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Portugal

ENVIRONMENT

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This country-specific Q&A provides an overview of environment laws and regulations applicable in Portugal.

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1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

In terms of legal framework, the first legal source to consider is the Portuguese Constitution. Article 66 of the Portuguese Constitution states that everyone has the right to a humane, healthy, and ecologically balanced living environment and has the duty to defend it.

Another key piece of environmental legislation is the law that approves the basis for environmental policy, aiming to fulfil environmental rights by promoting sustainable development, based on the proper management of the environment, in particular ecosystems and natural resources, contributing to the development of a low-carbon society and a "green economy", rational and efficient in its use of natural resources, ensuring well-being and the progressive improvement of citizens' quality of life.

Certain rules of the Penal Code should also be considered, namely those that classify as criminal offences certain actions with impact on the environment, such as damage to nature, violation of certain urban planning rules, pollution, activities that are dangerous to the environment, pollution with a common danger.

Furthermore, it should be noted that a significant part of Portuguese environmental legislation is derived from the transposition of EU directives.

Additionally, key pieces of legislation currently in force include the following:

- Environmental Administrative Offences Framework Law
- European Greenhouse Gas Emissions Trading Scheme Law
- Industrial Emissions Legal Regime
- Pollutant Emissions Prevention and Control Legal Regime
- Waste Management Legal Regime
- Water Law
- Water Resources Legal Regime
- Climate Protection Act

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

A central role is played by the Ministry for the Environment and Climate Action, member of the central government, whose activity is related with the definition of main policies and priorities and drafting of environmental law.

Additionally, at national level, there is an important technical body – the Portuguese Environment Agency (*Agência Portuguesa do Ambiente* – APA) – which is also the national authority for water and waste. APA has been defining environmental policy through legally binding regulations and guidelines regarding the implementation of the legal instruments.

At regional level, reference should be made to the Coordination and Regional Development Commissions. Their mission is to implement environmental, town and country planning and regional development policies within its geographical areas of operation, and to provide technical support to local authorities.

In what concerns environmental control and inspection, the relevant body is the General Inspection of Agriculture, Sea, Environment and Spatial Planning, which is the criminal police body, empowered to control, inspect, and enforce administrative fines.

Such public entities take part, in several capacities, in the context of environmental proceedings, notably, planning procedures, environmental authorizations, the setting of standards, the provision of economic measures, and the powers of ordinance, sanctions and control. The mentioned authorities have means to enforce environmental requirements, such as termination, revocation, or suspension of environmental permits, and, in certain cases, may develop measures to correct or enforce compliance with environmental

obligations.

In addition, non-compliance with environmental obligations may be subject to the imposition of fines and ancillary sanctions, such as, *inter alia*, loss of equipment, machinery and utensils used in the offence, the deprivation of the rights to public subsidies or benefits, suspension of licenses or exploration titles, closure of facilities. Furthermore, measures to prevent or eliminate situations of serious danger to health, safety of people, property and the environment, may also be imposed.

3. What is the framework for the environmental permitting regime in your jurisdiction?

There are several regulations governing environmental permitting, depending on the type of project, the intended activities and the natural resources that will be affected by the project (water, soil, air). Therefore, a project may require several licences from different authorities, with each authority analysing the project within the scope of its competences.

Following a deep restructuring of environmental public services carried out in 2015, a single environmental licensing procedure ("LUA") was designed to simplify the existing licensing procedures in the environmental field, which regulates the procedure for issuing a Single Environmental Permit (known as a "TUA"), which incorporates all environmental licensing decisions, and summarises the conditions applicable to the facilities, activity or project in question.

The TUA integrates the following environmental licensing and prior control regimes:

- Environmental Impact Assessment;
- Prevention of Major Accidents involving dangerous substances;
- Integrated Pollution Prevention and Control [Chapter II of the Industrial Emissions Act];
- European Greenhouse Gas Emissions Trading Scheme Law;
- Waste Management;
- Incineration and co-incineration of waste [Chapter IV of the Industrial Emissions Act];
- Establishments and activities using organic solvents [Chapter V of the Industrial Emissions Act];
- Water Resources Use Titles;
- Waste Landfill Operations;
- Licensing of integrated centres for the recovery, valorisation, and elimination of hazardous waste
- Management of Waste from Mineral Deposits and Mineral Mass Exploitation;
- Air Emissions Act;
- Wastewater treatment for reuse.

