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Portugal: Law and Practice

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PLMJ

PORTUGAL

Law and Practice

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1. Regulatory Framework and Law

1.1 Environmental Protection Policies, Principles and Laws

The aim of environmental policy is to enforce environmental rights by promoting sustainable development. This is supported by appropriate management of the environment, in particular of ecosystems and natural resources. This contributes to the development of a low-carbon society and a "green economy", and to rational and efficient use of natural resources, including the promotion of the circular economy, which ensures the well-being and gradual improvement of the quality of life of citizens.

Public action in environmental matters is guided by the following principles:

- sustainable development;
- intra and inter-generational responsibility;
- prevention and precaution;
- responsibility;
- recovery;
- the user pays; and
- the polluter pays.

Public policies for the environment are guided by the following principles:

- a transversal approach and integration;
- international co-operation;
- knowledge and science;
- environmental education; and
- information and participation.

There are several laws governing environmental protection, which relate to specific subjects. The key pieces of legislation include:

- the Constitution of the Portuguese Republic;
- Law 19/2014, the bases of environmental policy;
- Law 98/2021, the Climate Law;
- Law 50/2006, on environmental administrative offences;
- Decree Law 151-B/2013, on environmental impact assessment;
- Decree Law 147/2008, on responsibility for environmental damage;
- Decree Law 127/2013, on industrial emissions applicable to integrated pollution prevention and control;
- Law 58/2005, Decree Law 226-A/2007 and Decree Law 119/2019, on water;
- Decree Law 102-D/2020, on waste management;
- Decree Law 150/2015, on the prevention of major accidents (Seveso legislation);
- Decree Law 39/2018, on prevention and control of emissions of pollutants into the air;
- Decree Law 12/2020, on greenhouse gas (GHG) emission allowance trading;
- Decree Law 142/2008, on the conservation of nature and biodiversity;
- Decree Law 140/99, on the conservation of wild birds and the conservation of natural habitats and wild flora;
- Law 83/95, on environmental information and popular court actions (class actions);
- Law 26/2016, on administrative and environmental information;
- Decree Law 75/2015, on the single environmental licensing procedure;
- Decree Law 30-A/2022, exceptional rules aimed at ensuring the simplification of procedures for producing energy from renewable sources;
- Decree Law 9/2007, the general noise regulation; and
- Decree Law 169/2001, on the protection of cork oaks and holm oaks.

2. Enforcement Authorities and Mechanisms

2.1 Regulatory Authorities

The key regulatory bodies with authority in environmental matters are divided into two main categories.

Government bodies, which are governmental per se or directly depend on the government:

- Minister for the Environment and Climate Action;
- Minister of the Economy and Sea; and
- the Environmental Fund (dependent on the Minister for the Environment and Climate Action).

Other public bodies:

- the Portuguese Environmental Agency ("APA");
- the Commissions for Regional Co-ordination and Development, one for each region (CCDRs);
- the Inspectorate General of Agriculture, the Sea, Environment and Land Planning ("IGAMAOT");
- the Portuguese Institute for the Conservation of Nature and Forests (ICNF);
- the Portuguese Institute of the Sea and Atmosphere ("IPMA").

2.2 Co-operation

There is no specific co-operation mechanism concerning national key regulatory authorities in Portugal. The general administrative co-operation instruments provided for in the Code of Administrative Procedure (Decree Law 4/2015) are applicable.

3. Environmental Protections

3.1 Protection of Environmental Assets

Environmental law is based on two basic principles: the principle of prevention and the principle of precaution. These legal principles are implemented through rules laid down by law, regulations or sectoral and territorial plans, designed to prevent the degradation of environmental components.

Activities which may have a negative impact on the environment are prohibited or subject to an advance environmental impact assessment procedure, and, in certain situations, the provision of a financial guarantee is required. Such activities also have to obtain permits or authorisations which set limits on their performance and establish monitoring and reporting obligations.

The protection of the environment and the need to adapt activities to scientific developments and physical changes in the environment led to the legal development of a mechanism typical of environmental law: the temporary and precarious nature of permits and licences. Thus, the law empowers licensing authorities to unilaterally amend the licences granted and even to revoke them. In such cases, when the licensee has made investments based on the assumption of a certain duration of the licence, the law recognises the right to compensation.

3.2 Breaching Protections

Failure to comply with legal, regulatory or licensing provisions gives rise to sanctioning liability and may give rise to reparatory liability. See **4.5 Consequences of Breaching Permits/Approvals**, **5.1 Key Types of Liability** and **6.3 Types of Liability and Key Defences**.

On the other hand, violations of legal provisions when obtaining licences and permits can render them null and void.

Finally, in the event of serious non-compliance with the provisions of the licence, it may be revoked by the licensing authority.

4. Environmental Incidents and Permits

4.1 Investigative and Access Powers

Some of the entities listed in **2.1 Regulatory Authorities** have the power to control, inspect and monitor compliance with environmental legislation. In exercising these powers, they may request the collaboration of the police authorities. Whenever a situation of serious danger to the environment or human health is detected, they may adopt, as a preventative measure and with immediate effect, the precautionary measures that are justified, in each case, to prevent or eliminate the hazardous situation. In the worst-case scenario, such measures may entail the closure of the installation.

IGAMAOT has the right to free access to the operators' facilities, to request examinations, expert examinations, document collection and consultation. Throughout these actions, despite the investigated operator's right to a prior hearing, it must be co-operative and diligent.

4.2 Environmental Permits/Approvals

In general terms, an environmental permit is required whenever an activity may significantly affect environmental assets (eg, soil, water, sea, air or biodiversity).

The granting of some permits is preceded by a public consultation phase, when the public may suggest conditions to be imposed and express environmental concerns. Any permit granted by skipping this phase will be invalid.

The licences identified below are all included in the "Single Environmental Title".

The main environmental licences/authorisations are the:

- Environmental Impact Statement – DIA, DECAPE and DINCA;
- Environmental Licence;
- Title for Use of Water Resources;
- Air-Pollutant Emissions Title;
- Approval decisions under the Seveso legislation;
- GHG Permit;
- Waste Management Operator Licence;
- Landfill Operating Licence;
- Installation and Operation of Integrated Centres for Recovery, Valorisation and Disposal of Hazardous Waste Licence; and
- Water Reuse Licence.

4.3 Regulators' Approach to Policy and Enforcement

The regulators' traditional approach is mainly based on the logic of command and control.

A more pedagogical approach by some regulators is noteworthy, as they provide information on their websites that is useful for understanding the law, either in the form of FAQs or in the publication of guidelines.

Moreover, the law provides for the possibility of contracts being signed between public entities and private operators in certain situations, either to enable them to gradually bring their behaviour in line with the law or to involve them in the management of environmental assets.

4.4 Transferring Permits/Approvals
Environmental permits may be transferred from one operator to another, whether they are natural or legal persons, as long as they are identified. However, specific conditions may have to be complied with.

