

# Environmental Law and Practice in Portugal: Overview

by Manuel Gouveia Pereira, *VdA*

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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.

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## Environmental Regulatory Framework

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

### Legislation

**National Law.** The key pieces of environmental legislation are the:

- Criminal Code (Decree-Law 48/95, as amended).
- Environmental Framework Law (Law 19/2014).
- Environmental Misdemeanour Law (Law 50/2006, as amended).
- Environmental Liability Decree-Law (Decree-Law 147/2008, as amended).
- Water Law and Water Resources Use Regime (Law 58/2005, as amended, and Decree-Law 226-A/2007, as amended).
- Environmental Impact Assessment Regime (Decree-Law 151-B/2013, as amended).
- Industrial Emissions Regime (Decree-Law 127/2013).
- Regime of Prevention and Control of Pollutant Emissions into the Air (Decree-Law 39/2018).
- Waste Management Regime (Decree-Law 102-D/2020, as amended).
- Noise Regulation (Decree-Law 9/2007, as amended).

- Nature and Biodiversity Conservation Regime (Decree-Law 142/2008, as amended).
- National Ecological Reserve Regime (Decree-Law 166/2008, as amended).
- Sea Management and Planning Law (Law 19/2014, as amended).

**EU Law.** Sustainable finance matters and environmental, social and governance (ESG) requirements continue to be at the centre of the EU's sustainability legislative initiatives and all major companies are now focusing on these issues. Among recent relevant legislation are the Sustainable Finance Disclosure Regulation ((EU) 2019/2088) and the Taxonomy Regulation ((EU) 2020/852). In addition, on 21 April 2021, the European Commission adopted a package of measures aiming to enable investors to focus their investments on more sustainable technologies and businesses. The package comprises:

- The EU Taxonomy Climate Delegated Act. This aims to support sustainable investment by making it clearer which economic activities most contribute to meeting the EU's environmental objectives.
- A proposal for a Corporate Sustainability Reporting Directive (CSRD). This aims to improve the flow of sustainability information in the corporate world and to make sustainability reporting by companies more consistent.
- Six amending Delegated Acts on fiduciary duties, investment and insurance advice. These aim to ensure that financial firms (such as advisers, asset managers or insurers) include sustainability in their procedures and their investment advice to clients.

More recently, the European Climate Law (*Regulation (EU) 2021/1119*) was published and has already entered into force, establishing the framework for achieving climate neutrality in the European Union by 2050.

## Regulatory Authorities

The Ministry of Environment and Climate Action 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 Inspectorate of Environment, Spatial Planning, Agriculture and Sea (IGAMAOT).
- Portuguese Environment Agency (APA).
- Institute for Nature Conservation and Forests (ICNF).
- Regional Spatial Planning Commissions (CCDR).

## Regulatory Enforcement

2.To what extent do regulators enforce environmental requirements?

Industrial operators, companies and individuals are under the obligation to send different kinds of information to the APA throughout the year, depending on their activity or their use of natural resources. In addition, there is a large range of licences and authorisations that must be obtained from the APA.

Enforcement is strict. For example:

- In cases of non-compliance with obligations under the environmental legal framework, the APA usually notifies the IGAMAOT and a misdemeanour procedure is initiated. Both IGAMAOT and the APA have extensive inspection powers (see [Question 34](#)).
- 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 is notified and proceedings are carried out by the courts.

## 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 Climate Action in studies and projects, and in the drafting of reports.

Portuguese law grants environmental NGOs the right to issue their opinion before the Council of Ministers approves a major environmental legal regime, to access information regarding administrative procedures and to initiate judicial proceedings regarding environmental matters.

NGO's are increasingly active, having played significant roles in the discussion of sensitive issues including:

- The effects on human health of 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 regarding legionella bacteria.

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

**Single Environmental Licence (*Licença Ambiental*).** Industrial emissions to water, air and soil are regulated under a single environmental licence (*Industrial Emissions Regime*). The Industrial Emissions Regime enacted the Industrial Emissions Directive (2010/75/EU). However, in some cases specific titles are required as well as the single environmental licence (*see below*). However, this is not issued as a physical licence. Instead, its contents are listed in the Single Environmental Title (*Título Unico Ambiental*) (TUA).

