
CHAMBERS GLOBAL PRACTICE GUIDES

Climate Change Regulation 2024

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Portugal: Law & Practice and Trends & Developments

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PORTUGAL



Law and Practice

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PORTUGAL LAW AND PRACTICE

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1. Multilateral and Regional Regimes

1.1 Multilateral Climate Change Legal Regime

As part of the EU, Portugal has integrated the EU position within the Climate Convention and is very active in the co-ordination procedures.

The EU Nationally Determined Contribution (NDC) is an agreement of joint fulfilment submitted by the European Commission on behalf of the EU and its member states to the United Nations Framework Convention on Climate Change (UNFCCC). The positions are guided by the Council's conclusions. The Council's Working Party on International Environmental Issues – Climate Change (WPIEI-CC) is responsible for working and co-operating EU positions and has a negotiating team composed of members from different member states. The Portuguese position is aligned with the most ambitious targets and the Portuguese authorities, both political and technical, usually play a role in supporting the push for more ambitious targets in mitigation issues, in line with the national decisions (eg, the national Climate Framework Law opens the door to anticipating climate neutrality by 2045). Adaptation is critical for Portugal as a part of the Iberian Peninsula, one of the regions in the globe most exposed to climate change. Accordingly, Portugal is particularly vocal regarding adaptation issues.

Portugal is also part of the Community of Portuguese Speaking Countries that joins nine countries in five continents, including Angola and Mozambique, and is particularly sensitive to issues relating to technology transfer. Technology transfer is usually addressed within the nation's development assistance strategies and projects.

With regard to climate finance, not only does Portugal use its public Environmental Fund to finance several climate-related projects at the international level, as part of its development aid strategy, particularly those located in Portuguese-speaking countries, but also to support its greater ambition. For instance, in 2023, Portugal and Cabo Verde signed an agreement to convert Cabo Verde's external debt into a Climate and Environment Fund. Thus, the amount of debt repayment to Portugal will be fully invested in this fund for the climate and energy transition, an amount that should reach EUR12 million by 2025. It is expected that, given a positive assessment of the agreement, the remaining EUR140 million of debt can then also be converted into investments to increase the country's resilience and help to achieve the sustainable development goals.

1.2 Regional Climate Change Legal Regimes

As part of the EU, Portugal and the Portuguese responsible authorities, both at a political and technical level, are engaged with all the relevant legislative procedures (European Council, European Parliament, and engaging with the European Commission). Normally, the Portuguese position is active in supporting the raising of standards relating to mitigation, in line with the national ambition. As referred in **1.1 Multilateral Climate Change Legal Regime**, adaptation is an area of great concern and commitment for the Portuguese authorities. It should be noted that the European Climate Law was approved in 2021 under the Portuguese Presidency of the EU and was one of the notable outcomes of that Presidency.

2. National Policy and Legal Regime (Overview)

2.1 National Climate Change Policy

At the end of 2023, the EC submitted to the UNFCCC an updated version of the EU NDC on behalf of the EU and its member states, replacing the previous one submitted in 2020. In the new document, it is estimated that the full implementation of the “Fit for 55” legislative framework could enable the EU and its member states to overachieve the EU’s net domestic reduction of greenhouse gas (GHG) emissions target of at least 55% compared to 1990 by 2030. It should be noted that after the COP Dubai first global stocktake, the European Commission assumed an intermediate target of reducing 90% of emissions by 2040.

As part of the EU, Portugal is truly committed to the goals of the United Nations Framework Convention on Climate Change (UNFCCC), was part of the Kyoto Protocol, and was particularly active in the preparation of the Paris Agreement, all of which are being implemented into the national climate change and energy efficiency legal framework through various instruments, as follows.

- The Roadmap to Carbon Neutrality (2050), which determines renewable energy targets for Portugal, set at 80% by 2030 and 100% by 2050.
- The National Climate and Energy Plan 2030 (PNEC 2030), which was recently updated according to the provisions of the national Climate Framework Law, anticipates, within four years, reaching the goal of incorporating renewable energies in electricity production. Thus, as of 2026, 80% of the energy produced in the national territory should be of renewable origin.

- The Decree-Law No 84/2022, amended by Decree-Law No 23/2023, ensures the reinforcement of measures to accelerate the energy transition and the decarbonisation of the economy, establishing targets concerning energy consumption for renewable energy. For instance, in 2024, fuel suppliers, in addition to other mandatory measures, are also required to make a minimum annual contribution of advanced biofuels and biogas of 0.7% on the quantities of fuels they release for consumption.
- The National Air Strategy focused on the improvement of air quality.

Portugal has also approved the Green Growth Commitment (CCV), that imposed the following goals to be achieved in 2020 and 2030:

- reduce greenhouse gas emissions by between 30–40% in relation to 2005;
- increase the share of renewable energy in the final consumption of energy to 40%, which has been updated to 49% by Decree-Law No 84/2022, amended by Decree-Law No 23/2023; and
- increase energy efficiency through a reduction of 30% over the energy baseline in 2030.

The Portuguese Parliament approved the Climate Framework Law in 2021, establishing the principles of climate policy and governance, which is particularly generous in providing litigation rights.

2.2 National Climate Change Legal Regime

The Climate Framework Law (Law 98/2021), in force since 1 February 2022, establishes the principles of climate policy, targets, and requirements for the design of public policies across economic sectors, and levels of governance. It

also states a subjective right to the climate balance, and the law is applicable both to public and private entities and citizens.

This new legal instrument is essential to align Portuguese policies on climate change with the targets and objectives of the Paris Agreement. Indeed, the Climate Framework Law is the result of the Paris Agreement, the European Green Deal, and the European Climate Law.

In this context, the main purpose of the Climate Framework Law is to achieve carbon neutrality by 2050, as already established in the Roadmap for Carbon Neutrality (2050). Nevertheless, the law anticipates a possible raising of ambition to achieve carbon neutrality by 2045, imposing an obligation to conduct studies until 2025 addressing that possibility.

Objectives of the Climate Framework Law

The major objectives on climate policy foreseen in the law are the following:

- promoting a quick and socially balanced transition towards a sustainable economy and greenhouse gas neutrality;
- guaranteeing climate justice, ensuring the protection of communities most vulnerable to climate crisis, respect for human rights, equality, and collective rights;
- ensuring a sustainable and irreversible trajectory of reduction of greenhouse gas emissions;
- promoting the use of renewable energy as well as its integration into the national energy system;
- promoting a circular economy and improving energy and resource efficiency;
- promoting climate security;

- fighting against energy poverty, namely through the improvement of living conditions; and
- establishing a rigorous and ambitious basis for the definition and fulfilment of climate objectives, targets, and policies.

