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# ESG 2025

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## **Portugal: Law & Practice and Trends and Developments**

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## Law and Practice

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## 1. Introduction

### 1.1 General ESG Trends

In the last few years, European lawmakers have continued to improve the European Union ESG frameworks by adopting important ESG legal acts that could be considered a roadmap for all stakeholders on ESG issues. Late 2024 and the whole of 2025 represent for the first time a slowdown in the European ESG agenda. It is still too early to decide if this represents a downside, as the legal discussion is ongoing.

Following the Draghi Report, in response to concerns over complexity in sustainability regulation, the European Commission introduced the [Omnibus Simplification Package](#), a proposal aimed at streamlining corporate sustainability reporting while maintaining the EU's sustainability goals. Its first draft was released in February 2025. It brings amendments and clarifications to the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CSDDD), the Carbon Border Adjustment Mechanism (CBAM) and the EU Taxonomy Regulations.

The aim is to create conditions for a more competitive economy by reducing the administrative burden on businesses and promoting a more favourable environment for business and investment in Europe. One of the measures involves reducing the levels of information required from smaller companies, such as small and medium-sized enterprises (SMEs) and mid-cap companies, which are part of the value chains of large companies.

### The Corporate Sustainable Reporting Directive (CSRD)

One of the most anticipated legal regimes, the CSRD, which replaced the Non-Financial Reporting Directive, was adopted at the end of 2022 and came into effect in January 2023. Mandatory reporting obligations cover approximately 50,000 companies and are applicable to both EU and non-EU companies that meet the target number of employees and annual turnover. The first reporting period started in 2025 with information for the 2024 financial year. This first wave is limited to large public-interest entities with more than 500 employees. The inclusion of other companies was then postponed for two years by the so-called Stop-the-Clock Directive of April 2025. In any case, Portugal has not yet transposed this directive, and it is expected that this will only occur once the new text is approved.

### The European Sustainability Reporting Standards (ESRS)

The ESRS regulation was also adopted during 2023 as the unified instrument for CSRD reporting obligations. Unlike the CSRD, which needs transposition into national legislation (which has not yet occurred in Portugal), the ESRS can be applied directly to the member states. Consequently, companies started reporting according to the calendar stated by the CSRD, despite the omission of the national legal transposition act. The reporting standard has set a list of specific information that companies must disclose regarding their material impacts, risks and opportunities in environmental, social and governance matters. The ESRS consists of two cross-cutting matters and ten thematic standards that cover ESG issues. The



European Commission is also preparing a review of the ESRS in the context of the OMNIBUS I simplification package. For now, it has only approved and published the so-called Quick-Fix Directive, which adjusts the calendars on the annexes for the “first-wave companies”.

## **The Corporate Sustainability Due Diligence Directive (CSDDD)**

Discussions on the CSDDD started in 2022 and the directive finally came into force in July 2024. The CSDDD represents a major step as it imposes a due diligence obligation on companies, which are obliged to identify, mitigate and report on the impact of their own operations and supply chain on human rights and the environment. This is another directive covered by the OMNIBUS I simplification package. Under the Stop-the-Clock Directive, member states have two extra years for transposition, and several material changes have been proposed by the European Commission. It is still unclear what final version will be approved by the European Commission, Parliament and Council – especially considering doubts about the maintenance of this directive.

## **The Regulation on European Green Bonds**

On the financial side, the Regulation on European Green Bonds, adopted in 2023, aims to address the challenge of increasing financial flows towards green technologies and energy-efficiency projects. This regulation creates an effective financial instrument for investors, thereby contributing to the fight against climate change and having a positive impact on society and the environment. Early market feedback indicates that large issuers, especially in the energy sector, have led the way, but smaller entities face higher compliance costs and capacity constraints. Overall, this regulation has accelerated the growth and credibility of Portugal’s green bond market, but full market adaptation is ongoing, with further regulatory guidance and capacity-building expected in the coming years.

## **The Regulation on the Transparency and Integrity of ESG Rating Activities**

The new Regulation on the Transparency and Integrity of ESG Rating Activities was published in December 2024. It recognises a general legal regulatory approach to strengthening the principles of the reliability, trans-

parency and credibility of an ESG rating by setting specific rules of organisation and conduct for ESG rating providers. The regulation will apply from 2 July 2026 and is directly applicable to member states.

## **1.2 Environmental Trends**

### **The Regulation on Deforestation-Free Products (EUDR) and the Nature Restoration Law**

As a member of the EU, Portugal implements all EU legislation. A few examples of the development of EU legal acts in parts of the environment can be highlighted, such as the Regulation on Deforestation-Free products (EUDR) and the Nature Restoration Law which were adopted recently. Both legal regimes aim to protect nature and biodiversity.

### **The Regulation on Wastewater Management**

The EU is taking an important step towards achieving its “Zero Pollution” ambition, with the revised Urban Wastewater Treatment Directive due to come into force on 1 January 2026. The new rules will further protect human health and the environment from harmful discharges of urban wastewater and ensure cleaner rivers, lakes, groundwater and coasts across Europe.

### **Directive (EU) 2024/3019 Concerning Urban Wastewater Treatment**

Adopted on 27 November 2024, this directive introduces stricter rules on micropollutants, aiming to address growing concern about the environmental impact of micropollutants in urban wastewater, with a specific focus on the pollutants generated by the pharmaceutical and cosmetics industries. It complements upstream measures like the environmental risk assessment (ERA) for medicinal products, which focuses on preventing the entry of pharmaceuticals into the environment in the first place. With its entry into force on 1 January 2025, this directive already provides for the simultaneous application of some of its provisions, with several obligations that have to be fulfilled and reported to the European Commission by the end of 2027. The challenge of transposing it into national legislation until 31 July 2027 remains pending.

## Decree-Law No 11/2023

At the national level, one of the main environmental legislations recently approved was related to administrative simplification of licensing in the fields of the environment, green public procurement, water resources use and waste management, through the approval of Decree-Law No 11/2023.

## Parliament Resolution No 127/2025

Still at the national level, this very recent resolution approved an update to the Portuguese National Energy and Climate Plan 2021–2030. As part of this review, some objectives were updated in the areas of decarbonising the national economy, prioritising energy efficiency, promoting sustainable mobility, strengthening the commitment to renewable energies, and reducing the country's dependencies.

## The National Strategy for 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 (Law No 98/2021), which provides for preference for the contracting of services that comply with the principles of the EU Taxonomy on environmentally sustainable activities.

## Decree-Law No 69/2023

Decree-Law No 69/2023 established the legal framework for the quality of water intended for human consumption, in line with European directives.

## Management of Waste

Finally, comprehensive amendments to waste management legislation were approved (including the legal regime for the landfilling of waste and the regime for the management of specific waste streams, subject to the principle of extended producer responsibility), as well as the Strategic Plan for Urban Waste 2030 and the Strategic Plan for Non-Urban Waste and the National Waste Management Plan 2030.

