IN-DEPTH

Environment And Climate Change Law

PORTUGAL

LEXOLOGY

Environment and Climate Change Law

EDITION 8

Contributing Editor

Tallat Hussain

White & Case

In-Depth: Environment and Climate Change Law (formerly The Environment and Climate Change Law Review) provides a global overview of environmental protection laws and regulations, as well as legislative and policy initiatives to combat climate change. It analyses the essential features of the legal and enforcement frameworks in major jurisdictions worldwide, while also examining the most consequential recent developments and offering an outlook for future changes.

Generated: March 1, 2024

Portugal

Assuncao Cristas, **Joao Almeida Filipe** and **Carolina Vaza**
Vieira de Almeida & Associados

Summary

Introduction

Portugal has been reinforcing its national policies in recent years to achieve carbon neutrality by 2050, in line with EU policy in this area and other cross-cutting agendas such as the United Nations Sustainable Development Goals (SDGs), especially with respect to innovation, climate change and the safeguarding of marine life.

In compliance with the provisions of the Climate Framework Law, which opens the door to achieving climate neutrality by 2045, the revision of the National Energy and Climate Plan 2030 (PNEC 2030) anticipates, within four years, reaching the goal of incorporating renewable energies in electricity production. Thus, as of 2026, 80 per cent of the energy produced in the national territory should be of renewable origin, with the aim of Portugal achieving climate neutrality by 2045. PNEC 2030 is the document that must be sent to the European Commission for the purposes of the Regulation on the Governance of the Energy Union and Climate Action.

According to the law that approved the Major Planning Options for 2023–2026, the national policy for the environment and climate change is aligned with the European Union's objectives for both the green transition pillar and the smart, sustainable and inclusive growth pillar. In this sense, Portugal's Roadmap for Carbon Neutrality 2050 (RNC 2050) and the PNEC 2030 promote the decarbonisation of the economy and the energy transition based on a model of wealth generation and efficient use of resources.

One of the policy axes for decarbonisation is the blue economy, with investment in offshore wind energy production and the sustainable exploitation of marine resources, along with the creation of marine protected areas. In this context, the environmental assessment regime applicable to maritime space allocation plans for its social, environmental and economic use was clarified. Accordingly, 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.

To promote the accelerated decarbonisation of the economy, a legal regime for the operation of a voluntary carbon market in Portugal was also approved, prioritising in a first phase natural-based solutions for carbon removals from forests, with a view to compensating for the greenhouse gas (GHG) emissions that cannot be reduced or avoided by a specific entity in its activity (i.e., its residual emissions). This scheme entered into force on 6 January 2024, and the transaction of carbon credits will be assured through an electronic platform that is still to be developed.

Year in review

In 2023, legislation was approved at the national level for the administrative simplification of licensing in the fields of the environment, green public procurement, water resources use and waste management.

March 2023 saw the entry into force of the 'Environmental Simplex',[2] a regime aimed at eliminating unnecessary permits and simplifying the environmental licensing procedure, especially with respect to environmental impact assessments and water resources permits. It amends 14 legal regimes, including those relating to air emissions, water resources, and

nature and biodiversity conservation, therefore providing for measures with cross-cutting impact and applicable to all administrative activity.

As regards green public procurement, the National Strategy for Public Procurement has been updated in line with EU policy in this area and in compliance with the Climate Framework Law. The aim is that public administration contributes more to the fulfilment of the objectives of environmental policies, influencing the behaviour of companies within the model of sustainable economic development. To this end, ecological criteria applicable to public procurement procedures promoted by entities under the direct and indirect administration of the state, including state-owned companies, have been defined. In this regard, we note that the Climate Framework Law provides for preference for the contracting of services that comply with the principles of the EU taxonomy on environmentally sustainable activities.

Regarding the water sector, the legal regime for the use of water resources has been amended, and the legal regime for water quality has been approved in line with European directives. Considering the situation of prolonged drought that has affected Portugal in recent years, the Regional Water Efficiency Plans for the Algarve and Alentejo regions addressed concrete concerns. These Plans seek to reduce the pressure on the use of surface and groundwater by determining the constraints on water consumption, especially for industrial and agricultural purposes. They also present estimates of current and future water availability for each zone, indicating the alternative water sources that should be promoted in each, including desalination plants and water for reuse.