The procedure for obtaining the TUA runs through the SILiAmb electronic platform (the Integrated Environmental Licensing System) and is articulated with the various licensing regimes applicable to the relevant facilities and economic activities, specifically, the Responsible Industry System, the Livestock Activity Regulation, and the Electrical Installations Licensing Regulations.

Another relevant legislation has been recently enacted with the purpose of simplifying environmental licensing procedures, known as "Simplex Ambiental" (Environmental Simplex).

This legislation improved the efficiency of environmental licensing procedures, in particular by reducing the number of cases in which certain environmental licences are required.

One of the most notable measures of the Simplex Ambiental was the creation of a mechanism for certifying tacit approvals.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

In general, in case of change in the ownership of certain facilities, the environmental permits associated with the project can be transferred to the new entity, along with the other assets linked with the activity. As a rule, the licensing authority's prior consent or notification is required, and the new holder is subject to the same conditions and obligations as the previous holder.

The transfer of environmental permits usually requires an endorsement on the original permit identifying the new holder.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

Generally, rights of appeal with regards decisions on environmental permits are the same as those available in relation to administrative acts, and the same regime applies.

Thus, the applicant may challenge the decision before

the administrative authorities, or directly before the administrative courts. Under Portuguese administrative law, a prior administrative challenge procedure is not mandatory, which means that the applicant can appeal directly to the administrative courts.

In general, the appeal must be filed in the Administrative Courts within 3 (three) months from notification of the decision.

In case of a successful appeal against a decision, the Administrative Courts can refer the case back to the authority and force it to issue the permit or require the authority to reconsider the decision.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

Portugal adopted the Environmental Impact Assessment Law in accordance with EU requirements, so the legal regime is in line with Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 (as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014).

The Environmental Impact Assessment ("EIA") is a preventive environmental policy instrument that ensures the study and assessment of the potential effects of certain projects on the environment, namely in the case of environmentally sensitive industries, installations, and projects, expressly provided for by law and subject to the mandatory issuing of a favourable environmental impact statement ("DIA") – with or without conditions – as a prerequisite for licensing or authorising the project.

The law establishes which projects are compulsorily subject to an EIA, but also provides for the possibility of a "case-by-case analysis", under which the project licensing authority can refer projects that it considers likely to have a significant impact on the environment due to their location, size or nature to an EIA.

As mentioned, following the Environmental Simplex, the EIA is no longer required in a number of cases, and exceptions to the EIA have even been introduced, namely projects related with the production of hydrogen from renewable sources and the electrolysis of water.

Within the scope of the EIA procedure, entities with competence in environmental matters, along with other competent authorities, must issue technical opinions, based on which is issued the final technical opinion for the final decision of the EIA procedure.

In addition, the EIA procedures are disclosed to the public, and subject to public hearing period.

The EIA decision is public and must be duly grounded.

According to the environmental impact assessment legal regime, the EIA decision when favorable or favorable with conditions, corresponds to the environmental impact statement (DIA), which must be issued within a certain deadline (that may range from 150 to 70 days) 100 days from the date of submission of a duly instructed environmental impact study.

In the absence of an express decision in the applicable deadline, the DIA shall be deemed to have been tacitly issued.

The decisions regarding the EIA can be challenged before the Portuguese Courts. Under Portuguese law, prior administrative challenge procedure is not required, which means that the applicant can appeal directly to the administrative courts. In general, the appeal must be filed within 3 (three) months from notification of the decision.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

Differently from other countries, Portugal does not have a general legal regime for soil protection. However, there are several legal frameworks that regulate liability for soil remediation:

i. Under the terms of the Environmental Liability Act, the economic operator is responsible for repairing the environmental damage (including contaminated soil) caused in the exercise of one of the activities listed in annex III of this legal regime and, when the activity is imputable to a legal person, the obligations apply jointly and severally to its directors, managers or administrators. This legal regime is based on the polluter pays principle.

ii. The Waste Management Act governs the licensing of a soil remediation operation. The Portuguese Environment Agency has approved some technical documents for determining contamination values (based on Ontario standards).

iii. In some towns, prior to obtaining a building permit,

the owner or possessor must obtain a soil remediation operation permit – see previous point – when soil contamination is proven (this obligation is provided for in the various municipal general plans).

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

Under some municipal general plans ("Planos Diretores Municipais"), the applicant for a building permit is obliged to carry out a soil quality assessment and making a sampling plan ("Plano de Amostragem") when there are indications that the soil is contaminated.