## 1.3 Social Trends

In 2024, Portugal's social ESG landscape shifted from establishing frameworks to emphasising enforcement and transparency. The authorities have intensified inspections and sanctions on key social issues, notably addressing misclassification through mass

notifications to regularise economically dependent self-employed workers, ensuring gender pay-gap compliance, and enforcing hiring quotas for persons with disabilities. Employers have also expanded anti-harassment policies and well-being initiatives, reflecting a broader European trend towards comprehensive ESG compliance.

## Regulatory Framework

In regard to regulations and legislation, Portugal has continued to advance gender equality and regulations that are non-discriminatory. This includes measures to ensure equal pay, reinforce anti-discrimination laws, and promote female representation in corporate leadership roles. The existing regulatory framework has seen enhanced monitoring and enforcement mechanisms this year.

In turn, Portuguese companies have been making an effort to comply with inclusion regulations, namely, concerning disabled people.

In matters of harassment at work, employers have been putting in place codes of conduct and regulations on the prohibition and prevention of such behaviours, which encompass not only victims, but also witnesses and whistle-blowers.

Measures taken for parenthood protection and work-life balance were mostly in view of employees' mental health and engagement, with the development and enforcement of more regulations on absences from work, flexible schedules, and social benefits, among others.

The Portuguese government has put forward new regulations aimed at improving working conditions. This includes stronger enforcement of labour rights, increased minimum wages, and more stringent rules on temporary and precarious employment.

Finally, Directive (EU) 2023/970 of the European Parliament and the Council of 10 May 2023, to be transposed by 7 June 2026, addresses the subject of equal treatment between men and women in the workplace – a topic that is not new, but which has gained new drive with the publication of this directive. The directive imposes various obligations on companies

regarding pay transparency for both employees and job applicants, and is driving companies to improve data collection and transparency on social issues.

It is also worth noting that parental leave and work-life balance are topics the Portuguese government is looking into, notably with studies on extending parental leave and addressing gender discrimination in the labour market, with several legislative initiatives and policy proposals expected to impact employment in the coming year. Proposed amendments to the Labour Code are very extensive and, given the recent combination of parliamentary forces, structural changes to the Portuguese labour framework can be expected.

### Inspections and Reporting

Labour authorities intensified inspections on gender pay gaps, quotas for disabled workers, and compliance with anti-discrimination and harassment laws. This trend is expected to continue, with a likely rise in court disputes and enforcement actions.

### Gender equality and pay-gap reporting

Portugal continued to strengthen its legal framework for gender equality. In 2024, the Authority for Labour Conditions (*Autoridade para as Condições do Trabalho* – ACT) and the Commission for Equality in Labour and Employment (*Comissão para a Igualdade no Trabalho e no Emprego* – CITE) intensified inspections and enforcement, notifying thousands of companies to address pay disparities and submit evaluation plans.

### Misclassification of economically dependent self-employed workers

At the beginning of February 2024, the Labour Authority notified 9,699 employers to regularise the employment status of 17,701 economically dependent self-employed workers (ie, service providers who perform 80% or more of their work for a single entity). By May, the Labour Authority reported that 19% of the hiring entities had regularised approximately 2,400 economically dependent self-employed workers and highlighted the preparation of 130 reports to the Public Prosecutor's Office.

### Quotas for people with disabilities

On 22 July 2024, the Labour Authority announced that it would begin a nationwide inspection campaign, starting in September 2024, which would continue until the end of the first quarter of 2025, to verify compliance with the employment quota for people with disabilities as defined in Law No 4/2019, of 10 January. This law establishes an employment quota system for people with disabilities with a degree of disability equal to or greater than 60%.

### Case Law Developments

When it comes to case law, several notable cases on labour rights have been brought before the Portuguese courts in relation to unfair labour practices, including unjustified dismissals, workplace harassment, and violations of term contract. Notable cases addressed discrimination based on gender, race, and sexual orientation, reinforcing the importance of inclusive and equitable work environments.

The outcomes of these cases are shaping employer practices and reinforcing the importance of adhering to fair labour standards, with courts upholding the need for robust employer policies and protections for both victims and whistle-blowers.

Portuguese courts have also seen an increase in cases related to employee data privacy, due to the enforcement of the General Data Protection Regulation (GDPR) across the EU. Companies are being held accountable for misuse or mishandling of personal data, emphasising the importance of robust data protection measures in the workplace.

The cases are mostly related to:

- discrimination, with significant cases related to workplace discrimination based on gender, race and sexual orientation – the rulings in these cases are helping to build a more inclusive and equitable work environment in Portugal; and
- worker safety, with occupational health and safety violations being most prominent – companies found negligent in ensuring a safe working environment have faced substantial penalties, underlining the critical importance of health and safety protocols.

## 1.4 Governance Trends

Despite the uncertainty introduced by the Omnibus 1 package, corporate governance (the G of ESG) continues to gain prominence, extending a trend observed in recent years. Companies increasingly recognise the role of internal policies and systems and are adopting more risk management-oriented approaches.

The essential pillars of Portuguese legislation related to corporate governance, the Companies Code and the Securities Code, have not recently undergone significant changes. The Corporate Governance Code (soft law) by the Portuguese Institute of Corporate Governance (*Instituto Português de Corporate Governance* – IPCG) of 2018 was revised in 2023, adding a new, dedicated chapter on sustainability.

The most significant recent developments concern the CSRD. In February 2025, the Omnibus 1 package proposed a reduction of companies covered by this directive, the postponement of the application of reporting requirements for certain undertakings by two years, the revision of the ESRS, and the deletion of the requirement for sector-specific standards. Full application of the CSRD is now expected by 2029 for reporting of FY 2028, although many affected companies had already started preparing for implementation. It is important to note that it remains unclear when the applicable rules will stabilise and what their final terms will be.

The Omnibus 1 package further proposes to postpone the transposition deadline of the CSDDD by one year.

The EU Taxonomy Regulation and Delegated Acts will also undergo substantial changes, namely, a reduction in the number of companies obliged to report their taxonomy alignment, in a step towards closer alignment with the scope of the CSRD.

## 1.5 Government and Supervision

Currently, in Portugal, there is no single regulatory or supervisory entity that globally assumes responsibility for the ESG transition. In global terms for all economic activity, it is only the Portuguese government that assumes responsibility through policy measures that promote the ESG transition. Specifically, regarding climate, it has since 2021 enacted the Climate

Framework Law, which reflects deep concern about the transition and primarily targets public entities, although private companies are also in its scope.

Regulatory and supervisory bodies oversee sets of entities based on their sectors or nature and have ESG impacts within their respective areas. Some specific supervisory bodies stand out.

### The Portuguese Securities Market Commission

The Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* – CMVM) supervises entities with securities admitted to trading on a regulated market. These are mostly companies with extended ESG reporting obligations, whose compliance is subject to oversight and sanction by the regulatory entity. The CMVM has dedicated significant attention to ESG matters and in 2024 even published a “Sustainability Guide for Issuers, Asset Managers, and Financial Intermediaries” under its supervision.

### The Bank of Portugal

The Bank of Portugal (*Banco de Portugal* – BdP), responsible for supervising credit institutions, also has a supervisory role regarding ESG, shared with the European Central Bank, depending on the characteristics of the credit institutions. Credit institutions have a set of specific ESG disclosure obligations resulting from the Taxonomy Regulation and Pillar III obligations approved by the Commission Implementing Regulation (EU) 2022/2453 of 30 November 2022. These obligations are very broad and are subject to supervision by the regulatory authority.