4.5 Consequences of Breaching Permits/Approvals
In the case of breaching of an environmental approval/permit, immediate action to contain or repair the consequences of said breach may be necessary, as well as communication of the occurrence to the competent entities. These entities may establish a deadline for all required corrections to be made, and schedule a visit to the site to confirm that this has been done.

Moreover, noncompliance with environmental permits may trigger environmental liability. See **6.2 Reporting Requirements**.

5. Environmental Liability

5.1 Key Types of Liability
There are two main types of liability for environmental damage or breaches of environmental law. Specifically, there is punitive liability (administrative offence liability and criminal liability) and restorative liability (civil liability and environmental liability).

5.2 Disclosure
Under some regimes (eg, the Seveso legislation and Environmental Licence), operators must report environmental constraints to the competent authorities. See **17.1 Self-Reporting Requirements.**

Furthermore, there is a national registry of environmental offences, managed by IGAMAOT. This entity must disclose this information to all judges and public prosecutors for the purposes of a criminal investigation, as well as to all official entities for the pursuit of the public purposes for which they are responsible. The Single Environmental Title may be amended to include a registration of convicting decisions concerning some of these offences.

6. Environmental Incidents and Damage

6.1 Liability for Historical Environmental Incidents or Damage
The extent of liability for non-compliance with environmental standards can be analysed from two different perspectives: (i) the subjects to whom the liability might be attributed; and (ii) the period during which the liability subsists.

The Liable Party
Environmental law is structured to attribute liability to the person who committed the unlawful act and caused the environmental damage, ie, to the person who carries out, controls, registers or notifies an activity whenever that person exercises or may exercise decisive powers over the technical and economic functioning of that activity.

As such, the criterion for attributing liability is not that of the current (or purchasing) operator or landowner, but rather the subject to whom the activity that harmed the environment can be attributed.

Liability Limitation Period
Administrative offence liability
The limitation period for administrative offences is a maximum of five years from the commission of the offence, without prejudice to the causes of

interruption and suspension provided for in the law. Therefore, in practice, this period might be extended to eight years.

Environmental liability (for environmental damage) and civil liability

In relation to the limitation period for environmental and civil liability, there is the problem of the latency period, since damage to the environment and to third-party rights/interests resulting from them may only manifest long after the fact(s) of their origin. As a result, the applicable legislation has established that liability for damage caused by any emissions, events or incidents that happened more than 30 years ago is time-barred.

Moreover, this liability is not applicable to damage caused by any emissions, events or incidents prior to 1 August 2008 or to damage caused by any emissions, events or incidents that occurred after 1 August 2008 due to a specific activity performed or concluded before that date. In these cases, it will be necessary to resort to the traditional civil liability rules of the Portuguese Civil Code. Under these rules, non-contractual civil liability expires three years from the date the injured party becomes aware of their right, and contractual civil liability expires in 20 years.

Criminal liability

The statute of limitations for crimes depends on the applicable penalty and the specific crime in question. In the worst-case scenario, criminal liability expires 15 years after the commission of the act.

6.2 Reporting Requirements

See **5.2 Disclosure**.

6.3 Types of Liability and Key Defences

Types of Liability

The violation of legal and/or regulatory provisions in environmental matters might constitute an administrative offence, entail the civil liability or environmental liability of the offender, or be considered an environmental crime.

Administrative offence liability

This type of liability is the most common way to punish behaviour that violates environmental legal provisions. It corresponds to social and administrative censure of behaviour that is subsidiary to criminal law and the need to sanction illegal behaviour that is subject to lesser social disapproval.

Administrative offence proceedings can lead to the application of fines of between EUR2,000 and EUR5 million, depending, among other criteria, on the type of offence, its perceived seriousness and the infringer's degree of guilt. In the case of the presence or emission of one or more dangerous substances that seriously affect health, the safety of people and property, and the environment, the range of fines for the more serious offences can be doubled. Additionally, in the most serious situations, apart from the fines, interim decisions (including the preventative suspension of the polluting activity) and ancillary sanctions (such as a ban on carrying out the activity or the loss of public subsidies) may be applied.

Civil liability

If an environmental offence causes damage to a third party, the perpetrator is liable to pay compensation to repair the damage caused to people and property.

Environmental liability for environmental damage

This type of responsibility arises from Directive 2004/35/EC (which was incorporated into Portuguese law through Decree Law 147/2008). It is designed to repair the damage caused to the environment itself – specifically, significant damage caused to protected environmental assets. Causing environmental damage, or an imminent danger of such damage, while pursuing economic activities might lead to the liability of the perpetrator. Liability for environmental damage implies the obligation to implement preventative and repair measures, and to bear the associated costs.

Criminal environmental liability

The Portuguese Criminal Code includes four environmental crimes:

- damage to nature, related to species, natural habitats and subsoil resources;
- pollution, associated with the degradation of environmental components like the air, water and the soil;
- pollution that causes a common danger, in the cases where the pollution crime triggers danger to the life or physical integrity of a third party; and
- activities that are dangerous for the environment, including some actions concerning ozone-depleting substances, and transboundary movements of waste.

In the worst-case scenario, environmental crimes may lead to the application of a five-year custodial sentence. If death or physical injury results from the crime of pollution that causes a common danger, both the minimum and maximum thresholds are increased by one third.

For the crimes they commit, legal persons and similar entities are subject to the main penalties of a fine or of dissolution. The limits of the fine applicable to legal persons and similar entities are determined with reference to the term of imprisonment provided for natural persons, and one month's imprisonment corresponds to ten days of fine. Each day of fine corresponds to an amount between EUR100 and EUR10,000, which the court sets according to, among others, the economic and financial situation of the convicted person and its costs regarding employees.

Limits and Conditions on Civil, Environmental and Administrative Liability

The limitation periods referred to above should be considered as general limits on liability.

In the case of civil and environmental liability, there are specifics concerning guilt and causation in relation to the traditional civil liability rules to bear in mind. In these kinds of liabilities, the assessment of the evidence of the causal link is based on a criterion of likelihood and probability that the harmful act can cause the damage in question. Concerning guilt, for some economic activities listed in the law, these types of liability are applicable regardless of the existence of guilt or intent.

Civil liability

Traditionally, this depends on meeting five requirements, specifically:

- the fact;
- the illegality;
- the fault (in cases where the liability is not strict);
- the damage to a third party caused by damaging an environmental component; and

- the causal connection between the fact and the damage (based on a likelihood criterion).

These conditions are cumulative, so the failure to meet any one of them is sufficient for there to be no liability.

Additionally, concerning fault, it should be noted that, for some economic activities, this type of responsibility applies regardless of the existence of guilt or intent. Moreover, if several persons are liable, all are jointly and severally liable for the damage, even if one or more are at fault, without prejudice to the correlative right of recourse that they may exercise reciprocally. When it is not possible to individualise the degree of participation of each of the responsible parties, they are presumed to be liable in equal shares.