Excluding these municipal general plans, there is neither a positive obligation to investigate land for potential soil and groundwater contamination, nor a positive obligation to provide any investigative reports to regulatory authorities.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Under the Environmental Liability Act, if environmental damage to the soil occurs, the responsible economic operator must inform the competent authority of all relevant facts within a maximum period of 24 hours and keep the information provided up to date.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

The owner of polluted land can have a right of return against the previous owners if they caused the pollution, under the terms of the general regime of civil liability provided for in the Portuguese Civil Code.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

Waste legislation aims to prevent its production and sustainable management, avoiding and minimizing negative impacts on public health and the environment. The key laws are:

i. The above mentioned Waste Management Act establishes, among other things, planning and waste prevention and management instruments (e.g. national and local waste management plans; hazardous and non-hazardous waste prevention objectives and targets; targets for preparing for reuse, recycling and recovery), rules for the transportation of waste, as well as rules for the licensing of waste treatment activities, including the recycling and disposal of waste;

ii. The Unified System for Specific Waste Fluxes Act which establishes the legal regime governing the management of the following specific waste streams: Packaging and packaging waste; Oils and used oils; Tires and used tires; Electrical and electronic equipment and waste electrical and electronic equipment; Batteries and accumulators and waste batteries and accumulators; Vehicles and end-of-life vehicles;

iii. Also important is the Landfill Waste Act, which establishes the general requirements to be observed in the design, construction, operation, closure and post-closure of landfills, including the specific technical characteristics for each class of landfill (landfills for inert waste; landfills for non-hazardous waste and landfills for hazardous waste); and

iv. The legal regime for licensing the installation and operation of integrated centres for the recovery, recovery and disposal of hazardous waste (CIRVER), which are specialised centres for the treatment of hazardous waste using the best available techniques.

On the other hand, the main instrument of regulatory control is the system of waste classification and registration (SIRER). It is an information system that allows the registration, submission and storage of data relating to the generation and management of waste. The legal obligation to register with SIRER and report data is established by the Waste Management Act and is regulated by the SIRER Operating Regulations (Order 20/2022, 5th January).

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

According with Waste Management Act, the responsibility of the waste producer or the holder is extinguished with the transfer to a third party, namely the waste treatment operator.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

Under the above mentioned Unified System for Specific Waste Fluxes Act, according to extended producer responsibility, the products' producer is responsible for managing the life cycle phase of products when they have become waste.

The products' producers (e.g. packaging/batteries and accumulators/end-of-life vehicles) are obliged to manage their waste through an individual system or an integrated system: *(i)* the individual system is the system whereby the product's producer individually assumes responsibility for managing the waste; *(ii)* the integrated system is the system whereby the product's producer transfers responsibility for managing the waste to a management entity licensed for this purpose, which collectively assumes this responsibility.

In the coming months, it is expected that there will be a legislative change to regulate the deposit system for drinks packaging.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

Law no. 63/2018 establishes procedures and objectives for the removal of products containing asbestos fibres still present in company buildings, installations, and equipment.

With the legislation restricting the placing on the market and use of dangerous substances, the use of products containing asbestos fibres in the construction or renovation of private buildings, installations and equipment is not permitted.

The Authority for Working Conditions (ACT), in collaboration with workers' representative organisations and employers' associations, shall draw up a plan to identify companies whose buildings, installations and equipment contain asbestos-containing materials. The plan shall identify companies with a potential risk that the premises in which they operate and the equipment they use contain asbestos-containing materials, in accordance with the best applicable practices.

The conditions for implementing the plan shall be approved by order of the members of the Government responsible for the areas of labour, the economy and health. The implementation of this plan is monitored by the Government.

There is no general obligation for private entities to investigate the existence of asbestos within their premises, or to remove existing asbestos materials in buildings irrespective of risk aspects. However, in the context of construction or demolition works, owners and contractors must ensure that the material is disposed of safely in compliance with the applicable waste and hazardous materials regulations, which may lead to substantial additional costs.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

The product regulations provided for in Regulation 1907/2006/EC (REACH) on the registration, evaluation, authorisation and restriction of chemicals, in Regulation 1272/2008/EC (CLP) on the classification, labelling and packaging of substances and mixtures and in Regulation (EU) 2019/1021 on persistent organic pollutants (POPs), are directly applicable in the Portuguese legal system. The legal provisions necessary for their implementation and application in the domestic legal system can be found in Decree-Law no. 293/2009 (REACH), Decree-Law no. 220/2012 (CLP) and Decree-Law no. 75/2022 – (POP).