Climate Framework Law Targets

The Climate Framework Law also establishes climate policies and targets, namely the following.

- A timeline for greenhouse gas reduction targets, setting reductions of at least 55% by 2030, 65–75% by 2040, and 90% by 2050. Note that these targets included in Portuguese law must always take into consideration the EU and international commitments. Therefore, the national targets shall be updated in accordance with the EU intermediate target for 2040 that might be approved in the framework of the European Climate Law, a target for the equivalent net CO₂ sink from the land use and forestry sector of at least 13 megatonnes on average between 2040 and 2050, and a target for marine and coastal ecosystems.
- Sectoral targets for the reduction of GHG emissions relative to 2005 values and compulsory approval of sectoral plans for mitigation and adaptation to climate change.

Moreover, 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.

This law also states a clear obligation for sub-national level political actors (the Autonomous Regions of the Azores and Madeira, and municipalities all across the country, autonomous

regions included) to develop regional/local climate policies and strategies aligned with the law. This means that the regional and local authorities are expected to develop their own strategies in line with the goals stated in the law. The municipalities, the Regional Spatial Planning Commissions (CCDR), the Inter-municipal Commissions, and the Metropolitan Areas of Lisbon and Oporto, are expected to approve local climate change plans. The municipalities and the CCDRs are to approve the local climate change plans within two years and the law anticipates the approval of an assessment mechanism.

It should be noted that Lisboa, Porto, and Guimarães are three of the hundred European cities that have assumed a commitment to become climate neutral by 2030.

How Effective Will the Climate Framework Law Prove to Be?

The effectiveness of the law is not yet easy to foresee. On the one hand, it looks rather programmatic and, for instance, does not provide for any misdemeanour legal regime. On the other hand, it assumes the right to a balanced climate and states obligations for the public and private sectors. The application of this right is difficult to anticipate. It depends critically on the awareness of its existence, and the use that citizens, individually or collectively organised – as well as associations, foundations, and even private companies – make of it in the future, and the position of the relevant courts that might be asked to apply the law.

Recently, a group of environmental associations appealed to the Supreme Court of Justice (STJ) in a lawsuit against the Portuguese state for non-compliance with the Climate Law, after the Civil Court of Lisbon rejected the initial petition,

delivered in November 2023. The environmental associations made three requests:

- the recognition of the non-compliance, by the Portuguese state, with the measures provided for in the Framework Law on Climate, which does not allow the fulfilment of the climate targets set for 2030;
- the condemnation of the Portuguese state with a view to putting into practice the missing measures; and
- the adoption of the necessary legislative acts.

One of the first programmatic measures to be approved by parliament, on 2 June 2023, was the creation of a new institutional body – the Council for Climate Action (CAC). The CAC will collaborate with the legislative and executive branches to prepare studies, assessments, and opinions on climate action.

2.3 Bilateral/Multilateral Co-operation

The Portuguese Environment Agency (APA), is the national authority designated in the context of Article 6 of the Paris Agreement, monitoring the respective negotiations. In this context it is the national competent authority pursuant to and for the purposes of Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018, that establishes a scheme for GHG emission allowance trading within the Community. It is also the national authority responsible, within the voluntary carbon market established by the Decree-Law No 4/2024, for the approval of carbon methodologies, supervising the development and management of the platform for the registration of carbon projects and credits, monitoring the voluntary carbon market and making information on the functioning of this market publicly available on its [website](#). The national legal regime for the voluntary carbon market excludes the possibility

to use or claim carbon credits for complying with EU or international obligations, including for the purposes of the European Emissions Trading System (EU ETS) and the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) or for the fulfilment of NDCs from any other party to the Paris Agreement, but allows offsetting beyond residual emissions. The approval of all the complementary rules and the implementation of the online registration platform are expected shortly.

Until the current date, no formal bilateral, publicly known agreements for the establishment of internationally transferable mitigation outcomes (ITMOs) have been established by Portugal. Nevertheless, Portugal engages in co-operation efforts with countries aligned with the Paris Agreement on other areas of climate change policy action.

Portugal has a permanent collaboration between Camões – Institute for Co-operation and Language, IP (under the scope of the Ministry of Foreign Affairs) – in the capacity of co-operation with the development co-ordinator entity and the sectorial ministries, such as the Ministry of Environment and Climate Action responsible for the thematic areas of environment, including climate change (CC) and energy.

The Strategy for Portuguese Co-operation 2030 (“ECP 2030”) was adopted in Portugal in 2022. This strategy constitutes a guiding instrument for public policy on international co-operation for development. The strategy includes co-operation on the protection of the environment, fight against climate change, promotion of sustainability, and ensuring a green transition.

The ECP 2030 specifically states that Portuguese co-operation should substantially contribute to three key international commitments:

- the 2030 Agenda for Sustainable Development;
- the Action Agenda of Adis Abebda on financing development; and
- the Paris Agreement.

This strategy intends to strengthen the importance of international co-operation in Portugal. Moreover, the strategic framework and guidelines for development co-operation are aligned with the needs and priorities of partner countries and established by Strategic Co-operation Programmes (PEC) signed by each partner country, like those with long-time partners such as PALOP and Timor-Leste.

Co-operation with other Paris Agreement countries has been mostly achieved through the Environmental Fund established by Decree-Law No 42-A/2016, and geographically focused on the prioritisation of co-operation activities towards the Lusophone (Portuguese-speaking) developing countries.

According to the Decree-Law No 42-A/2016, amended by the Decree-Law No 114/2021, the national public entity in charge of managing the Environmental Fund is the Secretariat-General of the Ministry of Environment.

This Fund supports environmental policies for the pursuit of Sustainable Development Objectives, contributing to the achievement of national and international objectives and commitments, in particular those related to climate change adaptation, carbon markets, energy efficiency, water resources, waste, forests, nature conservation and biodiversity and co-operation in the

area of environment and climate action, including for the fulfilment of international commitments.

Specifically, Portugal has co-operated, through the Environmental Fund and PECs, with the Portuguese-speaking African countries (PAL-OP) and Timor-Leste. New beneficiary countries were added in the last few years, from North and Western Africa and Latin America, including Tunisia, Cote d'Ivoire, Colombia, and Argentina.

Portugal has also recently reiterated its collaboration with Brazil, in a joint declaration on 22 April 2023, on the promotion of a just energy transition aimed at carbon neutrality, within the framework of the Paris Agreement.