**TUA.** Decree-Law 75/2015 established the Single Environmental Licensing Regime (*licenciamento único ambiental*). Many licences may be required, depending on the emission, including the single environmental licence (*see above*). However, rather than obtaining many physical licences, a TUA is issued, which lists all the environmental regimes at stake (*see below*), all information and history regarding each industrial installation, and all licences, authorisations and relevant events.

The 12 environmental legal regimes within the Single Environmental Licensing Regime's scope are the:

- Environmental Impact Assessment Regime.

- Regime on the control of major-accident hazards involving dangerous substances (Decree-Law 150/2015).
- Industrial Emissions Regime.
- Carbon Trading Scheme.
- Waste Management Regime.
- Water Resources Use Regime.
- Landfill Regime.
- Licensing and Operation of Hazardous Waste Recovery and Elimination Facilities.
- Mineral Deposits and Masses Waste Management Regime.
- Environmental assessments under Decree-Law 76/2019.
- Regime of Prevention and Control of Pollutant Emissions into the Air.
- Water production for reuse obtained from waste treatment facilities.

### **Single/Separate Permits**

As well as a single environmental licence (issued in the form of the TUA), companies need additional licences for specific uses and activities. The main activities and uses subject to the issue of a separate permits are, among others:

- Waste management operations.
- The use of water resources and the occupation of public hydric domain areas (that is, the sea, rivers, streams, courses and banks, lakes and lagoons that legally belong to the state and are considered public domain/property).
- Greenhouse gas emissions.
- Air emissions.

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

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

### **Permits and Regulator**

The necessary permits are:

- **Single Environmental Licence.** This is issued by the APA (issued in physical form as the TUA) (*see Question 4*).
- **An Operation Permit (*Título de Exploração*).** This is issued by the Co-ordinating Licensing Authority, that varies according to the specific industrial activity.
- **Operation Licence (*licença de exploração*).** This is issued by the APA, only where the main industrial activity concerns waste incineration or co-incineration.

The operation permit is issued after the single environmental licence is issued or after the term for an APA decision regarding the single environmental licence elapses. Industrial activity must not be initiated before the issue of the operation permit.

If the main industrial activity is not related to waste management, the APA will only issue a single environmental licence containing, whenever applicable, the specific rules regarding the licensing of waste management installations, combustion plants and titanium dioxide plants.

## Length of Permit

A single environmental licence has a maximum term of ten years and its renewal must be requested at least six months before the expiry date.

The validity term of an operation permit depends on the specific rules established in the legal regime applicable to the relevant activity.

An operation licence has a maximum term of seven years and its renewal must be requested at least six months before the expiry date.

## Restrictions on Transfer

The transfer of single environmental licences and operation licences is subject to a request made by the transferor or transferee, addressed to the relevant 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:

- **Light Environmental Misdemeanours.** Examples 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).

- **Serious Environmental Misdemeanours.** Examples 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).

- **Very Serious Environmental Misdemeanours.** Examples 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).

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

- Prohibition to apply for 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 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 the Waste Shipments Regulation ((EC) 1013/2016): 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's 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 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 of 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

An industrial installation must obtain a water use title (*título de utilização dos recursos hídricos*) before using water resources or occupying the public hydric domain. Depending on the type of use, a water use title can be a licence, a concession or an authorisation, issued by the APA.

The water use title is annexed to the single environmental licence and included in the TUA (*see Question 4*).

## Prohibited Activities

There are several prohibited activities:

- 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.

*(Water Law (Law 58/2005) and the water resources use regime (Decree-Law 226-A/2007).)*

Further, Decree-Law 236/98 establishes the rules, criteria and quality objectives to protect 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

**Clean-up.** 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 water must carry out clean-up measures.

**Compensation.** In certain cases, polluters must pay compensation, under the polluter-pays principle and the obligation to restore the environment to its previous state.

Third parties can request compensation under the general rules of civil liability.

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

In addition, operators that carry out activities that are likely to cause water pollution must put in place financial guarantees.

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

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](#)).

**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

Water abstraction requires a water use title issued by the APA (see Question 6, [Permits and Regulator](#)).

## Prohibited Activities

Abstraction of water without the necessary title or the breach of the conditions provided in the title is a very serious environmental misdemeanour (*Water Law (Law 58/2005) and water use legal regime (Decree-Law 226-A/2007)*) (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](#)).

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 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 (*Título de Emissões para o Ar*) (TEAR). The TEAR is part of the TUA. 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 APA and/or the 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.