### Other Regulators

There are other regulators of significant activities in the transition process that impact the covered companies, such as the Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões* – ASF) and the National Tourism Authority (*Turismo de Portugal*).

The future transposition of the CSDDD will bring new developments in this matter, as countries will be required to designate an oversight authority with specific competencies not only in the supervision of due diligence matters but also in climate transition plans.



## 1.6 Market Participants

Portugal has a strong industrial ecosystem mainly composed of small and medium-sized companies, which act as first or second-tier suppliers to large companies located in other countries (EU and non-EU). The main sectors of activity consist of garment and footwear (textile sector), food and beverages (agricultural and food sector), metalworking, the automotive parts industry and mobility (manufacturing sector), real estate and construction (construction sector), tourism and hospitality (accommodation and travelling sectors), with other fast-growing sectors, such as the aerospace industry, ICT and corporate shared services, such as data centres or centralised operational hubs for back-office activities. Although many ESG laws and regulations will not be directly applicable to the Portuguese industrial sector due to the small size of the companies involved (the application thresholds of those laws and regulations will not be met, as is the case with the CSDDD, which only affects a reduced number of Portuguese companies), the fact that most of the market addressed by Portuguese companies is composed of large companies which are subject to those legal requirements will undoubtedly have an impact. ESG concerns, although not yet fully widespread in the industrial ecosystem, are becoming increasingly inescapable due to the pressure originating from the market. Therefore, it is expected that all sectors and industries with an export component will have to adjust to ESG requirements and reshape their business practices, or otherwise they will be at a competitive disadvantage and may even lose some of their market share. Finally, the attractiveness of foreign investment and access to traditional financing will increasingly be reliant on ESG criteria, which means that those sectors targeted by investment funds (eg, the energy sector, where the role of renewable energies is relevant) or with business models highly dependent on financing (eg, construction and the real estate sector) will have to adapt their operations and strategies to be ESG compliant. The energy, transportation, tourism, agribusiness, and financial services sectors are poised to experience the most immediate impacts, requiring firms to rethink long-term strategies, adopt sustainable practices, and invest in cleaner technologies.

## 1.7 Geopolitical Developments

Extraordinary events and the increased number of natural disasters of the last few years have been relevant in the ESG-related process.

The invasion of Ukraine by Russia and the subsequent disruption of the global energy market have caused the EU to adopt several measures to cope with this situation. Among these, it has launched a programme under the name “REPowerEU” to promote the phasing out of Russian fossil fuel imports and to overcome EU dependency on them.

Under this programme, several reforms have been made in Portugal, such as:

- the implementation of one-stop shops for energy efficiency and renewables;
- the development of a regulatory framework for renewable hydrogen management; and
- the creation of the National Energy Poverty Observatory.

Amendments were also made to energy efficiency in the residential, service and public buildings sectors; on energy transition to support the development of green industry; and on decarbonisation of public transport.

In turn, the climate policy remains among the priorities of the EU and other countries worldwide, as evidenced by the policy statements of various governments at 2023’s UN Climate Change Conference (COP28). These statements, aimed at combating global climate change, can be found in the domestic public policies of central banks, the fiscal system, and the energy-resilience system.

In Portugal, it is worth noting the adoption of the Climate Framework Law, which came into force in January 2022. With widespread scope (covering topics such as green finance, companies’ governance, health, security and foreign policy, energy transition, adaptation to climate change, a just transition, sustainable mobility and transport, agriculture and the food chain, international co-operation, etc) it sets ambitious targets and obligations for accomplishing climate neutrality even before the 2050 goal set by

the EU. Finally, brief mention needs to be made about the creation in 2021 of a national mechanism of just transition in order to guarantee the maintenance of the wages of workers who lost their jobs due to the closing, in 2021, of the Central do Pego, which used to produce electricity from coal.

## 2. Corporate Governance

### 2.1 Developments in Corporate Governance

The main developments expected in Portuguese corporate governance are adaptation to the changing requirements of the CSRD and the EU Taxonomy, as well as the continued implementation of the revised IPCG's Corporate Governance Code. Both initiatives are set to significantly shape the governance frameworks and processes of a broad range of companies.

The IPCG has dignified ESG with a new first chapter in its Corporate Governance Code, dedicated to relationships with shareholders, stakeholders and the wider community, as well as sustainability. This revision represents a notable shift in Portuguese corporate governance, placing sustainability at the forefront and aligning with the 2023 G20/OECD Principles of Corporate Governance. As an OECD member, Portugal is committed to these principles, which emphasise the responsibility to contribute to the UN Sustainable Development Goals, conduct environmental and social impact due diligence, and integrate stakeholders' interests into decision-making. The recommendations are particularly focused on promoting transparency and disclosure.

The sustainability reporting framework may face substantial amendments under the Omnibus 1 package. While the CSRD is primarily focused on imposing ESG reporting obligations, its underlying purpose and implementation strategy are designed to drive substantive change, encouraging companies to actively transition towards more sustainable practices rather than simply disclosing information. This pressure is felt throughout the corporate ecosystem. The need to comply with reporting obligations is prompting many companies to reorganise and change their governance processes. The increased transparency and inevitable benchmarking against other stakeholders

are expected to generate significant changes in corporate governance, such as an increase in environmental or social initiatives; the restructuring of boards, committees and overall corporate competencies; and improvement in addressing specific governance issues related to business conduct and ethics.

The value chain implications of the CSRD, combined with the broader diffusion of corporate governance and ESG concerns, have also triggered a clear trend among smaller companies. Even though they are not directly subject to any legal reporting obligations, they are increasingly embarking on their own sustainability journeys, recognising the growing importance of ESG in business.

However, the lack of clarity surrounding the reporting rules applicable to undertakings, stemming from delays in application and changes to the scope of companies covered, has led to the suspension of some ESG-related initiatives. This evolving regulatory environment has had a particular impact on so-called "wave two" companies (all large companies that are not public-interest entities with more than 500 employees), many of which were preparing to implement new compliance measures.

### 2.2 Differences Between Listed and Unlisted Entities

The fundamental legal framework for corporate governance, applicable to companies (listed and unlisted), is set out in the Portuguese Companies Code (*Código das Sociedades Comerciais*).

Listed companies are required to report on their adherence to a corporate governance code on a "comply or explain" basis and to disclose detailed information about their corporate governance practices. This has generally been done by referring to the IPCG's Corporate Governance Code. These companies are also subject to other specific corporate governance provisions under the Portuguese Securities Code (*Código dos Valores Mobiliários*) and other regulations issued by the CMVM.

Regarding ESG disclosure requirements, the distinction is not limited to whether a company is listed or unlisted, but also considers whether the company

qualifies as a large enterprise of public interest with at least 500 employees. Listed companies are, by definition, public interest companies. To those companies, the Portuguese Companies Code imposes specific ESG disclosure requirements, to be included in the management report.