As an EU member state and as part of the Official Development Assistance programme, Portugal has made commitments to mobilise 0.15% to 0.20% of its Gross National Income and allocate it to Least Developed Countries by 2030. Portugal also endorsed the commitment derived from the 2014 ministerial-level meeting of the Development Assistance Committee (OECD/DAC) to focus the support from member countries on countries most in need (which includes Fragile States, Least Developed Countries, and Small Island Developing States).

Lastly, many of the co-operation agreements in the energy area also include mentions of the need to achieve a just energy transition, namely one that is aligned with the objectives established by the Paris Agreement.

2.4 Key Policy/Regulatory Authorities

From a regulatory standpoint, there are several public entities responsible for enforcing the Portuguese climate change and environmental legal framework, namely:

- the Portuguese Environment Agency, which has a mission to propose, develop, and monitor the integrated and participatory management of environmental and sustainable development policies, in tandem with other sectorial policies, and in co-operation with public and private entities with the same purpose, with the aim of providing a high level of environmental protection and rendering high-quality services to citizens;
- the General Inspection of Agriculture, Sea, Environment, and Spatial Planning, which carries out inspections regarding all activities, and all public and private entities with environmental relevance, imposing the measures that prevent or eliminate situations of severe danger to human health and safety, and to goods and the environment;
- the Water and Waste Regulatory Authority, which ensures the regulation and supervision of the water and waste services, and aims to increase the efficiency and effectiveness of the provision of these services;
- the Institute for Nature Conservation and Forests, which has a mission to propose, develop, and ensure the execution of nature conservation and forest policies, taking into view the conservation, sustainable use, recovery, and recognition of these natural assets;
- regional spatial planning commissions, whose mission is to execute environmental, planning, and regional development policies;
- the Directorate-General for Natural Resources and for Maritime Services and Safety, which has a mission to execute policies for the preservation of natural marine resources, fisheries, and aquaculture, and to develop maritime services and safety, including the maritime ports sector; and
- the Secretariat-General of the Ministry of Environment, which has a mission to ensure support for policy formulation, strategic and

operational planning and to support the performance of the Ministry of the Environment at international level and in the application of EU law.

3. National Policy and Legal Regime (Mitigation)

3.1 Policy/Regulatory Instruments and Spheres of Government/Sectors

In Portugal, and as mentioned in **2.1 National Climate Change Policy**, there are several policy/regulatory instruments to achieve climate change goals.

In order to achieve the above-mentioned goals, there are also domestic regulations setting important rules on climate change/greenhouse gas emissions matters, such as:

- Decree-Law No 4/2024, which establishes the voluntary carbon market and lays down the rules for its operation;
- Decree-Law No 12/2020, which establishes Portugal's carbon trading scheme; and
- Decree-Law No 145/2017, which establishes mechanisms to reduce the emission of greenhouse gases.

Although the Decree-Law No 4/2024 entered into force on 6 January 2024, the voluntary carbon market is still under development as it depends on the approval of carbon methodologies, the definition of rules for the certification of independent verifiers and an online platform for the public registration of carbon projects and respective carbon credits.

The operators subject to Decree-Law No 12/2020 must hold a permit allowing them to emit greenhouse gases and they are obliged to

monitor their emissions. Other activities are not subject to climate targets as a prerequisite for environmental permits.

Nevertheless, if an entity applies for public funding, namely within the European Funds system, it is an increasingly common requirement that it complies with the “do no significant harm” principle. That is the applicable rule, eg, for the use of funds within the EU-funded Resilience and Recovery Plan.

With regards to taxation of polluting activities, new carbon taxes for air and ship travel were approved by Ministerial Order 38, amended by Ministerial Orders 110/2023 and 242/2023. These amendments extended the scope of the carbon tax to air travel on small aircrafts, while clarifying that only passenger air transport is taxed.

Additionally, values of tax rates for oil and energy products were reviewed by Ministerial Order 111-A/2022, and subsequently by Ministerial Order 164-A/2022 and Ministerial Order 167-D/2022, with several amendments thereafter.

4. National Policy and Legal Regime (Adaptation)

4.1 Policy/Regulatory Instruments and Spheres of Government/Sectors

The new Climate Framework Law establishes climate policy instruments which are specifically designed for 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, the validity of which was extended until 31

December 2025 by the Council of Ministers Resolution 53/2020.

- Sectoral plans for adaptation to climate change, in particular with regards to:
 - (a) territory;
 - (b) geography;
 - (c) the natural environment;
 - (d) infrastructure;
 - (e) equipment;
 - (f) built environment; and
 - (g) economic, social, and cultural activities.
- Inter-municipal and municipal plans for adaptation to climate change, for example in inter-municipalities such as Algarve and Arrábida and cities such as Lisbon, Aveiro, Maia, and Leiria.

The PNEC 2030 (listed in **2.1 National Climate Change Policy**) contains a strategic long-term vision for a climate-neutral country, setting the following national targets to be achieved by the year 2030, aligned with a trajectory towards carbon neutrality by 2050:

- reducing CO₂ emissions by 28.7% for non-ETS sectors;
- reducing CO₂ emissions, excluding LULUCF, by 55%, with reference to the emissions registered in 2005;
- reducing primary energy consumption by 35%, with a view to better energy efficiency; and
- achieving 15% electricity interconnections.

Furthermore, PNEC 2030 sets CO₂ reduction targets for the following specific sectors, to be achieved by 2030:

- 70% for services;
- 40% for transport;
- 35% for residences;
- 30% for waste and waste water; and

- 11% for agriculture.

Both the public and the private sectors, including investors and the general public, are expected to be impacted by the Portuguese national policies on climate change, as well as the new Climate Framework Law, since these instruments impose complex changes on the whole community.

5. Responses to International Developments

5.1 Carbon Markets

The Portuguese Environment Agency (APA), is the national authority designated in the context of Article 6 of the Paris Agreement, monitoring the respective negotiations. Being the national competent authority pursuant to and for the purposes of Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018, that establishes a scheme for greenhouse gas emission allowance trading within the Community, APA publishes all relevant information on this matter on its [website](#).

The national carbon trading scheme is foreseen in Decree-Law No 12/2020, enacting Directive 2018/410/EU, and establishing a scheme for GHG emissions allowance trading within the European Community (the Amended Emissions Trading Directive).

Operators subject to said legal regime must hold a permit allowing them to emit greenhouse gases, which must be monitored and certified annually, and this information must be sent to the Portuguese Environmental Agency. The permit is annexed to the environmental licence of the operator issued under the Industrial Emissions Regime.

Concerning the voluntary carbon markets – seen as a powerful tool to support the NDCs under Article 6 of the Paris Agreement – it should be highlighted that a national trend to compensate greenhouse gas emissions through these markets is emerging.