In addition, two new ministerial orders were published in 2018:

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

Law no. 52/2018 of 20 August 2018 concerns mandatory air quality controls for the detection of Legionella bacteria. This is a relevant and sensitive issue, considering past Legionella outbreaks in industrial installations that resulted in human infections and deaths, and criminal prosecution of the liable company, directors and other employees.

## **Prohibited Activities**

The open-air burning of any waste and of any type of material usually designated as scrap metal, 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 must pay compensation to the state and may have to pay compensation to third parties under civil liability rules.

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

## **Penalties**

A breach of air quality laws constitutes an environmental misdemeanour, which can be considered light or serious, and is subject to a fine:

- 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 a party to the UNFCCC, the Kyoto Protocol and the Paris Agreement.

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.

The Kyoto Protocol and, currently, the Paris Agreement are implemented or 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.

(See [Question 10](#).)

The Portuguese Parliament is currently discussing a Climate Law, aiming to make Portugal climate neutral by 2050 at the latest.

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).

Further, the GHG emissions legal regime recently came into force, setting the rules for the 2021 to 2030 period (*Decree-Law 12/2020 of 6 April 2020*).

## **PNEC 2030**

The PNEC 2030 was published on 10 July 2020. It contains a strategic long-term vision for a climate-neutral Portugal, taking into account the goals of the Paris Agreement, and sets the following national targets (among others) to be achieved by the year 2030, aligned with a trajectory of carbon neutrality by 2050:

- To reduce CO<sub>2</sub> emissions by 17% for non-ETS sectors.
- To reduce CO<sub>2</sub> emissions, excluding LULUCF, by 45% to 55%, by reference to the emissions registered in 2005.
- To reduce primary energy consumption by 35%, with a view to better energy efficiency.
- To achieve 15% electricity interconnections.

PNEC 2030 sets CO<sub>2</sub> reduction targets for specific sectors, to be achieved by 2030, by reference to the emissions recorded in 2005, of:

- 70% for services.
- 35% for residences.
- 40% for transport.
- 11% for agriculture.
- 30% for waste and wastewaters.

## **Green Growth Commitment (CCV)**

The CCV imposes certain goals to be achieved by 2020 and 2030. For 2030, the main goals are:

- To reduce GHG emissions between 30% and 40% (52.7 to 61.5 million metric tonnes of carbon dioxide equivalent (MtCO<sub>2e</sub>)) in relation to 2005 levels.
- To increase energy efficiency through a reduction of 30% over the energy baseline in 2030, translated into an energetic intensity of 101 tep/MEUR GDP.

## **Other**

There are various additional initiatives regarding GHG emissions and energy consumption:

- **QEPiC.** Portugal must reduce its GHG emissions by 30% to 40% by 2030, in relation to 2005, depending on the results of European negotiations.

- **Energy Certification System for Buildings.** This system is aimed at buildings intended for housing or commercial purposes, with the purpose of improving their energy performance. Certain mandatory energy certificates are required.
- **Operational Programme of Sustainability and Efficiency in the Use of Resources (*Programa Operacional Sustentabilidade e Eficiência no Uso de Recursos*) (POSEUR).** This focuses on, among other things, available funding to achieve the goals to increase energy efficiency in the housing sector and to reduce the annual estimated GHG emissions. For 2023, it limits the value of GHG emissions to 80.640T CO<sub>2</sub>e.
- **National Air Strategy (ENAR 2020).** This focuses on the improvement of air quality, to protect human health and the quality of life for citizens, and to ensure the preservation of ecosystems. The ENAR 2020 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;
  - compliance with climate policy to ensure that measures concerning air pollutants and GHG emissions will benefit air quality and address climate change.
- **National Road Map for Low Carbon (RNBC 2050) (Road Map).** This 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 the circular economy. The Road Map aims for the increase of the electrification of the economy to 65%, the increase of solar energy production, and the reduction of GHGs from industry and from the production of urban solid waste.

11. Do any emissions/carbon trading schemes operate?

Decree-Law 12/2020 of 6 April of 2020 enacted Directives (EU) 2018/410 and 2004/101/EC amending the EU ETS Directive (2003/87/EC), establishing Portugal's carbon trading scheme. It sets the rules for the 2021 to 2030 period.

Operators subject to this legal regime must hold a permit allowing them to emit GHGs. They must monitor and certify their emissions annually, and send this information to the APA. The auctioning of allowances is carried out according to the EU ETS Auctioning Regulation ((EU) 1031/2010).

