing greenhouse gas (GHG) emissions? How far are the targets aligned with the 1.5 degree target in the Paris Agreement, if at all? Has a climate emergency been declared? Is there a national strategy on climate change?

The Strategic Framework for the Climate Policy (QEPiC) was approved in 2015 and includes the National Climate Change Programme (PNAC 2020/2030) and the National Climate and Energy Plan 2030 (PNEC 2030).

National strategy

According to the Climate and Energy Package 2020 for the 2013 to 2020 period, Portugal must limit the increase of greenhouse gas emissions (GHG) for the sectors not included in the EU Emissions Trading Scheme to 1% in relation to 2005. For renewable energies in the raw final consumption of energy, a new goal of 31% has been adopted, 10% of which is allocated to transport. A general goal to reduce the consumption of primary energy to 25% and a specific goal for the public administration of reduction to 30% has also been adopted.

More recently. the PNEC 2030 was submitted to the European Commission on December 30, 2019 and its final version was recently approved by the Government on 21 May 2020.This plan contains a strategic long-term vision for a climate-neutral Portugal, taking into account the goals of the Paris Agreement and sets a target of -17% in CO2 emissions by 2030 for non-ETS sectors and a target of -45% to -55% in CO2 emissions, excluding LULUCF. As regards CO2 reduction targets for specific sectors, to be achieved by 2030, PNEC 2030 foresees -70% for services, -35% for residential, -40% for transports, -11% for agriculture and -30% for waste and wastewaters. PNEC 2030 also aims to achieve by 2030 47% of the energy produced from renewable sources, 20% of use of renewable energy in the transport sector and more than 80% of renewable energy in energy consumption.

Portugal approved the Green Growth Commitment (CCV), imposing certain goals to be achieved in 2020 and 2030. For 2030, the main goals are the following:

- To reduce GHG emissions between 30% to 40% (52.7 to 61.5 million metric tonnes of carbon dioxide equivalent (MtCO2e)) in relation to 2005.
- Increase the share of renewable energies in the final consumption of energy to 40%.
- Increase energy efficiency through a reduction of 30% over the energy baseline in 2030 translated into an energetic intensity of 101 tep/MEUR GDP.

The Strategic Framework for the Climate Policy (QEPiC), approved in 2015, provides that Portugal must reduce its GHG emissions to values of -18% to -23% in 2020 and of -30% to -40% in 2030, in relation to 2005, depending on the results of European negotiations.

Portugal has also created the National Action Plan for Renewable Energies (PNAER), establishing the goals regarding the Portuguese energy's share from renewable sources for the energy consumption in 2020, as well as the National Action Plan for Energy Efficiency (PNAEE).

Regarding energy efficiency, Portugal has implemented an Energetic Certification System for buildings (destined to housing or commercial purposes), with the purpose of improving the energetic performance of buildings and imposing the obtainment of mandatory energy certificates.

Additionally, through the EU 2020 funding programme, Portugal approved an Operational Programme of Sustainability and Efficiency in the Use of Resources (POSEUR), that focuses, among other issues, on available funding to achieve the goal to increase energy efficiency in the housing sector and to reduce the annual estimated GHG emissions, limiting, for 2023, the value of GHG emissions to 80.640T CO2e.

Further, the government approved the National Air Strategy (ENAR 2020), through the Resolution of the Council of Minsters 46/2016, focusing on the improvement of air quality, by protecting human health, the quality of life for citizens and ensuring the preservation of the ecosystems. This Strategy addresses the main following issues:

- Compliance with emissions and air quality goals by 2020.
- Compliance with air-quality improvement targets by 2020.
- Establishment of a plan to achieve air-quality goals recommended by the World Health Organization in the long term.
- Co-operation with climate policy to ensure that measures concerning air pollutants and greenhouse gas emissions will benefit air quality and address climate change.

11. Do any emissions/carbon trading schemes operate?

Portugal's carbon trading scheme is a result of the enactment of Directives (EU) 2018/410 and 2004/101/EC amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community (Amended Emissions Trading Directive) through the recent Decree-Law 12/2020 of 6 April of 2020, setting the rules for the 2021-2030 period. Operators subject to this legal regime must hold a permit allowing them to emit greenhouse gases (GHG). The emissions must be monitored and certified annually, and this information sent to the Portuguese Environment Agency (APA). The auctioning of allowances is now a rule and is carried out according to the EU ETS Auctioning Regulation.

In December 2018, the government presented the National Road Map for Low Carbon (RNBC 2050) (Road Map). The Road Map aims to guarantee that Portugal reaches carbon neutrality by 2050. To do so, it defines areas that will play a key role, such as energy, transportation, waste, agriculture and forests, and circular economy. To achieve carbon neutrality, the Road Map determines the increase of the electrification of the economy to 65%, the increase of solar energy production, and the reduction of greenhouse gases from industry and from the production of urban solid waste.

In addition, the PNEC 2030 was approved by the Government on 21 May 2020, with a strategic long-term vision for a climate-neutral Portugal, taking into account the goals of the Paris Agreement.

Renewable energy

12. Are there any national targets or legal requirements for increasing the use of renewable energy (such as wind or solar power)? Is there a national strategy on renewable energy?