Full implementation of the CSRD will probably shift the relevant distinction from differentiating between listed companies (and other public-interest companies) and other companies, to a system where the main criteria are only dependent on size. The Omnibus 1 package – pending final adoption following ongoing negotiations between co-legislators – proposed a scope that covers large companies with more than 1,000 employees, but only the final legal act will definitively establish the applicable criteria. In the meantime, companies falling within the scope of the CSRD are large public interest companies with more than 500 employees; parent undertakings of large groups that are public-interest companies with more than 500 employees; SMEs listed on the EU-regulated markets, except micro-undertakings; and issuers that belong to these categories of undertakings.

## 2.3 Role of Directors and Officers

The development of ESG, featuring environmental regulations, significant advancements in employee rights, and strengthened governance duties, such as those related to bribery and corruption or whistleblowing, as well as comprehensive reporting requirements, has resulted in several direct legal obligations for companies.

In the area of climate governance, the Portuguese Climate Framework Law (*Lei de Bases do Clima*) has introduced a governance obligation that requires companies to integrate climate change considerations into their corporate governance regarding investment decisions, and to incorporate climate risk analysis into their decision-making processes.

Fulfilment of all these obligations is the responsibility of the directors, who are bound by duties of care that require availability, technical competence and a thorough understanding of the company's activities, and who must act with the diligence of a prudent and responsible manager.

Where ESG factors do not yet constitute direct legal obligations for acting, directors' liability will generally arise only if duties were not observed in their actions, and it can be concluded that those actions did not meet the standards of business rationality (business judgement rule). Assessing such liability can only be done on a case-by-case basis and involves a degree of subjectivity, as it requires consideration of the specific context of the company's activities, the unique facts of each case, and the identification of relevant stakeholders whose interests directors must take into account in fulfilling their responsibilities.

## 2.4 Social Enterprises

Portugal does not have specific legal business forms for social enterprises and/or non-profit companies. Social entrepreneurs wishing to incorporate social enterprises or non-profit corporate structures, generally opt to incorporate a regular commercial company, with carefully drafted articles of association that reflect the social venture of the company. These companies frequently have non-profit organisations as founders.

## 2.5 Shareholders

Shareholders are responsible for overseeing the company's management, including evaluating the performance of directors, and may initiate dismissals and pursue liability claims. Within the ESG framework, there are specific obligations, and the influence of these concerns on all companies is unequivocal. Directors' decisions regarding ESG matters, like all other strategic decisions, are subject to shareholder scrutiny.

In this oversight, the interpretation of Portuguese law regarding stakeholders is relevant, particularly in relation to directors' duties of loyalty and the interests they are required to consider. Duties of loyalty are primarily owed to the company itself. The interests of shareholders and other stakeholders should also be considered, but these are subject to different levels of relevance in this construction. Directors must act in the long-term interests of shareholders, but must also take into account, to a distinct degree, the interests of other stakeholders who are relevant to the company's sustainability, such as employees, clients and creditors.

It is therefore clear that, under Portuguese law, the company and its shareholders are the primary focus. However, complexity arises from the recognition that considering the interests of other stakeholders may ultimately serve the best interests of the company and its shareholders.

## 3. Sustainable Finance

### 3.1 Progress in Green Financing

Portuguese supervisors have been making a concerted effort to promote sustainability with local asset managers, investors and stakeholders. This has been achieved primarily through the provision of information to the market, participation in public events, and the organisation of surveys to assess how market operators are incorporating sustainability into their activities.

New IT tools that will simplify the ESG analysis carried out for clients and prospective clients, along with the increased regulatory attention devoted to ESG, should continue to propel the integration of sustainability within the local market.

### 3.2 Sustainable Finance Framework

Currently, the main guidelines for companies seeking and/or providing finance stem from:

- the EU Green Bonds Regulation;
- internationally recognised standards such as those from the International Capital Market Association; and
- sustainable finance frameworks created by each institution.

These frameworks aim to disclose to the market how they incorporate sustainability demands into their financing activities.

### 3.3 Access to Green Financing

There are several local institutions and operators making green financing available to borrowers. The offer of green financing is expanding, and this trend is expected to continue in the foreseeable future due to the need for lenders to report their own alignment with the EU Taxonomy.

Regarding green banking loans, several of the major Portuguese banks already offer green options to borrowers under their sustainable finance frameworks. As expected, the financing granted under these options offers special conditions to borrowers; however, it also imposes constraints on their activities and the use of the proceeds.

In terms of sustainability bonds, sustainability-linked bonds, or green bonds, Portuguese entities with a particular focus on the energy sector started successfully resorting to these instruments to finance their activities several years ago.

### 3.4 Stranded Assets and Non-Bankables

Although the shift of focus towards green financing is becoming clearer each day, it is still possible for companies operating with stranded assets or other non-bankable assets under the ESG landscape to obtain financing for their activities.

Nevertheless, as financing increasingly favours more desirable sectors under the ESG landscape, concerns regarding old-economy borrowers and issuers will likely rise on the list of issues to address in the transition to a greener economy.

In any case, in Portugal, it is noticeable that even companies with a significant business in stranded assets are making an effort to adapt to ESG principles. For example, they are investing in more suitable projects, diversifying their portfolios, and making investments to reduce their carbon footprint.

### 3.5 Challenges Ahead

With the ever-increasing presence of sustainable finance and ESG at the top of the agenda for public supervisors, lenders, borrowers, investors and stakeholders, the market is now moving from its initial formal approach to the inclusion of ESG in its activities – perceived more as a burden than an opportunity – to truly embodying and adopting ESG principles.

This change in attitude will require a broader and better comprehension of the status of ESG adoption by local companies, and their plans. In this regard, it is already noticeable that local financial institutions, acting in a co-ordinated manner, are taking the first steps



to collect and share ESG data from their clients and to facilitate easier access to green financing.

Although anti-ESG movements may be on the rise in some US states, for now, the local market is adopting a positive outlook on ESG, and no significant anti-ESG movement has been perceived.

Finally, after the initial push for the adoption of, and compliance with, the ESG framework by financial institutions, according to public statements from financial sector supervisors, it is expected that regulatory awareness will start focusing more on the materiality of public ESG statements, classification of products and distribution of green products.

## 4. ESG Due Diligence

### 4.1 Soft Law Becoming Hard Law

In recent years, there has been a notable global trend of soft-law principles evolving into hard law. Portugal reflects this broader global trend, influenced by its commitment to international and European standards, and the evolving needs of governance and regulatory frameworks. This tendency may be observed in several areas, including environmental law, corporate governance, human rights, and digital regulations. The United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, which have informed recent EU legislation such as the CSDDD and the Forced Labour Regulation, are good examples.

### 4.2 Towards Vertical Responsibilities

Due diligence requirements for companies operating in Portugal are indeed increasing, especially for those forming part of the chain of activities of large companies. This is a trend emerging from EU legislation, notably the Forced Labour Regulation and the CSDDD relating to due diligence on human rights and the environment in the chain of activities, though the impact of the tripartite discussions resulting from the Omnibus 1 package is not yet known. However, market pressures, consumer expectations and companies' growing awareness of the importance of impacts caused by business activity are factors that are being increas-

ingly considered in decision-making processes by governing bodies, with direct effect on procurement policies and the ethical standards required throughout the chain of activities. Companies are expected to adopt more comprehensive due diligence practices to ensure compliance, assure the traceability of products supplied to the market, manage risks, and meet the demands of various stakeholders. A good example of this is the recent National Action Plan for Responsible Business Conduct and Human Rights (in its final stages of development and pending political approval), which promotes responsible business practices and calls for enhanced due diligence measures to prevent human rights abuses.

