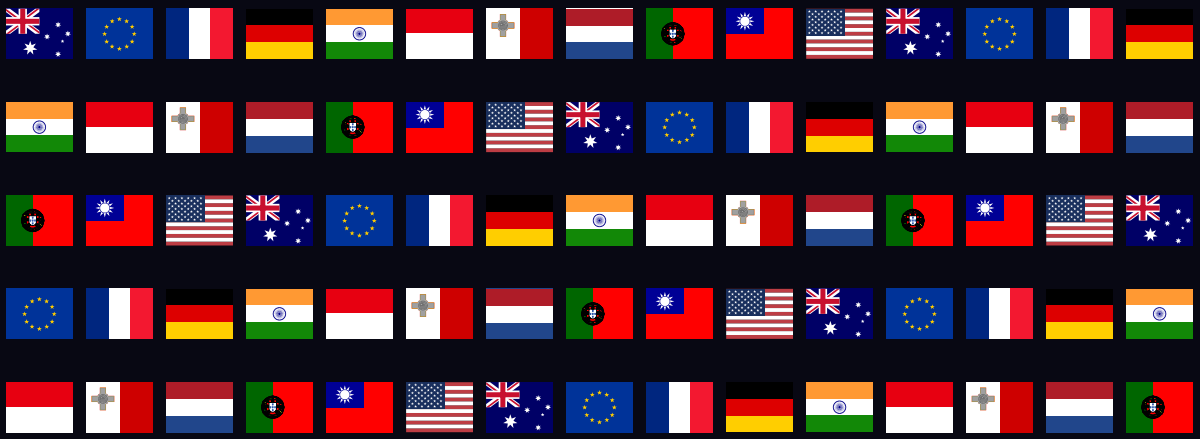
ENVIRONMENT

Portugal



LEXOLOGY
Getting The Deal Through

Consulting editor
Beveridge & Diamond PC

Environment

Consulting editors

James M. Auslander, Brook J. Detterman

Beveridge & Diamond PC

Quick reference guide enabling side-by-side comparison of local insights, including legislation and main environmental regulations; regulation of hazardous activities and substances; environmental aspects in M&A, public procurement and other transactions; environmental impact assessment; regulatory authorities; judicial proceedings; applicable international treaties and institutions; and recent trends.

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LEGISLATION

Main environmental regulations

What are the main statutes and regulations relating to the environment?

The main piece of legislation relating to the environment is article 66 of the Portuguese Constitution, which sets out the right to a healthy and ecologically sustainable environment, as well as the duty to preserve it.

The Portuguese state has enacted several statutes concerning general environmental matters, notably the following:

- Law No. 19/2014 of 14 April 2014 (the Environmental Policy Basis Law);
- Law No. 58/2005 of 29 December 2005, as amended by Decree-Law No. 245/2009 of 22 September 2009, Decree-Law No. 60/2012 of 14 March 2012, Decree-Law No. 130/2012 of 22 June 2012, Law No. 42/2016 of 28 December 2016 and Law No. 44/2017 of 19 June 2017 (the Water Law);
- Decree-Law No. 127/2013 of 30 August 2013 (the Law on Integrated Prevention and Control of Pollution and Emissions);
- Decree-Law No. 147/2008 of 29 July 2008, as amended by Decree-Law No. 245/2009 of 22 September 2009, Decree-Law No. 29-A/2011 of 1 March 2011, Decree-Law No. 60/2012 of 14 March 2012 and Decree-Law No. 13/2016 of 9 March 2016 (the Environmental Liability Law);
- Law No. 50/2006 of 29 August 2006, as amended by Law No. 89/2009 of 31 August 2009, Law No. 144/2015 of 28 August 2015, Decree-Law No. 42-A/2016 of 12 August 2016 and Law No. 25/2019 of 26 March 2019 (the Legal Framework for Environmental Administrative Offences);
- Law No. 26/2016 of 22 August 2016, as amended by Law No. 58/2019 of 8 August 2019 and Law No. 33/2020 of 12 August 2020, which sets out the law regarding environmental information;
- Decree-Law No. 151-B/2013 of 31 October 2013, as amended by Decree-Law No. 47/2014 of 24 March 2014, Decree-Law No. 179/2015 of 27 August 2015, Law No. 37/2017 of 2 June 2017, Decree-Law No. 152-B/2017 of 11 December 2017, Decree-Law No. 102-D/2020 of 10 December 2020, Law No. 71/2018 of 31 December 2018 and Law No. 68/2021 of 26 August 2021, which sets out the legal regime for environmental impact assessments;
- Decree-Law No. 72/2015 of 11 May 2015, which sets out the legal regime for single environmental licensing;
- Decree-Law No. 150/2015 of 5 August 2015, as amended by Decree-Law No. 71/2018 of 31 December 2018, which sets out the legal regime for hazardous products and substances;
- Decree-Law No. 140/99 of 24 April 1999, as amended by Decree-Law No. 49/2005 of 24 February 2005 and Decree-Law No. 156-A/2013 of 8 November 2013 (the Legal Regime for the Preservation of Natural Landscapes and Wild Flora and Fauna);
- Decree-Law No. 142/2008 of 24 July 2008, as amended by Decree-Law No. 242/2015 of 15 October 2015 and Decree-Law No. 42-A/2016 of 12 August 2016 (the Legal Regime for Nature and Biodiversity Preservation);
- Decree-Law No. 166/2008 of 22 August 2008, as amended by Decree-Law No. 239/2012 of 2 November 2012, Decree-Law No. 96/2013 of 19 July 2013, Decree-Law No. 80/2015 of 14 May 2015 and Decree-Law No. 124/2019 of 28 August 2019 (the Legal Regime of the National Ecological Reserve);
- Decree-Law No. 73/2009 of 31 March 2009, as amended by Decree-Law No. 199/2015 of 16 September 2015 (the Legal Regime of the National Agricultural Reserve);
- Decree-Law No. 42-A/2016 of 12 August 2016, as amended by Decree-Law No. 84/2019 of 28 June 2019, Decree-Law No. 102-D/2020 of 10 December 2020 and Decree-law No. 114/2021 of 15 December 2021, which created the Portuguese Environmental Fund; and
- Decree-Law No. 48/95 (the Criminal Code).