The National Action Plan for Renewable Energy and the National Action Plan for Energy Efficiency, which set up targets for renewable energy consumption and for energy efficiency in Portugal, indicated targets of 31% for renewable energy and 25% of energy efficiency by 2020.

PNEC 2030 (replacing the National Action Plan for Renewable Energy and the National Action Plan for Energy Efficiency) sets out a strategy for the increase in renewable energy, increasing the target for renewable energy consumption in Portugal to 47%, and the target for energy efficiency by 2030 to 35%, while the Roadmap to Carbon Neutrality (RCN 2050) approved in July 2019 also determines renewable energy targets for Portugal, set at 80% by 2030 and 100% by 2050.

While such targets do not differentiate by sources of energy, it is expected that solar projects will take a leading role in achieving such goals, particularly as the targets set out in the PNEC are more ambitious than those defined at an European Union level (32% for renewable energy and 32.5% for energy efficiency, in accordance with the Clean Energy for All Europeans package) and will therefore require an even more robust boost in installed capacity for renewable energy projects.

In addition to that, and in an effort to reduce coal production and accelerate the phasing out of fossil fuels used in the generation of energy, we are witnessing a growing number of taxes and tax rates being applied to non-renewable energy projects, notably coal-fired plants. Moreover, the rates applicable to the tax on oil products and CO2 added tax over coal used in the generation of electricity continue to increase yearly, being expected to reach a rate of 100% by 2022.

13. Do any renewables support schemes operate?

In general terms, renewable energy generation continues to be supported through guaranteed remuneration schemes (feed-in tariff) attributed in the past, notably through the public tenders for wind and solar energy which took place up until 2011. Support schemes remained available under very specific conditions to offshore wind projects and to certain biomass projects, small-scale generation units and cogeneration plants.

Relevant changes have since been enacted through Decree Law 76/2019 of 3 June, and the feed-in tariff regime was reintroduced under special conditions to projects awarded under public tenders or auctions, such as the injection capacity auctions which took place for solar energy projects in 2019 and are expected to be awarded in a second round to take place in 2020, or to hybrid projects which combine different primary energy sources in existing plants. In addition, a guaranteed fixed tariff can be granted in the context of overpowering of existing projects.

The feed-in tariffs being attributed pursuant to such recent changes are still significantly lower than the previous feed-in tariffs, and a significant number of project (particularly wind) are expected to begin operating under merchant in the coming years.

Energy efficiency

14. Are there any national targets for increasing energy efficiency (for example, in buildings and appliances) or legal requirements for achieving energy efficiency standards? Is there a national strategy on energy efficiency?

Portugal adopted several measures and incentive programs to encourage and promote energy efficiency, including the:

- National Energy Strategy 2020.
- National Action Plan for Energy Efficiency (NEEAP) and the National Action Plan for Renewable Energy (NREAP).
- Energy Efficiency Fund.
- Energy Efficiency Program in Public Administration (ECO.AP).
- Plan for Promoting Efficiency in Electricity Consumption.
- Environmental Fund.

The implementation of NEEAP in residential, transport, services, agriculture and industry areas, allowed for cumulative final energy savings of 1.102.342 tonnes until 2015 reaching 55% of the 2020 target.

In the buildings sector, energy efficiency policies focus on the publication of Energy Certification of Buildings. Decree-Law 118/2013 of 20 August, that completed the enactment of Directive 2010/31/EU, establishes the Buildings Energy Certification System, the Energy Performance Regulation for Residential Buildings and the Energy Performance Regulation for Services and Commerce.

The Energy Performance Certificate (EPC) will assign an energy performance label to residential and non-residential buildings, obtained from the combination of several characteristics of the building, such as solar orientation, lighting, HVAC systems and water heating, and it may list measures for improving their energy performance.

For buildings under construction or major renovation, a provisional EPC is required before the construction or renovation takes place.

This certificate is mandatory when listing a property for sales or lettings, or in the conclusion of sales or lease agreements.

Further, Decree-Law 68-A/2015 of 30 April, establishes requirements on energy efficiency, enacting Directive 2012/27/EU.

15. Do any mandatory or voluntary labelling schemes exist to identify energy efficient goods or buildings?

As from 1 December 2013, with the entry into force of Decree-Law 118/2013, the EPC is mandatory for all buildings. The EPC provides information on measures of improvement of energy performance and thermal comfort, with economic viability, that the owner can implement to reduce energy costs.

The certification system classifies buildings on an efficiency scale ranging from A+ (high energy efficiency) to F (poor efficiency). This scale is similar to the scale currently used for some domestic appliances and other equipment (although classes A and B are evenly subdivided into classes A+, A, B, B-, to improve the distinction among new buildings (all new buildings must be in the A+ to B- classes).

16. Do any energy efficiency support schemes operate?

The Energy Efficiency Fund (*Fundo de Eficiência Energética*), created pursuant to Decree-Law 50/2010 of 20 May, acts as a financial instrument intended for the support of measures foreseen in the PNAEE and in particular projects evidencing technological developments or breakthroughs impacting energy efficiency in transport, buildings and industries. This fund can however also provide support to other projects which despite not being included in the PNAEE, are shown to contribute towards an increase in energy efficiency.