The main authority responsible for monitoring the implementation of REACH, CLP and POP at national level is the Portuguese Environment Agency (APA).

A National Helpdesk has been set up to support the various economic operators with their responsibilities and obligations under these regulations.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

The Decree-Law 101-D/2020, 7th December, establishes the requirements applicable to the design and renovation of buildings, with the purpose of ensuring and promoting the improvement of their energy performance

through the establishment of requirements applicable to their modernization and renovation, as well as regulating the Building Energy Certification System.

This legal regime sets certain requirements for the energy quality of buildings, including their renovation. Large commercial and service buildings are subject to certain periodic obligations and energy consumption monitoring.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

The Climate Basis Law foresees a set of key provisions regarding climate policy, from which we underline the following:

- Recognition of the climate emergency situation;
- Climate rights and duties – public, free and accessible climate action website in order to allow citizens to participate in climate action, on topics such as greenhouse gas emissions, progress towards national targets, available funding sources, among others;
- Creation of the Council of Climate Action, a specialized body, whose function is to elaborate studies, evaluations and opinions on climate action and related legislation;
- Obligation for Municipalities to approve a municipal climate action plan;
- Obligation for the Coordination and Regional Development Commissions to approve a regional climate action plan;
- A National Strategy for Adaptation to Climate Change must be prepared by the Government and submitted to the Parliament;
- Every five years, sectoral plans for adaptation to climate change shall be developed and approved by the Government;
- The Government shall encourage the decarbonisation of the electric production system by ensuring: (i) the production of electricity from renewable sources; (ii) the prohibition of the use of coal for electricity production, from 2021 onwards; and (iii) the prohibition of the use of natural gas of fossil origin for electricity production, from 2040 onwards, provided that security of supply is ensured;
- Development of the electricity transmission and distribution networks, in the various electric voltage modalities, in order to promote an intelligent and efficient grid, capable of integrating electricity production from increasingly renewable sources and storage and demand management solutions; rationalise grid access costs; and make available in a rational manner the capacity to inject into the electricity grid the production of electricity from renewable sources;
- Development of a public transport network that tends to integrate low emission or zero emission vehicles, with the aim of reducing emissions from this sector, ensuring citizens access to sustainable mobility and reducing congestion in cities;
- Approval of a *green industrial* strategy, with the purpose of providing a strategic framework to support companies in the process of climate transition in the industrial sector and in the fulfilment of the objectives set out in this law, reinforcing their sustainable competitiveness;
- New category of tax deductions – Green Personal Income Tax (PIT)– in order to promote behaviours that reduce the ecological footprint, such deductions will benefit taxpayers who acquire, consume or use environmentally sustainable goods and services;
- Oil and energy products to be subject to a carbon price, which should tend to cover total greenhouse gas emissions in the production and consumption of those products;
- Climate risk in financing decisions and in the decision-making processes of commercial companies is mandatory;
- Promotion of the substitution of fossil fuels, by electricity supply or renewable energy gases is deemed as necessary;
- Climate policies must be duly considered in policies on mobility and transport, materials and consumption, the agri-food sector, climate education, R&D, economic policy, industrial strategy.

In terms of key instruments related with climate change, reference should also be made to the Roadmap for Carbon Neutrality 2050 (RNC 2050), approved by the Council of Ministers Resolution no. 107/2019. Portugal has committed to reduce its greenhouse gas emissions so that the balance between emissions and removals from the atmosphere will be zero by 2050. The RNC 2050 adopts the commitment to achieve carbon neutrality – with the goal of a net zero carbon footprint in Portugal by 2050 – which results in a neutral balance

between greenhouse gas (GHG) emissions and carbon sequestration through land use and forests.

18. Does your jurisdiction have an overarching "net zero" or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

In what concerns low-carbon targets, the main document to consider is the Roadmap for Carbon Neutrality 2050 (RNC2050), the purpose of which is to identify and analyse the implications associated with technically feasible, economically viable and socially accepted alternative trajectories, thus allowing the Portuguese economy to reach the objective of carbon neutrality by 2050, in line with the international commitments of the Portuguese State.

As stated in the RNC2050, deep decarbonization of the economy requires the broad involvement and collaboration of all stakeholders, in addition to analytical skills and the appropriate tools, in order to analyse and discuss mitigation options and strategies to redefine low carbon trajectories for the economy. The main objective, as previously stated.