### 4.3 Partner Selection

A noticeable trend that is being observed is that due diligence requirements are reshaping how companies engage with their supply chain partners, with a visible shift towards more responsible and transparent supplier relationships, even though 99% of Portuguese companies are SMEs, which makes it more difficult to implement effective due diligence requirements in supply chains. Market-driven pressure and increasing awareness of the importance of protecting human rights, adopting fair labour practices, and abiding by ethical sourcing of materials, just to mention a few factors, are becoming increasingly widespread as criteria for selecting suppliers, emphasising compliance with ESG standards. Suppliers are increasingly required to demonstrate that they meet these criteria through certifications (where applicable), adherence to suppliers' codes of conduct and documented practices addressing these matters. Due diligence requirements may reduce the pool of acceptable suppliers, especially in industries or regions where compliance with ethical or environmental standards is less common, but it is becoming an unavoidable business practice. More recent risk management systems emphasise geopolitical instability, labour rights violations, environmental harm, and other unethical practices associated with suppliers, as serious risks with material impacts on reputation and branding. Due diligence requirements, as part of risk management strategies, will allow companies to identify and mitigate risks, potentially leading to the prioritisation of partnerships with suppliers with robust governance systems, documented compliance policies and evidence of risk miti-

gation processes, avoiding high-risk suppliers which may be avoided or phased out.

## 4.4 ESG in M&A Due Diligence

ESG considerations are playing an increasingly central role in M&A activities in Portugal. From due diligence and valuation to post-merger integration and regulatory compliance, ESG factors are reshaping how deals are structured and executed. While there are still challenges to overcome, such as reliable and comparable ESG metrics and data availability, the trend is clear: companies and investors are placing growing importance on sustainable and responsible business practices in their M&A strategies, not only from a purely compliance perspective but also as a material consideration in the overall value of the business. Standard M&A due diligence exercises include stringent requirements on social, ethical and environmental practices, with a direct impact on the transaction price and special emphasis on the impact these practices can have on branding and market reputation.

### Due Diligence

ESG-related due diligence is now a standard part of the M&A legal due diligence process, which includes examining environmental practices, social policies and governance structures to identify any potential red flags or areas of improvement as part of the overall assessment of the target company. The level of compliance with environmental laws, labour rights and workplace safety, and meeting anti-corruption legal requirements, as well as potential liabilities related to past non-compliance, can impact the valuation and terms of the deal, including determining a go/no-go decision.

### Contractual Provisions

M&A agreements increasingly include specific warranties and indemnities related to ESG issues, and in some deals, contingent payments or earn-out clauses are tied to achieving specific ESG targets and milestones post acquisition.

## 5. Transparency and Reporting

### 5.1 Key Requirements

The Portuguese Companies Code establishes a legal obligation for all large companies of public interest with more than 500 employees to include non-financial performance indicators, such as information on environmental, social and employee-related matters, in their annual reports, to the extent necessary to understand the development, performance, position and impact of the company's activities. Additionally, there are specific general disclosure requirements related to climate matters resulting from the Climate Framework Law.

Currently, the sustainability reporting requirements of the CSRD apply to ("first wave") companies:

- that are public interest entities, such as certain insurance undertakings, credit institutions and companies whose securities are admitted to trading on a regulated market;
- that are large undertakings, by meeting at least two of the following three criteria:
  - (a) they have a turnover above EUR50 million;
  - (b) the total on their balance sheet exceeds EUR25 million; and
- c) they have more than 250 employees during the financial year; or
- that have more than 500 employees.

Although the current version of the CSRD provides for the application of reporting requirements to all large companies ("second wave" companies), the changes introduced by the Omnibus 1 package may alter the scope of companies covered, limiting it to those with more than 1,000 employees.

However, in July, the European Commission adopted a recommendation – pending publication as a delegated act in the Official Journal – on the application of the European Financial Reporting Advisory Group (EFRAG) Voluntary Sustainability Reporting Standard for non-listed SMEs ("VSME") to small and medium-sized undertakings, which need to voluntarily report sustainability information following information

requests by large undertakings. Large undertakings that need to comply with ESG disclosure requirements are required to provide information related to their value chain, and this recommendation is now a useful legal tool in that context. Transparency requirements do not, therefore, only impact companies covered by the scope of the CSRD, but also amplify the sustainability-driven pressure upon SMEs to disclose non-financial information, uncovering the ultimate purpose of the European sustainable corporate reporting system.

## 5.2 Transition Plans and ESG Targets

Despite the National Energy and Climate Plan having been revised and updated in 2025, there is currently no cross-cutting obligation in the Portuguese jurisdiction to publish transition plans or to commit to targets. Even the Climate Framework Law refers to the setting of a “carbon budget” as being optional.

With the transposition of European ESG legislation, this situation is evolving. Although under the CSRD it is not mandatory to have a transition plan, it will be necessary to declare whether one exists and, if it does, to provide information about its content. Companies that fall under the scope of the CSDDD, which will only be very large companies, will be required under the current legal text to adopt and implement a transition plan to mitigate climate change. The companies covered by this obligation and the content of the obligation itself are currently under revision within the referred OMBIBUS 1 package.

## 5.3 Regulation of ESG Labels

During the past few years, the EU has initiated a revision of consumer law, as announced in the New Consumer Agenda and the Circular Economy Action Plan. This has resulted in the adoption of the Empowering Consumers for Green Transition (ECGT) Directive, the Ecodesign Regulation, the Right to Repair Directive and the issuing of the Proposal of Green Claims Directive, which together will cover the issues of sustainable claims and combat misleading environmental claims known as “greenwashing”.

### The ECGT Directive and Right to Repair Directive

The ECGT Directive amends the Unfair Commercial Practice Directive (2005/29/EC) and Consumer Rights

Directive (2011/83/EU) and will be implemented in Portuguese legal regimes Decree-Law 57/2008 and Law 47/2014 respectively within two years. Protection of consumers from unfair commercial practices, non-transparent sustainability labels, and untruthful advertising, and the mandatory inclusion of information on the durability and repairability of a product will ensure consumers are better informed and help them decide in favour of truly sustainable products.

### The Ecodesign Regulation

The Ecodesign Regulation aims to ensure that the products or services placed on the EU market meet the requirements that cover the entire cycle of the products. The development of a digital product passport, providing information about a product from its origin, materials used, its environmental impact, and disposal recommendations, will be mandatory for all producers in the EU and outside the EU before placing a product on the EU market.

### The EC’s Proposal for Green Claims Directive

The European Commission’s Proposal for a Green Claims Directive has been under legislative procedure since 2023, when it was initially proposed. The directive proposed to set a number of requirements for the substantiation of explicit environmental claims and environmental labels, ensuring their reliability, comparability and verification.

Legislative procedures are still not complete, however, and the Green Claims Directive is likely to face major changes, with the possibility of non-approval.