Environmental liability for environmental damage

Environmental liability is traditionally dependent on meeting the same five cumulative requirements as listed above in “civil liability”.

An important issue is that there are specific grounds for exclusion of liability.

Additionally, concerning fault and joint/several liability, the considerations above also apply.

Administrative offence liability

Administrative offence liability is based on the same five requirements as civil liability. However, in this case, it is always necessary to establish the guilt of the perpetrator.

As in criminal law, it is important to underline that only the fact described and declared to be subject to a fine by a law prior to the time it was committed is punishable as an administrative offence. Moreover, if the law in force at the time the act was committed is subsequently changed, the law that is more favourable to the defendant will apply.

The fine may be specially reduced when there are circumstances prior, subsequent to, or contemporaneous with, the commission of the administrative offence which markedly reduce the unlawfulness of the act, the culpability of the perpetrator, or the need for the fine. In these cases, the minimum and maximum limits of the fine are reduced by half.

In some circumstances, voluntary payment of the fine at the minimum amount or with a reduction of up to 25% is allowed.

7. Corporate Liability

7.1 Liability for Environmental Damage or Breaches of Environmental Law

Administrative Offence Liability

As far as administrative offences are concerned, legal persons are liable if the damaging activity is attributable to them. The general rules specifically state that legal persons or equivalent are responsible for administrative offences committed by their bodies in the performance of their duties.

Civil Liability and Environmental Liability (for Environmental Damage)

Regarding civil liability and environmental liability, legal persons are liable if the damaging activity is attributable to them. See **7.4 Shareholder or Parent Company Liability** and **8.1 Directors and Other Officers**.

Criminal Liability

Legal persons or equivalent are liable for environmental crimes when committed:

- in their name or on their behalf and in their direct or indirect interest by persons occupying a leadership position; or
- by whoever acts in their name or on their behalf and in their direct or indirect interest, under the authority of the persons referred to in the preceding paragraph, by virtue of a breach of their duties of vigilance or control.

It is understood that the bodies and representatives of the legal entity and whoever has the authority to exercise control over its activity occupy a leadership position.

The criminal liability of legal persons and similar entities is excluded when the agent has acted against express orders or instructions from those in charge.

This criminal responsibility of the legal person does not exclude the individual liability of the actual perpetrators, nor does it depend on their liability.

Climate Risk in Corporate Governance

See **7.5 ESG Requirements**.

7.2 Environmental Taxes

See **19. Taxes**.

7.3 Incentives, Exemptions and Penalties

See **19. Taxes**.

7.4 Shareholder or Parent Company Liability

Administrative Offence Liability

Given the legal provisions of the framework law for environmental administrative offences, it is not clear that this type of liability cannot also extend to shareholders.

Civil Liability and Environmental Liability (for Environmental Damage)

Regarding civil liability and environmental liability, if the operator is a commercial company that is in a group or control relationship, the environmental liability extends to the parent or controlling company when there is abuse of legal personality or fraud against the law.

7.5 ESG Requirements

Environmental, social and governance (ESG) requirements in Portugal arise both from national and EU laws and regulations.

The main ESG requirements have been enacted at the EU level and are directly applicable, notably through the Taxonomy Regulation (which offers a unified system for classifying environmentally sustainable activities, aiding financial actors in distinguishing and comparing environmentally friendly investments) and the Sustainable Finance Disclosure Regulation and the respective delegated acts (aiming to standardise how sustainability-related information in the financial sector should be reported). Financial intermediaries and alternative investment fund managers must also integrate ESG risks into their operations, as dictated by the Commission Delegated Regulations (EU) 2021/1253 and 2021/1255.

The following legal requirements at the national level should be highlighted:

- The Climate Law mandates private companies to prioritise climate and environmental balance. It compels businesses to integrate climate change factors into corporate governance and financial decision-making, considering climate risks. Directors are also expected to consider and disclose climate change-related risks to companies.

- The Structured Deposits Law (Law 35/2018) mandates credit institutions to include sustainability objectives in the design of structured deposits, and provide transparent information about their sustainability characteristics. This also extends to marketing and advisory roles.
- The Asset Management Legal Framework (Decree Law 27/2023) dictates that asset managers incorporate sustainability risks, ensuring they have the resources and procedures to do so effectively.
- The Investment Firms Regulation (Decree Law 109-H/2021) emphasises the importance of investment firms having strategies and internal policies to manage and control sustainability risks that can adversely affect investment value.
- Decree Law 89/2017, which amends the Portuguese Securities Code and Commercial Companies Code, mandates that major corporations disclose non-financial and diversity information in accordance with the EU Non-financial Reporting Directive.
- The Balanced Gender Representation Law (Law 62/2017) ensures gender parity in management positions and the supervisory bodies of the public sector entities and listed companies.
- Companies with over 75 employees must hire a percentage of staff with significant disabilities, as per the Employment of Persons with Disabilities Law (Law 4/2019).
- The Labour Code guards against discrimination and addresses workers' health and safety.
- The Gender Salary Equality Law (Law 60/2018) promotes gender-neutral pay structures.
- The Protection for Whistle-Blowers Law (Law 93/2021) safeguards individuals reporting specific violations.

In Portugal, ESG requirements are mainly supervised and enforced by the Bank of Portugal, the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* or CMVM) and the Supervisory Authority for Insurance and Pension Funds (*Autoridade de Supervisão de Seguros e Fundos de* Pensões or ASF). The Bank of Portugal has a dedicated committee to streamline its ESG initiatives annually and has shown its commitment to exploring the interaction between the environment, the financial system, and monetary policy. The CMVM ensures that regulated companies maintain transparency in financial and sustainability practices and promote the integration of ESG factors in market practices. The ASF analyses the environmental dimension and ESG rating application to the national insurance sector's investment portfolio, overseeing the regulation and supervision of insurance, reinsurance, pension funds, and their managing entities.

7.6 Environmental Audits

Environmental Impact Assessment (EIA)

The first major example of an environmental audit is the one that takes place during the post-evaluation phase of the EIA, which aims to verify compliance with and assess the suitability and effectiveness of the terms and conditions for approving the project, established in the EIA procedure.

Entities that have relevant technical knowledge take part in this phase. In exceptional and duly substantiated cases, additional measures may be established in this phase to minimise or compensate for significant unforeseen negative impacts.

Control of Major-Accident Hazards (Seveso)

Establishments of higher hazard level included in the Seveso legislation are subject to specific

prevention measures, under which they have various obligations and are subject to annual audits and inspections.

Waste Treatment Activity

Establishments where waste treatment activities are carried out are subject to inspections to ensure compliance with the legal conditions established in the licence, as well as an overall re-examination of their operating conditions every seven years.