Environmental impact assessments

17. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?

Scope

All public or private projects listed in Annexes I, II and III of Decree-Law 151-B/2013, as amended, enacting Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, will be subject to an Environmental Impact Assessment (EIA) procedure under the following terms:

- Annex I: all projects mentioned in this annex (for example power plants, nuclear plants, road infrastructures, ports, hazardous and non-hazardous waste installations, waste water treatment plants, dams, extraction of oil and natural gas) according to certain thresholds.
- Annex II: all projects included in the thresholds of this annex or located in sensitive areas and considered to have significant environmental impact, or, if not located in sensitive areas, considered to have significant environmental impact (for example agricultural projects, extractive industries, energy industries, chemical industries, infrastructure projects and other projects) according to certain thresholds.
- Annex III: projects that, due to their location, size or nature are considered to have significant environmental impact.

Whenever a project is not comprised in the scope of the EIA Legal Regime and is located in a protected area of Natura 2000 network (Birds and Habitats directives) and is likely to cause a significant environmental impact, the Natura 2000 Legal Regime determines that a specific environmental assessment (*avaliação de incidências ambientais*) must be carried out.

Permits and regulator

All projects within the scope of the EIA Legal Regime are subject to a previous EIA procedure and can only be executed if a favourable or a conditionally favourable environmental impact declaration (DIA) is issued. The DIA will be issued by the Portuguese Environment Agency, for example, among other situations:

- Projects are listed in Annex I (except pig farms and quarries).
- The project involves the legal regime regarding major industrial accidents.
- The project is located in the sea.
- The project is located in the jurisdiction of two Regional Spatial Planning Authorities.

The Regional Spatial Planning Authority (CCDR) will issue a DIA in the remaining situations.

After the project is executed, and to verify its compliance with the issued DIA, a final report on the environmental compliance of the execution project (RECAPE) will be drafted by the operator. The RECAPE will be assessed by the Portuguese Environment Agency (for certain projects) or by the CCDR, by means of an environmental conformity declaration (DCAPE) that may be favourable, conditionally favourable or unfavourable.

Whenever a specific environmental assessment under the Natura 2000 Legal Regime is carried out, an environmental assessment declaration (DIncA) must be obtained before the execution of the project. The DIncA is issued by the Portuguese Nature Conservation and Forest Institute (ICNF) or by the CCDR.

Penalties

A breach of the legal framework for environmental impact assessments is an environmental misdemeanour that can be considered light, serious or very serious, depending on the gravity of the infraction. It is subject to fines and ancillary penalties (*see Question 5, Penalties*).

Some examples of misdemeanours are the:

- Execution of a project without the respective DIA.
- Non-compliance of the requisites provided in the DIA.
- Non-compliance with the additional measures established in the post-evaluation procedure.

Regarding specific environmental assessments, non-compliance with the DIncA issued under the Natura 2000 Legal Regime is a misdemeanour subject to a fine ranging between EUR250 to EUR3,740 (for individuals) and between EUR3,990 to EUR44,890 (for companies).

Habitats and biodiversity

18. What requirements and regimes apply for the conservation of nature, habitats and biodiversity that affect development? What assessments or obligations are required before any development begins?

Whenever a project is not subject to the EIA Legal Regime it may be subject to a specific environmental assessment under the Natura 2000 Legal Regime due to its location in a protected area for nature, habitats and biodiversity purposes. In these situations, an environmental assessment declaration (DIncA) must be obtained before the execution of the project. The DIncA is issued by the Portuguese Nature Conservation and Forest Institute (ICNF) or by the CCDR.

Requirements are regimes

Portugal has ratified and is a party to various international conventions as the 1971 Convention on Wetlands of International Importance (Ramsar Convention), the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), the UN Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The principles and rules set out in these conventions are taken into account and are integrated in the main nature and biodiversity legal regimes.

Prior assessments and obligations

Environmental licences and authorisations, in specific DIAs (under the EIA Legal Regime) and DIncAs (under the Natura 2000 Legal Regime) contain various minimisation and compensation measures to be complied with by operators and/or promoters of projects throughout the planning, construction and explorations phases.

Waste and the circular economy

Regulatory regime

19. What is the regulatory regime for waste?

Permits and regulator

Waste management activities, including soil decontamination operations, are subject to a licensing procedure.

Whenever these activities are carried out in installations included in the thresholds of Annex I of the EIA Legal Regime, the licensing authority is the Portuguese Environment Agency (APA), which is also the National Waste Authority. In all other circumstances, and whenever soil decontamination operations are involved, the licensing authority is the Regional Spatial Planning Authority (CCDR).

Prohibited activities

The following activities are prohibited:

- Mixing hazardous waste with other categories of hazardous waste or with other waste, substances or materials (including dilution).
- Mixing used oils with different characteristics.
- Mixing used oils with other types of waste or substances.

The execution of waste management activities without a previous licence is also prohibited (for example, collection, transportation, recovery and elimination).