## 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?

## Targets

**PNAER.** The PNAER aims for 31% of energy consumption to be of renewable energy by 2020. The PNAER establishes the PNAEE, which sets the target of 25% of energy efficiency by 2020.

**PNEC 2030.** PNEC 2030 provides a strategy for the increase in use of renewable energy by 2030. It increases the target for renewable energy consumption to 47%, and the target for energy efficiency to 35%. It also aims for the transport sector to use at least 20% renewable energy by 2030.

**Road Map.** The Road Map (*see Question 10, Other*) also determines renewable energy targets for Portugal, set at 80% by 2030 and 100% by 2050.

**CCV.** The CCV (*see Question 10*) aims to increase the share of renewable energies in final consumption of energy to 40%.

## Strategy

It is expected that solar projects will take a leading role, particularly as the targets set out in the PNEC 2030 are more ambitious than those defined at EU level and will therefore require an even more robust boost in installed capacity for renewable energy projects.

In addition, and in an effort to reduce coal production and accelerate the phasing out of fossil fuels used in the generation of energy, there are a growing number of taxes being applied to non-renewable energy projects, notably coal-fired plants. Further, the rates applicable to the oil products tax and the CO<sub>2</sub>-added tax on coal used in the generation of electricity, increase yearly and are expected to reach 100% by 2022.

13. Do any renewables support schemes operate?

Guaranteed remuneration schemes for renewable energy generation is being phased out, remaining available only to projects that previously benefited from that support or new projects that are awarded through tender under Decree Law 76/2019 of 3 June 2019, and are available only in very specific cases always awarded through tender (for example, recent auctions for solar capacity in 2019 and 2020).

Recent amendments have partially reintroduced the feed-in tariff regime under specific conditions, at significantly lower prices, provided that this remuneration is secured by a public tender or auction. This regime is also available in the context of overpowering of existing projects (that is, refurbishing or amending a project to increase its power capacity), and for projects using hybrid generation to combine a different primary energy source to an existing powerplant.

## 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 has adopted several measures and incentive programmes 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 the NEEAP in residential, transport, services, agriculture and industry areas resulted in cumulative final energy savings of 1,102,342 tonnes by 2015, reaching 55% of the 2020 target. See also [Question 10](#) and [Question 12](#) for specific targets.

Further, Decree-Law 68-A/2015 of 30 April establishes requirements relating to energy efficiency, enacting the Energy Efficiency Directive (2012/27/EU).

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

Decree-Law 118/2013 of 20 August 2013 enacts the Energy Performance of Buildings Directive (2010/31/EU). It 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) assigns an energy performance label to residential and non-residential buildings (*Buildings Energy Certification System*). 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 distinction among new buildings (all new buildings must be in the A+ to B- classes)).

The classification takes into account several characteristics of the building, such as solar orientation, lighting, heating, ventilation, and air conditioning (HVAC) systems and water heating, and may list measures for their improvement.

For buildings under construction or major renovation, a provisional EPC is required before the construction or renovation takes place. The EPC is also mandatory when listing a property for sales or lettings, or in the conclusion of sales or lease agreements.

16. Do any energy efficiency support schemes operate?

The Energy Efficiency Fund (*Fundo de Eficiência Energética*), created under Decree-Law 50/2010 of 20 May, is intended to support measures taken under the PNAEE and, in particular, projects evidencing technological developments or breakthroughs that affect energy efficiency in transport, buildings and industries. The Energy Efficiency Fund also provides 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 (which enacts the Environmental Impact Assessment Directive (2011/92/EU)) are subject to an environmental impact assessment (EIA) procedure:

- 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), if they meet certain thresholds.
- Annex II: all projects included in the thresholds (which depend on the project at stake) 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), if they meet certain thresholds.
- Annex III: projects that, due to their location, size or nature are considered to have significant environmental impact.

If a project does not require an EIA, but is located in a protected area of the Natura 2000 network (under the Birds Directive (2009/147/EC) and Habitats Directive (92/43/EEC) and is likely to cause a significant environmental impact, a specific environmental assessment (*avaliação de incidências ambientais*) must be carried out.

## Permits and Regulator

All projects within the scope of the EIA regime must undergo an EIA procedure. The project can only begin if a favourable or conditionally favourable environmental impact declaration (DIA) is issued.