European Emissions Trading Scheme (ETS)

Under the ETS regime, there is an annual procedure of monitoring, reporting and verification of operators' emissions. This is known as the ETS compliance cycle.

The operator must follow its monitoring plan and send an annual report to the APA by 31 March. This report must first be verified by accredited verifiers in accordance with the criteria established by law.

8. Personal Liability

8.1 Directors and Other Officers

Environmental Administrative Offences

Directors, managers and other persons who hold management positions (even if only de facto) in legal entities (even if irregularly constituted) and any other similar entities, are responsible on a subsidiary level:

- for fines imposed for infractions for acts that took place during the period they held their positions, or for previous acts when it was their fault that the company's assets or the legal person became insufficient to pay the fine;
- for fines due for previous acts when the definitive decision to apply them is notified during their term of office and the failure to pay is attributable to them; and
- for the procedural costs resulting from the proceedings brought under the framework law for environmental administrative offences.

If there are several individual persons responsible for the wrongful acts or omissions that result in the insufficiency of the assets, their responsibility is joint and several.

Civil Liability and Liability for Environmental Damage

When the harmful activity is attributable to a legal person, the obligations arising from the legal framework on liability for environmental damage are jointly and severally levied on its managers, directors, or persons with leading functions.

Environmental Crimes

Without prejudice to the right of recourse, persons occupying a leadership position are liable on a subsidiary basis for the payment of fines and compensation for which the legal person or equivalent entity is convicted, in relation to crimes:

- committed during the period they held those positions, without their express opposition;
- committed previously, when it was their fault that the assets of the legal person or equivalent entity became insufficient to pay the fine in question; or
- committed previously, when the final decision to apply them was notified during the period they held a leadership position and the failure to pay is imputable to them.

If there are several individual persons responsible under these terms, their responsibility is joint and several.

8.2 Insuring Against Liability

Directors' and officers' liability insurance may include administrative, civil and environmental liability, even if this is achieved by negotiating tailor-made insurance with the insurer. Typically, such insurance covers civil liability and administrative liability. Environmental liability can be included in the insurance if agreed with the insurance company.

Climate Risk in Corporate Governance

Under the Climate Law the duties of care, loyalty and reporting of managers or directors and members of corporate bodies with supervisory functions include prudent consideration and transparent information-sharing about the risk that climate change poses to the business model, capital structure and assets of companies.

9. Insurance

9.1 Environmental Insurance

Environmental insurance is available in the Portuguese legal system. Regarding potentially harmful activities, it is mandatory to have a financial guarantee, which can be provided by taking out environmental responsibility insurance. This type of insurance usually covers multiple risks arising from pollutant discharges in an environmental asset and from the activity of the insured.

Normally, insurers exclude damage caused by workers' errors and intentional acts. However, IGAMAOT believes that these exclusions violate the law. There are currently several administrative offense cases on this subject, and the courts have yet to rule on the matter.

10. Lender Liability

10.1 Financial Institutions/Lender Liability

As referred to in **6.1 Liability for Historical Environmental Incidents or Damage**, liability falls upon the operator to which the activity that harmed the environment is attributed. Therefore, financial institutions or lenders are not, in principle, liable for the offences the operator commits.

The legal framework on liability for environmental damage determines that some operators are obliged to set up one or more financial guarantees of their own that enable them to assume the environmental liability inherent to their activity.

Financial guarantees can be constituted by taking out insurance policies, obtaining bank guarantees, participating in environmental funds, or constituting own funds reserved for this purpose. If the financial guarantee is constituted through bank guarantees, the financial institution will be liable under the terms established in the guarantee.

Furthermore, financial institutions and lenders should also consider the provisions set out in the Climate Law.

In fact, as far as sustainable financing is concerned, several guiding principles were laid down that should guide the financial policies, financial management, capitalisation support and borrowing, of the state and of private entities. Examples include the principle of accountability and prudence, which is intended to incorporate climate risks in the valuation of assets and liabilities, and the principle of transparency, which promotes the disclosure of information regarding the impact of management and investment decisions by managers, investors

and consumers. Lack of transparency or failure to share information is considered an improper sale, under the regulation of the market of financial instruments.

The failure to take climate risk and climate impact into account is considered a violation of fiduciary duties.

See **7.5 ESG Requirements**.

10.2 Lender Protection

The liability of financial institutions can only be safeguarded contractually. Specifically in the case mentioned of the constitution of a mandatory financial guarantee (see **10.1 Financial Institutions/Lender Liability**), the limits of the financial institution's liability will be stated in the terms of the bank guarantee.

11. Civil Liability

11.1 Civil Claims

Civil claims relating to environmental damage are recoverable provided private interests are damaged as a consequence of the event (causal link). Environmental assets are often private property or located on private property. Thus, the injured party may bring an action for damages based on civil liability whenever someone offends their rights or interests by damaging any component of the environment. This is to say that the act committed by the agent is unlawful and, as such, gives rise to civil liability if it violates another person's subjective right – such as the right to property – or if it violates any legal provision intended to protect the interests of others. In these cases, the agent is obliged to repair the damage resulting from the offence.

Compensation is enforced in kind (eg, replacing injured specimens with new ones) or by paying the corresponding amount of money whenever the former is not feasible.

It should be noted that financial compensation often poses difficulties in measuring damage.

The real damage thus assessed works as a limit on the eligible compensation but sometimes, especially when the unlawful act is not intentional, the judge is granted powers to reduce the compensation equitably. To do this, the judge considers the degree of culpability of the perpetrator, the economic situations of the perpetrator and of the injured party, and other circumstances of the case. This principle of equitability may also apply in cases where there are several perpetrators: compensation is allocated according to the degree of culpability of each one and not merely pro rata. See **6.1 Liability for Historical Environmental Incidents or Damage** and **6.3 Types of Liability and Key Defences**.

11.2 Exemplary or Punitive Damages

In Portuguese tort law, the principle of equivalence between damage and compensation applies to environmental civil claims to its full extent. Thus, exemplary or punitive damages have no place in Portuguese law.

It should be noted that the deterrence effect usually linked to exemplary or punitive damages is pursued by the application of significant penalties when the unlawful act is also specifically qualified by the law as an administrative offence. Of course, these penalties revert to the Portuguese state and not to the injured party, which is only entitled to the above-mentioned equivalent to the damage.

11.3 Class or Group Actions

The Constitution of the Portuguese Republic recognises the fundamental right to bring a popular action, integrating it in the scope of the rights, liberties and guarantees of political participation. The constitution expressly lists the preservation of the environment as an asset that can be protected by popular action. This means that, by means of popular action, any citizen, as well as certain associations and organisations can access the justice system to protect legal situations that are not susceptible to individual appropriation, as is often the case with environment-related matters. This protection can be exercised both in the judicial courts and through the administrative procedures themselves.

Institutional parties can bring popular actions and it is important to emphasise the role of environmental non-governmental organisations (ENGOs), which have been granted broad legal standing in environmental matters. ENGOs are, in principle, exempt from paying court fees and benefit from a 50% exemption from the fees due for access to environmental information.