Operator criteria

Operators of landfill sites subject to an environmental licence according to the Industrial Emissions Regime and operators that carry out the collection, transportation, recovery and elimination of hazardous waste must hold a

financial guarantee to cover their environmental liability under the environmental liability regime. They must also obtain two types of insurance under the landfill legal regime:

- Insurance to cover closure and post-closure obligations.
- Insurance to cover accidental pollution events.

Additionally, under the landfill legal regime, operators must have a fully paid up share capital of at least:

- EUR250,000 (for inert waste landfills).
- EUR1,000,000 (for hazardous or non-hazardous waste landfills).

Special rules for certain waste

The waste management legal regime (Decree-Law 178/2006 amended by Decree-Law 73/2011), applies to both hazardous and non-hazardous waste. However, the elimination of hazardous waste in specific facilities is subject to an autonomous legal regime.

Regarding waste streams such as packaging waste, used oils, electrical and electronic equipment, batteries and accumulators, used tyres and end of life vehicles, a new legal regime was published through Decree-Law 152-D/2017. This revoked the specific legal regimes that previously existed for each waste stream, grouping in a single legal regime the rules for the management of waste streams, and enacting Directive 2015/720/EU on lightweight plastic carrier bags and Directives 2016/774/EU and 2017/2096/EU on end-of-life vehicles.

In general terms, producers, packagers or plastic bag providers are liable for the management of waste and must transfer their liability to a collective (to a waste managing entity, by means of a written agreement) or to an individual waste management system (guaranteeing liability on an individual basis). This new legal regime came into effect on 1 January 2018.

Medical waste and the deposition of waste in landfills is subject to specific legal regimes.

Penalties

The breach of the legal framework regarding waste is an environmental misdemeanour that can be considered light, serious or very serious, depending on the gravity of the infraction. It can be subject to fines and ancillary penalties (*see Question 5, Penalties*).

National strategy, targets and producer responsibilities

20. Is there a national strategy to tackle particular types of waste (such as plastics waste or marine litter)? What waste targets exist? What producer responsibility schemes exist?

National strategy

To address pollution from plastic waste, the Portuguese Government approved new environmental legislation aimed at reducing or eliminating the use of plastics in restaurants, beverage and retail stores (Law No. 76/2019 and Law No. 77/2019).

Law No. 76/2019 of 2 September, establishes that single-use plastic tableware cannot be used or made available in restaurants, beverage and retails stores, promoting the use of reusable tableware instead of disposable. Reusable or biodegradable tableware must be used in all establishments, other locations where catering services are being provided and in non-sedentary activities such as shows, festivals, fairs and exhibitions.

Law No. 77/2019 of 2 September, sets out an obligation to have alternatives to ultralight plastic bags and plastic packaging available to consumers at places where bread, fruit and vegetables are sold.

Until 1 June 2023, commercial establishments will be banned from providing ultralight plastic bags (less than 15 microns thick) for primary packaging or transporting of bread, fruit and vegetables and from selling these products in disposable packaging containing expanded plastic or polystyrene.

Targets

Portugal is committed to achieving the packaging waste recovery and recycling targets (set out in Decree-Law 152-D/2017, which enacted Directive 94/62/EC). **The**current target (set in 2011) is a minimum recovery of 60% (in weight), of which at least 55% must correspond to recycling, with minimum sectoral recycling targets of:

- 60% for paper/cardboard packaging waste.
- 60% for glass packaging waste.
- 50% for metal packaging waste.
- 22.5% for plastic packaging waste.
- 15% for wood packaging waste.

In the recycling field, Directive 2018/852 lays down a common objective for member states to prepare to reuse and recycle 65% of packaging waste, until 2025, with the following goals:

- 75% paper/cardboard.
- 70% glass.
- 70% ferrous metals (steel).
- 50% aluminium.

- 50% plastic.
- 25% wood.

By 31 December 2030, at least 70% by weight of all packaging waste must be recycled with the following targets:

- 85% paper/cardboard.
- 75% glass.
- 80% ferrous metals (steel).
- 60% aluminium.
- 55% plastic.
- 30% wood.

Producer responsibility schemes

Under the Waste Management Legal Regime (Decree-Law 178/2006, as amended Decree-Law 73/2011) and Decree-Law 152-D/2017, regarding waste streams (including packaging waste, used oils, electrical and electronic equipment, batteries and accumulators, used tyres and end of life vehicles), the Extended Producer Responsibility is the main scheme. This is a policy approach under which producers are given a significant responsibility for the treatment or disposal of post-consumer products.

Asbestos

21. What is the regulatory regime for asbestos?

The main legal framework for asbestos is the:

- Legal regime on the protection of workers from the risks related to exposure to asbestos at work (Decree-Law 266/2007, enacting Directive 2003/18/EC amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work).
- Decree-Law 264/98, prohibiting the placement in the market of substances and products containing asbestos.
- Decree-Law 101/2005, prohibiting the placement in the market and commerce of asbestos fibres and products containing asbestos fibres, enacting Directive no. 1999/77/EC of 26 July.