Indeed, since 6 January 2024, has entered into force the Decree-Law No 4/2024 that establishes the voluntary carbon market (VCM) and lays down the rules for its operation. The VCM covers GHG emission reduction projects and carbon sequestration projects, if they are developed on national territory. Its operating mode can be briefly described as follows.

- Carbon projects shall be developed according to methodologies for each typology (such as forests and “blue carbon”) approved by the APA.
- The reduction of GHG emissions or carbon sequestration within the voluntary carbon market generates carbon credits.
- One carbon credit corresponds to one tonne of CO₂.
- Carbon projects and carbon credits are recorded on a public platform specifically provided for this purpose and may be traded between voluntary carbon market actors or used by their holders.
- The use of credits could be either for emission compensation or for contributing to climate action.
- Once used the carbon credits must be cancelled on the public platform.

The technical committee for monitoring the voluntary carbon market necessary for the development of carbon methodologies to be submitted to the APA for approval has already been created.

It is expected that the first methodologies for carbon projects will be put out for public consultation during 2024. Meanwhile, the requirements for the certification of independent verifiers should be published and developed the public registry platform for carbon projects and credits, making the voluntary carbon market fully operative.

Moreover, the first fund in Portugal that foresees carbon sequestration rights namely as a way to remunerate in kind a class of fund units, considered a dark green investment under Article 9 of the Sustainable Finance Disclosure Regulation (SFDR), was approved by the Portuguese Securities Market Commission (CMVM) in February 2023.

5.2 European Union Carbon Border Adjustment Mechanism (CBAM)

The EU Regulation establishing a Carbon Border Adjustment Mechanism (CBAM) entered into force on 17 May 2023. As a member state of the EU, Portugal will be impacted by the obligations arising from this mechanism.

Bearing in mind that the main objective of the EU Carbon Border Adjustment Mechanism (CBAM) is to avoid carbon leakage and inspire partner countries to establish carbon pricing policies to fight climate change, the import of relevant goods – so far, cement, iron and steel, aluminium, fertiliser, hydrogen, and electricity – into Portugal will be dependent on the issuance of CBAM certificates.

Only authorised CBAM declarants will be able to import the relevant goods to EU territory, which means importers that operate in Portugal will also have to become authorised CBAM declarants.

CBAM declarants will need to:

- buy CBAM certificates at the beginning of each year;
- report, until 31 May of each year, on the quantity of relevant goods imported into the EU in the preceding year, on the number of CBAM certificates purchased, and on its correspondence with the amount of GHG emissions embedded in the products; and
- submit proof that CBAM certificates were bought for the calendar year in question until 31 May.

Starting on 1 October 2023, importers of relevant goods will be obliged to provide information concerning embedded emissions. Authorisations to become CBAM declarants will need to be requested from 1 January 2024 onwards and starting on 1 January 2026 CBAM declarants will be obliged to declare the goods imported, their embedded GHG emissions, and the quantity of corresponding CBAM certificates bought.

6. Liability for Climate Change and ESG Reporting

6.1 Task Force on Climate-Related Financial Disclosures (TCFD)

As part of the EU, all the EU legislation on reporting and information obligations, namely to investors, is totally applicable in Portugal. A growing number of investors are creating specific funds under the most stringent EU regulations to address climate issues, combining the Sustainable Finance Disclosure Regulation (SFDR) and the European Taxonomy.

It shall be noted that the Corporate Sustainability Reporting Directive (CSRD) sets mandatory reporting obligations for in-scope companies

concerning ESG sustainability matters, whilst the TCFD only provides for voluntary disclosure of information concerning climate related risks and opportunities.

And the recently approved Corporate Sustainability Due Diligence Directive (CSDDD) – which is pending publication – has a broader scope than the TCFD, which goes far beyond the disclosure of related risks and opportunities pursuant to the TCFD, establishing liability provisions for companies.

Please refer to the below sections for more information concerning the CSRD and CSDD, directives that will still need to be transposed into the Portuguese legal order.

So, the demand for climate response initiatives is a growing trend, produced both by pressure from investors and also the feeling that consumers increasingly value the sustainability commitment of companies and institutions. Investment and industrial operational decisions tend to influence each other, and the shortage of green assets might turn out to be a powerful engine. The financial sector, as a whole, is expected to play a relevant part in these transformations.

6.2 Directors' Climate Change Liability Administrative/Civil Liability

Directors or persons who hold a management position in companies are responsible, on a subsidiary level, for the payment of fines and procedural costs related to environmental administrative offences.

The majority of misdemeanours due to environmental damage are regulated by the Environmental Misdemeanour Framework Law. According to said legal regime, environmental misdemeanours can be considered light, seri-

ous, or very serious, depending on the gravity of the infraction.

For very serious environmental misdemeanours, the applicable fine ranges between EUR10,000 and EUR200,000 for individuals and between EUR24,000 and EUR5 million for companies. Whenever the presence, emission, or release of one or more hazardous substances seriously affects the health, safety of persons and goods, and the environment, the minimum and maximum limits of the above-mentioned fines may be elevated to double the amount.

For serious environmental misdemeanours, the applicable fine ranges between EUR2,000 and EUR40,000 for individuals and between EUR12,000 and EUR216,000 for companies.

For light environmental misdemeanours, the applicable fine ranges between EUR200 and EUR4,000 for individuals and between EUR2,000 and EUR36,000 for companies.

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

- prohibition against applying for subsidies and public benefits;
- prohibition against participating in public tenders;
- suspension of licences and authorisations;
- closing down of industrial facilities or sites subject to authorisation or licensing issued by a public authority;
- sealing of equipment; and
- seizure of animals.

Additionally, the Climate Framework Law foresees that the duties of care, loyalty, and reporting

on accounting imposed on directors or members of governing bodies with supervisory functions must include the careful assessment of the risk that climate change poses to the business model, capital structure, and assets of companies. However, the Climate Framework Law does not foresee any sanctions, nor any type of liability, for the non-compliance with these duties.

The amendments introduced to the Commercial Company Act by Decree-Law No 89/2017, which transposed the Non-Financial Reporting Directive (Directive 2014/95 (EU)) into the Portuguese legal order, impose on the directors of companies of public interest that have an average of 500 employees the duty to include non-financial demonstrations in the management report, which have to contain information on the evolution, performance, position and impact of the company's activity regarding environmental matters, namely impact on climate change, among other matters.

It shall be noted that the number of companies, and consequently of directors, to which these duties are applicable will enlarge after the approval of the legal instrument that will transpose the Corporate Sustainability Reporting Directive (CSRD) into the Portuguese legal order, which must occur until the 6 July 2024. In fact, all large companies, as well as listed Small Medium Enterprises, will now progressively be required to report on sustainability, and some non-EU companies will also have to report.

