



PUBLIC LAW AND ENERGY AND NATURAL RESOURCES

Framework Law on the Climate

INTRODUCTION

The new Framework Law on the Climate (Law 98/2021 of 31 December) was published on 31 December 2021. This new Law repeals Law 93/2001 of 20 August and establishes the guiding principles of climate policy and governance. It also introduces targets and provides for mechanisms to combat climate change, to decarbonise the economy and to achieve sustainable development.

The Framework Law on the Climate is a comprehensive and programme-based law that focuses on various sectors, including the energy industry, construction, agriculture and fisheries. It also addresses financial assets and green taxation. Accordingly, although the Law already establishes a set of specific targets, it will still be necessary to implement it in a set of other laws. This new Law also reinforces and brings together other legal instruments in force on climate change. These include the National Strategy for Adaptation to Climate Change (ENAAC) 2020¹, the Roadmap to Carbon Neutrality 2050², the National Energy and Climate Plan 2021-2030 (PNEC 2030)^{3/4}, and the Action Programme for Adaptation to Climate Change (P-3AC)⁵. It thus condenses the guidelines for Portuguese climate policy, with the aim of achieving carbon neutrality in the country.

This new Law lays the foundations of climate policy, based on the urgency of combating climate change and it recognises the climate emergency situation⁶.

It comes into force on 1 February 2022.

"The ultimate goal is to achieve climate neutrality by 2050 and the possibility of bringing this target forward to 2045 is being studied."

¹ Approved by Council of Ministers Resolution 56/2015 of 30 July, and its validity was extended until 31 December 2025 by Council of Ministers Resolution 53/2020 of 10 July.

² Approved by Council of Ministers Resolution 107/2019 of 1 July.

³ Approved by Council of Ministers Resolution 53/2020 of 10 July.

⁴ [PLMJ Informative Note of 16 July 2021](#).

⁵ Approved by Council of Ministers Resolution 130/2019 of 2 August.

⁶ The Law states that this recognition of the climate emergency situation does not constitute a declaration of a state of emergency under Article 19 of the Constitution of the Portuguese Republic.

1. Objective of the climate policy

The major objective is to achieve ecological balance and neutrality in greenhouse gases by 2050⁷. In other words, the aim is to achieve a neutral balance between greenhouse gas emissions and the sequestration of these gases by the various sinks. This process will take into account the following targets for the reduction of emissions of these gases by reference to 2005 values and defined by the new law:

- Reduction of at least 55% by 2030;
- Reduction of at least 65% to 75% by 2040;
- Reduction of at least 90% by 2050.

Climate policy objectives are outlined for this purpose. These include (i) fostering the circular economy through the sustainable use of resources (especially energy resources), (ii) developing and strengthening current carbon sinks and other carbon sequestration services, (iii) encouraging the use of renewable energies and their integration into the national electricity system, (iv) boosting sustainable financing, and (v) ensuring that all legislative measures and major public investments are strategically assessed to achieve the essential goal of pursuing sustainable development. All this is to be done in line with the principles now enshrined in the climate policy.

2. Issues regarding specific sectors

‘Sector-by-sector climate policy instruments’ are defined to provide measures and targets for specific sectors. These are some examples:

- **Transport** - besides the provision to develop measures to promote sustainable mobility, 2035 is set as the reference date for the end of sales in Portugal of new light vehicles powered exclusively by fossil fuels;
- **Materials and consumption policy** - the design of products, packaging, infrastructures and buildings must follow a logic of eco-design.
- **Waste** - the State is obliged to adopt a bio-waste collection and recovery model and, by 2025, incentive and returnable packaging waste systems to effectively recover plastic packaging from urban waste;
- **The agri-food chain** - provision is made to encourage the decarbonisation of agriculture, fisheries and aquaculture, and to encourage sustainable and healthy eating habits, with a reduction in food waste;

"The circular economy is recognised as the cornerstone of decarbonisation."

⁷ A target that had already been defined in the Roadmap for Carbon Neutrality 2050, approved by Council of Ministers Resolution 107/2019 of July 1.



- For the purpose of **carbon sequestration**, provision is made to introduce measures targeting forests and oceans to strengthen their capacity as natural carbon sinks. Provision is made to support the sustainability and resilience of forests. This is to be achieved by maintaining and incorporating residual forest biomass into the soil and promoting more sustainable and resilient forest crops, such as native species, white oaks and hard woods.

"As part of the development of a sustainable blue economy, there is a plan to encourage electricity generation through ocean and deep-sea energy."

The energy sector in particular:

In this sector, the plan is to achieve decarbonisation of the electro-production system. This is to be done by banning the use of coal to produce electricity from 2021, and of natural gas of fossil origin to produce electricity from 2040, provided the security of supply is guaranteed.

Together with decarbonisation, the policy to produce electricity from renewable sources is reaffirmed, and there is also a focus on the aspects of decentralised production and energy efficiency.