Whether or not they have a direct interest in the legal action, ENGOs have legal standing to:

- bring the legal actions necessary to prevent, correct, suspend and put an end to acts or omissions of public or private entities that constitute a threat to or may damage the environment;
- bring legal actions to enforce civil liability in relation to the acts and omissions referred to above (although they are not entitled to any financial compensation arising from them, the role of ENGOs here is to open the court case and organise the joinder of any entitled injured parties to the court action);
- take legal action against administrative acts, decisions and regulations that violate the legal provisions that protect the environment; and
- lodge complaints or accusations, act as interested parties (*assistentes*) in criminal proceedings for crimes against the environment, and monitor administrative offence proceedings, when they so request.

11.4 Landmark Cases

Citizens' Right Not to be Disturbed

In matters of noise, there is case law in Portugal deciding, in general terms, that the rights of the residents should prevail over the rights of the operators of economic activities, and this may happen even if the licensing is valid and noise limits are not exceeded. Consequently, in such circumstances, operators may be obliged to adopt mitigation measures in order to reduce the noise produced.

Specifically, there is case law in which the court (Case No 2209/08.0TBTVD.L1-1) upheld the right of inhabitants living in the vicinity of a wind farm to have wind turbines removed or their operation suspended at a certain time of the day, on the grounds of noise emission and/or the shadows from the wind turbines.

The Portuguese courts have taken the view that, in these situations, there is a collision of rights at issue between the right to rest and sleep and the tranquillity of the residents, and the economic right of the wind farm, the wind turbines of which emit noise and/or shadow, to operate as a business.

In the abstract, it is considered that the rights of the residents should prevail over the rights of the economic operator. However, even if the economic activity is licensed, it has been held

that this assessment should be made considering each specific case individually. Therefore, the residents are required to definitively demonstrate that the location in question is their home and that they are truly affected by such noise.

Animal Rights

Concerning the right to civil compensation, Law 90/88 specifies that the state is liable for compensating all citizens who are directly harmed by actions of Iberian wolves (Canis lupus signatus Cabrera). In this context, the court decided (Case No 00242/05.2BEMDL), that when Iberian wolves kill animals owned by citizens, this damage is eligible for compensation by the state, as is any emotional damage suffered by the owners. This is because the above law does not differentiate between property damage or personal injuries, although the complementary legislation in force at the time of the decision (Decree Law 139/90) referred to damage to animals. The current complementary legislation provides far more detailed rules on compensation for damage to animals.

Furthermore, a recent decision from the court (Case No 00036/06.8BEPNF) established that the operation of a wastewater treatment plant under normal conditions that is licensed for this purpose cannot be grounds to award compensation to people living nearby. The court stressed that the aim of these plants is to prevent the contamination of soils and water, and that a public interest objective of this type will prevail over minor inconveniences that were eventually suffered by these people. As such, it does not trigger the right to compensation. From another perspective, to protect a bat colony, the court decided in a protective order (Case No 06793/10), that a windmill on a wind farm could only be constructed and installed at certain times of the day and during certain months of the year. Moreover, its operation could only occur at a certain speed and in specific time periods. This demonstrates that the courts decide on environmental matters regardless of the presence of other legal institutes. On similar grounds, similar measures have been imposed by the competent authorities under the environmental impact assessment procedure to project sponsors.

12. Contractual Agreements

12.1 Transferring or Apportioning Liability

It is possible to use indemnities or other contractual agreements, which are subject to the general principles of law, such as good faith and proportionality, to transfer liability to another party.

These types of contracts do not have any binding effect on the regulators, who will always take into consideration the party responsible for the activity that harms the environment. This follows the accountability and “polluter pays” principles.

The contracts might, however, have an influence on the regulators, especially in a scenario where there is continuation of the damaging activity and where it may be difficult to locate in time the fact that gave rise to the damage, and establish a causal link with an operator.

In water legislation, in cases of non-compliance with the law, it is possible for adaptation contracts to be signed between the licensing authority and the operator. These contracts provide a recovery plan that will allow the operator to remedy the illegalities and may also provide the obligation to install an environmental management system and carry out periodic environmental audits.

12.2 Environmental Insurance

See **9.1 Environmental Insurance**.

13. Contaminated Land

13.1 Key Laws Governing Contaminated Land

There are no specific laws concerning contaminated land. A draft law has been under discussion in Portugal since 2015 and a proposal for a European Directive on soil monitoring and resilience was released in 2023, but no official publication of these laws has yet occurred.

Nevertheless, the prevention of emissions into the soil is covered by environmental procedures, such as environmental licensing and the EIA. Furthermore, the law of responsibility for environmental damage determines that soil damage must be communicated to the appropriate authorities within 24 hours. For further details concerning self-reporting obligations, see **17. Environmental Disclosure and Information**.

Considering the absence of regulation on this matter, the APA recommends that, in the case of transfer of property on land where potentially polluting activities were carried out, or where there are signs of contamination, a technical quality assessment should be carried out.

The APA has issued supporting documents about the technical requirements to use in contamination assessments and remediation operations.

13.2 Clearing Contaminated Land

If the soil contamination creates a significant risk to human health and environment (environmental damage), remediation can be demanded from the liable party referred to in **6.1 Liability for Historical Environmental Incidents or Damage**. However, the public authorities may intervene as a last resource solution if the operator does not act accordingly or if it cannot be identified.

Furthermore, in contamination situations that are not considered environmental damage, if the current owner wishes to excavate contaminated soil and the liable operator is not identified, the owner may have to take on the remediation operations under the terms of a previous licence to be obtained.

13.3 Determining Liability

See **6.3 Types of Liability and Key Defences**.

13.4 Proceedings Against Polluters

See **6.3 Types of Liability and Key Defences**.

From another perspective, if any legal or natural person is aware of a situation of contamination or environmental damage, a complaint may be made to the competent authorities – even if the person did not suffer damage because of said situation.

13.5 Rights and Obligations Applicable to Waste Operators

Waste operators can only manage waste under a specific permit to be issued by public entities. It is usual that said permits set out obligations on the proper handling of the waste to avoid contamination events.

Furthermore, for the decommissioning of a waste-treatment plant, the operator must follow the conditions specifically established in the permit and must present a waiver request alongside an assessment of the state of the soil. Maintenance actions may also be required after the plant's closing. Regarding the obligation to

take over a financial guarantee, see **9.1 Environmental Insurance**.

An application for a soil remediation licence must contain an assessment of the local contamination, including a risk analysis for human health and/or the environment, as well as a definition of the decontamination objectives, a timetable and a monitoring plan to assess the effectiveness of the operation. Decontamination operations are subject to a final inspection by the licensing authority.

Regarding the consequences of non-compliance, see **4.5 Consequences of Breaching Permits/Approvals**.

