



ESG Comparative Guide



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1. Legal and enforcement framework

1. 1. What regulatory regimes and codes of practice primarily govern environmental, social and governance (ESG) regulation and implementation in your jurisdiction?

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As Portugal is an EU member state, several regulatory regimes relating to ESG matters are applicable in the country, including:

- the Taxonomy Regulation;
- the Sustainable Finance Disclosure Regulation;
- the Delegated Act supplementing Article 8 of the Taxonomy Regulation; and
- the financing sector delegated acts, which set out the main regulatory regime applicable to ESG in Portugal within the financial sector.

Environment: Various domestic regulations establish important rules on environmental matters, such as:

- the Climate Framework Law;
- the Waste Management Legal Regime;
- the legal regime for waste streams;
- the Environmental Impact Assessment Legal Regime; and
- the Water Law.

The Criminal Code also sets out situations in which criminal liability may arise as a result of environmental crimes that cause damage to the environment or to nature. These provisions apply to both companies and individuals.

Social: Portuguese law includes gender quotas aimed at ensuring the balanced representation of women and men in the management and supervisory bodies of public sector companies and listed companies. In 2017, a law was enacted to combat racial discrimination; and in 2019, legislation was adopted establishing a quota system for the employment of persons with disabilities, to promote their employment by private sector employers and public sector bodies. The Labour Code and complementary legislation set out the principal rules on workers' rights and health and safety matters.

Governance: The Commercial Code is the most important law in this regard. Listed companies also adhere to the Corporate Governance Code issued by the Portuguese Institute of Corporate Governance. Although not mandatory, compliance with this code (and other international codes) is assessed through the annual reporting obligations on corporate governance.

A recent decree-law also established:

- the National Anti-Corruption Mechanism (MENAC), an independent administrative entity with legal personality under public law and authority powers; and
- the General Scheme for the Prevention of Corruption.

MENAC's mission is:

- to promote transparency and integrity in public action; and
- to ensure the effectiveness of policies to prevent corruption and related offences.

1. 2. Is the ESG framework in your jurisdiction primarily based on hard (mandatory) law and regulation or soft (eg, ‘comply or explain’) codes of governance?

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In Portugal, and as mentioned in question 1.1, the ESG framework is mainly based on hard law – namely, EU law. As regards corporate matters, soft law also plays a relevant role.

Global soft law instruments such as the United Nations Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises play a key role as non-binding instruments for companies that wish to stay ahead of the game, especially when it comes to environmental and social due diligence mechanisms.

1. 3. Which bodies are responsible for implementing and enforcing the rules and codes that make up the ESG framework? What powers do they have?

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Environment: The Ministry of Environment and Climate Change plays an important role in the regulation of environmental matters. Several public entities are also responsible for enforcing the environmental legal framework, such as:

- the General Inspection of Agriculture, Sea, Environment and Spatial Planning, which carries out inspections of all activities and all public and private entities with environmental relevance, imposing measures to prevent or eliminate situations that present a severe risk to human health and the safety of persons, goods and the environment;
- the Portuguese Environment Agency, whose mission is to propose, develop and monitor the integrated and participated management of environmental and sustainable development policies; and
- the Institute for Nature Conservation and Forests, whose mission is to propose, develop and ensure the execution of nature conservation and forest policies, taking into account the conservation, sustainable use, recovery, use and recognition of natural assets.

Social: The Ministry of Labour, Solidarity and Social Security plays an important role, in cooperation with the General Inspectorate of Agriculture, Sea, Environment and Spatial Planning.

Governance: The main regulators with respect to governance matters are:

- the Ministry of Economy and Digital Transition;
- the Bank of Portugal;
- the Securities Market Commission; and
- the Insurance and Pension Funds Authority.

As the competent financial supervisory authorities, the Bank of Portugal, the Securities Market Commission

and the Insurance and Pension Funds Authority also enforce the ESG framework in the financial sector.

1. 4. What is the regulators' general approach to ESG and the enforcement of the ESG framework in your jurisdiction?