Biomass receives special attention in the legislation. In particular, it provides for

- The certification of the origin of residual forest biomass and the regular monitoring of the nature of the biomass used for electricity production;
- The ban on the use of quality wood, biomass from energy crops and residual biomass from distant locations for the production of energy from biomass.

There is also a focus on the sea as a preferential area to harness energy from renewable sources for electricity production.

Finally, the State supports the replacement of fuels, in particular fossil fuels, as a source of energy, by electricity or renewable gases. From 1 January 2022, it will restrict the production and marketing of fuels or biofuels containing palm oil or other unsustainable food crops. In terms of exploration and exploitation of hydrocarbons, the State will prohibit the granting of new concessions for exploration or exploitation of hydrocarbons in Portuguese territory.

"Biomass receives special attention, with provision for: (i) Certification of the origin of residual forest biomass and the regular monitoring of the nature of the biomass used for electricity generation; (ii) A ban of the use of quality wood, biomass from energy crops and residual biomass from distant territories to produce energy from biomass."



3. Economic operators and climate change

The new law calls upon and obliges economic operators to contribute to achieving the objectives set out in it. Thus:

- Companies are obliged, in their corporate governance, to consider climate change in decision-making processes and to incorporate a climate risk analysis;
- For each annual financial year, companies must assess the exposure to climate change of the carbon impact of their activity and operation, and they must integrate this assessment into their management reports;
- Companies can set a carbon budget that establishes a total maximum limit of greenhouse gas emissions that observes the targets set out in this law;

"Company management reports must include an assessment of the exposure to climate change of the carbon impact of their activity and operations."

"Failure to consider climate risk and climate impact in the short, medium and long term in financing decisions is considered a breach of the fiduciary duties."

- Economic and financial agents, whether public or private, must take into account "climate risk" and the "climate impact". The new law establishes that the failure to take these factors into account in the short, medium and long term is a breach of fiduciary duties;
- Provision is also made to create a certification system on the ecological or carbon footprint of goods and services.

4. Climate policy instruments

The new law creates a set of climate policy instruments with diverse characteristics, functions and specific scopes. They are grouped into the following categories: planning and evaluation; economic and financial; and sector-by-sector climate policy (presented above in point 2.) The following is a non-exhaustive list of the measures included in these instruments.

Planning instruments:

- **National scope**
 - Mitigation:
 - i) National targets for the reduction of greenhouse gas emissions, to be defined by the Portuguese Parliament for a 30-year period;
 - ii) Sector-by-sector targets for the reduction of greenhouse gas emissions, to be drawn up by the State;



- iii) The Government is responsible for the long-term strategy (30 years), the carbon budgets, and the PNEC (the Portuguese National Energy and Climate Plan)⁸, and the sector-by-sector plans to mitigate climate change, with the latter to be approved by the end of 2023, for a 5 year period.

Adaptation:

- i) The ENAAC (National Strategy of Adaptation to Climate Change)⁹, to be presented in the Portuguese parliament by the Government;
- ii) Sector-by-sector plans for adaptation to climate change should be approved by the Government by the end of 2023. These plans cover territory, geography and the natural environment, infrastructure, equipment and built environment, and economic, social and cultural activities.

o **Local scope**

Although they are not expressly included in the chapter on planning and assessment instruments, the following must also be taken into account in this context:

- i) The municipal climate action plans, to be approved by the municipal assemblies up to 24 months after the entry into force of this law;
- ii) The regional climate action plans, to be approved by the regional councils of the regional coordination and development commissions;
- iii) The common climate policies to be defined by the inter-municipal communities and metropolitan areas for their territories.

Assessment instruments:

- o National greenhouse gas emissions inventory;
- o Annual report on the state of execution of planning instruments and on policies and measures on greenhouse gases, as well as the progress achieved in national greenhouse gas emissions by sources and removals by sinks, and on actions to adapt to climate change;
- o Annual report on the use of revenues generated by auctioning emission allowances, to be prepared by the Government;
- o Evaluation of the impact of legislative initiatives on climate balance, also under the responsibility of the Government.

⁸ As already mentioned, the PNEC 2030, which was approved by Resolution of the Council of Ministers 53/2020 of 10 July, is now in force.

⁹ ENAAC 2020 is currently in force, having been approved by Council of Ministers Resolution 56/2015 of 30 July, and its validity was extended until 31 December 2025 by Council of Ministers Resolution 53/2020 of 10 July.



Economic and financial instruments:

In the context of the budget process and green taxation, the stand-out instruments are:

- The provision of a budgetary allocation for climate policy purposes consolidated in a State Budget account;
- *IRS Verde* (Green Personal Income Tax), which consists of the creation of a category of tax deductions that benefits taxpayers who acquire, consume or use environmentally sustainable goods and services;
- Making petroleum and energy products subject to a carbon price that covers the total greenhouse gas emissions in their production and consumption;
- The existence of a financial instrument under the Government member responsible for the area of climate change to support climate policies¹⁰.