13.6 Investigating Environmental Accidents

An investigation may be triggered following information disclosure by the operators (referred to in **5.2 Disclosure**), a complaint from any third party, or inspections performed by the public authorities.

Regarding the investigation process, see **4.1 Investigative and Access Powers**.

14. Climate Change and Emissions Trading

14.1 Key Policies, Principles and Laws

Key Policies

The key policies to combat climate change are based on fundamental principles of environmental law, particularly the principle of sustainable development, the "polluter pays" principle and the principle of intergenerational solidarity.

In particular, the following goals have been set to tackle climate change:

- a reduction in GHG emissions;
- improving the capacity for carbon dioxide (CO_2) sequestration; and
- adaptation to expected climate change impacts.

Planning Instruments

There are several important planning instruments to achieve these goals, of which the following stand out:

- at the European level, the European Climate Law (Regulation (EU) No 2021/1119) establishing the framework for achieving climate neutrality in the EU by 2050, which entails a zero balance between GHG emissions and their removal; and
- at the national level, the National Energy and Climate Plan 2030, the PNEC 2030 (Council of Ministers Resolution 53/2020), under review, which establishes policies for decarbonisation of the economy, energy efficiency and energy transition, as well as goals for sectors to reduce GHG emissions, among others.

Legislation

Furthermore, there is legislation that addresses GHG emissions and seeks to achieve the established goals, namely:

- Decree Law 12/2020 (transposing Directive 2003/87/EC), which establishes the framework for the trading of licences for the emission of GHGs, along with Decree Law 93/2010, which provides such a framework for the scheme; and
- Decree Law 145/2017 incorporating Regulation (EU) 517/2014 into Portuguese law, which aims to reduce GHG emissions.

The Climate Law sets forth an ambitious approach to climate change. Several instruments are provided to prevent and adapt to climate change, including tax and monitoring by specific bodies. This law also introduces some significant measures, such as:

- climate change impact assessment of parliamentary or government laws;
- identification and quantification of avoided GHG emissions in the state's general accounts, with a breakdown of the information for each climate protection measure implemented;
- progressive elimination of public funds for fossil fuel usage until 2030;
- a ban on prospection or exploitation of oil;
- a ban on using coal for electricity generation from 2021 onwards; and
- a ban on using fossil natural gas for electricity generation from 2040 onwards, effective only if energy safety is considered safeguarded.

Portuguese climate change legislation will be revised for the purpose of transposing/implementing recent "Fit for 55" European acts, eg, Directive (EU) 2023/959 amending Directive 2003/87/EC, and Regulation (EU) 2023/956 establishing a carbon border adjustment mechanism, replacing current measures against carbon leakage.

Furthermore, and in line with the European Commission strategy, the Portuguese government is preparing an act on a voluntary carbon credits market, expected to provide norms on standards and the eligibility of projects to generate carbon credits as well as mechanisms for the issuance, transfer and use of such credits in a state-owned and managed market. According to the last version of such act made public, the state-owned and managed market will not be implemented in such a way as to prevent the creation of private markets on the same kind of green assets.

14.2 Targets to Reduce Greenhouse Gas Emissions

The European Climate Law provides that climate neutrality should be reached by 2050. To achieve this, a goal has been set to reduce GHG emissions at the EU level by at least 55% (compared to 1990 levels) by 2030.

"Fit for 55"

In line with this goal, "Fit for 55", a package of proposals, was published through a communication from the EC, dated 14 July 2021, proposing a comprehensive set of measures to ensure that GHG emissions are reduced by at least 55% by 2030 (compared to 1990 levels). The Effort Sharing Regulation (Regulation (EU) 2018/842) provides that between 2023 and 2030, Portugal must reduce its GHG emissions by 28.7% (compared to 2005 levels). This represents an increase of more than 10% in relation to the current goal of a 17% reduction.

These proposals, once approved, are to be inserted by transposition or implementation into legal texts, which may affect current Portuguese legislation. Other legislation is expected to be published in the meantime that will lead to changes in these goals.

The PNEC2030

The PNEC2030 governs the main climate action goals, pursuant and in compliance with Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action, and is now undergoing revision. PNEC2030 was approved before the enactment of the new European Climate Law and establishes that the reduction of GHG emissions must be between 45% and 55% (compared by refer-

ence to 2005). It also defined the following goals by sector for the reduction of GHG emissions, in comparison to 2005:

- 70% for services;
- 35% for the residential sector;
- 40% for transport;
- 11% for agriculture; and
- 30% for the waste and industrial waste water sector.

15. Asbestos

15.1 Key Policies, Principles and Laws Relating to Asbestos

The law determines that employers must use all available means to reduce the exposure of workers in the workplace to dust from asbestos or materials containing asbestos and must restrict exposure to the limit value (0.1 fibres per cubic centimetre over a daily period of eight hours).

Furthermore, the removal of material containing asbestos – as well as the wrapping, transportation and management of the corresponding construction and demolition waste – is subject to a specific regulation and may only be performed by duly licensed waste-management operators.

16. Waste

16.1 Key Laws and Regulatory Controls

The General Framework on Waste Management (*Regime geral da gestão de resíduos* or RGGR), Decree Law 102-D/2020, is the cornerstone of waste law in Portugal. Decree Law 152-D/2017 (UNILEX) is also important since it establishes the rules for the management of certain specific waste: packaging, used oil, used tyres, electric and electronic equipment, batteries and accumulators, and end-of-life vehicles.

The RGGR sets out the main principles and rules on responsibility, liability and regulatory conditions for waste management, in line with the Directive 2008/98/EC, known as the Waste Framework Directive. Among these principles, the following are most important:

- the responsibility for waste – regarding specific waste flows under UNILEX, the principle in force is that of extended producer responsibility (EPR), which provides that the placer of products on the market is the person responsible for the corresponding waste, ie, the product's producer, the packager and the supplier of service packages must individually or in an integrated scheme ensure proper management of the life cycle of their product;
- the waste management hierarchy – this involves setting a priority order in waste prevention and waste management options, ie, prevention, preparation for re-use, recycling, waste-to-energy recovery and other forms of recovery and, as a last resort, disposal;
- the planning of waste prevention and waste management – notably, providing for certain targets; and
- the proximity of waste management operations to the place where the product became waste.

This legislation also covers waste transportation and establishes rules and schemes on urban waste, construction and demolition waste, as well as dangerous waste. Finally, it sets out the main provisions on the licensing procedures for waste management operators.

To create the conditions necessary for a circular economy, the RGGR also introduced rules on

by-products and end-of-waste status, as well as other forms of waste declassification.

16.2 Retention of Environmental Liability

Environmental liability falls on the person responsible under the applicable law, and sanctions and regulatory responsibility cannot be transferred. However, from a contractual standpoint, the costs relating to environmental responsibility/liability may be transferred or retained under the parties' agreement.