Also noteworthy is the approval of comprehensive amendments to the general framework on waste management, to the legal regime for the landfilling of waste and to the regime for the management of specific waste streams subject to the principle of extended producer responsibility (all pending to be published), as well as the approval of the Strategic Plan for Urban Waste 2030 (PERSU 2030), the Strategic Plan for Non-Urban Waste and the National Waste Management Plan 2030.

Legislative framework

The environment has constitutional protection under the Portuguese legal system. The Constitution consecrates the defence of nature and the environment and the preservation of natural resources as a fundamental task of the state, which is responsible for preventing and controlling pollution and promoting balanced socio-economic development and the enhancement of the landscape, as well as the rational use of natural resources based on the principle of intergenerational solidarity.

From a legislative and regulatory standpoint, the environmental framework originates from three main sources: (1) international treaties or conventions; (2) EU regulations, directives and delegated acts; and (3) domestic law.

Portugal has ratified the main treaties and conventions on environmental protection and climate change, but the primary source of environmental legislation is the European Union. Accordingly, the central environmental legal regimes applicable in Portugal derive from European regulations (which are directly enforceable in the national legal system) or directives (whose enforceability depends on their enactment into Portuguese law).

From a domestic law perspective, it is primarily up to Parliament to legislate, through laws; however, the government can also legislate with the authorisation of Parliament or in the exercise of its own powers, through decree-laws. The autonomous regions of the Azores and Madeira may also legislate at the regional level on matters within their competence or on matters authorised by the national Parliament, through regional legislative decrees. All legislative acts, laws, decree-laws and regional legislative decrees, as well as the legal instruments for their regulation, are published in the Portuguese Official Gazette.

Regulatory oversight

i Portuguese Environment Agency

The Portuguese Environment Agency (APA) is a public institution under the supervision of the Minister of the Environment and Climate Action. It has its headquarters in Lisbon, with a decentralised management structure in the five river basin districts of mainland Portugal (North, Centre, Lisbon and Tagus Valley, Alentejo and the Algarve). APA plays a decisive role in the proposal, development and implementation of environmental policies, particularly with respect to the fight against climate change, the management of water resources, integrated coastal zone management, waste, ozone layer protection and air quality, soil restoration and enhancement, integrated pollution prevention and control, noise, the prevention of serious industrial risks, environmental and public safety, eco-labelling, eco-procurement, voluntary environmental management schemes, environmental impact assessments, and the environmental assessment of plans and programmes.

APA exercises the powers of the state authority in the area of water resources, namely in respect of (1) the voluntary or compulsory assessment and collection of fees; (2) the enforcement of decisions of authority; (3) the defence of public property under its administration; (4) the prevention and control of infringements, and the application of penalties for illegal activities relating to water resources, in accordance with the applicable legislation; and (5) the recognition of legal capacity for the purposes of establishing civil liability for repairing damage caused to the environment or to the general interests of nature conservation and biodiversity.

ii Institute for Nature Conservation and Forests

The Institute for Nature Conservation and Forests (ICNF) is a public institution under the supervision of the Minister of the Environment and Climate Action. It has its headquarters in Lisbon, with a decentralised management structure in the five regions of mainland Portugal (North, Centre, Lisbon and Tagus Valley, Alentejo and the Algarve).

ICNF is the national authority for nature and biodiversity conservation and the national forest authority. It is responsible for proposing, developing and ensuring the execution of policies in those domains and for managing the national network of protected areas and the implementation of the Natura 2000 network, which includes marine protected areas.

iii Directorate-General for Natural Resources, Safety and Maritime Services

The Directorate-General for Natural Resources, Safety and Maritime Services (DGRM) is subject to the joint control of the Minister of the Economy and the Sea, the Minister of Agriculture and Food, and the Minister of Infrastructure.