The APA issues the DIA in the following situations, among others:

- The project is 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 CCDRs.

The CCDR issues a DIA in all other situations.

After the project is executed, to verify its compliance with the issued DIA, the project's operator drafts a final report on the environmental compliance of the executed project (RECAPE). The RECAPE is assessed by the APA or the CCDR (*see above*), which then make an environmental conformity declaration (DCAPE) that may be favourable, conditionally favourable or unfavourable.

Whenever a specific environmental assessment under the Natura 2000 regime is carried out, an environmental assessment declaration (DInCA) must be obtained before the execution of the project. The DInCA is issued by the ICNF or by the CCDR.

## Penalties

A breach of the legal framework for EIAs 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 requirements provided in the DIA.
- Non-compliance with the additional measures established in the post-evaluation procedure.

Non-compliance with a DIInC is a misdemeanour subject to a fine ranging from EUR250 to EUR3,740 (for individuals) and from 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?

### Requirements and Regimes

Portugal has ratified and is a party to various international conventions, such as the:

- 1971 Convention on Wetlands of International Importance (Ramsar Convention).
- Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention).
- Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention).
- UN Convention on Biological Diversity (CBD).
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

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

### Prior Assessments and Obligations

DIAs or EIAs are required (*see Question 17*). They contain various damage minimisation and compensation measures that operators and/or promoters of projects must comply with 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 and will be mentioned in the TUA.

If these activities are carried out in installations included in the thresholds of Annex I of the EIA regime (*see Question 17, Scope*), the licensing authority is the APA, which is also the National Waste Authority. In all other circumstances, and where soil decontamination operations are involved, the licensing authority is the CCDR.

Several amendments to the waste legislation were approved through Decree-Law no. 102-D/2020, approving a new waste and landfill management framework, and further amending the specific waste streams' management framework (Decree-Law no. 152-D/2017 of 11 December), the EIA framework and the Environmental Fund legal framework.

## 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 licence is also prohibited (for example, collection, transportation, recovery and elimination).

## Operator Criteria

Operators of landfill sites subject to an single environmental licence under 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. They must also obtain two types of insurance:

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

Additionally, landfill 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

Decree-Law 178/2006 (amended by Decree-Law 102-D/2020 of 10 December 2020 and by Law 52/2021 of 10 August 2021) enacted the Waste Framework Amendment Directive ((EU) 2018/851). It applies to both hazardous and non-hazardous waste. However, the elimination of hazardous waste in specific facilities is subject to an autonomous legal regime.

A new legal regime for waste streams such as packaging waste, used oils, electrical and electronic equipment, batteries and accumulators, used tyres and end of life vehicles, was published through Decree-Law 152-D/2017. It enacted the Plastic Bags Directive (2015/720/EU) and the End-of-Life Vehicles Amendment Directives (2016/774/EU and 2017/2096/EU). The recent amendments to this legal regime made by Decree-Law 102-D/2020 of 10 December 2020 enacted the Batteries Directive ((EU) 2018/849) and the Packaging Directive (94/62/EC) (amended by Directive (EU) 2018/852).

In general terms, producers, packagers or plastic bag providers are liable for the management of waste and must transfer their liability to a waste managing entity (by means of a written agreement) or to an individual waste management system (guaranteeing liability on an individual basis).

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 government approved the following new environmental legislation aimed at reducing or eliminating the use of plastics in restaurants, drinks establishments and retail stores:

- **Law No. 76/2019 of 2 September.** This establishes that single-use plastic tableware cannot be used or made available. 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.** This provides an obligation to have alternatives to ultralight plastic bags and plastic packaging available to consumers at places where bread, fruit and vegetables are sold.

From 1 June 2023, commercial establishments are 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.

More recently, the Government approved Decree-Law No. 78/2021 of 24 September 2021, enacting the Single-Use Plastics Directive ((EU) 2019/904). This new Decree-Law prohibits the placing on the market of the single-use plastic products listed in the Decree-Law and of products made from oxo-degradable plastic.