The legal framework for water resources comprises the following:

- Decree-Law No. 236/98 of 1 August 1998, as amended by Decree-Law Nos. 52/99, 53/99 and 54/99 of 20 February 1999, Decree-Law No. 56/99 of 26 February 1999, Decree-Law No. 431/99 of 22 October 1999, Decree-Law No. 243/2001 of 5 September 2001, Decree-Law No. 135/2009 of 3 June 2009, Decree-Law No. 103/2010 of 24 September 2010, Decree-Law No. 83/2011 of 20 June 2011, and Decree-Law No. 119/2019 of 21 August 2019 on water resources;
- Decree-Law No. 306/2007 of 27 August 2007, as amended by Decree-Law No. 92/2010 of 26 July 2010, Decree-Law No. 152/2017 of 7 December 2017 and Decree-Law No. 9/2021 of 29 January 2021 on the quality of water for human consumption;
- Decree-Law No. 226-A/2007 of 31 May 2007, as amended by Decree-Law No. 391-A/2007 of 21 December 2007, Decree-Law No. 93/2008 of 4 June 2008, Decree-Law No. 107/2009 of 15 May 2009, Decree-Law No. 137/2009 of 8 June 2009, Decree-Law No. 245/2009 of 22 September 2009, Decree-Law No. 82/2010 of 2 July 2010, Decree-Law No. 44/2012 of 29 August 2012, Law No. 12/2018 of 2 March 2018 and Decree-Law No. 97/2018 (the Law on the Use of Water Resources);
- Decree-Law No. 54/2005 of 15 November 2005, as amended by Law No. 78/2013 of 21 November 2013, Law No. 34/2014 of 19 June 2014 and Law No. 31/2016 of 23 August 2016 (the Law on Ownership of Water Resources); and
- Decree-Law No. 152/97 of 19 June 1997, as amended by Decree-Law No. 236/98 of 1 August 1998, Decree-Law No. 348/98 of 9 November 1998, Decree-Law No. 261/99 of 7 July 1999, Decree-Law No. 172/2001 of 26 May 2001, Decree-Law No. 149/2004 of 22 June 2004, Decree-Law No. 198/2008 of 8 October 2008, Decree-Law No. 73/2011 of 17 June 2011, Decree-Law No. 133/2015 of 13 July 2015 and Decree-Law No. 77/2021 of 27 August 2021 on urban waste water treatment.

The general legal framework for waste management comprises the following:

- Decree-Law No. 102-D/2020 of 10 December 2020, as amended by Law No. 52/2021 of 10 August 2021 (the Legal Framework for Waste Management);
- Decree-Law No. 152-D/2017 of 11 December 2017, as amended by Law No. 69/2018 of 26 December 2018, Law No. 41/2019 of 21 June 2019, Decree-Law No. 86/2020 of 14 October 2020, Decree-Law No. 102-D/2020 of 10 December 2020 and Decree-Law No. 9/2021 of 29 January 2021 (the Legal Framework for Specific Waste Stream Systems);
- Commission Decision 2000/532/EC of 3 May 2000, as amended by Commission Decision 2014/955/EU of 18 December 2014 (the European List of Waste); and
- Decree-Law No. 210/2009 of 3 September 2009, as amended by Decree-Law No. 73/2011 of 17 June 2011 on the organised waste market.

The legal framework, policies and guidelines on air quality management are set out in the following:

- Decree-Law No. 102/2010 of 23 September 2010, as amended by Decree-Law No. 43/2015 of 27 March 2015 and Decree-Law No. 47/2017 of 10 May 2017 (the Law on Evaluation and Management of Air Quality);
- Decree-Law No. 39/2018 of 11 June 2018 (the Law on Air Pollution Prevention);
- Decree-Law No. 12/2020 of 6 April 2020, as amended by Decree-Law No. 114/2021 of 15 September 20121 on the trade market for greenhouse licences;
- Decree-Law No. 152/2005 of 31 August 2005, as amended by Decree-Law No. 35/2008 of 27 February 2008, Decree-Law No. 85/2014 of 27 May 2014 and Decree-Law No. 145/2017 of 30 November 2017 on substances

that deplete the ozone layer; and

- Regulation (EC) No. 1005/2009 of the European Parliament and of the Council of 16 September 2009, as amended by Commission Regulation (EU) 2017/605 of 29 March 2017 and Commission Regulation (EU) No. 389/2013 of 2 May 2013, which regulates substances that deplete the ozone layer at the EU level.

Finally, the regulations on noise and the evaluation and control of environmental noise are set out in the following:

- Decree-Law No. 9/2007 of 17 January 2007, as amended by Decree-Law No. 278/2007 of 1 August 2007 (the General Noise Regulation); and
- Decree-Law No. 146/2006 of 31 July 2006, as amended by Law No. 71/2018 of 31 December 2018, Decree-Law No. 136-A/2019 of 6 September 2019, Law No. 2/2020 of 31 March 2020, Law No. 75-B/2020 of 31 December 2020 and Decree-Law 84-A/2022 of 9 December 2022 (the Law on Noise Assessment and Management).

Law stated - 25 January 2023

Integrated pollution prevention and control

Is there a system of integrated control of pollution?

The Law on Integrated Prevention and Control of Pollution and Emissions sets forth an overall approach regarding emissions related to air, water, soil, waste production and noise, and is applicable to several types of industrial facilities in potentially polluting sectors (eg, energy, processing of metals, chemical, waste management).

Under this statute, the commencement of use of these facilities and any substantial changes made to them are subject to an environmental licence. This licence is part of the facility licence and consolidates the most relevant environmental authorisations or licences and administrative stages into a single integrated licence.

The licence contains measures for the facility to comply with to avoid or reduce pollution, such as limits on emissions and communication obligations to the regulating authority.