Its mission is to execute the policies for preservation and knowledge of natural marine resources, for fisheries and aquaculture, the transformation industry and related activities, and the development of maritime safety and services, including the maritime ports sector. Its competencies include the authorisation and licensing of structures and productive activities relating to maritime fishing and aquaculture, the exercise of its functions regarding the prevention of pollution from ships, and the licensing and inspection of the use of waters located in protected marine areas. DGRM is the entity responsible for maritime spatial planning and management at the national level and plays a central role in both the public procedures for the allocation of maritime space to certain predetermined activities offshore and the private procedures for the allocation of maritime space for private use through concessions, licences and authorisations.

iv Regional Spatial Planning Commissions

The five Regional Spatial Planning Commissions in mainland Portugal (North, Centre, Lisbon and Tagus Valley, Alentejo and the Algarve) are public institutions under the supervision of the Minister of Territorial Cohesion.

Their task is to implement, evaluate and supervise public policies essential for regional development, including in the fields of the environment and nature conservation, as well as to oversee the necessary environment assessment processes.

They are the one-stop shop for licensing requests when multiple state entities are involved.

They exercise the powers of the state authority, particularly regarding the recognition of legal capacity for the purposes of establishing non-contractual civil liability for damage caused to the environment.

v Water and Waste Services Regulatory Authority

The Water and Waste Services Regulatory Authority (ERSAR) is an independent administrative agency in the sphere of competence of the Ministry of the Environment and Climate Action but is not subject to government control.

Within the scope of its regulatory power, ERSAR drafts and approves regulations, notably regarding quality of service, business relations and the approval procedures for products in contact with water intended for human consumption.

It exercises the powers of the state authority through inspection, supervision and auditing.

vi General Inspectorate for Agriculture, Sea, Environment and Spatial Planning

The General Inspectorate for Agriculture, Sea, Environment and Spatial Planning (IGAMAOT) is subject to the joint control of the Minister of the Environment and Climate

Action, the Minister of Agriculture and Food, the Minister of the Economy and the Sea, and the Minister of Territorial Cohesion.

IGAMAOT carries out systematic inspections and internal audits of all activities and all entities, whether public or private, in matters of environmental impact, including those relating to compliance with tax rules on environmental fees and contributions. It has the competence to bring, instruct and decide on environmental misdemeanour proceedings and, in its capacity as a criminal police body, it assists the Public Prosecutor's Office in the investigation of environmental crimes.

Enforcement

The Climate Framework Law recognises the right of all citizens to climate balance, which consists of the right to demand that public and private entities comply with their duties and obligations regarding climate change, including the right to request the immediate cessation of any activity threatening or causing damage to the climate balance. In general terms, the right to intervene and participate in administrative procedures relating to climate policy and the full and effective protection of legally protected rights and interests in climate policy are recognised, including the right to popular action and the right to promote the prevention, cessation and remediation of risks to the climate balance.

The Environmental Framework Law establishes the principles of prevention and precaution, responsibility and polluter pays, which are operationalised through the Environmental Liability Regime, which transposes Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability regarding the prevention and remedying of environmental damage. This regime lays down a system of administrative liability for damage caused to the environment (or its imminent threat) resulting from an occupational activity listed in Annex III of Decree-Law No. 147/2008, as amended. Therefore, any public or private person who carries out an occupational activity in those terms and causes environmental damage (or its imminent threat) is required to take preventive measures as indicated by the competent authority. It should be noted that a system of joint and several liability, both between co-participants and between legal persons and their respective directors, managers or administrators, is established. A system of subjective and objective civil liability is also established. Under this system, operator polluters are obliged to compensate injured persons for damage suffered by means of an environmental component.

Damage to the environment and to nature conservation interests may also give rise to criminal liability, with individuals and companies being liable for environmental crimes and crimes against nature conservation. The Portuguese Penal Code covers crimes against nature (e.g., destruction or capture of specimens of protected species of wild fauna or flora or destruction or significant deterioration of natural habitats or seriously affecting subsoil resources), of pollution (e.g., pollution of the air, water or soil), of dangerous activities to the environment (e.g., shipments of waste in breach of Regulation (EC) No. 1013/2016 on waste shipments), and of pollution with common danger (e.g., pollution of the air, water or soil causing danger to life, to the physical integrity of others, to the property of others with a high value or to cultural heritage).