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Due to the novelty of the ESG paradigm and doubts in the local market regarding the application of an incomplete framework, the approach of local regulators to ESG is essentially pedagogical and aims to create awareness of the new obligations relating to ESG.

Likewise, whenever a new financial product is created, the supervisory authorities undertake a preliminary assessment of its compatibility with the claims made by issuers under the ESG framework to prevent greenwashing.

Both the Bank of Portugal and the Securities Market Commission have published public statements and brief guidelines on this matter addressed to local entities.

However, given that relevant laws are due to enter into force in the coming months, we anticipate that the enforcement of ESG matters may begin to tighten over the course of the year.

1. 5. What private sector initiatives have been launched in your jurisdiction to complement the ESG framework?

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GRACE – Empresas Responsáveis is a membership-based non-governmental organisation dedicated to sharing and leveraging sustainability-related best practices in the private sector. ESG topics feature prominently in GRACE's pipeline and sector-driven clusters have been established to gather together different companies. Although it was not established for the express purpose of complementing ESG frameworks, it has nonetheless contributed to their development in Portugal.

BCSD Portugal has also played a relevant role in this regard by promoting discussion, raising awareness and promoting best practices.

2. Scope of application

2. 1. Which entities are captured by the rules and codes that make up the principal elements of the ESG framework in your jurisdiction?

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Most reporting provisions are targeted at large, public-interest companies and concern specific sectors.

Companies with over 500 employees must prepare non-financial statements. Other mandatory reporting obligations are set out in:

- the Commercial Company Act, which requires the disclosure of financial statements and annual reports;
- Accounting Directive 29, which requires disclosures on environmental risks; and
- the Corporate Code, which requires disclosures on corporate governance structures and practices.

Under the Sustainable Finance Disclosure Regulation (SFDR), there is a mandatory obligation to report on the principal adverse impacts on sustainability factors for financial market participants that, on their balance-sheet dates, have an average number of 500 employees, on an individual or consolidated basis.

The Taxonomy Regulation focuses on specific economic activities and requires environmental disclosures relating to the three ESG factors.

2. 2. How are entities in your jurisdiction that are not subject to specific rules or codes implementing ESG?

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Entities are at different stages of their ESG journeys. Awareness is starting to spread, and several companies are already disclosing information on ESG through the publication of ESG commitments and the adoption of sustainability policies. This trend is more visible among companies affiliated with institutions such as the UN Global Compact, which are strongly committed to improving their corporate responsibility and implementing their sustainability policies.

The whole value chain legal approach is also gaining visibility, as a growing number of companies are being required by their clients to embrace ESG concerns. However, only a minority of companies use the ESG framework as a competitive differentiator on the market.

2. 3. What are the principal ESG issues in your jurisdiction that are either part of the ESG framework or part of the implementation of ESG?

Portugal

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The principal issue is the lack of a complete framework with clear obligations and guidance. Other major issues include the dynamic process of legal production (eg, the European Taxonomy Delegated Acts and the Regulatory Technical Standards under the SFDR) and uncertainty around the timing of implementation.

As regards ESG implementation, the main issues are:

- the organisation and management of, and access to, adequate information on sustainability; and
- the proper training of both internal and external people engaged in sustainability implementation, reporting and auditing.

The costs involved may also hinder a stronger push towards sustainability, especially for smaller entities.

3. Disclosure and transparency

3. 1. What primary disclosure obligations relating to ESG apply in your jurisdiction?

Portugal

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The Taxonomy Regulation, the Sustainable Finance Disclosure Regulation (SFDR) and the Delegated Act supplementing Article 8 of the Taxonomy Regulation set out the primary disclosure obligations with respect to ESG in Portugal.

Thus far, no local legislation or gold plating has been established in this regard.

3. 2. What voluntary ESG disclosures are also commonly made in your jurisdiction?

Portugal

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Although still not common, there is an emerging trend towards the voluntary disclosure of information relating to ESG, in addition to the mandatory annual accounting and reporting elements.