Law stated - 25 January 2023

Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

Under article 10 of the Environmental Policy Basis Law, the management of soil requires the implementation of measures that limit or reduce the impact of human activity on soil and that prevent contamination and degradation. The measures also promote soil restoration as well as aim to stop desertification.

This piece of legislation also sets out a general principle under which anyone who causes environmental damage must restore the previously existing state of affairs. This principle is found in several regulations regarding the environment (in particular, the Legal Framework for Environmental Administrative Offences, the Environmental Liability Law and the Legal Framework for Waste Management).

Hence, operators that damage soil must take up measures to repair such damage – namely, to prevent, eliminate, control, contain or reduce soil contamination.

Soil decontamination activities are subject to licensing under the Legal Framework for Waste Management.

Law stated - 25 January 2023

Regulation of waste

What types of waste are regulated and how?

According to the Legal Framework for Waste Management, the term 'waste' covers any substance or object that its owner disposes of, or has the intention or obligation of doing so. All substances and objects listed on the European List of Waste are also considered 'waste'.

In general, the waste producer is responsible for managing it. There are, however, some exceptions:

- municipal administrative entities are responsible for the management of urban waste below 1,100 litres per day per producer;
- the holder of the waste is responsible for its management whenever it is not possible to determine the producer's identity; and
- when waste is of foreign origin, the management obligation lies with the entity responsible for its introduction to Portugal, except when specifically set forth in the legislation regarding the transfer of waste.

The responsibility of the aforementioned entities to manage waste ceases when the waste is transferred to a licensed waste treatment operator or to a licensed manager of specific waste stream systems.

Waste treatment activities (which include the recovery and disposal of waste) are subject to a licensing procedure and other waste management activities – such as storage and sorting, and storage and recovery in the place of production – are subject to a simplified licensing procedure.

In general, the collection and transport of waste must be registered with the integrated system for electronic waste registries (SIRER) of the relevant waste management authority in Portugal. Furthermore, registration with SIRER is mandatory for:

- establishments with more than 10 employees that produce non-urban waste;
- the production of hazardous waste;
- professional waste treatment activities;
- entities that manage systems of urban waste;
- entities that manage individual or integrated systems of specific waste streams;
- waste market participants (eg, brokers, dealers); and
- producers of products that require registration under the terms of the legislation regarding specific waste streams.

Certain types of waste are subject to specific rules, notably to the Legal Framework for Specific Waste Stream Systems. This is the case, among others, for waste packages, used tyres, construction and demolition waste, used oil, feed, batteries, accumulators, and end-of-life vehicles. In these cases, one of the following management models may apply:

- a technical-economic model based on the principle of extended producer responsibility through the implementation of individual systems or integrated management systems; or
- a model under which the management responsibility lies with the waste producer or holder.

The properties that render waste hazardous are set out in Commission Regulation (EU) No. 1357/2014 of 18 December 2014 and the list of hazardous waste is listed as such in the European Waste List. The production, collection, transport, storage and treatment of hazardous waste are subject to special conditions.

Law stated - 25 January 2023

Regulation of air emissions

What are the main features of the rules governing air emissions?

Without prejudice to the Law on Integrated Prevention and Control of Pollution and Emissions applying to the facilities covered therein, the Law on Air Pollution Prevention applies to sources of significant air pollution, notably:

- facilities associated with industrial activities;
- combustion plants with nominal thermal power equal to or above 1MW and below 50MW;
- facilities that burn fuel for the generation of energy within oil and gas refineries; and
- furnaces with thermal power equal to or above 1MW and below 50MW.

Under the Law on Air Pollution Prevention, these facilities must hold an Air Emissions Title and the operator of these facilities must, among others:

- ensure compliance with the emissions limit value;
- ensure the monitoring of air emissions and communicate the results to the competent authorities;
- comply with the applicable requisites for the discharge of air pollutants; and
- notify the competent regional development coordination commission of the poor functioning or breakdown of the gaseous effluent treatment system.

In addition, the Law on Evaluation and Management of Air Quality sets out measures intended to:

- determine milestones regarding the quality of ambient air;
- evaluate the quality of ambient air in Portugal;
- obtain information on the quality of ambient air and disclose it to the public;
- preserve and improve the ambient air quality; and
- promote cooperation between EU member states to reduce atmospheric pollution.

Law stated - 25 January 2023

Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

The Water Law establishes the basis for the sustainable management of water resources, taking into account fragile aquatic ecosystems, and claims a greater integration of the qualitative and quantitative aspects of both surface water and groundwater. The main goal of this statute is to eliminate hazardous substances and contribute to sustainable water use by executing specific measures to ensure the gradual protection of water and its associated land.

More specifically, this statute and the Law on the Use of Water Resources stipulate that activities that require

significant use of water resources or may have a relevant impact on water resources are subject to specific authorisations, licences or concession agreements.

In addition, the Law on Ownership of Water Resources regulates the concept of water domains. This law applies to water, stream beds, waterfront zones, bordering areas, protected areas and maximum infiltration areas, and constitutes the legal background for the public water domain, providing a classification of the water domain for seas, rivers, lakes and other water resources. Moreover, this statute rules on the recognition of private property over parts of public stream beds and waterfront zones, and vice versa.

Law stated - 25 January 2023

Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

The Legal Regime for Nature and Biodiversity Preservation implemented the Nature Preservation Fundamental Network, which covers:

- areas encompassed by the National System of Protected Areas (NSCA), including:
  - the National Network of Protected Areas (NNPA), which labels areas as national parks, natural parks, natural reserves, natural monuments or protected landscapes and awards them specific protection measures with the aim of maintaining biodiversity, ecosystem services and geological heritage, as well as enhancing landscapes;
  - areas integrated with the Natura 2000 Network; and
  - other areas protected under international agreements;
- National Ecological Reserve areas;
- National Agricultural Reserve areas; and
- public water domains.

Although the Legal Regime for Nature and Biodiversity Preservation has set forth the rules applicable to protected areas, it does not preclude the application of the specific legislation relevant on this matter (such as, for example, the Legal Regime of the National Ecological Reserve and the Legal Regime of the National Agricultural Reserve).