Legal measures related with the low carbon trajectories are essentially foreseen in the Climate Basis Law, as mentioned above, above. A significant number of such measures have not yet been fully implemented.

On January 5th new legislation has been published – Decree-Law 4/2024 – establishing the voluntary carbon market and setting out the rules for its operation. This recent legislation represents a significant contribution towards low carbon trajectories.

19. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as "green", "sustainable" or similar terms? Who are the regulators in relation to greenwashing allegations?

The topic of greenwashing allegation is dealt with through the legislation regulating advertising, consumer protection and abusive commercial practices. According to the Consumer's Protection Law, advertising must be lawful, unambiguously labelled and respect the truth and the rights of consumers. It is considered misleading a commercial practice that contains false information that is untrue or which in any way misleads or is likely to mislead the average consumer even if the information is factually correct. On the other hand, a commercial practice is also considered misleading when it omits substantial information that is necessary for the average consumer to make an informed an informed transactional decision.

The regulator in relation to greenwashing allegations is the Directorate-General for Consumers (DGC), which is the public entity responsible for defining and executing consumer protection and supervising advertising activities in Portugal.

On 2021 the DGC issued a report regarding greenwashing practices, which included an explanatory guide on companies' commercial practices that intend to associate their brands with sustainability, particularly with regard to environmental claims, to encourage the adoption of practices that allow enlightened consumption practices, also establishing guidelines for economic operators.

Such guidelines have the purpose of making operators aware of the adequate practices, in the use of environmental claims, for promoting goods and services, in order to avoid wrongfully misleading consumers. Along with the mentioned guidelines, this document also provides information for consumers focusing on environmental claims used in marketing and advertising and a checklist for assessing the conformity of environmental claims with international fair advertising practices.

Additionally, the Code of Conduct on Advertising Self-Regulation includes a section regarding Environmental Claims (Section E), which establishes a framework to guiding economic operators in using environmental claims in advertising through any means (including labelling, in-packaging documents, promotional and point-of-sale material and in the packaging, product literature relating to the product, or by telephone or digital or electronic means, such as means such as e-mail and the internet).

20. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

In assessing antitrust agreements and concerted practices the Portuguese Competition Authority and the national courts typically follow the European Commission's Guidelines. Therefore, it is expected that the same will occur in relation to the Commission's new Guidelines on horizontal cooperation agreements, which introduced a specific chapter aimed at assessing agreements between competitors that promote

sustainability objectives.

21. Have there been any notable court judgments in relation to climate change litigation over the past three years?

There have been no rulings in Portuguese courts on climate change litigation worthy of being mentioned over the past three years.

22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

Further legislative changes and reforms are expected to be implemented in a near future, namely in order to meet the goals of the European Green Deal, and to continue implementing the measures foreseen in the Climate Basis Law, notably tax related, as well as legal instruments to promote the substitution of fossil fuels by renewables.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

Liability for breaches of environmental law and/or pollution are mainly governed by the Environmental Liability Act, and by the Environmental Administrative Offences Framework Law.

The Environmental Liability Act establishes that when the damaging activity is attributable to a legal person (e.g., a company), the obligations to prevent and repair environmental damage fall jointly and severally on the respective principals, managers or directors. If the operator is a company in a group or control relationship, the law states that environmental liability extends to the parent company when there is abusive use of legal personality or fraud.

Regarding damage caused by diffuse pollution, the Environmental Liability Act ‘s provisions only apply when it is possible to establish a causal link between the damage and the harmful activities.

There is no legal provision in the Portuguese legal system that assigns environmental liability to financing entities, although they may be held liable under the terms of the general provisions set out in the Environmental Liability Act, insofar as it provides for the possibility of liability falling on several people, in which case they are all jointly and severally liable for the damage.

Regarding environmental administrative offences, partners, directors, or managers of the company may, under certain circumstances, be jointly and severally liable for the payment of the fine.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

In principle, under the Portuguese legal system, liability for environmental offences is determined at the time the environmental damage is caused, so the partners, directors or managers of the acquiring company in a share sale will not be held liable for damage caused prior to the sale, even if liability remains with the company being sold, to whom primary liability is attributed.

However, the Environmental Administrative Offences Framework Law establishes that directors, managers, and other persons who exercise, even if only de facto, management functions in legal persons are subsidiarily liable for fines due for previous events when the final decision imposing them is notified during their exercise period and the failure to pay is attributable to them.