- Ministerial Order 40/2014, containing the rules for asbestos removal from buildings, including their transportation and management.
- Law no. 69/2018 regarding asbestos materials removal from buildings, installations and equipment.
- Further, the 2020 funding programme relating to funding for energy efficiency in buildings (Operational Program for Sustainability and Efficient Use of Resources (POSEUR)), foresees that priority will be given to asbestos removal from buildings. Additionally, the Portuguese government must promote financial support (through EU funding) and set relevant conditions, to remove asbestos materials from existing buildings (*Law no. 69/2018*).

There is no specific regime regarding asbestos contaminating materials in soils.

Prohibited activities

Some examples of prohibited activities are the:

- Exposure of workers to asbestos fibres during the removal, productions or transformations of products containing asbestos.
- Placement in the market and the use of substances and products containing asbestos.
- Fragmentation, grinding or crushing of material containing asbestos during its removal from buildings.
- Reutilisation of material containing asbestos, recycling or other types of recovery of construction and demolition waste containing asbestos.

Main obligations

The main obligations of the employer under the legal regime on the protection of workers from the risks related to exposure to asbestos at work (Decree-Law 266/2007) are to use all available means in order to reduce exposure to asbestos to a minimum or prevent it from exceeding the exposure limit value, namely to:

- Regularly monitor the concentration of asbestos fibres at the workplace.
- Identify, prior to the beginning of the works, all materials presumably containing asbestos.
- Draft an asbestos removal works plan.
- Adopt specific hygiene measures.
- Provide workers with safety equipment and suits.
- Carry out monitoring of workers' health.

Permits and regulator

The employer, under the legal regime on the protection of workers from the risks related to exposure to asbestos at work, must request a prior authorisation to the Portuguese Authority for Work Conditions for the approval of the asbestos removal works plan.

The transportation of waste materials containing asbestos must be declared in wastes transportation forms, this activity being controlled by the Portuguese Environment Agency (APA).

The temporary storage of construction and demolition waste containing asbestos is subject to licensing under the wastes management legal regime, and its deposition in landfills is authorised provided the landfill has been duly licensed by the APA or by the Regional Spatial Planning Authority (CCDR).

Penalties

Non-compliance of asbestos legislation can imply labour or environmental misdemeanours.

The breach of rules contained in the legal regime on the protection of workers from the risks related to exposure to asbestos at work, is a labour misdemeanour that may be considered light, serious or very serious, depending on the gravity of the infraction and on the turnover of the company.

The breach of the rules for asbestos removal from buildings, including their transportation and management are environmental misdemeanours that can be considered light, serious or very serious, depending on the gravity of the infraction. It can be subject to fines and ancillary penalties (*see Question 5, Penalties*).

Contaminated land

22. What is the regulatory regime for contaminated land?

Regulator and legislation

Portugal does not have a specific legal regime for contaminated land. Soil decontamination operations are subject to previous licensing under the Waste Management Legal Regime by the Regional Spatial Planning Authorities (CCDRs). In 2011 the APA issued non-binding guidance regarding the assessment of imminent threat and environmental damage according to the Environmental Liability Regime (Decree-Law 147/2008). The guidance contains a specific chapter on how to assess damage to soil and soil contamination situations, including prevention measures, risk analysis and repair and monitoring plans. The Ontario Rules for soil decontamination are the reference used to assess the level of contaminants in the soil.

More recently, the APA issued three new guides relating to contaminated soil (*Technical Guide – Reference Values to the Soil; Technical Guide – Sampling Plan and Soil Monitoring Plan; Technical Guide – Risk Analysis and risk acceptability criteria*), which determine the procedures in the case of threatened or actual soil contamination.

Investigation and clean-up

There are no general legal obligations requiring owners to investigate and assess the contamination level of their property. However, regulatory authorities can demand assessments and clean-up operations to take place whenever a pollution or contamination event is verified or comes to their knowledge.

The polluter-pays principle will apply and the polluter will be responsible for clean-up. Most of the environmental legal framework applicable to the activities most likely to cause pollution demand operators to hold financial guarantees in order to cover their liability in relation to pollution events, including environmental liability under Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive).

Whenever environmental damages are caused the Environmental Liability Legal Regime applies and the operator must adopt prevention and remediation measures.

If the operator does not have the capacity or know-how to carry out *in situ* decontamination, it can hire a specialised company to carry out the operation of, or remove, the contaminated soil from the site or installation, and deliver it to a duly licensed waste management operator.

Penalties

According the environmental liability regime, the failure to adopt prevention or remediation measures, when directly determined by the Portuguese Environment Agency (APA) is a very serious environmental misdemeanour.

The failure to immediately adopt prevention or remediation measures, when an imminent threat or an environmental damage occurs, is a serious environmental misdemeanour.

For the amounts of the fines and ancillary penalties, see *Question 5*.

23. Who is liable for the clean-up of contaminated land? Can liability be excluded in transactions?

Liable party

According the polluter-pays principle, the operator responsible for causing pollution or environmental damage is liable and must carry out and pay the costs of environmental pollution and clean up, adopting the necessary measures to prevent further threats and damages to the environment.

However, in cases where the owner of the land was not the polluter, if there is an imminent threat or serious danger to the environment, authorities can demand that the current owner carry out the environmental investigation and clean up, including prevention and remediation measures, paying for all associated costs. In these cases, the owner has the right of redress in relation to the liable party.