Criminal Liability

The Portuguese Criminal Code also establishes several situations where criminal liability may arise owing to the practice of environmental crimes as a result of damage to the environment or to nature. Companies and not only individuals may be considered subject to criminal liability

owing to the practice of an environmental crime under the terms foreseen in the Criminal Code.

Furthermore, Directive (EU) 2024/1203 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC was published on 11 April 2024.

This European legislation aims to strengthen environmental protection through criminal law in the EU by introducing new criminal offences based on serious breaches of environmental law and significantly increasing the level of sanctions and fines. The new Directive introduces sanctions and penalties that should be uniformly applied across the European Union for both natural and legal persons (except state authorities and public international organisations).

It also requires member states to guarantee appropriate procedural rights in proceedings concerning environmental criminal offences and rights of access to information on the progress of said proceedings, in line with the rights that already exist in national law for proceedings concerning other criminal offences, namely to (i) persons affected or likely to be affected by those offences, (ii) persons having sufficient interest or maintaining the impairment of a right, as well as (iii) environmental NGOs.

The Directive has been in force since 1 May 2024 and shall now be transposed by member states into their domestic laws, by 21 May 2026.

6.3 Shareholder or Parent Company Liability

According to Article 72 of the Climate Framework Law, harmful acts and omissions that accelerate or contribute to climate change give rise to liability. Misdemeanour penalties will be laid down in a separate statute, still to be approved.

Said provision assumes an important dissuasive function for:

- acts and omissions harmful to the climate;
- practices that violate legal provisions on climate; and
- the improper or abusive use of natural resources.

Pursuant to the Corporate Sustainability Due Diligence Directive (CSDDD), a parent company can be liable without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the chain of activities of the company. Nonetheless, when the damage was caused jointly by the parent company and its subsidiary, direct or indirect business partner, they shall be liable jointly and severally.

Where the parent company fulfils the obligation of combating climate change on behalf of the subsidiary, the subsidiary shall comply with the obligations laid down in Article 22 of the CSDDD concerning combating climate change in accordance with the parent company's transition plan for climate change mitigation accordingly adapted to its business model and strategy.

It should be noted that the fulfilment of some of the due diligence obligations at a group level should be without prejudice to the civil liability of subsidiaries under the CSDDD in respect of victims to whom the damage is caused. In fact, if the conditions for civil liability are met, the subsidiary could be held liable for damage that occurred, irrespective of whether the due diligence obligations were carried out by the subsidiary or by the parent company on behalf of the subsidiary.

The CSDDD provides the possibility to exclude a ultimate parent company from any due diligence

obligations if its main activity is the holding of shares in operational subsidiaries and does not engage in the taking of management, operational or financial decisions affecting the group or one or more of its subsidiaries, and only if one of its subsidiaries established in the EU fulfils all obligations under the CSDDD on behalf of the holding company. For that purpose, an application needs to be submitted to the competent supervisory authority of the holding company. Joint liability for both the ultimate parent company and the designated subsidiary is foreseen in case of failure of the subsidiary to comply with the obligations.

6.4 ESG Reporting and Climate Change

In Portugal, the ESG framework is based mainly on EU legislation. The Taxonomy Regulation, the Climate and Environmental Delegated Acts supplementing Article 8 of the Taxonomy Regulation, the SFDR, and the delegated acts related to the finance sector contain the main regulatory regime applicable to ESG in Portugal within the financial sector. The majority of reporting provisions are targeted at large, public-interest companies and specific sectors.

According to Decree-Law No 89/2017, companies of over 500 employees shall prepare a non-financial statement. Other mandatory reporting obligations derive from:

- the Portuguese Commercial Company Act, which requires disclosing financial statements and annual reports;
- the Accounting Directive No 29, which requests disclosures on environmental risks; and
- the Corporate Code, which requests disclosures on corporate governance structures and practices.

The majority of the reporting provisions ask for information on environmental issues such as climate change or waste treatment and governance issues such as remuneration and risk management. Companies that are not subject to specific rules are starting to disclose information on a voluntary basis through the publication of ESG commitments and the adoption of sustainability policies. For example, several Portuguese companies are members of the UN Global Compact, representing a strong commitment on their part to improve their corporate responsibility and implement their sustainability policies.

As the EU legislation adopts a “whole value chain” approach, although not directly covered by the legal obligations, many small and medium-sized companies already feel the impact of the new regimes, as they are increasingly asked by their clients to comply with ESG priorities. Reporting duties will, however, become more exigent and apply to a larger number of companies with the approval of the legal instrument that transposes the Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464) into the Portuguese legal order. The transposition of this Directive must occur by 6 July 2024. So far, there has been no proposed Law or Decree-Law concerning the transposition of the Directive.

CSRD extends the NFRD’s scope of application progressively to a large number of companies, such as:

- in 2025, to be reported in 2026, to all big companies established in a member state that fulfil at least two of the following criteria:
 - (a) balance of more than EUR25 million;
 - (b) turnover of more than EUR50 million; and
 - (c) more than 250 employees;
- in 2026, to be reported in 2027, to small and medium enterprises with values listed on the

- regulated market of a member state (with a possibility of opting until 2028);
- in 2028, to be reported in 2029, to small to medium enterprises that opted out and companies headquartered outside of the EU that have generated a net turnover in the EU of EUR150 million or more for each of the last two consecutive financial years, on a group basis and which have:
 - (a) a subsidiary in the EU which is a large company or which is a medium-sized or small company with values listed on an EU market; or
 - (b) a branch which generated a turnover in the European Union of more than EUR40 million in the previous financial year.

The adoption of the legal instrument that will transpose the CSRD into the Portuguese legal order will result in a responsibility to report on climate matters. The first set of European Sustainability Reporting Standards (Delegated Regulation (EU) 2023/2772), specifying the information that companies shall be required to disclose with regards to environmental, social and governance matters within the framework of the CSRD, was adopted in December 2023. It establishes that, under the CSRD, companies must report on the material impacts, risks and opportunities resulting from their activities, namely in relation to climate change, as provided under ESRS E1 Climate Change.

As referred, the CSRD in-scope companies will also have to adopt a plan to ensure that business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of a global warming to 1.5 degrees Celsius in line with the Paris Agreement.

In Portugal, the standards and guidance provided by the International Sustainability Standard

Board (ISSB) are recognised because they provide a global baseline of climate and sustainability-related risk disclosure for companies and their investors. Some Portuguese companies have set science-based targets in accordance with the Science Based Targets initiative (SBTi) framework for reducing their GHG emissions according to the climate target set under the Paris Agreement.