Law stated - 25 January 2023

Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

The Legal Regime for the Preservation of Natural Landscapes and Wild Flora and Fauna is the statute that implements the EU Birds Directive and the EU Habitats Directive to ensure the protection of wild species of flora and fauna, and the preservation of natural habitats. The main purpose of this legislation is the creation and conservation of a network of sites commonly known as the Natura 2000 Network.

The legal regime sets out procedural and substantive protection rules as well as plans and projects that are likely to have a significant effect on a Natura 2000 Network site. Although it is applicable to several types of fauna and flora species, it provides for specific rules regarding priority species, which have the most stringent schemes of protection.

In particular, this piece of legislation establishes Special Protection Areas and Special Areas of Conservation, which are subject to specific regulation to protect (or restore) the level of conservation of populations of specific species of birds and natural habitats or populations of species, respectively.

As a general rule, destroying or disturbing protected wild species of flora and fauna, and the possession or trade of such species, is prohibited. This conduct may be subject to administrative penalties and criminal liability under the Criminal Code.

Law stated - 25 January 2023

Noise, odours and vibrations

What are the main features of the rules governing noise, odours and vibrations?

The General Noise Regulation and the Law on Noise Assessment and Management are the two key statutes concerning noise emissions, although municipal regulations also play a major role in this matter, especially in relation to noise zoning.

The limits imposed by law depend on factors such as the location or the time of day at which the noise is produced. Nonetheless, if duly justified, it is possible to exceed such limits to a certain extent by obtaining a special municipal noise allowance licence. As a general rule, the maximum noise limits fluctuate between 55dB(A) and 65dB(A). In sensitive areas (eg, near houses, hospitals and schools), such limits are reduced to 45dB(A) and 55dB(A).

The police, the municipal authorities and the General Inspectorate of Agriculture, Sea, Environment and Spatial Planning are some of the entities that enforce compliance with these regulations.

Vibrations may also be deemed covered by the concept of noise for purposes of the legal frameworks.

There are no specific rules applicable to odours, although it is a factor often taken into account by regulatory and licensing authorities, notably when assessing the environmental impact of certain projects.

Law stated - 25 January 2023

Liability for damage to the environment

Is there a general regime on liability for environmental damage?

At a general level, the Environmental Policy Basis Law sets out:

- the principle of liability of anyone who threatens or damages the environment, whether directly or indirectly, acting intentionally or negligently; and
- the principle of restoration, under which whomever causes environmental damage must restore the affected environment to its prior condition.

Although a definition of 'environmental damage' is absent from the Environmental Policy Basis Law, the Environmental Liability Law defines 'damage' as an adverse measurable change of a natural resource or a measurable deterioration of a natural resource service, which may occur directly or indirectly.

Portuguese law establishes three types of environmental liability: criminal, administrative and civil.

Criminal liability, which may result in prison sentences or fines, is set out in articles 278, 279, 279(A) and 280 of the Criminal Code, which criminalise damage to the environment, pollution and undertaking activities dangerous to the environment.

The Environmental Liability Law is generally applicable to threats or damage to the environment made by economic activities, and regulates both administrative and civil liability for environmental damage.

Administrative liability constitutes the responsible economic operator in the obligation to adopt and pay for measures to prevent and repair any damage caused or threatened.

Civil liability stems from offences to third-party rights or interests through damage of environmental components. Despite operating independently from administrative liability, civil liability cannot be imposed if the agent has already repaired the damage under the administrative liability framework.

The competent authority regarding compliance with the rules provided by the Environmental Liability Law is the Portuguese Environment Agency.

Law stated - 25 January 2023

Environmental taxes

Is there any type of environmental tax?

There are several environmental taxes currently in force in Portugal. In fact, the Environmental Policy Basis Law stipulates that environmental taxation may be used as an instrument in environmental policies to remove burdens from good environmental practices and encumber the most polluting activities.

Environmental taxation generally applies to activities regarding water, waste or emissions.

For instance, the Law on the Use of Water Resources establishes a water resources tax over licensed activities that negatively impact or may potentially impact the water resources. The Legal Framework for Waste Management provides for an economic and financial system according to which different taxes may be imposed such as, among others, a tax imposed during the licensing procedures, a waste management tax and a registration tax. The Law on Air Pollution Prevention sets out a tax for the issuance of an Air Emissions Title. Such taxes lawfully accumulate along with general taxes on real estate and corporate return, and there is no record of double taxation issues being raised in this regard.

Ministerial Order No. 38/2021 of 16 February 2021 approved the application of a carbon tax on air and sea travel with the aim of compensating for emissions of pollutant gases and other negative environmental impacts caused by these means of transportation.

Law stated - 25 January 2023

Environmental reporting

Are there any notable environmental reporting requirements (eg, regarding emissions, energy consumption or related environmental, social and governance (ESG) reporting obligations)?

Depending on the type of activities being carried out by an undertaking and the licensing or permitting regime to which it is subject, different environmental reporting obligations may need to be complied with.

By way of example, the following are some of the most notable environmental reporting requirements:

- annual submission of the waste registry integrated map;
- annual emissions report;
- results of the self-assessment monitoring of air emissions;
- annual environmental report;
- submission of information to the Pollutant Release and Transfer Register;
- reporting on the use and rejection of wastewater for the purposes of the calculation of the water resources use fee; and

- Seveso audit reports.

Law stated - 25 January 2023

Government policy

How would you describe the general government policy for environmental issues? How are environmental policy objectives influencing the legislative agenda?

Environmental issues and the energy transition play a central role in Portuguese governmental policy, especially given the key policies introduced recently. In 2019, the Portuguese government approved the Carbon Neutrality Roadmap 2050, which enshrined a commitment to achieve carbon neutrality by 2050. In the following year, the Portuguese government approved the National Plan for Energy and Climate 2020–2030, which has as its main objectives the promotion of the decarbonisation of the economy and the energy transition to achieve carbon neutrality. The latter plan contains a long-term strategy designed to be aligned with the goal of achieving carbon neutrality by 2050.