Transferral of Liability

When a party responsible for waste management delivers the waste to a third party, such as a licensed waste management operator or any other operator authorised to deal with it (eg, an entity responsible for the EPR schemes or urban waste management systems), the first party's liability for waste management ceases and it is transferred to those operators. To properly transfer their responsibility, the person responsible must be sure that the chosen operator's scope of licensing covers the waste that is being delivered for management.

Documentation

Evidence on the proper management and circulation of waste can be found in the documents that waste producers, transporters and final recipients are obliged to fill in, such as electronic waste notes ("e-GAR"), which must accompany all waste transport operations and set out information on the above players and the waste. Likewise, waste producers must fill in and submit annual waste tables to the APA, eg, on the types and quantities of waste produced and to whom it was delivered for transportation and treatment.

16.3 Requirements to Design, Take Back, Recover, Recycle or Dispose of Goods

The eco-design of products, take-back schemes and recovery obligations are prominent in specific waste flow regulations (listed in **16.1 Key Laws and Regulatory Controls**).

Information for End-Users

Nevertheless, concerning goods in general, producers must ensure that their end-users can obtain the necessary information about the possibility of reusing the goods and their components and about their dismantling, as well as information on substances of high concern. In addition, provided specific regulations are enacted, products are not to be placed on the market unless some quotas of recovered materials are incorporated in them. According to UNILEX, for specific waste flows, producers must also provide end-users with information on waste prevention measures, their contribution to reuse and preparation for reuse, existing take-back and collection schemes, and the prohibition on littering.

UNILEX

UNILEX is based on two main features and brings into effect the EPR principle set out in European law. Producers placing products on the market subject to these flows (eg, packaging) must sign up to a scheme created for the management of the waste in question, by which the producers' responsibility/liability is transferred to the manager of the scheme (PRO – producers responsibility organisation). This signing up triggers an obligation to pay a regulatory fee (*ecovalor* or *prestação financeira*) intended to cover all the costs of waste management vis-à-vis the products placed on the market and declared to the manager of the scheme.

These producers can implement an individual scheme by carrying out the waste management operations themselves, subject to the prior approval of the APA. Although provided for in Portuguese law, individual schemes are rare, but this solution is of growing interest to big players under the EPR.

Take-Back

Regarding take-back, if the producer of the tyres or of the electrical and electronic equipment is simultaneously the seller to the final user, it is obliged, in some circumstances, to take back the waste arising from those goods at no cost. If the producer is not the seller to the end-user, it must provide for the creation and implementation of a collection grid and pay the corresponding costs.

The Circular Economy

Portuguese law intertwines production and recovery in line with the principles of the circular economy. For instance, secondary raw materials obtained from the recycling of packages must be incorporated, whenever possible, into the production of packages, and electrical and electronic equipment must be designed for ease of dismantling and the recovery of waste, components and materials. The producers of this equipment must also do so bearing in mind the goals of resources efficiency, the reduction of dangerous chemical products and the durability of the products. The producers of batteries and accumulators must also, among other requirements, design these so that they progressively contain fewer dangerous substances (eg, by replacing heavy metals such as mercury, cadmium and lead).

Disposal

Finally, disposal may occur in the forms of incineration, especially waste-to-energy incineration, or landfilling. Requirements for disposal are directly linked to the principle of hierarchy of waste management options and waste characteristics (eg, hazardousness).

17. Environmental Disclosure and Information

17.1 Self-Reporting Requirements

Responsibility to Inform the Competent Authority

The law determines that operators must immediately inform the competent authority of all matters relating to the existence of an imminent threat of environmental damage, of the preventative measures taken, and of the success of these measures in preventing damage. If environmental damage actually occurs, the operator must inform the competent authority of all the relevant facts within 24 hours. These obligations are usually included in the operators' environmental permits and are preferably fulfilled by electronic means.

Without prejudice to these obligations, the competent authority may, at any time, require the operator to provide information on an imminent or suspected threat of environmental damage, or on the damage that has occurred. All prevention and remediation costs are paid by the operator.

Reponsibility to Inform the Public

Concerning information to the public, the competent authorities must inform health authorities about any imminent threats of environmental damage that could affect public health.

Additionally, the competent public entities must ensure that, in the event of an imminent threat to human health or the environment, caused by human action or natural phenomena, all envi-

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ronmental information is released immediately to enable the populations at risk to take measures to prevent or reduce the damage arising from this threat. Besides that, no general warnings to the public are required, unless this is considered a necessary prevention measure.

Periodic Reporting

On the other hand, operators are also obliged to submit periodic reports on their environmental performance (eg, with regard to the quality and quantity of water discharged and abstracted, atmospheric emissions, and waste produced) in the case of activities subject to an Environmental Licence (see **17.3 Corporate Disclosure Requirement**).

17.2 Public Environmental Information

The law provides that all people have the right to access environmental information by consulting, reproducing or being informed of the existence and content of such documents. Applicants do not have to provide a specific interest to exercise this right; however, the request for access to environmental information may be subject to additional requirements, and it may be denied, or reduced.

On the other hand, the law provides for a duty, applicable to public authorities and bodies, to actively disclose, electronically, certain parts of this information, in such a way that it is publicly accessible.

Entities Obliged to Disclose Environmental Information

This legal framework applies to all public entities. It also applies to private associations or organisations in which public entities exercise powers of management control, or appoint, directly or indirectly, the majority of the members of the administrative, management or supervisory body. Furthermore, it applies to entities responsible for managing public archives and entities actually performing an administrative role or exercising public powers. This includes entities holding concessions or delegations of public services. In some cases, the law also covers documents held or produced by any entities with legal personality that have been created to satisfy, in a specific manner, needs of general interest.

Moreover, this framework applies to any natural or legal person, of a public or private nature, that belongs to the indirect administration of the bodies or entities referred to above and which has duties or roles, or which performs public administrative functions or provides public services relating to the environment. This includes public corporate entities, owned or part-owned companies, and concessionary companies. It also includes any natural or legal person that holds or materially maintains environmental information on behalf or on the account of any of the bodies or entities referred to. Finally, this law also applies to entities that met the above requirements at an earlier time, for documents corresponding to that period.

The public can also be informed of, and participate in, environmental issues during the public consultation periods – see **5.2 Disclosure**.

17.3 Corporate Disclosure Requirement

Companies are obliged to disclose environmental information in three different ways, as follows:

- to the general public, by making information available on their websites or at their premises (Seveso legislation);
- to public bodies, which will analyse it and provide conclusions to the company only; and

- to public entities that are subsequently obliged to make the information available to the general public – for example, following the requests to obtain an Environmental Licence (Decree Law 127/2013) or those within the EIA procedure (Decree Law 151-B/2013), the competent entity must disclose this information via its website.

Companies which hold an Environmental Licence are also required to send an annual environmental report to the APA, to demonstrate compliance with all the conditions set by the Environmental Licence.