7. Transactions

7.1 Due Diligence

There is already a visible trend to include climate change due diligence and even minimum safeguards due diligence in M&A, finance, and property transactions.

Currently, companies that are eligible under the European Taxonomy Regulation, to have an activity aligned with the taxonomy they must:

- make a substantial contribution to one of the six environmental objectives;
- do not significantly harm the other remaining five objectives; and
- carry out their activities in compliance with the Minimum Safeguards, which include a due diligence through the value chain – compliance with Minimum Safeguards implies the execution of due diligence procedures to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.

Although the alignment with the European Taxonomy is optional, the mandatory reporting represents a significant pressure.

In Portugal, there are no statutory duties to perform due diligence throughout the value chain. Nonetheless, with the transposition into the Portuguese legal order of the CSDDD, the statutory duties to perform due diligence on environmental and social matters are expected to be established through a progressive in-scope timeline from 2027 to 2029.

The CSDDD will require in-scope companies to conduct environmental (which includes climate change) and human rights due diligence throughout their chains of activities, ie, EU and non-EU companies and parent companies with over 1,000 employees and with a turnover of more than EUR450 million and to franchises with a turnover of more than EUR80 million if at least EUR22.5 million was generated by royalties, by integrating due diligence in their policies, identifying actual or potential adverse impacts, preventing, and mitigating potential adverse impacts, monitoring the effectiveness of their due diligence policy and measures, and publicly communicating on due diligence. Since the CSDDD is built on a value chain approach, it will have an indirect impact on Small and Medium Enterprises as these SMEs are part of the chain of activities.

8. Climate-Friendly Investment Support

8.1 Renewable Energy

Portugal has implemented the National Action Plan for Renewable Energies, establishing concrete objectives regarding the share of Portugal's energy supply from renewable sources, as well as the National Action Plan for Energy Efficiency. Concerning energy efficiency, Portugal established an energy certification system for buildings, with the purpose of improving the

energy performance of buildings and making the obtaining of energy certificates mandatory.

More recently, the National Long-Term Strategy to Eliminate Energy Poverty 2023–2050 was approved. Its main goal is to eradicate energy poverty in Portugal by 2050, protecting vulnerable consumers and actively integrating them into the energy and climate transition, which is intended to be fair, democratic and cohesive.

The major objectives established by the Climate Framework Law regarding the energy sector were to ban the use of coal to produce electricity from 2021, and of natural gas of fossil origin to produce electricity from 2040. With regard to energy supply, it is worth noting that the ocean will play a key role as an important source of electricity production.

Already in 2024, the following decrees and decisions regarding renewable energies were approved and published.

- Decree-Law 22/2024, that extends the exceptional measures to simplify procedures for the production of energy from renewable sources.

It aims to maintain the exceptional and temporary measures established in 2022 for the implementation of projects and initiatives for the production and storage of energy from renewable sources, including the procedures for the prior control of urban operations, in order to adapt them to the material simplicity of the operations for the installation of power plants for renewable energy sources and the production of hydrogen by water electrolysis

- Decree-Law 18/2024, that creates a mechanism to compensate municipalities for strategic electricity projects of great impact that

generate significant negative externalities in their territories.

The objective is to establish a compensations framework (financial or other) to municipalities strongly impacted by high-impact strategic national projects that involve the construction and rapid operation of new renewable power plants, energy storage facilities and the development of new electricity grid capacities developed as part of the acceleration of the energy transition to reduce dependence on fossil fuels.

- Resolution of the Council of Ministers 50/2024, that establishes the legal entity for the “Licensing of Renewable Energy Projects 2030” in the framework for the Recovery and Resilience Plan and in line with RePowerEU.

It has a mission to ensure simplification of the legal and regulatory framework applicable to renewable energy projects through the implementation of a one-stop-shop for project licensing, the consolidation of the sector’s legal framework and the creation of a monitoring system, which results in effective monitoring and control of projects.

- Resolution of the Council of Ministers 41/2024, that approves the Biomethane Action Plan 2024–2040. It foresees two phases, with different time horizons: a first phase that aims to create a biomethane market in Portugal, and a second phase that aims to strengthen and consolidate that biomethane market. In addition, a complementary axis is also presented, which will be transversal to the use of biomethane at national level, which aims to ensure social and environmental sustainability.

The Renewable Energy Directive was revised by the amending Directive EU/2023/2413, has been in force since 20 November 2023 and shall be transposed by member states in an 18-month period, with a shorter deadline of July 2024 for some provisions related to permitting for renewables.

The purpose is to accelerate EU’s independence from fossil fuels raising the 2030 target to at least 42.5% (up from 32%), aiming for 45%, meaning that members states shall collectively ensure that the share of energy from renewable sources in the Union’s gross final consumption of energy reaches those targets by 2030.

Even if with a broader scope, should also be mentioned the Regulation on establishing a framework of measures for strengthening Europe’s net-zero technology products manufacturing ecosystem (Net-Zero Industry Act), adopted on 27 May 2024, which recognises 19 net-zero technologies, including those related to renewable and nuclear energy, grid and energy storage, hydrogen, biogas and biomethane, carbon capture and storage, and biotechnologies, and creates favourable conditions for investment in such technologies. This Regulation is now pending publication in the Official Journal of the European Union and will enter into force on the day of its publication.

8.2 Other Support

The Recovery and Resilience Plan, the national programme implementing the next generation EU strategic instruments to mitigate the economic and social impact of the environmental crisis, is aimed at providing investment opportunities for resilience, climate change, and digital transition projects, and encompasses projects focused on renewable energy. Moreover, Ministerial Order No 98-A/2022 approved a regulation

for an incentive system for production of renewable hydrogen and other renewable gases.

The “Portugal 2030” materialises the Partnership Agreement established between Portugal and the European Commission, which defines the major strategic objectives for the implementation, between 2021 and 2027, of the overall amount of EUR23 billion from the EU funds for regional development, employment, social aid and innovation and territorial cohesion, just transition, maritime, fisheries and aquaculture.

It is implemented through 12 programmes including the “Sustainable 2030” programme dedicated to climate action and sustainability. This programme, with an allocation of EUR3.1 billion, is an important contribution for the country to achieve carbon neutrality by 2050, providing investments to answer the challenges of climate change adaptation, risk prevention and disaster resilience, the transition to a circular economy and sustainable urban mobility, and delivers on the EU’s strategic policy objective for a greener Europe implementing the Paris Agreement by investing in the energy transition, renewable energy and the fight against climate change.