Reporting and disclosure

The Climate Framework Law requires the state to prepare a national inventory of anthropogenic emissions by sources and removal by sinks of GHG. It also recognises the right of all citizens to climate balance, which consists of the right to demand that public and private entities comply with their duties and obligations regarding climate change. The Environmental Liability Regime also provides that all interested parties may submit to the competent authority observations of situations of environmental damage (or its imminent threat) that they have become aware of, with the right to request its intervention. According to this regime, and in the implementation of the precautionary principle, the economic operator will have to immediately inform APA of any imminent threat of environmental damage and of the prevention measures adopted and their success.

The protection of whistle-blowers has been enshrined in law since 2022 and covers the reporting of infringements relating to environmental protection. Companies with more than 50 employees must have internal reporting channels. This rule also applies to branches in Portugal of companies headquartered outside the country. The right to confidentiality and to legal protection is guaranteed, as is the prohibition of any retaliation against the whistle-blower (i.e., acts motivated by the whistle-blowing that may cause material or non-material damage to the whistle-blower). Fines are established for the violation of these rights, ranging from €1,000 to €250,000 for companies and from €500 to €25,000 for individuals.

The Climate Framework Law established obligations for commercial companies, which must now consider climate change and incorporate climate risk analysis in their decision-making processes. Companies must also assess, for each financial year, the economic, environmental and social dimensions, as well as the carbon impact, of their activity. This assessment shall be included in their management reports. The duties of care, loyalty and management reporting and accountability of managers or directors and members of governing bodies with oversight functions should include prudent consideration of and transparent information sharing on the risks that climate change poses to the business model, capital structure and assets of companies. Under the Portuguese Commercial Companies Code, it is defensible that failure to comply with these new legal obligations and duties may give rise to the liability of managers and directors for damage caused to the respective company. In relation to the financial system, the Climate Framework Law determines that failure to consider climate risk and the impact on climate in the financing decisions of public and private agents and institutions constitutes a violation of fiduciary duties. Lack of transparency or the non-sharing of information constitutes an inappropriate sale under the Markets in Financial Instruments Regulation.

Environmental protection

i Air quality

The legal regime applicable to the assessment of air quality is set forth under Decree-Law No. 102/2010 of 23 September, enacting Directive (EU) 2015/1480 of 28 August 2015 of the European Parliament and of the Council laying down the rules concerning reference methods, data validation and location of sampling points for the assessment of ambient air quality. Under this legal framework, air quality must be assessed taking into consideration

the following: (1) division of the Portuguese territory into zones; (2) specific measurements, modelling and other empirical techniques according to the air quality level of the zone and the population; (3) sampling strategy considering assessment techniques, in accordance with established criteria and the quality control and assurance requirements; and (4) disclosure of air quality information to the public.

As regards emission limit values and the licensing of installations and sources of emissions, two legal regimes should be highlighted: (1) the Industrial Emissions Regime, which enacted Directive 2010/75/EU; and (2) Decree-Law No. 39/2018, regarding the prevention and control of pollutant emissions. In addition to these, specific Ministerial Orders were approved, defining the emission limit values for sectoral application, the emission limit values applicable to other sources not covered by those provided for sectoral application and the height of chimneys.

For combustion installations with a capacity greater than 50MW, the applicable emission limit values are those foreseen in the Industrial Emissions Regime.

Under Decree-Law No. 39/2018, (1) combustion installations with a rated thermal input ranging between 1MW and 50MW (medium combustion installation (MCI)); (2) complexes of new MCIs, unless the installation is already covered by Chapter III of the Industrial Emissions Regime; and (3) industrial activities, under the terms set out in Part 2 of Annex I to this Decree-Law, are subject to an air emissions title (TEAR). This title is integrated into and is part of the single environmental title; however, by virtue of the amendments introduced by Decree-Law No. 11/2023, it is waived for installations holding a single environmental title, which are already included in the scope of the Industrial Emissions Regime.

Both of the above-mentioned legal regimes foresee the operator's obligation to monitor the emission limit values and to communicate the results to APA.

The operation of such installations without the necessary TEAR or those in breach of the emission limit values contained in an environmental licence issued under the Industrial Emissions Regime constitutes environmental misdemeanours, entailing the application of fines, along with possible ancillary penalties.