## Targets

Portugal is committed to achieving the packaging waste recovery and recycling targets set out in Decree-Law 152-D/2017, as amended (enacting the Packaging Directive (94/62/EC) and its amendments). The current targets are to recover or incinerate with energy recovery at least 60% (in weight) of packaging waste, and a minimum overall recycling target of 55% (in weight) of packaging waste, with minimum sectoral recycling targets of:

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

In the recycling field, the Packaging Amendment Directive ((EU) 2018/852) sets out a common objective for member states to reuse and recycle 65% of packaging waste by 31 December 2025, with the following specific targets:

- 75% of paper/cardboard.
- 70% of glass.
- 70% of ferrous metals (steel).
- 50% of aluminium.
- 50% of plastic.
- 25% of wood.

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

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

## Producer Responsibility Schemes

The Extended Producer Responsibility Scheme is the main scheme under the waste management legal regime (see *Question 19, Special Rules for Certain Waste*) and Decree-Law 152-D/2017, as amended by Decree-Law 102-D/2020 and by Law 52/2021 of 10 August 2021, regarding waste streams (including packaging waste, used oils, electrical and electronic equipment, batteries and accumulators, used tyres and end of life vehicles). Producers are given significant responsibility for the treatment or disposal of post-consumer products.

## Asbestos

21. What is the regulatory regime for asbestos?

The legal framework for asbestos includes:

- 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 1999/77/EC.
- 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, POSEUR (see *Question 10, Other*) gives priority 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.
- Reuse of material containing asbestos, and recycling or other types of recovery of construction and demolition waste containing asbestos.

## Main Obligations

The employer's main obligations under Decree-Law 266/2007 are to use all available means to keep exposure to asbestos to a minimum or prevent it from exceeding the exposure limit value, by:

- Regularly monitoring the concentration of asbestos fibres at the workplace.
- Identifying, before the works begin, all materials presumably containing asbestos.
- Drafting an asbestos removal works plan.
- Adopting specific hygiene measures.
- Providing workers with safety equipment and suits.
- Carrying out monitoring of workers' health.

## Permits and Regulator

Employers must request prior authorisation for an asbestos removal works plan, from the Portuguese Authority for Work Conditions (*Decree-Law 266/2007*).

The APA controls the transport of waste materials containing asbestos. This activity must be declared to the APA in waste transportation forms.

The temporary storage of construction and demolition waste containing asbestos is subject to licensing, and its disposal in landfills is authorised provided the landfill facility is duly licensed by the APA or the CCDR.

## Penalties

Non-compliance with asbestos legislation can constitute a labour or environmental misdemeanour.

The breach of Decree-Law 266/2007 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.

The APA has issued non-binding guidance regarding the assessment of imminent threat and environmental damage under the Environmental Liability Regime (*see Question 1, Legislation*). This 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 used to assess the level of contaminants in the soil.

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

Soil decontamination operations must be licensed under the waste management regime by the CCDRs.

### 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.

In addition, operators of industrial activities must deliver a baseline report to assess potential groundwater and soil contamination, where the industrial activity involves the use, production or discharge of "relevant hazardous substances". The baseline report must be drafted and delivered to the APA when the activity is initiated or when an single environmental licence is renewed or updated, or where a substantial change to the industrial installation occurs.

The polluter-pays principle applies and the polluter is responsible for clean-up and any necessary remediation measures. Operators must generally hold financial guarantees to cover their liability in relation to pollution events, including environmental liability under the Environmental Liability Directive (2004/35/EC).

If the operator does not have the capacity or know-how to carry out decontamination, it can hire a specialist 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

The failure to adopt prevention or remediation measures, when directly required by the APA, is a very serious environmental misdemeanour (*Environmental Liability Regime*).

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 to the polluter-pays principle, the operator responsible for causing pollution or environmental damage is liable (see [Question 22](#)), whether or not they are the current occupier. However, 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 a right of redress in relation to the liable party.

Public authorities can also carry out the clean-up and decontamination operations directly, with a 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, without prejudice to the 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 its purposes 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.

## 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.

While not direct limitations of liability, the following provisions under the Environmental Liability Regime are relevant:

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

## Voluntary Clean-Up Programme

Although there is no specific legislation for brownfields, the government has identified 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. When it is impossible to identify the polluter (so the polluter-pays principle cannot be enforced) and imminent and serious risk to the environment or to human health is at stake, the government can carry out clean up.

POSEUR provides for funding for soil decontamination, but only public authorities can apply for these funds (*see Question 10*).

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 it either:

- Contributed in any way to cause the pollution or contamination.
- Becomes the owner and public authorities, due to extreme circumstances, demand clean-up of the contamination.