The management report that companies must prepare under corporate legislation must include, as far as necessary to understand the evolution of the business, the company's performance or position, non-financial information, including environmental matters, and an assessment of the risk exposure to climate change. For large companies, which, by the closing of the balance sheet, employ an average of more than 500 workers during the financial year, this is mandatory (Decree Law 262/86). See **7.5 ESG Requirements**.

For details of the environmental information to be made available to economic and financial agents, see **10.1 Financial Institutions/Lender Liability**.

17.4 Green Finance

Green finance in Portugal tends to be aligned with widely recognised international standards, such as the Loan Market Association (LMA) principles and guidelines for green, social and sustainability-linked loans.

The Portuguese regulators that play a role in the supervision and enforcement of green financing regulations and initiatives in Portugal are the Portuguese Securities Market Commission (CMVM), the Bank of Portugal and the Supervisory Authority for Insurance and Pension Funds (ASF). These entities have not published any divergent approach from the main international standards so far. This adherence to international standards helps foster consistency, comparability and transparency in green finance.

18. Transactions

18.1 Environmental Due Diligence

It is now very common to include an analysis of environmental matters in the scope of the due diligence exercises that precede M&A, finance and property transactions. Moreover, it is also usual to complement the legal due diligence with a technical due diligence.

Some of the environmental issues analysed during a due diligence are:

- EIA;
- environmental licensing;
- environmental liability;
- waste management, including specific waste flows;
- contamination of soils and water lines;
- asbestos;
- emissions of air pollutants;
- equipment containing ozone-depleting substances and GHG; and
- water supply, waste water and water reuse.

18.2 Disclosure of Environmental Information

There is no express legal requirement that requires a seller to disclose environmental information to a purchaser. However, in general terms, this obligation arises from compliance

with the principle of good faith in the pre-contractual phase, which imposes duties of information that bind the parties to provide all the clarifications necessary for the honest conclusion of the contract.

19. Taxes

19.1 Green Taxes

The aim of green taxation is to penalise pollution and damage to the environment, reduce energy dependence from abroad, and encourage more sustainable production and consumption patterns. In doing so, green taxation reinforces both the freedom and the liability of citizens and companies, and promotes efficiency in the use of resources.

From a taxation perspective, there are essentially two groups of mechanisms to pursue environmental goals: deterrence taxes (or fees or financial contributions), in line with the "polluter pays" principle, and tax benefits, such as exemptions. Moreover, environmental components may influence the calculation formulae of classic taxes such as Corporate Income Tax (*Imposto Sobre o Rendimento das Pessoas Coletivas* or IRC).

Below are some examples of environmental tax mechanisms currently in force in Portugal.

Deterrence Taxes, Fees and Contributions

- Waste Management Fee (*Taxa de Gestão de Resíduos* or TGR) – this aims to encourage the reduction of waste production, stimulate compliance with national waste management targets and improve the performance of the sector.
- Financial contributions due for the management of specific waste streams.
- Water Resources Management Fee (*Taxa de Recursos Hídricos* or TRH) – this aims to compensate the environmental cost inherent in activities likely to have a significant impact on water resources.
- Carbon Tax (TCO_2) – this is levied on sectors not included in the European Emissions Trading Scheme (ETS). This tax is indexed to the price of carbon in the ETS sector.
- Road Vehicle Tax (*Imposto Único de Circulação* or IUC), Vehicle Excise Duty (*Imposto Sobre Veículos* or ISV) and Excise Duty (*Impostos Especiais de Consumo* or IEC) – these seek to burden taxpayers in proportion to the environmental cost they cause.
- A financial contribution for light plastic bags.
- A tax on less energy-efficient light bulbs.
- A carbon tax on air and sea travel.
- A contribution for single-use plastic, shopping bags, or aluminium packaging for readymade meals.

Tax Benefits

- Corporate Income Tax (IRC) exemption for producers responsibility organisations (PROs) – to manage specific waste flows during the entire licensing period for the results which, during this period, are reinvested or used for the purposes legally attributed to them.
- Exemption of Property Transfer Tax (*Imposto Municipal a Transmissão Onerosa de Imóveis* or IMT) and Stamp Duty (*Imposto de Selo* or IS) on acquisitions that fall within forest intervention areas.
- Vehicle Purchase Tax (*Imposto Sobre Compra de Veículos* or ISV) exclusion for non-motorised vehicles and exclusively electric vehicles or those powered by non-combustible renewable energies.
- Exemption from Road Vehicle Tax for non-motorised, exclusively electric vehicles or

those powered by non-combustible renewable energies.
- Deductible expenses in higher proportion to their nominal value, such as expenses of car-sharing and bike-sharing systems, with the acquisition of fleets of bicycles, with electricity and vehicular natural gas for vehicle supply, etc.
- Possibility of deducting Value Added Tax (VAT) on the purchase, manufacture or import, leasing and conversion of electric vehicles or plug-in hybrids.
- Exemption from Municipal Property Tax, Municipal Property Transfer Tax and Stamp Duty for buildings completed more than 30 years ago or located in urban regeneration areas, provided they fulfil certain conditions, namely that they have been rehabilitated.
- Possibility of deducting provisions set up to cover the cost of repairing environmental damage.

Environmental Components in Classic Taxation

- Influence of parameters such as energy efficiency and location in areas of urban regeneration in the calculation of Municipal Property Tax (*Imposto Municipal Sobre Imóveis* or IMI).
- 50% reduction in the Municipal Property Tax rate when the property is exclusively used in the production of energy from renewable sources.
- Influence of the particle emission levels in the calculation of the Road Vehicle Tax.
- The Road Vehicle Tax rates increase on oil and diesel vehicles, according to CO_2 emissions.
- Expenses related to electric vehicles are not subject to autonomous taxation for Corporate Income Tax (IRC) or Personal Income Tax (*Imposto de Renda Pessoal* or IRS).

20. Disputes

20.1 Resolving Disputes

Disputes can be avoided by the licensing authorities simply by pursuing a complete and proper resolution of the interplay of legitimate interests during the process of granting licences for the development of activities or implementation of projects.

In other situations, when a dispute cannot be avoided, it is up to the court to resolve it.

The specific court (criminal, administrative or civil) with jurisdiction depends on the nature of the relationship from which the dispute arises. Almost all disputes are settled in the state courts, as arbitration is not very commonly used in environmental disputes (apart from in small consumer issues).

21. Reform

21.1 Legal and Regulatory Reforms

In general terms, the national legal system is based on principles and rules that guarantee adequate environmental protection. However, it is undeniable that there are issues that need to be developed and adapted to the dynamics of economic activity and the growing sentiment to strengthen environmental protection. The main themes to be developed are:

- Prevention of soil contamination and remediation (see **13.1 Key Laws Governing Contaminated Land**); and
- Climate Law (see **14.1 Key Policies, Principles and Laws**).

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