With this goal in mind, Portugal has been actively fostering energy transition efforts and has set the goal of having 80 per cent of the electricity supplied in Portugal coming from renewable energy sources by 2030.

This policy approach has translated into a legislative agenda that particularly fosters renewable power generation (centralised and distributed), for example, through the introduction of legislative packages focused on simplifying the licensing procedures applicable to solar and green hydrogen projects, including environmental licensing procedures.

Clear legislative measures are already being seen in terms of energy efficiency in buildings, an increase of renewables installed capacity, a green hydrogen strategy (with a roadmap approved in 2020) and the reduction of heavy industry energy consumption.

Finally, and most recently, in light of environmental policy objectives, Law No. 98/2021 of 31 December 2021 came into force. It approved the Climate Framework Law, which consolidates the objectives, principles and obligations of the different levels of governance for climate action through public policies.

Law stated - 25 January 2023

HAZARDOUS ACTIVITIES AND SUBSTANCES

Regulation of hazardous activities

Are there specific rules governing hazardous activities?

Pursuant to Decree-Law No. 127/2013 of 30 August 2013 on the integrated prevention and control of pollution and emissions, prior to the start of operations, hazardous activities require the issuing of an environmental licence, which is to be granted according to the applicable licensing procedures. Likewise, prior to the start of operations, the facility must be inspected to verify whether it has been established according to its licence.

In addition, some activities are subject to specific regulations, notably:

- the management of hazardous waste, regulated by Decree-Law No. 102-D/2020 of 10 December 2020, as amended by Law No. 52/2021 of 10 August 2021 (which sets out the legal framework for waste management), Decree-Law No. 3/2004 of 3 January 2004 and Ministerial Order No. 172/2009 of 17 February 2009 (which is a statute on integrated centres of recovery, assessment and disposal of hazardous waste); and
- the land transport of hazardous products or substances, regulated by national statutes (namely Decree-Law No.

41-A/2010 of 29 April 2010) and by European or international regulations.

Law stated - 25 January 2023

Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

There are several provisions regarding hazardous products and substances, depending on the issues to be addressed.

Pursuant to Decree-Law No. 150/2015 of 5 August 2015, as amended by Decree-Law No. 71/2018 of 31 December 2018 (the Legal Regime for Hazardous Products and Substances), the authorisation for the commencement of activities involving hazardous substances is subject to several preventive conditions (such as the preparation of preventive policy plans, security reports or emergency plans).

Regarding the classification, packaging and labelling of hazardous substances and preparations, Decree-Law No. 98/2010 of 11 August 2010 is the main statute on hazardous substances and Decree-Law No. 82/2003 of 23 April 2003 , as amended by Decree-Law No. 155/2013 of 5 November 2013, provides the rules applicable to hazardous preparations. This legislation sets forth a list of substances that cannot be put on the market and requirements that must be complied with for the trading of certain hazardous substances to be allowed. Furthermore, there is an obligation to notify the relevant public administration of new compounds containing hazardous substances, and to label and pack compounds containing hazardous substances.

The transport by land of hazardous products or substances is also subject to several requirements determined by national statutes, or EU or international regulations. In broad terms, the transportation of such goods may be carried on by authorised or licensed entities using authorised and adequate vehicles. Notifications shall be made to the relevant crossed countries, and packages and vehicles shall be duly marked and labelled.

Finally, Decree-Law No. 293/2009 of 13 October 2009 ensures the implementation and execution at a national level of Regulation (EC) No. 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals, which sets out specific duties and obligations (eg, registration of substances with the European Chemicals Agency) on manufacturers, importers and downstream users of substances, mixtures or preparations.

Law stated - 25 January 2023

Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

The main preventive measures concerning industrial accidents are set out in the Legal Regime for Hazardous Products and Substances. According to this statute, security regulations for the different types of industries must impose compulsory obligations, such as the implementation of a serious accident prevention policy or an internal emergency plan. Furthermore, the competent authorities may suspend or close any activity when a material risk to human health or the environment is detected.

On the other hand, the Legal Regime for Hazardous Products and Substances imposes on public authorities and certain industries the obligation to carry out specific actions to avoid accidents involving hazardous substances (eg, drawing a prevention plan or conducting accident drills). Breaches of such provisions may determine the application of administrative penalties, which can range from fines to the seizure of goods and assets.

Law stated - 25 January 2023

ENVIRONMENTAL ASPECTS IN TRANSACTIONS AND PUBLIC PROCUREMENT

Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

The main environmental aspects to consider in such transactions are the following:

- compliance with the relevant environmental obligations, of which the most relevant are usually related to emission limits and waste management conditions;
- the availability of relevant environmental permits, the most important of which are the activity and operation licences, water extraction and wastewater discharge authorisations, waste production and management authorisations and the integrated environmental authorisation;
- the existence of administrative or judicial proceedings (current or envisaged) in connection with environmental issues;
- the existence of soil pollution and pollution of the associated underground water; and
- the existence of historical environmental damage and liability.

In addition, it is important to take into account whether the transaction is implemented by means of an asset deal or a share deal. The acquisition of shares entails that all environmental liabilities are assumed by the buyer. Conversely, asset purchases may reduce the liabilities to be assumed by the buyer but require transferring or obtaining the permits to carry out the activity.

Alternatively, there are a number of legal aspects that may need to be considered, in particular relating to:

- energy consumption;
- water domain;
- licence to operate underground storage tanks;
- public liability insurance or environmental incidents insurance coverage;
- asbestos and polychlorinated biphenyls;
- chemical storage and handling; and
- change of control provisions requiring prior notice of authorisation from regulatory bodies.

Law stated - 25 January 2023

Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

In real estate transactions, soil and water pollution are the most relevant issues. Alternatively, compliance with environmental obligations and the availability of the relevant permits to carry out the activity are the most relevant aspects that must be observed in transactions regarding financing or capital markets. Exposure to prospective damage compensation under the Decree-Law No. 147/2008 of 29 July 2008, as amended (on environmental liability) and to potential offences under Law No. 50/2006 of 29 August 2006, as amended (on environmental administrative offences) should also be assessed.