3. 3. What role is played in this regard by (a) the board and (b) other corporate bodies and/or officers?

Portugal

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The role played by the board and other corporate bodies varies depending on the company's size and sector of activity. Many bigger companies have introduced the role of chief sustainability officer, who reports to the board and assumes responsibility for external disclosure and clarification of information.

3. 4. What best practices should be considered in relation to ESG reporting and disclosure?

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- Maintain a good website with all relevant information presented to the public in a comprehensive, well-organised, accessible way. This information should be clear, simple and written in non-legalese for easier understanding among a non-specialised audience.
- The supporting documentation for all statements and information provided should be easily accessible through direct links or easy document downloads.
- All relevant information should be sent directly to the relevant stakeholders.
- The information disclosed should be fully coherent with actual practice and activity development. Non-conformity is simply unacceptable.

4. Strategy and governance

4. 1. How is ESG strategy typically designed and implemented in companies in your jurisdiction?

Portugal

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Although ESG strategies are only now being developed in the Portuguese market, they are typically designed and implemented by sustainability or corporate social responsibility teams or owners, often with the assistance of external advisers.

4. 2. What role is played in this regard by (a) the board and (b) other corporate bodies and/or officers?

Portugal

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The board typically holds approval powers when it comes to establishing ESG internal policies, external commitments, collaborative initiatives and membership-based institutions. Sustainability officers are typically responsible for executing ESG standards internally.

4. 3. What mechanisms are typically utilised to monitor the implementation of ESG strategy in your jurisdiction?

Portugal

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Where such mechanisms exist, a process involving periodic assessments, compliance checklists and internal/external consultations is usually applied.

4. 4. What role is played in this regard by (a) the board and (b) other corporate bodies and/or officers?

Portugal

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The board typically oversees the approval and monitoring process. Sustainability officers:

- manage ESG-related projects;
- liaise with external stakeholders; and
- conduct awareness-raising activities internally (often together with the legal team).

4. 5. How is executive compensation typically aligned with ESG strategy in your jurisdiction?

Portugal

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For companies that adopt and implement remuneration policies, ESG criteria are considered, among others,

For companies that adopt and implement remuneration policies, ESG criteria are considered, among others, but do not yet play an autonomous and more relevant role.

4. 6. What best practices should be considered in relation to the design and implementation of ESG strategy?

Portugal

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- Engage different levels, departments and functions within the organisation to make the building process as cross-cutting and participative as possible, ensuring that there is a clear top-down message and guidance to be implemented and shared.
- Once the ESG strategy has been designed, it should be clearly communicated internally, in a manner that is accessible to all levels, departments and functions.
- Implementation of the ESG strategy should be effectively monitored, based on clear responsibilities, targets and periodic reporting.

5. Financing

5. 1. What is the general approach of lenders towards ESG in your jurisdiction? What internal and external information regarding a prospective borrower will they typically consider in this regard?

Portugal

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Given that the ESG framework is still incomplete and in its initial stages of application, lenders are taking different approaches, depending on their own level of adoption of ESG.

Nevertheless, a trend is arising among local lenders – particularly major banks – of:

- requiring ESG information from the borrower; and
- applying a predefined ESG framework and rating systems to the borrower.

The ESG information required by the lender typically includes:

- environmental criteria, such as the assessment of:
 - physical risk (from general to specific, at the level of country, region, activity and company); and
 - transition risk (eg, greenhouse gas emissions, carbon intensity, energy expenditure and investment in R&D);
- social criteria, such as gender equality, remuneration level and investment in training; and
- governance criteria, such as the quality of partners/shareholders and management.

5. 2. Are bonds/loans that are marketed as green bonds/loans, social bonds/loans, sustainability bonds/loans or similar a feature of the markets in your jurisdiction?

Portugal

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We are already observing the granting of contractual loans by institutional entities with consideration of ESG factors, including for the purpose of rebranding the credit product as ‘green’, although this remains an exception.