Public authorities can also carry out the clean-up and decontamination operations directly with right of redress in relation to the liable party.

In relation to environmental crime, if there are multiple liable parties each party is punished according to its guilt, regardless of the punishment or the degree of guilt of the other liable parties (*Criminal Code*).

If the environmental liability regime applies, if various persons may be liable, all parties are subject to joint and severable liability, even if only one or more parties are guilty without prejudice to right of redress in relation to the liable party. If it is not possible to determine the degree of guilt of each party, it is presumed that all parties are equally liable.

An Environmental Fund was created by Decree-Law 42-A/2016. This comprises the former Portuguese Carbon Fund, Environmental Intervention Fund, Water Resources Protection Fund and Biodiversity and Nature Conservation Fund.

One of the purposes of the Environmental Fund is to finance the entities, activities or projects aiming to prevent or repair environmental damage. However, only public authorities can receive funding for environmental clean-up.

Owner/occupier liability

Obligations do not apply to tenants except if they were responsible for environmental damage.

Previous owner/occupier liability

If a previous owner was responsible for contamination in the past he or she may be held liable.

Limitation of liability

Liable parties cannot limit their liability in relation to environmental remediation or clean up demanded by public authorities. They can only limit environmental liability contractually among themselves.

However, under the Environmental Liability Regime:

- The limitation period for environmental damages or events is 30 years.
- Remediation measures must be "viable" and not financially disproportionate.

Voluntary clean-up programme

Although there is no specific legislation for brownfields, the government has identified the brownfield locations within the Portuguese territory and has carried out various clean-up operations in the last two decades. However, the government does not carry out clean-up operations in privately owned properties. As a last resort, when it is impossible to identify the polluter, the polluter-pays principle cannot be enforced, and a very serious situation of imminent and serious risk to the environment or to human health is at stake, the government can carry out clean up.

The 2020 funding programme (POSEUR) (*see Question 10*) foresees funding for soil decontamination but only public authorities can apply for these funds.

24. Can a lender incur liability for contaminated land and is it common for a lender to incur liability? What steps do lenders commonly take to minimise liability?

Lender liability

A lender can only be held liable if he contributed in any way to cause pollution or contamination or if he becomes the owner and public authorities, due to extreme circumstances, demand clean-up or contamination.

Minimising liability

Lenders must carry out a thorough due diligence of the property in order to minimise their liability.

25. Can an individual bring legal action against a polluter, owner or occupier?

Under the environmental liability legal regime, any interested person or entity can inform the Portuguese Environment Agency (APA) of any environmental damage or imminent threats of damage that come to their knowledge and request it to intervene, handing over all data and information in its possession.

Additionally, individuals as well as environmental associations or NGOs can bring actions against polluters for any environmental damages caused. For damages caused by the movement of contamination onto one's land, the damaged party can demand compensation and clean-up of the land under civil liability laws.

Environmental liability and asset/share transfers

26. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/ the sale of a company (share sale)?

Asset sale

If a buyer acquires an asset with environmental liability associated to it the seller/operator responsible for the pollution or environmental damage will be liable for carrying out and paying the clean-up costs and for adopting the necessary measures to prevent further threats and damage to the environment.

However, if the pollution and contamination continues, and whenever extreme circumstances of pollution or contamination are at stake, there is the risk of authorities requesting the buyer to carry out the environmental investigation and clean up directly as the new owner of the land.

Share sale

Liabilities remain in the target company acquired by the buyer, so the relevant target company is liable for remediation costs and payment of fines. However, under the environmental liability regime, directors and managers in office at the date of the decision taken by the relevant authority are jointly and severally liable with the company for the adoption of prevention and/or remediation measures and respective costs, and for the payment of fines.

In the case of environmental misdemeanours, the Environmental Misdemeanour Law provides that directors and managers are secondarily liable with the company for the payment of fines and trial costs.

Liability for representations and warranties can be inserted in the share purchase agreement clarifying these issues.

27. In what circumstances can a seller retain environmental liability after an asset sale/a share sale?

Asset sale

The seller remains liable for pollution or contamination he caused (*see Question 26*). If liability is limited contractually between the buyer and seller, this will not apply in relation to public authorities as they can demand the seller to be liable.

Share sale

Liabilities remain in the target company sold by the seller. Therefore, the seller will not be at risk, apart from liabilities for the payment of fines (including trial costs) applied until the sale.

If the seller was also a member of the management of the target he can be jointly and severally liable for non-compliance of obligations under the environmental liability regime originated during the period of his mandate.

28. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?

Asset sale

There is no legal obligation to disclose this type of information to the seller. However, under the Civil Code there is an obligation to negotiate and execute contracts according to good faith principles.

Environmental information must always be requested by the buyer and representations and warranties regarding this information must be inserted in the agreement.

Share sale

There is no legal obligation to disclose this type of information to the seller. However, under the Civil Code there is an obligation to negotiate and execute contracts according to good faith principles.

Environmental information must always be requested by the buyer and representations and warranties regarding this information must be inserted in the share purchase agreement.