In corporate restructuring and bankruptcy proceedings, if the activity is assigned to another entity, the relevant permits and concessions must also be transferred, and the closure or dismantling of certain types of industries may be subject

to specific environmental permits.

Law stated - 25 January 2023

Environmental aspects in public procurement

Is environmental protection taken into consideration by public procurement regulations?

The legal framework applicable to public procurement procedures is set out in Decree-Law No. 18/2008 of 29 January 2008, as amended (the Public Contracts Code). The Public Contracts Code establishes a clear differentiation between pre-contractual procurement procedures and the material execution of public contracts, providing for different rules for each of these instances.

Although the sections of the Public Contracts Code dedicated to the material execution of public contracts do not establish specific rules that tackle environmental issues, the sections on pre-contractual procedures do have rules on the public authorities' duties to take into account environmental issues when preparing and drafting the specifications of public contracts as well as the high level of scrutiny towards the bidders' overall compliance with such issues.

In works contracts, whenever the intended construction falls under Decree-Law No. 151-B/2013 of 31 October 2013, as amended – setting out the legal regime for environmental impact assessments – either owing to its location or the specific characteristics of the construction, the execution project to be included in the pre-contractual procedures' specifications shall include an environmental impact statement (when applicable), and the bidders' offers must evidence compliance with the terms and conditions of such a statement.

With regard to the scrutiny of the bidders' overall compliance with environmental requirements, not only must the bidders provide evidence that they hold all necessary licences (including in the environmental field) necessary to comply with the terms of the contract to be awarded, but they must also submit several statements and public documents attesting to the absence of any administrative or criminal convictions related to business activities (which include convictions by breach of environmental laws). Members of the managing bodies of bidders must also submit such statements evidencing the absence of convictions.

Finally, environmental requirements are increasingly set forth in public procurement procedures pursuant to EU policies. These requirements are part of the Green Public Procurement instrument, under which Europe's public authorities use their purchasing power to choose environmentally friendly goods, services and works.

Law stated - 25 January 2023

ENVIRONMENTAL ASSESSMENT

Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

The general rule under Decree-Law No. 151-B/2013 of 31 October 2013, as amended – setting out the legal regime for environmental impact assessments (EIAs) – is that public and private projects that could have a significant effect on the environment are subject to an EIA, which in turn gives rise to an environmental impact statement (EIS). Favourable EISs do not constitute licences; rather, they are a priori binding conditions to obtain a certain authorisation or decision.

EIAs are particularly required for projects relating to agriculture, mining, oil, power generation, the steel industry, the chemical industry, infrastructures, hydraulic works and waste management facilities. In addition, depending on the characteristics of a project, the responsible EIA authority or government bodies may decide that such a project should be subject to an EIA.

In exceptional circumstances, it is possible to request an exemption from an EIA (eg, if the project is considered to be

of potential national interest under Decree-Law No. 154/2013 of 5 November 2013).

Law stated - 25 January 2023

Environmental assessment process

What are the main steps of the environmental assessment process?

The main steps of an EIA procedure are:

- preliminary and optional steps:
  - the project sponsor may propose a definition of the EIA's scope containing the characteristics, location and description of the project;
  - the EIA authority shall forward it to certain institutions to obtain their opinion; and
  - a public consultation may be required by the project sponsor and decided by the evaluation committee; and
- without prejudice to the steps described above:
  - the EIA procedure is initiated by the project sponsor filing the EIS with the relevant licensing or authorisation body, which will in turn submit it to the EIA authority;
  - the EIA authority submits the EIS to the competent authorities for them to appoint members of the evaluation committee;
  - on the basis of the assessment of the evaluation committee, the EIA authority declares the conformity or non-conformity of the EIS (in the case of non-conformity, the procedure is concluded);
  - the EIA is submitted to public consultation, the result of which is sent by the EIA authority to the evaluation committee;
  - the evaluation committee shall prepare and send to the EIA authority a report with its final opinion; and
  - the EIA authority will issue an environmental impact statement.

Law stated - 25 January 2023

REGULATORY AUTHORITIES

Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

In Portugal, environmental responsibilities are shared between the Portuguese state (central administration) and municipalities (local administration). At state level, the main public entities with environmental responsibilities are the following:

- the Ministry of the Environment, Planning and Energy;
- the Regional Development and Coordination Committees;
- the Water and Waste Services Regulatory Entity;
- the Nature and Forests Preservation Institute;
- the Portuguese Environment Agency; and
- the General Inspectorate of Agriculture, Sea, Environment and Spatial Planning.

Through these entities, the Portuguese state enacts basic environmental legislation and supervises, monitors and sanctions most activities concerned with the environment.

Municipalities also have powers on environmental protection that must be executed in accordance with the regulations issued by the state. The main environmental powers of the municipalities concern granting licences, administering urban waste regulation and defining noise limits.

Law stated - 25 January 2023

Investigation

What are the typical steps in an investigation?

In general, facilities subject to environmental regulation may be inspected and monitored by the competent regulating authority and the respective operators must provide it with the relevant information.

The investigation procedure following the breach of environmental regulations constituting administrative offences is subject to the rules established by Law No. 50/2006 of 29 August 2006, as amended (setting out the legal framework for environmental administrative offences) and, on a subsidiary level, to Decree-Law No. 433/82 of 27 October 1982 (setting out the legal framework of administrative offences).

Whenever a public officer witnesses or becomes aware of an administrative offence (which may occur through a complaint submitted by an individual), an official report must be drawn up describing:

- the facts;
- the time and circumstances under which the offence was committed or detected;
- the identification details of the offender and of witnesses; and
- the name of the reporting public officer.

Upon receiving the report, which serves as evidence of the reported facts, the administrative authority may decide not to proceed to the investigation phase if the reported offence is minor, the offender's record is clean and the offender has not been given a warning by the administrative authority in the preceding three years.