"Provision is made to create a system of Green Personal Income Tax (IRS Verde) and to adopt a system of tax or financial benefits for those who demonstrate a reduction in energy consumption and a saving in water consumption."

In the context of sustainable financing:

- A set of sustainable financing principles are established to guide the activity of financial management, capitalisation support and loan contracting;
- The new law provides that any lack of transparency or failure to share information regarding the consideration of climate risk and climate impact in financing decisions is considered an inadequate sale, under the terms of the regulation on markets in financial instruments;
- It also provides that the analysis of risk in financial intermediation should take into account the climate risk and climate impact of the activities that seek financing.

In the context of public investment and public procurement:

- A state guarantee that, progressively up to 2030, all public assets will respect the principles of the EU taxonomy on environmentally sustainable activities. The state will also proceed with divestment of shares in companies or activities that do not comply with those principles;
- Preference in the financing of projects, contracting of services or concession of public services, exclusively or partially, that comply with the principles of the taxonomy on environmentally sustainable activities of the European Union;

¹⁰ Which everything indicates to be the Environmental Fund, created by Decree-Law 42-A/2016 of 12 August.



- The largest public investments will now be subject to a strategic evaluation that deals with the risks associated with climate change in national and sector-by-sector planning and economic investment decisions;
- Approval and implementation of decarbonisation programmes.

5. Climate rights and duties

- From a more subjective perspective on the issue of climate change, the new law lists climate rights and duties, in particular, the right of citizens to climate balance. This consists of the right of citizens to defend themselves against the impacts of climate change. The law also lists the power to require public and private bodies to comply with the duties and obligations to which they are bound in climate matters.

"The new law provides that everyone has a right to climate balance, which takes the form of a right-duty to climate balance."

- In addition to the right to climate balance, other climate-related rights are also established. These include the right to prevent, stop and repair risks to the climate balance and the right to demand the immediate cessation of the activity causing a threat or damage to the climate balance. Procedural prerogatives are also established.
- Parallel to the recognition of these rights, the duty to protect, preserve, respect and ensure the safeguarding of the climate balance is established to contribute to mitigating climate change. Accordingly, the right to climate balance takes the form of a right-duty to climate balance. This is similar to what already occurs in the Constitution of the Portuguese Republic with the right-duty to the environment.
- Simultaneously, citizens are recognised as subjects of climate action¹¹ and have the right to participate in the processes of drafting and reviewing climate policy instruments. The new law also seeks to ensure they have easy access to clear and systematised information. To this end, there is a plan to create a climate action website, which should be operational within one year of the entry into force of this new law. This will be a public digital tool that is free and accessible via the Internet, and it will enable citizens and civil society to participate in climate action.

6. Liability and sanctioning framework

- The law establishes that harmful acts and omissions that accelerate or contribute to climate change give rise to liability.
- Provision is made to define a system of administrative offences in a specific statute. This system will act as a dissuasive and punitive instrument for acts and omissions that are harmful to the climate, for practices that violate legal and regulatory provisions on climate, and for the improper or abusive use of natural resources.

¹¹ The following are also subject to climate action: The state, public institutions, public companies, autonomous regions, local authorities and their public associations, the Climate Action Council, independent administrative bodies that regulate economic activity, non-governmental environmental organisations, research and reflection centres and groups, and other non-governmental organisations, associations or civil society bodies, private companies and other private law bodies.



"Regarding the definition of climate policy, the right of citizens to information and to participate in planning instruments and decisions on environmental matters is strengthened with the provision of the obligation to organise clarification and debate sessions."

7. Other highlights

- The Government's duty to defend the recognition of the stable climate as Common Heritage of Humanity by the United Nations¹².
- Creation of the Climate Action Council as a body specialising in climate matters, with consultative functions. It must issue an opinion on the State Budget and state its position, whether in the form of opinions or recommendations, on the decarbonisation of the economy in different contexts. Its members must include a young citizen residing in Portugal.
- Incorporation of new concepts or development of concepts recently introduced in normative instruments relating to the topic of climate change:
 - i) Climate justice: A new objective of climate policy is to ensure climate justice by guaranteeing the protection of the communities most vulnerable to the climate crisis, respect for human rights, equality and collective rights over common assets.
 - ii) Climate security: Associated with the prevention and mitigation of the consequences of climate change on public order, security and peace, the integrity of people and property and the regular exercise of rights, freedoms and guarantees, this concept encompasses climate security, energy security, health security and food and nutrition security.
 - iii) Environmental health: associated with public health, as a matter that should be subject to assessment of the risk of emergence of new diseases or the worsening of disease incidence as a result of climate change, in the context of the preparation of plans of action, prevention and contingency in the face of extreme climate phenomena.
 - iv) Climate refugee: in the context of foreign policy on climate, the Government should actively support the definition of this concept, its status and recognition. ■

¹² In accordance with the Resolution of the Portuguese Parliament 324/2021 of 16 December.