In June 2025, the European Commission announced its intention to withdraw this proposal, which faced support and criticism at the political level. Although political uncertainty persists, the European Commission has reiterated its commitment to the EU’s sustainability and consumer protection agenda.

## 5.4 Supervision

In Portugal, regulators monitoring corporate sustainability reporting include the CMVM for entities with securities admitted to trading on a regulated market and certain investment funds, the BdP and the European Central Bank for credit institutions, and the ASF for insurance and pension fund activities.

With the coming into force of national legislation transposing the CSDDD, Portugal will designate an authority to supervise and enforce the rules relating to certain ESG matters covered by the directive, particularly regarding due diligence processes and climate transition plans. This will occur in parallel with the setting up of the European Network of Supervisory Authorities at the European level.

In Portugal, “sustainability marketing claims” involve direct communication with consumers, and are therefore subject to various supervisory entities.

Unfair commercial practices are dealt with by the Directorate-General for Consumers (*Direção-Geral do Consumidor* – DGC), as well as the BdP, the CMVM, and the ASF, which are considered competent administrative authorities within the financial sector.

## 5.5 Enforcement

Failure to comply with reporting obligations primarily triggers general liability under the general rules applicable to companies and their management, making them responsible for any damages resulting from a breach of legal provisions.

Beyond these general liability rules, regulated entities may face additional consequences, including ancillary sanctions and administrative fines. For example, for listed companies, a breach of information-disclosure duties can be classified as a very serious offence, subject to fines ranging from EUR25,000 to EUR5 million.

Under the CSDDD, the specific sanctioning regime applies to certain matters, with pecuniary penalties that currently may not be less than 5% of the net worldwide turnover of the company. The Omnibus 1 proposal previews the issuance of guidance to assist supervisory authorities in determining the level of penalties rather than having a maximum limit of pecuniary penalties. It is still unclear what final sanctioning regime will apply to companies in the scope of the CSDDD.

As there is no dedicated sanctioning regime for the specific reporting failures of banks, the general regime for credit institutions and financial companies applies. This regime provides sanctions for violations of the

mandatory legal requirements (including those arising from EU legislation) governing the activities of credit institutions, financial companies and mixed financial holding companies.

## 5.6 Expected Progress

The reporting timelines for sustainability disclosures under the CSRD, which were originally set for 2026, have been postponed under the Omnibus 1 package for two additional years for “second-wave” and “third-wave” (listed SMEs) companies. In addition, it is proposed that large companies covered by this obligation should be limited to those that have more than 1,000 employees. However, considering that sustainability reporting often requires a value chain perspective, the impact of these obligations will extend beyond the directly affected companies.

Some companies that fall under the new requirements have already begun preparing for compliance. The main challenges identified by companies relate to data access and the necessary adaptations of processes and governance models not only to satisfy reporting requirements, but also to ensure that the company’s actual practices are aligned with the more robust and comprehensive content demanded by the CSRD and ESRS.

There is broad recognition that companies cannot transition instantly from almost non-existent ESG disclosure to the sophisticated and detailed reporting required by the CSRD. However, companies that have started this process are finding motivation in the progress they are making and the benefits of early adaptation.

The final adoption of the proposals included in the Omnibus 1 package is expected to be revealed this year. The stabilisation and consolidation of the European ESG reporting framework are long awaited, for the benefit of the whole ecosystem. Although it is expected that dramatic simplification efforts will make the legal regime less complex, it is not possible to anticipate the impact the rest of the new rules will have on companies covered by the CSRD.

The impending implementation of the CSDDD, with its distinct set of obligations, is prompting some compa-



nies to adopt a combined approach to addressing the ESG implications arising from both regulations.

## 6. Climate and ESG Litigation

### 6.1 Instruments for ESG Litigation

The Portuguese Constitution consecrates the right to intervene and participate in administrative procedures, and the full and effective protection of legally protected rights and interests is recognised, including the right to popular action and the right to promote the prevention, cessation and remediation of offences against public health, consumers' rights, quality of life, the environment and cultural heritage.

The Climate Framework Law (Law No 98/2021) has been in force since 1 February 2022, recognising 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 climate balance.

The effectiveness of the law will greatly depend on the use that citizens and collective organisations (associations, foundations and even private companies) make of it, as well as the position the national courts take when asked to apply the relevant law.

### 6.2 Climate Activism

The environmental non-government organisations (ENGOS) in Portugal have benefited since 1998 from a special legal status and, among other rights, have the right to consult or be informed by administrative authorities on documents and administrative decisions affecting the environment. ENGOS are also recognised as having legitimacy to initiate legal actions related to acts performed by public or private entities and to constitute themselves as assistants in proceedings for crimes against the environment.

Although Portugal has already woken up to climate litigation, its civil society is not very litigious in matters of public interest. Despite this, a group of environmental associations recently appealed to the Supreme Court of Justice in a lawsuit against the Portuguese State

for non-compliance with the Climate Framework Law, after the Civil Court of Lisbon rejected the initial petition delivered in November 2023. On 19 September 2024, the Supreme Court of Justice overturned the first-instance decision and proposed that the associations concretise their claims. This is the first lawsuit against the Portuguese State targeting measures to protect from climate change.

In turn, the case of *Duarte Agostinho and Others v Portugal and 32 Other States* is a clear example of Portuguese activists' actions. In 2020, six Portuguese youngsters filed a complaint with the European Court of Human Rights (ECHR) against 33 countries. The applicants' main claim concerned human rights violations resulting from the failure to take sufficient measures to combat climate change, and to demand more ambitious measures to reduce GHG emissions and fulfil commitments under the Paris Agreement to combat rising global temperatures. The ECHR decided, however, that the complaint should not be upheld because the applicants had failed to exhaust the remedies offered by the Portuguese legal system.

### 6.3 Greenwashing

The DGC is the competent national authority responsible for consumer protection and advertising supervision. The DGC has, among other duties, the competence to deal with misleading or false claims and has the power to impose fines on non-compliant companies. Several administrative procedures have been opened against companies accused of misleading advertising of their products.

So far, no lawsuit had been filed by investors or by a regulator in Portugal in relation to greenwashing. In 2022, a judgment was handed down by the Court of Appeal of Lisbon in a case against two companies engaged in the manufacture of cars and two companies engaged in the importation and sale of cars in Portugal, filed by a civil society organisation for false and misleading environmental claims.

It is expected that there will be an increase in the number of cases dealing with greenwashing claims and it is possible that such lawsuits will represent the majority of ESG-related litigation in the near future. Some recent findings at the national level suggest that most

Portuguese consumers abandon brands that promote false environmental practices. Whether this will have any impact on consumers' willingness to take judicial action, however, is still unclear.

## 6.4 A Turbulent Future Ahead

In Portugal, the ESG framework is based mainly on EU legislation. It is therefore expected that the development of ESG-related proceedings in Portugal will follow the full implementation of EU legislation and its transposition into national law that is still to be fulfilled.

Although Portugal is lagging behind other European countries, such as Spain and Italy, according to recently published data, 58% of Portuguese companies already have a formal ESG strategy.