However, if these conditions are not all met, the administrative authority must proceed to the investigation phase, where it has 180 days to gather and examine all evidence (this deadline may be extended for a further 120 days). For this purpose, the administrative authority must be granted access to the facilities or sites where inspected activities take place. It must be granted all the requested information, documentation and any other elements.

Following an investigation, the administrative authority may issue a resolution:

- imposing sanctions on the offender; or
- filing the proceedings if no violation has been evidenced.

However, before this decision is issued, the offender is notified of the proceedings, together with all relevant elements for them to ascertain all relevant aspects of the expected decision. The offender has 15 business days to lodge a written response, submit any relevant documents or summon witnesses.

The decision under which sanctions are imposed may be appealed against judicially.

Law stated - 25 January 2023

Administrative decisions

What is the procedure for making administrative decisions?

The procedure commences at the request of an individual or a public authority. Thereafter, a preliminary investigation is carried out in which all relevant facts and allegations are collected and examined. Finally, the decision is issued by the competent authority.

As a general rule, the parties have the right to be heard before the decision is made (the project decision phase). Under this right, the private party may provide to the public authority all relevant evidence and summon witnesses. The decisions rendered can be appealed in court.

Law stated - 25 January 2023

Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

The sanctions and remedies that may be imposed by the regulator for violations of mandatory environmental rules are usually fines, which may range from €200 to €5 million, depending on the seriousness of the offence and whether the offender is a legal person. Ancillary sanctions may also be imposed, which may include, among others, the following:

- appropriation by the state of any objects of the producers or agents used in such activities;
- exclusion of any rights to claim any subsidy or benefits from any public entities;
- compulsory closure of any premises and facilities subject to previous authorisation or licensing; and
- suspension of any applicable authorisations, licences or permits.

In addition to these sanctions, the offender may also be obliged to undertake any suitable measure to prevent and mitigate the environmental damage caused and to restore the previously existing state of affairs.

Law stated - 25 January 2023

Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

Any administrative decision taken as a result of an administrative procedure may be appealed for judicial review. Should there be an authority in a higher position in the hierarchy than the one that has issued the decision, an administrative appeal may also be filed.

Law stated - 25 January 2023

JUDICIAL PROCEEDINGS

Judicial proceedings

Are environmental law proceedings in court civil, criminal or both?

Environmental law proceedings take place in administrative, civil and criminal courts depending, in each case, on the affected interests and the applicable regulations. Civil claims, notably those related to environmental liability for

damage, usually proceed in civil courts. Proceedings related to environmental offences are resolved before criminal courts if the offence is regarded as a criminal offence.

With regard to administrative offences, the claims regarding an appeal for judicial review of the decisions of the competent authorities or regulators may proceed in administrative courts or in civil courts, depending on the nature of the offence and applicable regime.

Law stated - 25 January 2023

Powers of courts

What are the powers of courts in relation to infringements of environmental law?

Portuguese courts have full powers to confirm or quash any kind of administrative decisions regarding any kind of infringement or breach of environmental law.

Furthermore, in the case of criminal offences, penalties such as fines or imprisonment may also be imposed by Portuguese courts.

As a general rule, a court cannot aggravate the original decision from a public authority being appealed exclusively by the private party.

However, a fine may be aggravated by the court if the offender's financial situation has considerably improved. In addition, administrative decisions concerning environmental infringements may be aggravated by the courts.

Law stated - 25 January 2023

Civil claims

Are civil claims allowed regarding infringements of environmental law?

Under Decree-Law No. 147/2008 of 29 July 2008, as amended (the Environmental Liability Law), civil liability may arise from damage to individual rights or interests through damage to an environmental component. Both contractual and non-contractual civil claims regarding breaches and infringements of environmental law are allowed in Portuguese courts when damage or nuisance is caused by such a breach or infringement.

Law stated - 25 January 2023

Defences and indemnities

What defences or indemnities are available?

Allocation of liability

Both individuals and legal entities may incur civil, criminal and administrative liability.

Criminal liability is fault-based and arises when the conduct has been committed intentionally or, in some cases, negligently. The criminal liability of a legal person does not exclude, nor does it depend on, the criminal liability of an individual acting in a leadership position of such a legal person. However, the criminal liability of legal persons can be excluded when the relevant agent has acted against express orders or instructions.

Under Law No. 50/2006 of 29 August 2006, as amended (the Legal Framework for Environmental Administrative Offences), a fine may be reduced when circumstances arising before or after the date of the offence significantly diminish its illegality, the degree of fault of the agent or the necessity of the fine. For this purpose, the agent must have

shown regret (namely, by repairing the damage to the extent possible and complying with the breached provision or order) or, if two years have passed since the offence, the agent has shown good behaviour.

Administrative liability for environmental damage may be strict or fault-based. If there is more than one person involved, liability for the infringement is generally joint and several. When the environmental damage is caused by more than one agent, each agent is jointly liable, without prejudice to the right of recourse to be determined by each agent's degree of liability or fault. If determining this degree is not possible, the liability is presumed equal.

Under the Environmental Liability Law, the operator does not have to bear the costs of prevention or reparation measures if it is established that the environmental damage or imminent threat:

- has been caused by third parties and despite the adoption by the operator of adequate safety measures; or
- results from compliance with an order or instruction of a public authority that has not been issued in the context of an emission or accident caused by the operator's activity.

The operator is still obliged to adopt and execute such measures, but has a right of recourse over the third party or over the administrative authority, as applicable.

In addition, the operator does not have to bear the costs of prevention or reparation measures if it is established that:

- there has been no intention or negligence on causing the damage; and
- the damage was caused:
  - by an expressly allowed action that has complied with all the conditions of the relevant authorisation and with the legal provisions; or
  - during an activity that was not considered to be susceptible to causing environmental damage at that time.

Civil liability can be either fault-based or strict. Should environmental damage arise from a legal person's action, management may be jointly and severally liable with the legal person. In addition, if the operator is a legal person controlled by another legal person, the latter may also be jointly liable where legal personality has been abused or where it constitutes illegal fraud.

Limitation period

Under the Environmental Liability Law, liability for damage caused by emissions, incidents or occurrences is limited to a period of 30 years from the date the damage was sustained.