Conversely, green bonds and sustainability-linked bonds are making headway with Portuguese issuers having recently carried out successful issues of these instruments.

We expect that these trends will be reinforced in the coming years.

5. 3. What key developments have taken place in the structuring of these instruments in your jurisdiction?

Portugal

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The structuring of these instruments is being affected by the need to tackle the challenges posed by the demanding European ESG framework, which is still incomplete, while complying with industry best standards and practices, and avoiding any behaviour that could be perceived as greenwashing.

At present, these instruments are still substantially structured on the basis of draft legislation; but with the gradual introduction of new laws, the pace of compliance with the ESG framework is expected to pick up.

5. 4. What best practices should be considered in relation to ESG in the financing context?

Portugal

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The offer of ESG financing requires that the lender adopt an ESG framework and internal policies aimed at promoting awareness of these matters within the organisation.

Following the updated guidelines issued by the European supervisory authorities and the European Commission, as well as the best standards and practices of the main sectoral associations, we believe that staff training and access to good-quality information from reliable sources – including third-party ESG information service providers – are two of the most relevant factors to ensure that entities position themselves correctly in the market and avoid greenwashing.

6. ESG activism

6. 1. What role do institutional investors and other activist shareholders play in shaping ESG in your jurisdiction?

Portugal

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Institutional investors and activist shareholders are pushing voluntary ESG standards forward by integrating them in their investment policies and standards, thus influencing companies to align with ESG standards.

6. 2. How do activist shareholders typically seek to exert influence on corporations in your jurisdiction in relation to ESG?

Portugal

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Shareholders are becoming more concerned about ESG standards and are defining them as essential for investment.

6. 3. Which areas of ESG are shareholders currently focused on?

Portugal

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Shareholders are currently focused on environmental and human rights due diligence. Companies that can demonstrate successful efforts in this regard (eg, through public commitments) are one step ahead when raising finance or competing in public or private tenders.

6. 4. Have there been any high-profile instances of ESG activism in recent years?

Portugal

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ESG activism is not yet evident in Portugal.

6. 5. Is ESG activism increasing or decreasing in your jurisdiction? How and why?

Portugal

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ESG activism is not yet evident in Portugal.

7. Other stakeholders and rights holders

7. 1. What role do stakeholders or rights holders (eg, employees, pensioners, creditors, customers, suppliers, and Indigenous communities) play in shaping ESG in your jurisdiction? What influence can they exert on a company?

Portugal

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Engagement policies are a common feature in Portugal, including for funds and asset managers, due to the regime established by the Shareholders Directive II. However, the influence exerted by managers over investee companies with a view to steering them down the ESG path is still far from optimal.

This notwithstanding, we have observed some examples of local managers adopting a more proactive stance towards the boards of investee companies by demanding and overseeing the application of ESG criteria.

8. Trends and predictions

8. 1. How would you describe the current ESG landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

Portugal

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The current ESG landscape in Portugal is characterised by growing awareness and the gathering of information on mandatory requirements and best practices. Most entities are still learning about ESG and focused on building up their internal capabilities in this regard. A minority are already well aware of the ESG paradigm and have developed a structured ESG framework to gain leverage on the market.

With regard to environmental issues, we believe that the Climate Framework Law will assume an important role, as it applies to both private and public stakeholders and establishes relevant targets. The development of European legal proposals in many different areas – including the Corporate Sustainability Reporting Directive and the European Taxonomy Delegated Acts – is also expected to have a strong impact.

9. Tips and traps

9. 1. What are your top tips for effective ESG implementation in your jurisdiction and what potential sticking points would you highlight?

Portugal

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We would highlight the following top tips for effective ESG implementation:

- Approve an ESG policy, publish it and disseminate it within your organisation.
- Develop an ESG awareness and capacity-building programme, including workshops, training sessions and expert keynote speeches.
- Customise your contracts with specific ESG compliance clauses and warranties.
- Update internal procurement and hiring codes, policies and standards in light of ESG.
- Indicate who will monitor and leverage ESG excellence, empower people and make them responsible.

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