Finally, we highlight that 'damage caused to the air' is not expressly foreseen in the environmental liability legal regime.

ii Water quality

Decree-Law No. 69/2023 establishes the legal framework for the quality of water intended for human consumption and brings some novelties, including the introduction of new parameters in the list of parametric values, such as Legionella disease; the definition of minimum principles and requirements for the selection of the products to be used in the treatment of water and materials to be applied in infrastructure to be developed until January 2025, by regulation of ERSAR; and risk assessment and management focused on the three main components of the supply chain: the water abstraction areas of points intended for human consumption, public supply systems and land distribution systems.

Decree-Law No. 119/2019, which establishes the legal scheme for water production and its subsequent reuse, obtained through treatment, was amended by Decree-Law No. 11/2023 with the aim of simplifying procedures for licensing the reuse of treated wastewater.

APA is the entity responsible for the attribution of permits (licence, concession or authorisation) for the use of water resources and for the occupation of the public hydric domain under the Water Law (Law No. 58/2005) and the Legal Framework for the Use of Water Resources (Decree-Law No. 226-A/2007). Depending on the specific uses of water at stake (e.g., for human consumption or for agriculture), different quality standards will be applicable. Also in this regard, we highlight Decree-Law No. 306/2007 on water quality for human consumption, amended by Decree-Law No. 152/2017. This regime establishes rules for water quality control techniques, defines new parameters and clarifies certain situations, such as the procedure for exemption from control of pesticides.

iii Chemicals

The Portuguese legal framework for chemicals and hazardous substances has a robust European basis. Accordingly, it was broadly established with reference to Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (the REACH Regulation) and Regulation (EC) No. 1272/2008 regarding Classification, Labelling and Packaging (the CLP Regulation), and then further developed by additional specific instruments, by reference to the type of use of the substances and mixtures, namely persistent organic pollutants, biocides, phytopharmaceuticals, pharmaceuticals and cosmetics.

With the aim of regulating the risk management of chemical products throughout their lifespan, and of adapting and developing the obligations defined in the aforementioned instruments, from a national perspective, it is worth highlighting the following legal regimes:

1. Decree-Law No. 82/2003 (as amended) approves Regulations for the Classification, Packaging, Labelling and Safety Data Sheets of Dangerous Mixtures: Under this legal framework, the classification, labelling and packaging of substances and mixtures are considered a condition for their placement on the market. In addition, this Decree-Law establishes an obligation on the individuals and companies responsible for the market placement of a mixture preparation considered dangerous due to its effects on health or its physical–chemical effects to provide information to the Directorate-General for Economic Activities, to the Poisons Information Centre and to the National Institute for Medical Emergency, thus enabling a response to any medical request that may arise.
2. Decree-Law No. 293/2009 ensures the implementation and execution of the obligations arising from the REACH Regulation, transposes Directive 2006/121/EC to adapt it to the REACH Regulation, guarantees the execution of Article 55 of the CLP Regulation and partially enacts Directive 2008/112/EC: This Decree-Law designated APA, the Directorate-General of Health and the Directorate-General for Economic Activities as the competent authorities under the REACH Regulation for risks to the environment, risks to human health and socio-economic impacts, respectively. Moreover, IGAMAOT, the Food and Economic Safety Authority and the Tax Authority were designated as competent for monitoring compliance with the REACH Regulation.
3. Decree-Law No. 98/2010 establishes the regime for the classification, labelling and packaging of hazardous substances for human health or the environment, taking into consideration their placement in the market, transposes Directive 2006/121/EC

to adapt it to the REACH Regulation, guarantees the execution of Article 55 of the CLP Regulation and partially enacts Directive 2008/112/EC: This Decree-Law sets out requirements for the classification, packaging and labelling of hazardous substances or mixtures, as well as specific obligations and conditions for their placement in the market, such as the prohibition of advertising any substance classified in one or more categories of danger, without an express mention of the substance. Failure to comply with the obligations relating to chemicals and hazardous substances and mixtures constitutes an environmental misdemeanour, entailing the application of fines, along with possible ancillary penalties.

iv Solid and hazardous waste

A decree-law was approved to comprehensively revise the regime for the management of specific waste streams subject to the principle of extended producer responsibility, the general regime for waste management and the legal regime for the disposal of waste in landfills. The aim is to ensure the support and promotion of innovation and the development of new products from waste, as well as the simplification of licensing procedures. This new regulatory framework is expected to be published shortly and to come into force in 2024.