Trends and Developments

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VdA

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Examining the Voluntary Carbon Market in Portugal With Respect to Biodiversity and Genuine Environmental Conservation

The publication at the beginning of this year of Decree-Law 4/2024, which establishes a voluntary carbon market in Portugal and lays down the rules for its operation, stirred the interest of several market players for investments in carbon projects with the potential to generate tradable credits in accordance with the principles and rules of this new national regulation.

In this text the authors put in context the regulation of the voluntary carbon market in Portugal and address its main challenges and what could be the way ahead.

The broad context

Portugal has been reinforcing its national policies in line with the EU policies for climate transition and other cross-cutting agendas, such as the United Nations 2030 Agenda, in particular with respect to innovation, climate change, and the safeguarding of natural resources and marine life.

In the last years, Portugal approved the Roadmap for Carbon Neutrality 2050 (RNC 2050) and the National Energy and Climate Plan 2030 (PNEC 2030), which together shape the strategies for promoting the decarbonisation of the economy and the energy transition based on a model of wealth generation and efficient use of resources.

Meanwhile, the revised version of PNEC 2030, already sent for the approval of the European Commission, anticipates the timeline for achieving the goal of incorporating renewable energies in electricity production. Thus, as of 2026, 80% of the energy produced in the national territory should be of renewable origin.

The impact of the war in Ukraine on the energy market and the approval of the “REPowerEU Plan” to accelerate the energy transition process and eliminate dependence on fossil fuels in EU has made the need to move quickly with a commitment to renewables even more evident.

According to the last report of the Energy Observatory, managed by ADENE – national Agency for Energy – Portugal is becoming less dependent on foreign supply, but in the EU it is still in 12th place with regards to the greatest energy dependence, and the transport sector remained the main consumer of energy, accounting for 35.4% of total final energy consumption, and therefore one of the sectors with the most CO2 emissions.

The installed photovoltaic (solar) capacity was the one that grew the most, reaching 3.9GW. Regarding the investment in offshore wind energy production, the Portuguese government prepared an Offshore Renewable Energy Allocation Plan that reserves areas along the coast of the mainland allowing for an installed capacity of 10GW by 2030.

The EU package of policies and legislative initiatives related to the climate transition and best known as the “European Green Deal” established the goal of the EU achieving climate neutrality by 2050. This goal was enacted into law by the adoption, in 2021, of the European Climate Law (ECL). Thus, it became legally binding for the EU to achieve:

- an intermediate target of reducing net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels;
- climate neutrality by 2050, through the balance between greenhouse gas emissions and removals; and

- the aim of negative emissions from 2050 onwards.

The Portuguese Climate Framework Law sets even higher goals and ambitions, not only by establishing national mitigation objectives with reference to 2005, but also by establishing the obligation for the government to study and evaluate the possibility of achieving climate neutrality by 2045. It represents a greater step towards reinforcing Portugal's commitment to achieve carbon neutrality faster, but it brings a high pressure on all the public and private players in the market to comply with these goals within the established deadlines.

Achieving climate neutrality by 2045 requires, not only the fast decarbonisation of the electricity generation system and urban mobility, but also a significant increase of the country's carbon sequestration potential.

It was after the entry into force of the Portuguese Climate Framework Law that PNEC 2030 was updated, aligning its strategic objectives with the new national targets and highlighting the potential contribution and relevance of a national voluntary carbon market (VCM).

The development of the voluntary carbon market

While EU institutions were discussing the regulation for the certification of carbon removals, yet to be published, Portugal moved faster in the approval of rules to create a regulated market at the national level through Decree-Law No 4/2024 that entered into force on 6 January 2024 and sets rules for the operation of a VCM.

This legal diploma was built upon the assumption that VCMs can play an important role in supporting greenhouse gas (GHG) emissions

mitigation efforts, promoting the accelerated decarbonisation of the economy.

The Intergovernmental Panel on Climate Change (IPCC) clearly states in its Climate Change 2022: Mitigation of Climate Change Report that “[C]arbon Dioxide Removal (CDR) is necessary to achieve net zero CO₂ and GHG emissions both globally and nationally, counterbalancing “hard-to-abate” residual emissions”.

The IPCC also validated findings suggesting that to reach climate neutrality it would be necessary to combine the reduction of emissions into the atmosphere with carbon removals and the compensation of emissions that cannot be avoided or reduced. For that purpose, it would be necessary to assure a healthy framework, gathering legal certainty, transparency and market attractiveness.

The VCM framework in Portugal is therefore approved in the belief that voluntary carbon markets, by generating economic incentives to reduce emissions or increase carbon sequestration, enhancing the cost-effectiveness of GHG mitigation measures, promoting transparency and certainty in regards to carbon projects and credits, and promoting innovation, constitute an important contribution to:

- support the achievement of national climate action objectives;
- fight greenwashing cases; and
- promote the alignment of the carbon price in the VCM with that of the regulated markets, namely of the European Trading System.

This would:

- allow the unlocking of financial resources for projects that otherwise would not be feasible,

- in line with the Paris Agreement objectives; and
- involve, and allow the participation of, various actors, public or private, in this voluntary market.

Furthermore, it would help:

- on the supply side, through the promotion of GHG emissions reduction or carbon sequestration projects generating carbon credits;
- on the demand side, through the acquisition of these credits for the purpose of offsetting residual GHG emissions or to ensure financial contributions to climate action;
- new players, such as the verification authorities that verify and validate carbon projects and credits;
- to catalyze investments from the private sector, complementing the public effort to accelerate and promote mitigation actions in the national territory; and
- to fight biodiversity loss by improving the conservation status of natural heritage and promoting the recognition of its value.

This can be especially important considering both the recommendations of the National Strategy for the Conservation of Nature and Biodiversity, which encourages the implementation of ecological restoration actions and sustainable development of coastal and marine ecosystems, and the goals set by the recently approved EU Law on Restoration of Nature, that should be published within a short period of time from the date of writing this article.

This new legal framework establishes:

- the fundamental principles, such as additionality and permanence, and the qualification criteria;

- the requirements for the generation of carbon credits;
- the types of projects – ie, reduction and sequestration projects, natural or technological based, and credits included (“carbon credits” and “carbon credits+” when they contribute to biodiversity and natural capital, and verified and future carbon credits);
- the development of methodologies and a procedure for their approval;
- the monitoring, reporting, and verifying system; and
- the creation of a public platform for registration of carbon credits from their generation to their elimination.

The challenges and the way ahead

In the last two decades, Portugal has suffered from several large forest fires that have burned considerable forested areas, in addition to high material damage and, more recently, the loss of human lives. This led to a severe reform of the legislative framework and operational proceedings to make the prevention of risks, namely the risk of wildfires, more effective.

