

Portugal discusses a new industrial emissions regime - VdA



The Portuguese Government recently launched a public consultation among the main entities and stakeholders of the industrial sector, including public entities and environmental organisations, to discuss a proposal of the new industrial emissions regime. This will enact Directive 2010/75/EU on industrial emissions, laying down rules on integrated prevention and control of pollution arising from industrial activities.

The new industrial emissions regime will merge into one the following five specific environmental regimes: integrated pollution and prevention control (Decree-Law 173/2008, of August 26th); limitation of emissions of certain pollutants from large combustion plants (Decree-Law 178/2003, of August 5th); incineration of waste (Decree-Law 85/2005, of April 28th); limitation of emissions of volatile organic compounds (Decree-Law 242/2001, of August 31th); and, licensing conditions for the discharge, storage or injection in the soil of waste waters or of waste from the titanium dioxide industry (Ministerial Order 1147/94, of December 16th).

The purpose of the new regime is to facilitate new investments and generate projects for existing companies, based on faster and more transparent procedures, making it easier to grant environment-related licences or authorisations and promoting a greater responsibility of economic operators and other entities involved in this process.

As a result, whenever requesting an environmental permit, operators can hand in a conformity report (*relatório de conformidade*) drafted by accredited entities in the environmental field and validated according to the rules set forth by the Portuguese Environmental Agency. The involvement of these accredited entities in the licensing process is foreseen in the recently published Decree-Law 169/2012, of August 1th, establishing the new industrial licensing regime— the Responsible Industry System (*Sistema da Indústria Responsável – SIR*)—aiming to guarantee the accurate filling in of the licensing request alongside the respective application and conformity report. Operators that resort to these entities will benefit from a reduction in the term for the issuance of the environmental permit, which is reduced to half.

Furthermore, economic operators may also adhere to standard technical conditions (*condiçãostécnicaspadronizadas*), predefined by the Portuguese Environmental Agency, regarding certain types of activities or operations, resulting in the issue of an environmental permit based on such conditions – '*licençapadronizada*'.

It should also be noted that the new regime determines that, whenever the activity involves the use, production or release of relevant hazardous substances, and having regard to the possibility of soil and groundwater contamination at the site of the installation, the operator will draft and submit to the competent authority a baseline report before starting operation of an installation or before a permit for an installation is updated for the first time after January 7th, 2013. The purpose of the baseline report is to allow authorities to access the information necessary to determine the state of soil and groundwater contamination so as to enable a quantified comparison with the state upon definitive cessation of activities.

Upon cessation of the industrial activity, and in case of significant pollution to the soil and groundwater or significant risk to the health or environment, operators are under an obligation to take the necessary measures to return the site to its initial state and to guarantee that it ceases to pose such a risk.

It will be interesting to see how the Portuguese Environmental Agency will impose and link these measures with the rules laid down in the environmental liability legal regime, enacted in July 2008, considering that the meaning and scope of significant environmental damage or risk is still under discussion. However, in 2011, an interpretative and non-binding guide was released by this Agency in order to help operators to determine the initial state of a site and to assess the existence of significant environmental damage or threat to the environment.

Once the contributions received as a result of the public consultation launched have been analysed, the Government will approve the definitive version of the industrial emissions regime, expected to occur after the summer of 2013.

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