Until its publication and subsequent entry into force, the framework applicable to waste-related matters is set forth by Decree-Law No. 102-D/2020, which was recently amended by Decree-Law No. 11/2023, which establishes measures to reduce burdens, eliminate licensing and simplify administrative procedures for companies.

As the national waste authority, APA is responsible for ensuring and monitoring the implementation of the National Waste Strategy 2030, which was recently approved by Resolution No. 31/2023. It is also responsible for licensing and monitoring waste management activities, issuing technical standards and carrying out the operational and administrative control of waste shipments within the national territory. It additionally ensures the validation of the information necessary for the application of the economic and financial regime of waste management: the waste management fee. The Commissions for the Coordination of Regional Development (CCDRs) are the regional waste authorities, which have competences in waste management matters falling within their territorial jurisdiction. Thus, both APA and CCDRs are licensing entities for waste management activities.

Lastly, we note the approval, during 2023, of PERSU 2030 (Resolution No. 30/2023) and the Strategic Plan for Non-Urban Waste (Resolution No. 127/2023).

v Contaminated land

A specific legal framework for the prevention of soil contamination and soil remediation in Portugal is still pending approval.

As such, the prevention of soil contamination is currently regulated by the various environmental legal regimes, namely the environmental liability framework, the framework for the licensing of economic activities, the general rules on disposal of hazardous waste and waste management, and specific provisions of the environmental licensing legal regime.

With specific regard to soil remediation operations, the applicable framework is provided under the General Waste Management Regime, which determines that soil remediation operations are subject to a previous licensing procedure before the regional waste authorities (i.e., the relevant CCDR).

From a soft law perspective, APA has published technical guides and recommendations for the prevention of soil contamination and for soil remediation, with specific guidelines for operators on (1) the assessment of soil quality where a potentially contaminating activity is being carried out or has been carried out, (2) the assessment of risk and criteria for determining acceptability, and (3) guiding elements to be considered in each of the different phases of general soil quality assessment and remediation, and in the reports to be prepared by operators.

From an environmental liability standpoint, it is important to highlight the two main guiding principles on which the liability for soil contamination is based. On the one hand, there is the polluter pays principle, which determines that the individuals or companies responsible for causing pollution or environmental damage shall be held liable and must carry out (and bear all costs associated with) the repair of the damage caused, including any necessary clean-up actions, adopting all measures to prevent further threats and damage to the environment. On the other hand, there is the principle of recovery, according to which the individuals or companies causing environmental damage are obliged to restore the state of the environment (i.e., restore its natural situation prior to the occurrence of the harmful event).

Accordingly, and despite the concept of damage caused to the soil being defined under the Portuguese Environmental Framework Law as a contamination event posing a significant risk to human health due to the direct or indirect introduction of substances, preparations, organisms and microorganisms into the soil or onto its surface, in 2011, APA issued non-binding guidance on the assessment of imminent threat and environmental damage under the Environmental Liability Regime. This instrument provides guidance on how to assess damage to soil and soil contamination situations, including prevention measures, risk analysis, and repair and monitoring plans.

Notwithstanding the cornerstone principals upon which the Environmental Liability Regime is built, landowners are not required to investigate or assess the contamination level of their property under the existing Portuguese framework. However, some municipalities have started to include specific provisions in their municipal zoning plans requiring a site risk assessment, before the attribution of urban licensing, for plots of land that, due to past activities, are considered likely to be contaminated with substances that might be hazardous to human health or the environment. In cases where a proven risk situation is at stake, certain municipalities go further, requiring the drafting and execution of a decontamination plan to restore the environment to an acceptable condition.

Climate change

The Roadmap for Carbon Neutrality 2050 and the National Energy and Climate Plan 2030 are the planning instruments contributing to the reduction of GHG emissions. Additionally, from a regulatory standpoint, the European Emissions Trading Scheme (ETS) comprises the cornerstone of the policy to combat climate change, being a key tool for reducing GHG emissions.

Decree-Law No. 12/2020 establishes the legal framework for European GHG emission allowance trading for the period 2021–2030, enacting Directive 2018/410/EU, amending Directive 2003/87/EC. From 2021, the rules for adjusting the annual amounts of emissions allowances to be allocated free of charge consider both increases and decreases in production. They also provide for the optional exclusion from the ETS of installations with low emissions (up to 25,000 tonnes CO2eq), provided that they are subject to measures allowing an equivalent contribution to emission reductions, or with a very low level of emissions without being subject to any equivalent measure.

