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Climate Change Regulation 2022

Portugal: Law & Practice

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Portugal: Trends & Developments

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Trends and Developments

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The Portuguese Climate Framework Law Raises Ambitions

As part of the European Union, Portugal is entirely aligned with and committed to the Paris Agreement and the EU agenda on climate change.

In fact, the new Climate Framework Law (Law No 98/2021, of 31 December), in force since 1 February 2022, was recently approved by the Portuguese Parliament. This is an essential legal instrument to align Portuguese policies on climate change with the targets and objectives of the Paris Agreement, the European Green Deal and the European Climate Law.

This new law settles the right to a balanced climate, establishes ambitious targets and requirements for the design of public policies across several economic sectors and levels of governance, recognises climate as a “Common Heritage of Humanity” and incorporates new concepts into Portuguese law, such as climate refugee, climate justice, climate security and environmental health.

The main goal of the law is to achieve climate neutrality by 2050, as already foreseen in the Portuguese Roadmap for Carbon Neutrality, establishing the main vectors of decarbonisation to be implemented, largely in the electricity and mobility industries, but it also settles the obligation for the Portuguese government to develop studies to anticipate the meeting of this target early – by 2045.

The law establishes climate policies and targets for forestry sector (target for the equivalent net

CO₂ sink from the land use and forestry sector of at least 13 megatons on average between 2040 and 2050), as well as a target for marine and coastal ecosystems. There are also sectorial targets for the reduction of greenhouse gas emissions relative to 2005 values and compulsory approval of sectoral plans for mitigation and adaptation to climate change.

The law also creates climate policy instruments which are specifically applied to dealing with climate change adaptation, as follows:

- the National Strategy of Adaptation to Climate Change, which was approved by Council of Ministers Resolution 56/2015 of 30 July, and its validity was extended until 31 December 2025 by Council of Ministers Resolution 53/2020 of 10 July; and
- sectoral plans for adaptation to climate change, regarding the territory, geography and the natural environment, infrastructure, equipment and built environment, and economic, social and cultural activities.

In addition, the law sets up a budget and tax policies, such as the creation of a new tax deduction category – *IRS Verde* (Green Personal Income Tax) – which will benefit national taxpayers who acquire, use, or consume environmentally sustainable goods and services and a new carbon price policy covering the greenhouse gas emissions involved in the production and consumption of petroleum and energy products.

The energy sector: a concrete example

It can be argued that the commitment of Portugal goes beyond the international agenda and

targets, as it has been one of the first countries in the world to accelerate, with concrete measures, the decarbonisation process.

In contrast to the recent statements of other European countries, which are deciding to reactivate their coal-fired power plants, Portugal shut down its last remaining coal-fired power plant – Central do Pego – in November 2021, thus ending the use of the polluting material for electricity generation and showing that an ambitious coal exit is possible through a combination of renewable energy policies and investment and energy transition planning. In fact, Portugal committed to shut down its two coal-fired power plants in Pego and Sines by 2030 at COP23, but the process was accelerated, and the last coal-fired power plant was decommissioned at the end of 2021.

This decision was not affected by the impact of the war in Ukraine. On the contrary, the official call is to intensify and speed the energy transition. In 2021, 59% of the electricity consumed in Portugal was already being generated from renewables, namely hydroelectric and solar, and the share is expected to grow fast.

In this context, it should be highlighted that the target set out in the National Plan for Energy and Climate 2030 (PNEC 2030), approved in July 2020, is of 47% of the energy consumed in the country to have been generated from renewable sources by 2030.

The ocean as the new player

Portugal is a coastal and archipelagic nation; accordingly, there is also a focus on the ocean which will certainly play an important role in the near future as a source of renewable energy production. In fact, it is already visible a national trend to develop projects which derive renewable energy from the sea and the recently approved law on the national electric system

underlines this as it determines the preparation of a study that assesses the potential and the best location for ocean-based renewable energy generation and the measures for its subsequent development.

Meanwhile, after a successful floating wind power pilot project, there is clear interest, both from the market and the State, in developing ocean renewable energies, namely floating, wind-based energy generation capacity. Following repeated announcements from the Portuguese government regarding the intention to launch the first offshore wind energy tender for 2023, the Portuguese Prime Minister stated at the 2nd UN Ocean Conference that Portugal is committed to a new target regarding renewable energy projects derived from the sea: 10 GW by 2030.

Floating wind projects are expected to develop as multipurpose schemes, delivering green hydrogen and green ammonia, among others, but also to develop in combination with sustainable aquaculture (namely algae and bivalves) and carbon sequestration schemes. In addition, in the energy field, projects under development that relate to harnessing wave energy are expected to undergo intense development in the coming years.

In parallel, and to assist during the transitional period, Portugal is reinforcing efforts to make the Port of Sines the LNG gate to Europe.

Also concerning the ocean, another area of interest for climate issues is expected to develop: carbon sequestration. Following the scientific evidence that carbon sequestration is at least eight times more effective in the ocean than on land, there is growing interest in investing in blue carbon systems. A concrete public example comes from the Calouste Gulbenkian Foundation, which announced, within the context of the UN Ocean Conference, the launching of studies

to assess the carbon sequestration potential of Portuguese coastal ecosystems and committed to invest in improving that sequestration to compensate for the Foundation's carbon footprint.

The pressure for the government to move into the regulation of the voluntary carbon markets, both ocean-based and forestry/agriculture systems, is expected to grow.

ESG-related investments

In another plan, Portuguese companies are already becoming more concerned with ESG standards, namely by defining them as essential for investment.

As part of the European Union, there are several regulatory regimes related to ESG matters in Portugal: the Taxonomy Regulation, the Sustainable Finance Disclosures Regulation (SFDR), the Delegated Act supplementing Article 8 of the Taxonomy Regulation and the delegated acts related to the finance sector. These contain the main regulatory regime applicable to ESG in Portugal within the financial sector.

Concerning the environmental component of ESG, there are various domestic regulations setting important rules on environmental matters, such as the above-mentioned Climate Framework Law, the Waste Management Legal Regime, the Environmental Impact Assessment Legal Regime and the Water Law.

As will probably happen in other jurisdictions, the financial sector is expected to play a central role. Not only do the most dynamic sectors reveal strong interest through the creation of new funds aligned with the strictest environmental standards (Article 9 of the SFDR), but also traditional banking actors are moving towards more sustainable positions.

For example, Caixa Geral de Depósitos (CGD), the largest Portuguese bank, announced that, as part of its sustainability strategy, it is classifying its entire portfolio in light of ESG risk criteria.

Although still slight, the disclosure of voluntary information relating to ESG, as an addition to mandatory items within the annual accounting and reporting, is already a visible trend.

The European Taxonomy is also starting to play an interesting role, with more companies aware of its importance as a tool for transformation, including companies not directly covered by its scope of application. The principles of “make a substantial contribution” and “do no significant harm” (DNSH) are reaching greater levels of awareness as applied beyond the Taxonomy: the DNSH was adopted, for example, in the European legislation for the application of European funds within the Recovery and Resilience programme.

The approach to ESG by local regulators has been essentially pedagogical, aiming at creating awareness of the new obligations. Likewise, whenever a new financial product is created, regulators undertake a preliminary assessment of its compatibility with the claims made by the issuers under the ESG to prevent greenwashing.

PORTUGAL TRENDS AND DEVELOPMENTS

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