The reforestation of the burnt areas has, however, been taking place at a slower pace than desirable and still far from restoring the situation that existed before the forest fires.

It is not surprising, therefore, that the voluntary carbon market in Portugal prioritises, in a first phase, natural-based solutions for carbon removals from forests, with a view to compensating for the GHG emissions that cannot be reduced or avoided by a specific entity in its activity (ie, its residual emissions).

Although the VCM in Portugal comprises both GHG emissions reduction projects and carbon sequestration projects developed in the national

territory, the prioritisation of nature-based solutions to also contribute to other national public policies, notably the reduction of the territory's vulnerability to the risk of forest fires and the conservation of biodiversity and natural resources, offer some challenges to be addressed.

One of the biggest challenges is the “chicken and the egg dilemma”, where, to start, how to grow a market where there is still little knowledge about carbon sequestration projects' availability on the market or about investors' willingness to wait for these voluntary carbon credits, are both issues that need addressing.

In a voluntary carbon market there is the need to already have enough projects available for investors to buy carbon credits that could be used in the short term to compensate their emissions, and at the same time there is the need to have enough investors that can compensate the project developers for their initial capital burden.

On the one hand, what drives someone or a company to develop expensive carbon sequestration projects based on afforestation and reforestation of large areas when there is still no constant and stable demand for carbon credits and there is no fixed market price?

On the other hand, how can an entity make the decision to set aside investments in their budget for carbon sequestration forestry projects when it is not known for sure whether they are sufficient to offset the necessary emissions in the short term?

These issues are all the more relevant because the sequestration of emissions through a forestry project is typically of medium or long duration when native trees or trees of greater resilience to fire are used.

The Decree-Law 4/2024, that establishes the voluntary carbon market, provides some possible pathways.

- Contrary to what is provided for in other legal regimes, the “principle of additionality” in Portuguese law does not require that the development of a project depends exclusively on the carbon market, allowing the accumulation of different sources of funding.
- On the other hand, the purchase and sale of “future carbon credits” – ie, credits issued before an actual reduction of greenhouse gas emissions, or carbon sequestration – by the project, based on an estimate, submitted by the project promoter, duly validated by an independent verifier, allows the anticipation of the use of carbon credits in the offsetting of emissions in the short term, although with the limitation of a maximum of 20% of the total credits estimated to be generated by a project.
- Finally, the methodologies that define the rules for each type of project can be submitted by any interested party to the competent authority for their approval and, when developed by it, they are always subject to prior public consultation, which allows market agents to actively participate in their regulation and anticipate a more appropriate scenario for investments.

This flexibility, however, is only possible to the extent that it is framed by a set of rules that require a robust monitoring, reporting and verifying system, based on independent verifiers, to ensure the effective carbon sequestration of the emissions declared by project promoters and, therefore, the validity of the carbon credits in terms of claims and market trading.

It should also be noted that the Decree-Law No 4/2024 provides answers for one of the topics of major concern: the vulnerability of nature-based solutions. Indeed, mechanisms are also put in place to address the exposure of nature-based projects to climate risks, such as major fires, floods or severe droughts.

When there is an unintentional reversal of sequestered emissions (eg, due to a wildfire), the promoter must cancel, in the public platform for registry, the credits generated by the project, in the amount equivalent to the reversal that occurred, which were not yet traded.

In the event that the cancelled credits are not sufficient to cover the amount of the reversal that has occurred, the promoter is in a position to resort to the planned guarantee fund and/or to resort to insurance to compensate for the credits already negotiated and missing.

Any situation of reversal of emissions that may occur over the duration of the project has no impact on the carbon credits already issued by that project that have been transacted between the promoter and third parties.

To deal with such eventualities, Decree-Law 4/2024 foresees the possibility of a promoter opting between:

- contracting an insurance policy;
- contributing to a public Guarantee Fund; or
- combining the previous two options to cover possible unintended reversals of emissions throughout the duration of the project.

In these terms, if the cancelled carbon credits are not sufficient to cover the amount of the verified reversal, the project promoter shall use one of the options identified above to compensate

the carbon credits that have been transferred and are no longer existent.

A more recent topic has been challenging the voluntary carbon market: the need to contribute to biodiversity restoration and halt the current extensive loss of biodiversity that is unnatural when compared to the usual rate of loss that is between 0.1 and 1 species per 10,000 species per 100 years, known as the “background extinction rate”. According to [Our World in Data](#), for example, “Since 1970,... the size of animal populations for which data is available [has] declined by 69%, on average.... [Although...] many populations have been *increasing* in size.” However, in terms of “biodiversity”, a crucial foundational element of the proper, healthy “running” of the planet as it is, with each life-form affecting the existence of others even to the point of mutual reliance, one or more species may increase their populations while many others go extinct, but that does not mean the planet is actually in a good state of health. For instance, humans cannot exist without other species. Without trees and such, there is no oxygen. And then there is the topic of food supply, among others. Carbon projects must not harm biodiversity and, where possible, should promote its conservation and restoration.

Projects based on extensive forestation or reforestation, or the use of faster-growing trees, allow for greater effectiveness in carbon sequestration goals, but, in the light of the principles and rules of biodiversity conservation and restoration, should not be allowed.

In turn, projects aiming to improve the conservation of biodiversity or to halt its loss might have no impact on sequestration of CO₂.

But this apparent paradox or difficulty may rather result in a win-win situation. In fact, combining carbon projects with biodiversity projects can allow for the combination of shorter-term revenues derived from the faster evolution of biodiversity actions, with longer-term revenues associated with tree growth and carbon sequestration, increasing the profitability of investments.

On the other hand, the association of carbon sequestration objectives with objectives of improvement or restoration of biodiversity can make a project more attractive in the market and with more valued prices of the credits generated.

In this regard, it should be noted that Decree-Law No 4/2024 includes a specific type of carbon credits, identified in the registry as “Carbon Credit+”, for projects which, in addition to carbon sequestration, incorporate significant additional benefits in terms of biodiversity and natural capital, provided that there is a methodology, to be developed, for determining and monitoring that benefit.

Although the effective operation of the Portuguese voluntary carbon market is still dependent on the approval of complementary regulation and administrative procedures, such as the rules for the qualification of independent verifiers and for the insurance conditions and their minimum capitals, there is already a legal framework that establishes the fundamental principles and rules so that agents in this national market can participate in the definition of methodologies for the typology of projects that are of the greatest interest and can anticipate carbon reduction and sequestration projects to be developed on the ground and generate carbon credits to offset buyers’ emissions. Those looking for a highlight within this market should consider that the objectives of effective nature conservation and restoration can be relevant in accurately valuing carbon projects.

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