An emission permit allows for the issuance of 1 tonne of carbon dioxide (CO2) equivalent. Emission allowances are, by default, subject to auction, and the revenues generated and allocated to Portugal are included in the Environmental Fund, which aims to support environmental and climate action policies for the pursuit of the SDGs, having provided financial support in 2023, including for renewable energies with a focus on the production of hydrogen and other gases of renewable origin.

The allocation of allowances free of charge to avoid shifting production to countries where emission restrictions are less stringent has been reduced and is generally expected to end by 2030. In this regard, it is worth mentioning the recently created Carbon Border Adjustment Mechanism, established by Regulation (EU) 2023/956 of 10 May 2023, which aims to impose a carbon price on certain goods imported into the European Union, guaranteeing an equivalent carbon price between the imported product and the same product produced in the European Union.

In November 2023, the regime for the operation of a voluntary carbon market in Portugal was also approved, prioritising in a first phase natural-based solutions for carbon removals from forests, with a view to offsetting GHG emissions by entities for the residual emissions of their activity (i.e., emissions that cannot be reduced or avoided). This scheme is expected to enter into force in early 2024, following which the development of the digital platform for the transaction of carbon credits will be required.

For the purposes of monitoring emissions, APA publishes the national inventory of GHG emissions, thus facilitating national compliance with the targets set. This inventory is prepared annually, with the most recent inventory being from 2022. It provides information in accordance with the requirements of the Climate Framework Law, notably regarding emissions and compliance with the targets of national mitigation policies.

Lastly, it should be noted that although the Portuguese Climate Framework Law is aligned with the European Climate Law, it states the obligation to provide studies supporting the raising of ambition to reach climate neutrality by 2045. The Portuguese government has been especially vocal in assuming this goal.

Outlook and conclusions

The acceleration of the decarbonisation of the economy, particularly for energy transition, remained the driver of the major legislative changes occurring in 2023. The revision of the PNEC 2030, along with the execution of the Climate Framework Law provisions, set the mood and pace of this transformation, anticipating within four years the goal of incorporating renewable energies in electricity production and setting 2045 as the national target date by which climate neutrality should be achieved.

Therefore, the main regimes approved have brought clarification and simplification to the procedures relating to environmental licences and authorisations, with the aim of speeding up the implementation and execution of important projects that can contribute to decarbonisation targets in the coming years. A voluntary carbon market was also regulated to contribute to this purpose.

On the other hand, the growing environmental, social and governance (ESG) framework within the European Union is putting significant pressure on the commitment of companies with decarbonisation and environmental (and social) concerns. Although targeted directly only at big companies and the financial and banking system, the ESG framework, which is based on a whole value chain approach, relies on these big players to disseminate the obligations, as can be easily observed in the Scope 3 carbon disclosure obligations.

The European Taxonomy, the Sustainable Finance Disclosure Regulation, the Corporate Sustainability Reporting Directive, which is currently awaiting transposition to national jurisdictions, and the forthcoming Corporate Sustainability Due Diligence Directive, which is still pending approval, among others (notably the Capital Regulation Requirements for the banking sector), create a very robust ecosystem to drive change. Their effectiveness, notably the capability to drive change also for small and medium-sized enterprises (in relation to which a 'light' EU taxonomy is envisaged), is the main challenge, but there are few doubts that the path to achieving the Paris Agreement commitment is clear. Sectoral legislation, as explained before, combined with the cross-cutting ESG framework, together with financial incentives (namely, public subsidies) and disincentives (see the Carbon Border Adjustment Mechanism), are leading the way to real change, which can already be observed.

Endnotes

1. Assunção Cristas is of counsel, João Almeida Filipe is a principal consultant and Carolina Vaz is an associate at Vieira de Almeida. Back to section

2. Please note that a part entered into force in January 2024. Back to section

Assuncao Cristas acr@vda.pt
Joao Almeida Filipe jdaf@vda.pt
Carolina Vaza cvs@vda.pt

Vieira de Almeida & Associados

Read more from this firm on Lexology