29. Is environmental due diligence common in an asset sale/a share sale?

Scope

Environmental due diligence is very common, usually covering:

- Waste.
- Water.
- Noise.
- Hazardous substances and asbestos.
- Air pollution.
- Legionella prevention and control.
- Environmental and industrial licences.
- Insurance.
- Litigation or misdemeanour procedures.

Representations and warranties regarding these issues are also very common. Matters such as climate change and sustainability are not very common.

Types of assessment

Due diligences are normally carried out by means of access to a virtual data room with all relevant information and documents, to assess compliance with the applicable legal framework. Access and visits to the site are increasing and often occur and are carried out by a technical team of environmental consultants.

Due diligences can assume two types:

- A red flag due diligence, focusing only on the main and most relevant issues.
- A fully descriptive and more thorough due diligence, comprising all possible environmental issues, in both cases based on the documents and information provided.

Environmental consultants

The use of technical environmental consultants, especially for large-scale installations or projects, is very common and focuses on the specific details of the activity such as compliance with applicable thresholds.

The use of lawyers specialised in environmental law is also very common.

Engagement letters normally limit legal consultants' liability to the documentation and information provided for the purposes of the due diligence or to the facts verified in case of a site visit.

30.Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale? Are there usually time limits or financial caps on environmental warranties and indemnities?

Asset sale

Environmental representations and warranties are very common and normally include clauses where the seller states that apart from the documentation provided to the buyer:

- The installation holds all permits, authorisations and licences.
- No contamination events have occurred.
- No misdemeanour procedures or other judicial proceedings are in course.

Share sale

Similar environmental representations and warranties are included in the share purchase agreement.

Time limits and financial caps on environmental liability are very common. Liability is usually limited to events occurring up to the transaction date.

Reporting and auditing

31. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?

Public registers

The website of the Portuguese Environment Agency (APA) contains a large amount of environmental information, including:

- Environmental licences issued under the industrial emissions regime.
- All environmental impact assessment procedures.
- Bathing water quality.
- Monitoring of river and dam water quality.

Additionally, the Water and Waste Regulatory Authority (ERSAR) provides various data regarding drinking water quality in addition to water supply, wastewater and waste management systems and entities.

There is no register of contaminated properties; exception is made to brownfield sites that have been subject to various surveys, studies and reports by public authorities.

Third party procedures

Except where documentation relating to commercial or industrial secrets is concerned, parties can freely access the information mentioned in the previous answer, including various documents, reports and studies, directly through the websites and at no cost.

National defence issues are protected and cannot be accessed by the public.

32. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators about environmental performance?

Environmental auditing

Environmental auditing is not mandatory. However, operators subject to the industrial emissions regime must draft annual environmental reports (*relatório ambiental anual*) with all relevant environmental information and send them to the Portuguese Environment Agency (APA).

Most of the large operators and companies have adopted voluntary participation in the EU eco-management and audit scheme (EMAS) and also have voluntary ISO 14001 certification. Whenever a breach of environmental legislation occurs, for example, equipment malfunctioning or accident, operators must inform the regulatory authorities.

Reporting requirements

Apart from the Annual Environmental Reports mentioned in the previous answer, operators must regularly send to the APA information on air and wastewater emissions, production of wastes and noise audits. This information is usually sent once a year.

33. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

According to the Environmental Liability Regime, environmental incidents or accidents must be reported to the Portuguese Environment Agency by the operator within 24 hours. The legal regime on the control of major-accident hazards involving dangerous substances also determines that any accident must be notified within 24 hours. Under the Industrial Emissions Regime any event that may significantly affect the environment must be notified within 48 hours, without prejudice to the Environmental Liability Regime.

Companies are not required to inform the public.

34. What powers do environmental regulators have to access a company?

Operators must allow the General Inspection of Environment, Spatial Planning, Agriculture and Sea access to their installations and provide all documents, books, registers and any other elements requested as well as any other information. In case of refusal of access or obstruction of the inspection activity, the co-operation of police forces may be requested.

Administrative authorities in the exercise of inspection functions must be granted free entrance when inspecting establishments and sites (*Environmental Misdemeanour Law (Law 50/2006, as amended by Law 114/2015)*). The entities responsible for the establishments and sites must present all of the documentation demanded and provide the required information.

35. What obligations are there on companies to report on environmental issues in their annual corporate reports?

Large companies (that is, those with on average more than 500 workers) must report non-financial information related to the evolution, performance, position and impact of their activities in relation to environmental matters, among other issues (*Decree-Law 89/2017, of 28 July 2017, enacting Directive 2014/95/EU on the disclosure of non-financial and diversity information*).

36. What mandatory GHG, carbon reporting or transparency requirements apply to corporates, including as part of their annual corporate reporting requirements? Is reporting in accordance with the Task Force on Climate-related Financial Disclosures (TCFD) recommendations? Do any voluntary GHG reporting schemes exist?

Apart from mandatory reporting regarding non-financial information related to the evolution, performance, position and impact of their activities in relation to environmental matters (*Decree-Law 89/2017, of 28 July 2017, enacting Directive 2014/95/EU on the disclosure of non-financial and diversity information*), most major companies voluntarily disclose, on an annual basis, carbon footprint and sustainability reports.