In fact, major changes in European legislation directly related to corporate reporting suggest that the number of ESG-related claims will increase, especially as the deadline for transposition into national jurisdictions is reached and all the due information is disclosed by the companies.

The evolution of greenwashing legislation in Europe and the future adoption of the Green Claims Directive, establishing clear rules for all participants, will also influence the number of climate greenwashing cases.

## Trends and Developments

### Contributed by:

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**VdA** is a leading international law firm with more than 40 years of history, recognised for its impressive track record and innovative approach. Its excellent and comprehensive legal services cover several industries and practice areas, including agribusiness; aviation; banking and finance; competition; corporate and M&A; defence; digital frontiers; energy and natural resources; the environment; governance; health-care; information, communication and technology; infrastructure and mobility; insurance; investigations and white-collar crime; IP; life sciences; litigation and arbitration; mining; oil and gas; private equity

and venture capital; public law and administration; rail infrastructure; real estate and regulatory entities; restructuring and insolvency; social economy and human rights; and tax. VdA offers robust solutions grounded in consistent standards of excellence, ethics and professionalism to help its clients overcome increasingly complex challenges. The excellence of VdA's work is acknowledged by clients and stakeholders, and leading professional associations, legal publications and academic entities, with the firm and its lawyers receiving numerous international accolades and awards.

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# PORTUGAL TRENDS AND DEVELOPMENTS

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## ESG Framework Under Conditions of Legislative Instability

At the European level, the ESG agenda enters 2025 marked by a widening gap between regulatory ambition and legal predictability. Legislative instability – reflected in shifting implementation timelines, successive technical revisions and regulatory “packages” progressing at different speeds – has become a structural feature of the legal-regulatory environment. For companies and investors, the challenge is no longer merely to understand what the law requires, but to navigate an almost continuous cycle of change, with direct effects on planning, disclosure and governance. This context demands modular compliance approaches, granular mapping of regulatory materiality and internal early-warning mechanisms to absorb changes without disproportionate friction.

Two additional dynamics sharpen this picture. First, the interaction between climate policy, trade policy and financial regulation is increasingly tight, meaning that a delay or acceleration in one silo can trigger ripple effects across others. Second, political cycles and international pressures are exerting stronger influence over ESG timetables and scope, adding a further layer of uncertainty to corporate planning horizons. As a result, boards are reassessing how they allocate capital to decarbonisation and to due diligence programmes, and are demanding clearer internal ownership of regulatory watch, scenario planning and data governance.

Against this backdrop, the market’s centre of gravity is shifting from “policy interpretation” to “execution under uncertainty”. Organisations continue to work at different speeds, more inspired by their own convictions and balancing the market conditions than pressured by regulatory compliance. Relevant companies tend to shift sustainability issues from the compliance side to the added value and competitiveness side, and use sustainability achievements as selling points. At the same time, frontrunners signal frustration with the slow progress of the regulatory framework, which impedes a truly level playing field and has negative effects on competitors.

## The Omnibus Package I: Very Little Progress

In 2024–25, the notion of an “omnibus package”, a bundle of measures designed to give coherence and simultaneity to different ESG instruments, faced a reality check. The so-called stop-the-clock and quick-fix directives were limited in scope to the rescheduling of obligations, providing more time for EU member states in their transpositions – and for companies also having obligations. Material issues under The Corporate Sustainability Reporting Directive (CSRD) and the European Taxonomy or the Corporate Sustainability Due Diligence Directive (CSDDD) remain to be resolved. In practice, progress has been uneven: only the Carbon Border Adjustment Mechanism (CBAM) has moved ahead with sufficient detail and a clear operational timetable; other pieces of legislation remain under review, or are in the consultation or preparatory phase. This asymmetry has three implications. First, it diverts corporate resources towards areas with more immediate enforceability, creating risks of underinvestment in areas that, while less mature, will have a cumulative impact. Second, it hampers systemic integration of data and controls, as metrics, scopes and timelines do not “fit” together. Third, it underscores the importance of risk-regulatory prioritisation matrices, with an emphasis on the value chain and sectoral exposure to carbon, international trade and critical substances.

A practical consequence is the emergence of multi-speed compliance roadmaps. Businesses are sequencing their programmes into near-term “must-do” deliverables versus medium-term “ready-to-launch” modules, with clear triggers tied to future regulatory milestones. Where omnibus ambitions stall, firms committed to the sustainability agenda are increasingly relying on contractual cascades and supplier codes to preserve momentum, even in the absence of fully harmonised public rules. This private law scaffolding (performance clauses, audit rights, data-sharing obligations) helps bridge timing gaps and maintain alignment across the value chain.

Another consequence is governance fatigue. Steering committees that were designed for a single, coherent package now need to manage rolling consultations, technical updates and staggered go-live dates. Remapping roles and decision rights, re-baselining budgets and creating cross-functional “sprint” teams

for each instrument are becoming common responses to the asymmetry.

At the same time, the EU encourages voluntary progress reporting. The European Commission Recommendation to adopt the Voluntary Reporting Standard for SMEs (VSME), prepared by the European Financial Reporting Advisory Group (EFRAG), even before it is clearly required by law, might pave the way towards an effective bottom-up approach. The much-needed simplification might ultimately arise from this voluntary standard.

Although the pressure on big companies seems to have been alleviated, given the uncertainty regarding the final content of the CSDDD but also the probable postponing of the date of entry into force, the banking and financial sector seems to still be under pressure. This is a consequence of the need to comply with the provisions related to Pillar 3 disclosures of ESG risks under the European Banking Authority (EBA) Pillar 3 Implementing Technical Standards (ITS), which mandate standardised, mandatory disclosures for EU banks of climate-related physical/transition risks, risk management and sustainable finance strategies. This is to be achieved using specific templates for metrics, like the green asset ratio (GAR) and the taxonomy alignment ratio (BTAR), to enhance market discipline and transparency.

Amidst this uncertainty, the EBA announced the publication of a no-action letter on 5 August 2025, recommending that regulators – for the period starting from the reference date of 30 June 2025 until the amendments to the EBA disclosure ITS are adopted and enter into force – should not prioritise the enforcement of new ESG Pillar 3 disclosure requirements for banks as clarity is awaited on the outcome of the European Commission's Omnibus initiative to simplify sustainability reporting and compliance obligations (with the objective of alleviating the operational burden on institutions until the amendments on Commission Implementing Regulation 2024/3172 are adopted by the European Commission and published in the *Official Journal of the European Union*).

However, the reduction in the data collection burden introduced by the omnibus package on smaller enti-

ties challenges banks' ability to obtain comprehensive information, which poses difficulties in managing their ESG risks and exposures – also considering that the leniency period granted by the EBA will come to an end as soon as the amendments on Commission Implementing Regulation 2024/3172 are adopted (in a form that cannot be completely determined at present).

## CBAM: From Approval to Operationalisation, With a Focus on Data and Proportionality

The CBAM has moved beyond being merely a climate policy lever to become, in effect, a reporting and verification regime with first-order operational implications. Its approval and subsequent technical regulation have consolidated a common lexicon of embedded emissions and calculation methodologies, raising the level of scrutiny of imports in carbon-intensive sectors. The critical point for 2026 is operationalisation: data quality and traceability, interoperability between suppliers and importers, and independent verification governance. Companies with complex supply chains will need to treat CBAM as a cross-cutting data programme – closer to an ESG master data initiative than a simple ad hoc compliance exercise.