In the case of an asset deal, liability for administrative offences remains with the seller.

The same applies to environmental damage liability, insofar as liability is subjectively attributed to the entity that caused the damage.

Thus, the buyer will not be held liable in an asset deal for damage caused before the sale, even though in practice the time at which the damage was caused is difficult to determine.

In case of a share deal, liability for environmental damage may subsequently be attributed to the buyer, to

the extent that it was the acquired legal entity that caused the damage.

In the case of both share and asset transactions, the contractual allocation of liability should be taken into account (for example, by including specific indemnities or guarantee clauses in the sale and purchase agreement). The risk of (potential) environmental liability can also be reflected in the purchase price or mitigated to some extent by obtaining guarantee and indemnity insurance or environmental damage insurance.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

Under Portuguese law, there is no legal provision under which the seller in a transaction is required to disclose environmental information.

In this sense, the obligation to disclose environmental information is addressed through the general rules of contract law.

Environmental due diligence is commonplace in the Portuguese jurisdiction.

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

There are several environmental insurances that may be legally required depending on the activities carried out.

In general, operators of facilities identified in the Environmental Liability Act are required to cover the risks arising from the operation of the facility through a financial guarantee, which is often provided through an environmental insurance policy.

Certain legal regimes in environmental matters require specific non-contractual civil liability insurance, such as the regime applicable to the operation of waste incineration and/or coincineration facilities.

Environmental insurance policies are generally available in Portugal for environmental damage to soil, water and groundwater, and are regularly obtained in practice.

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

Public authorities keep public records of environmental information in several areas. Public records are available in *(i)* environmental licensing procedures; *(ii)* environmental impact assessment procedures; *(iii)* authorized waste operators; *(iv)* information related to the monitoring of water resources, and *(v)* air monitoring, although the information provided may not be up to date. Some of this information may be available in the internet sites of the relevant environmental authority.

The access to administrative and environmental information and the re-use of administrative documents is ruled by Law 26/2016, of August 22, which transposes Directive 2003/4/EC of the European Parliament and of the Council, and Directive 2003/98/EC of the European Parliament and of the Council.

In general, parties have access to administrative and environmental information by submitting a formal request to the relevant authority.

Public authorities are obliged to assist the parties in identifying the documents and data they require, namely by providing information on how their archives and records are organised and used, and by publishing on their website the form, means, place and time, if applicable, for making a request for access.

In case of certain environmental information, there is a specific provision stating that environmental public authorities shall collect and organise environmental information, and ensure its periodical disclosure to the public, and it's progressively made available in databases accessible via the Internet. The environmental information covered by this provision include, among other, texts of international treaties relating to the environment, policies, plans and programmes relating to the environment, reports on the state of the environment, data resulting from the monitoring of activities that affect or may affect the environment, licences and authorisations with a significant impact on the environment.

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to

parties that request it?

According to the relevant legal provisions, access to and re-use of administrative information is in general ensured by public authorities, in accordance with other principles of administrative activity, namely the principles of equality, proportionality, justice, impartiality, and collaboration with private individuals.

Everyone has a right of access to administrative documents, which includes the right to consult, reproduce and be informed about their existence and content.

Restrictions to access may be imposed for duly grounded circumstances, for instance, to protect business secrets, intellectual property rights or personal data, or based on public interests, such as security related aspects. Fees can be charged if it involves a more complex procedure (e.g., copies, certified copies, anonymisation of files).

In addition, public authorities are not obliged to comply with requests which, given their repetitive and systematic nature, or the number of documents requested, are manifestly abusive.

In the event of rejection of the access request, or lack of response after the deadline provided, the parties may complain to the Commission for Access to Administrative Documents (CADA), which is an independent administrative body that works with the Parliament to ensure compliance with the legal provisions on access to administrative information. The submission of a complaint before CADA suspends the deadline for submission to the courts of an application for a summons to provide information, consult files or issue certificates.

29. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

A large part of the legislation mentioned throughout this questionnaire result from significant updates in environmental Portuguese law in the past three years. In this regard, the approval of the environmental procedure simplification act, known as Simplex Ambiental (Environmental Simplex), should be highlighted (please refer to question 3, above).

In what concerns future updates or reforms, updates are expected in the field of extended producer liability for new waste streams, such as furniture, mattresses, products used in home healthcare services, textiles, as well as packaging deposit and refund system, since the government recently approved a decree-law regulating this matter.

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