37. What corporate governance requirements apply in relation to climate change?

Although not part of binding legislation, most major companies are starting to adopt Environment, Social and Governance (ESG) criteria and disclosing their values and approach to relevant environmental issues such as ownership of contaminated land, disposal of hazardous waste, management of toxic emissions, or compliance with government environmental regulations.

Environmental insurance

38. What types of insurance cover are available for environmental damage or liability, and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice?

Types of insurance and risk

Environmental insurance is usually issued under the Environmental Liability Regime and normally cover the environmental liability and environmental damages foreseen in Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive). Whenever they relate to a group company, the insurance will state the environmental liability covered in relation to each installation. All environmental insurances have a maximum limit, which is not foreseen in the law and is established freely by each insurance company.

Obtaining insurance

Environmental insurance is usually subject to a standard insurance agreement and the issue of environmental insurance is a common practice.

Environmental taxes

39. What are the main environmental taxes?

The main environmental taxes/charges are:

- Water use charge (*Taxa de Recursos Hídricos*).
- Waste management charge (*Taxa de Gestão de Resíduos*).
- Carbon tax (*Taxa Adicional sobre Emissões de CO2*).
- Light plastic bag charge (*Taxa sobre Sacos de Plástico Leves*).

Tax liability

The water use charge is paid by the users of the water resources (for example, end-users, industrial installations, and concessionaires, among others).

The waste management charge is paid by the management entities responsible for waste streams systems, waste incineration or co-incineration plants and landfills.

The additional carbon tax applicable to non-ETS sectors is paid by buyers of petrol and energy products. The light plastic bag charge is paid by final consumers.

Tax rates

The amount of the water use charge depends on various factors (for example, area occupied, cubic metres of water extracted or discharged, use of public waters, extraction of inert matter) and has a specific calculation formula (A +E+I+O+U) for each one of its five components. Any amount below EUR10 will not be charged.

The amount of the waste management charge for 2017 was EUR7.7 per tonne of waste, in 2018 EUR8.8 per tonne of waste and in 2019 EUR 9.9 per tonne of waste. In 2020 this charge increased significantly to EUR 22 per tonne of waste.

The amount of the carbon tax varies according to tax policy and on the basis of the price of the CO2 tonne.

The light plastic bag charge is EUR0.08, plus VAT at the applicable legal rate, per light plastic bag.

Reform

40. Are there any proposals for significant reform of environmental law?

The most recent and significant proposal for new environmental legal framework relates to a new legal regime regarding the prevention of soil contamination and its remediation. This will be the first law of its kind in Portugal and will apply to operators that carry out activities listed in an annex that are more likely to represent an environmental risk. These operators must carry out a soil quality assessment that depending on the results may determine the obligation to carry out decontamination and clean up measures. Operators whose activities are listed in the annex will be responsible for the soil quality assessment and may only be exempted from liability if they prove they were not responsible for contamination. This new legal regime has been under discussion among government agencies for several years and could be approved at any moment.

Further, a significant revision of the waste management legal framework is expected to occur shortly, taking into view the simplification of administrative procedures and the implementation of policies favouring circular economy principles.

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Professional qualifications. Lawyer, Portugal

Areas of practice. Environmental law; water and wastes; noise; air and climate change; renewables; environmental and industrial licensing; maritime affairs; environmental compliance, litigation and liability; agro-industry and forests, circular economy, green economy; sustainability.

Non-professional qualifications. Master's degree in Administrative Law, University of Lisbon; postgraduate in Planning and Environmental Law, University of Coimbra; certified professional for legal training (Professional Trainer Aptitude Certificate - CAP) issued by the Directorate-General for Employment and Labour Issues; Teacher of Environmental Law at the New Faculty of Lisbon (UNL); Coordinator of the firm's Green Project (Environmental Sustainability)

Recent transactions

- Advising a major wastes management company in Portugal regarding the main regulatory and environmental aspects of its activity.
- Advising major oil companies on environmental compliance and liability issues.
- Legal assistance to two major electricity producers on wastes, water, noise and emissions trading.
- Advising on several issues regarding packaging waste and electrical and electronic waste.
- Acting for a major player in the renewable sector in the acquisition of several wind farms in Portugal.
- Advising a major medical waste management company in Portugal regarding the main regulatory and environmental aspects of its activity.

Languages. English, Spanish, French, Italian, German

Professional associations/memberships. Admitted to the Portuguese Bar Association.

Publications

- *Chapter on Environmental Law in Portugal, The Environment and Climate Change Law Review, 2017, 2018 and 2019, Law Business Research, First, Second and Third Editions.*
- *"Environmental law and practice in Portugal: overview", Global Guide 2016/2017, Practical Law, Thomson Reuters.*
- *Author of several articles on Environmental Law in Industry & Environment magazine (Portugal).*

- *"Managing environmental risk in Mozambique" in Portugal Mozambique Chamber of Commerce magazine, 2014.*
- *Various articles on environmental law in Iberian Lawyer, Legal Update, June 2012, 2013, 2014, 2015 and 2016.*
- *Co-author of environmental legislation publication (2005 to 2009), Ministry of Environment, Spatial Planning and Regional Development, 1st edition, 2009.*

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