Operational excellence under the CBAM rests on four pillars:

- first, robust supplier engagement that pushes primary data upstream while providing pragmatic fallback methods where primary data are unavailable;
- second, harmonised calculation engines that can withstand assurance and regulatory challenge and that are integrated with procurement and customs processes;
- third, defensible verification strategies that balance cost with risk, including when and how to use third-party assurance versus internal audit; and
- fourth, legal and contractual frameworks that allocate CBAM-related responsibilities, liabilities and data rights across importers, brokers and suppliers.

At the same time, a de facto principle of proportionality is emerging. Although CBAM affects all operators within its scope, the calibration of burdens, reporting

frequencies and verification requirements tends to fall more heavily on larger operators or those with higher carbon intensity. In 2026, competitive maturity will lie in turning the CBAM into a comparative advantage: where there is upstream data quality and transparency, there will be less regulatory friction and greater cost predictability.

Looking outward, the CBAM also has strategic trade implications. Firms should anticipate counterparty requests for emissions data, renegotiations of price formulas to reflect carbon intensity differentials and, in some sectors, supplier diversification to reduce embedded emissions exposure. Where third-country regulations are less developed, importers may need to sponsor capacity building among suppliers or deploy digital measurement solutions to close data gaps.

## **Voluntary ESG Reporting as a Path To Transition: A Pragmatic Tool for SMEs**

Legislative instability is exacerbated when hard law requirements run ahead of firms' installed capacity, especially for SMEs. The creation of voluntary ESG reporting tools, specifically designed for proportional and modular use, is emerging as a transition solution. In 2025, the goal was to consolidate simplified frameworks, with core taxonomies, indicators and options being materially extended. This is a dual-track process: on the one hand, it allows large companies to extract minimally harmonised information from their SME suppliers, reducing information asymmetry along the value chain, while on the other hand it provides SMEs with a practical roadmap to evolve from minimum compliance to risk- and data-oriented ESG management.

For SMEs, the key is practicality. Templates should prioritise a short list of cross-sector metrics (eg, energy consumption, basic emissions estimates, workforce metrics, key safety indicators) and provide sector add-ons where relevant. Guidance should detail acceptable estimation methods, data sources and reasonable assurance expectations according to the level of maturity. Digital submission tools and pre-filled supplier questionnaires can reduce friction and increase response rates, especially in multi-tier supply chains.

This voluntary approach should be more than “declare and move on”. The value lies in curation: selecting metrics with genuine sectoral relevance, providing interoperable templates, and indicating maturity scales that avoid false dichotomies between “compliant” and “non-compliant”. The outcome is a “runway” for future requirements – a way to mitigate regulatory shock when the voluntary becomes mandatory, without disproportionately burdening those with less scale.

Crucially, voluntary reporting should come with incentives. Buyers can link preferred-supplier status, longer contract tenors or financing support to the adoption of core modules. Public sector programmes can align grants, tax credits or training support with uptake, helping to offset initial costs for smaller firms.

## **Limiting Duties for SMEs and Placing More Demand on Large Companies: Regulatory Efficiency and Competitive Fairness**

A pragmatic reading of proportionality leads to a design in which the heaviest obligations – granular reporting, assurance and expanded due diligence – are placed mainly on large companies, preserving SMEs' ability to keep pace through simplified tools. In 2026, this trend should consolidate along three dimensions:

- first, calibration of thresholds and scopes of application that prioritise materiality and systemic risk;
- second, incentives for SMEs to adopt voluntary “core” reporting modules aligned with large companies' value-chain needs; and
- third, a verification and data ecosystem that accepts differentiated levels of robustness, from structured self-assessments to limited assurance, to keep compliance costs at sustainable levels.

Proportionality also has a legal risk dimension. By concentrating the most onerous obligations where resources and leverage exist, regulators reduce the likelihood of unintended market distortion, such as widespread supplier exit or concentration risk. At the same time, large companies should expect heightened scrutiny of how they exercise leverage in the chain – for example, whether contractual demands on smaller suppliers are reasonable, phased and sup-

ported by capacity building. Clear supplier engagement plans, tiered requirements and remediation pathways can help demonstrate that leverage is being used responsibly.

The aim is not to fragment the market, but to create a gradient of requirements that recognises resource asymmetries without compromising climate and social ambition. When properly calibrated, this model reduces the risk of de-risking smaller suppliers while preserving the integrity of consolidated reports and large companies' public commitments.

## Managing Instability: Regulatory Governance, Data and Scenario Planning

With regulatory acceleration and asymmetric progress, 2026 will require more sophisticated internal regulatory governance. The traditional compliance pillar is no longer sufficient; what is needed is a triangle combining active regulatory monitoring, an ESG data architecture governed by quality principles and a scenario-planning capability with consequences for contracts, pricing and logistics. Good practice will involve incorporating adaptive clauses into supplier relationships, designing catalogues of requirements "by maturity level" and anchoring investment decisions in regulatory sensitivity analyses. In sectors exposed to the CBAM, integrating embedded emissions data into procurement and operational risk systems will cease to be optional and will become the core of competitive resilience.

Two operational levers stand out:

- first, contract design – price adjustment mechanisms linked to carbon intensity, audit and access-to-data clauses, and step-in rights for remediation are increasingly relevant to allocate ESG-related risks; and
- second, data and technology – deploying product-level carbon accounting, identity-linked supplier registries and workflow tools for attestations and evidence collection can materially reduce the cost of compliance while increasing auditability.

From a financing perspective, lenders and investors are sharpening their focus on data lineage and gov-

ernance, not only outcomes. Facilities tied to sustainability performance are evolving to require clearer definitions, robust baselines and external assurance. Companies that can evidence credible data control frameworks – akin to financial reporting controls – are likely to enjoy a lower cost of capital relative to peers that rely on opaque estimates.

## Scenarios and Watchpoints

Looking ahead, three scenarios are plausible:

- in a convergence scenario, delayed instruments are finalised with workable transition periods, allowing companies to align roadmaps and unlock economies of scale in data and assurance;
- in a staggered scenario, instruments continue to drift, requiring prolonged reliance on voluntary schemes and private law mechanisms to maintain supply chain alignment; and
- in a divergence scenario, policy fragmentation deepens across jurisdictions, raising the premium on geo-specific operating models and contractual localisation.

Practical watchpoints for executives include:

- the cadence of technical updates to methodologies;
- the availability and cost of qualified assurers;
- the evolution of cross-border data-sharing rules; and
- the feedback loop between trade measures like the CBAM and industrial policy incentives

Monitoring these vectors and pre-positioning options – alternative suppliers, flexible contract terms and modular data systems – will be critical risk-mitigation steps.

In sum, 2026 will not bring less ESG; it will bring ESG that is more demanding and more uneven in its pace of implementation. Those who can turn legislative instability into organisational discipline – with intelligent proportionality, voluntary tools for SMEs and data excellence under the CBAM – will be ahead of the curve in the next phase of the market.



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