## Minimising Liability

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

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

Any interested person or entity can inform the APA of any environmental damage or imminent threats of damage that come to their knowledge, handing over all data and information in their possession. They can request the APA to intervene (*Environmental Liability Regime*).

Additionally, individuals, environmental associations or NGOs can bring civil actions against polluters for any environmental damages caused. They can also demand compensation and clean-up for damages caused by the movement of contamination onto their land.

## 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 with it, the seller/operator responsible for the pollution or environmental damage is 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 involved, there is the risk of the authorities requesting the buyer to carry out the environmental investigation and clean up.

### 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 it caused. Any contractual limitation of liability between the buyer and seller does not apply in relation to public authorities, and they can declare the seller liable. See [Question 26](#).

### **Share Sale**

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

If the seller was also a member of the target's management, the seller can be jointly and severally liable for non-compliance with obligations under the Environmental Liability Regime that originated during the period of the seller's 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 environmental information to the seller. However, under the Civil Code there is an obligation to negotiate and execute contracts according to good faith principles.

The buyer should always request environmental information. Representations and warranties regarding this information must be inserted in the agreement.

### **Share Sale**

There is no legal obligation to disclose environmental 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 diligence is usually 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 increasingly frequent, and are carried out by a technical team of environmental consultants.

Due diligence can be:

- 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.

## 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 usually limit legal consultants' liability to the documentation and information provided for the purposes of the due diligence, or to the verified facts in the 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 usually include clauses in which 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 underway.

## 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 APA's website 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.
- Air quality.
- Public participation hearings and procedures.

Additionally, the ERSAR (see [Question 1](#)) 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 (apart from brownfield sites, which 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 environmental information, including documents, reports and studies, directly through the websites (for example, see [APA](#) and [National Water Resources Information System](#)) 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.

Most 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 an accident), operators must inform the regulatory authorities.

### Reporting Requirements

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 APA.

In addition, 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)?

Operators must report environmental incidents or accidents to the APA within 24 hours (*Environmental Liability Regime*). Any event that may significantly affect the environment must be notified to the APA within 48 hours (*Industrial Emissions Regime*).

Any major accident involving dangerous substances must be notified to the APA within 24 hours.

Companies are not required to inform the public.

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

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). It is granted permission by the Environmental Misdemeanour 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.

Operators must allow the IGAMAOT access to their installations and provide all documents, books, registers and any other elements requested (*Environmental Misdemeanour Law*). If IGAMAOT is refused access or is obstructed, the co-operation of police forces may be requested.

Additionally, the APA, the ICNF and the CCDR have inspection services and usually 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.

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 the Non-financial Reporting Directive (2014/95/EU)*), 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?

Most major companies are starting to adopt 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, as well as alignment with the UN's Sustainable Development Goals.

## 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. It usually covers the environmental liability and environmental damages described in the Environmental Liability Directive. For a group company, the insurance will state the environmental liability covered in relation to each installation. All environmental insurance has a maximum limit, which 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?

### Main Taxes

The main environmental taxes/charges are the:

- Water use charge (*Taxa de Recursos Hídricos*).
- Waste management charge (*Taxa de Gestão de Resíduos*).
- Carbon tax (*Taxa Adicional sobre Emissões de CO<sub>2</sub>*).
- Light plastic bag charge (*Taxa sobre Sacos de Plástico Leves*).
- New carbon taxes for air and ship travel were approved (*ministerial order no. 38/2021*).

### Tax Liability

The following are liable to pay these taxes:

- 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.
- The new carbon tax for ship travel is paid by the ship owners.
- The new carbon tax for air travel is paid by airline passengers.

## Tax Rates

The following tax rates apply:

- 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, or extraction of inert matter) and has a specific calculation formula for each one of its five components. Any amount below EUR10 will not be charged.
- The amount of the waste management charge for 2021 is EUR22 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 EURO.08, plus VAT at the applicable legal rate, per light plastic bag.
- The carbon taxes for air and ship travel amount to EUR2 each, per passenger.

## Reform

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

The most recent and significant proposal for a 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 will have to carry out a soil quality assessment that, depending on the results, may result in 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 soon.

### Contributor profile

**Manuel Gouveia Pereira, Managing Associate**

**VdA**

**T** +351 21 311 34 53

**F** +351 21 353 24 72

**E** [mgp@vda.pt](mailto:mgp@vda.pt)

**W** [www.vda.pt](http://www.vda.pt)

**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 renewables 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

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