According to the Legal Framework for Environmental Administrative Offences, the limitation period for administrative offences is five years for very serious offences and serious offences, and three years for minor offences. The limitation period is counted from the date of the offence.

Pursuant to Decree-Law No. 48/95 (the Criminal Code), the limitation period for basic environmental crimes may range from five to 10 years.

Law stated - 25 January 2023

Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

Under the Criminal Code, directors, officers and company representatives can be held personally responsible for any

environmental wrongdoing or offence caused by the company (which may be held criminally responsible as well). The criminal liability of a legal company does not exclude, nor does it depend on, the criminal liability of an individual acting in a leadership position of such a legal person, but the criminal liability of legal persons can be excluded when the relevant agent has acted against express orders or instructions.

Under the Legal Framework for Environmental Administrative Offences, directors, managers and shareholders are jointly responsible for the payment of fines. Where a fine has been imposed on a legal person, its directors, managers and persons who perform managerial functions are secondarily responsible for the payment of fines if:

- they bear responsibility in the insufficiency of the legal person's assets to pay; or
- the offence was committed prior to them taking office but the final decision imposing a fine is notified during their office and it is not paid due to their conduct – they may also be secondarily responsible for the payment of procedural costs.

According to the Environmental Liability Law, where a legal person is liable for any damage or an imminent threat of damage to the environment, joint and several liability is imposed on the managers, administrators or directors, who become personally liable together with the company itself. This rule is set out in the law concerning water – Law No. 58/2005 of 29 December 2005, as amended.

Furthermore, a legal person may be held liable in civil claims for any damage caused, including damage caused by a director or officer.

On the other hand, the directors and officers of the company may also be held liable in relation to the company itself, the shareholders and the company creditors for any damage caused as a consequence of their negligent or guilty acts.

Law stated - 25 January 2023

Appeal process

What is the appeal process from trials?

Under Portuguese law, there are two levels of appeal plus an additional appeal to the Constitutional Court. However, to progress through all the appeal levels, several requirements must be met.

As a general rule, judgments issued by administrative, civil and criminal courts at first instance may be appealed against in second instance courts. Judgments issued in second instance courts may be appealed before the Supreme Court of Justice or the Administrative Supreme Court, depending on the matter at hand.

Notwithstanding this, certain matters may be decided at first or second instance without the possibility of lodging an appeal before the higher court. Alternatively, in a few cases and under certain conditions, rulings issued at first instance may be directly appealed before the Supreme Court of Justice or the Administrative Supreme Court.

In addition, if there is a violation of constitutional norms, the matter may be raised before any common court. The decision of such a court on this constitutional issue may be appealed before the Constitutional Court.

Law stated - 25 January 2023

INTERNATIONAL TREATIES AND INSTITUTIONS

International treaties

Is your country a contracting state to any international environmental treaties, or similar agreements?

Portugal is a contracting party to many relevant international treaties regarding the environment, including:

- the United Nations Framework Convention on Climate Change, New York, 1992;
- the Convention on Wetlands, Ramsar, 1971;
- the Protocol to the United Nations Framework Convention on Climate Change, Kyoto, 1997;
- the Paris Agreement, Paris, 2015;
- the Convention on the Conservation of European Wildlife and Natural Habitats, Berne, 1979;
- the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, DC, 1973;
- the Convention for the Protection of the Mediterranean Sea Against Pollution, Barcelona, 1976;
- the Stockholm Convention on Persistent Organic Pollutants, Stockholm, 2001;
- the Convention on Long-range Transboundary Air Pollution, Geneva, 1979;
- the Convention on the Transboundary Effects of Industrial Accidents, Helsinki, 1992;
- the Convention on Environmental Impact Assessment in a Transboundary Context, Espoo, 1991;
- the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Rotterdam, 1998; and
- the Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985.

Law stated - 25 January 2023

International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

International treaties are binding in Portugal as soon as they are published in the State Official Gazette. Therefore, regulatory policy is directly affected by such international treaties to the same extent as state regulations.

Law stated - 25 January 2023

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics in environment law in your jurisdiction?

Environmental issues and the energy transition play a central role in the Portuguese governmental policy, especially in light of the Portuguese government's approval of the Carbon Neutrality Roadmap 2050, which enshrined a commitment to achieve carbon neutrality by 2050, and the National Plan for Energy and Climate 2020–2030, which promotes the decarbonisation of the economy and the energy transition to achieve carbon neutrality.

In light of the objectives set out by these packages, the government has announced that it will be introducing legislative packages focused on, among others, simplifying the licensing procedures applicable to solar and green hydrogen projects, including environmental licensing procedures. For example, the environmental impact assessment procedure will cease to be mandatory for certain types of projects. The government's intention is the acceleration of investments, the energy transition, and waste and water reutilisation transition.

The government's general approach to date, especially in light of the current energy crisis, has been to implement temporary measures that simplify and expedite environmental licensing procedures for renewable energy projects. Although these measures are temporary, given the faster energy transition aim, it seems that the government is likely to continue following this trend from an environmental licensing perspective.

Also worth noting is that the Portuguese legislative agenda currently includes a mandatory revision of the National Plan for Energy and Climate 2020–2030, set to be concluded at some time in 2023. This revision is expected to result in new objectives and measures to be accommodated by legislative packages, the approval of the legal framework on soil contamination prevention and remediation, and the completion of the revision of both the Strategic Plan for Municipal Waste and the Strategic Plan for Non-urban Waste through the elaboration of both plans.

Law stated - 25 January 2023

Jurisdictions

Australia	Johnson Winter Slattery
European Union	Allen & Overy LLP
France	Huglo Lepage Avocats
Germany	Enderle Environmental Law
India	Shardul Amarchand Mangaldas & Co
Indonesia	SSEK Law Firm
Malta	Camilleri Preziosi
Netherlands	Van der Feltz attorneys
Portugal	Uría Menéndez
Taiwan	Lee and Li Attorneys at Law
USA	Beveridge & Diamond PC