

# Avosetta Meeting 2009

## Recent Legal Developments in Portugal

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### 1. Legislative hyper-production

The first noteworthy feature of environmental law in Portugal, presently, is quantity. The number of legal diplomas approved in 2008 was very large. This *legislative hyper-production* led the Portuguese Environmental Agency to produce, for the first time, a guiding list of the main diplomas published in 2008.

One of the reasons for this was the end of the 6 month period of the Portuguese Presidency of the European Union, between the 1st July 2007 and 31st December 2007. For 6 months the Portuguese Official Journal (legislation series) had half its normal size and in the end of 2007, a substantive delay in legal production was reported. Of course, the Presidency didn't only affect environmental law, but all fields of legislation. The end of the Presidency boosted the "regulatory speed": in 2008 the government recovered from the *apathy* and there was a remarkable *explosion* of legislation.

### 2. Web transparency

2008 was the year of recovery also in terms of web transparency. The recovery comes after a long black out during which the legal environmental information available online (databases on laws, administrative procedures and decisions, reports, etc.) was gradually removed with the argument that the web page could not support the growing quantity of information (mostly available in PDF format) required by the law on access to environmental information. In 2008 the site of the Portuguese

Environmental Agency was renewed granting online access to a set of services both for the citizens (the general *public*) and for the environmental *actors* (namely firms and NGOs). Here are some examples:

- Full access to environmental impact assessment processes and documents (historical and ongoing)

- Downloadable forms: on IPPC licensing, on the electronic submission of data for the report on Greenhouse Gases, on the European Pollutant Release and Transfer Register, on the European Pollutant Emission Register and on the Portuguese Environmental Agency Register of all the (public or private) agents having environmental obligations.

- Information on air quality indexes and forecasts, services of the environmental reference laboratory, waste market services (not yet implemented) and on environmental taxes due to the Portuguese Environmental Agency.

The “SIDDAMB” a search engine of environmental law in function from the beginning of the 90s and canceled a couple of years ago (for the same software reasons) has been re-launched and is now available in an upgraded and more agile version.

### **3. Large environmental projects**

There are four large environmental projects whose developments in 2008 deserve mentioning: two of them are quite consensual and the other two are rather controversial projects.

#### **3.1. Consensual projects:**

- a) A large solar photovoltaic system was built in a poor, depressed region in the south of Portugal (Amareleja). This installation, which is fully functional since 2008, is said to be the largest in the world, with 46,41 megawatts capacity and has got large political and social support.

- b) The production of electricity from the waves was made possible in December 2008 by a law approving the general conditions for the private use of territorial waters (public domain goods) for a period of 45 years for the production of wave electric energy. It's the first time that wave energy is regulated by law.

#### **3.2. Controversial projects:**

- a) In 2008 the final report of the strategic impact assessment of the new Lisbon airport (which will replace the Portela airport, in the center of Lisbon) was approved. The airport will be built in an ancient military campus (still functioning as fire training area) enclaved in a Natura 2000 site. The alternative sites were not significantly better than this one.

- b) The construction of a dam on the last savage river in Portugal (Sabor) is being contested before the national courts. The environmentalists deny the arguments,

used by the government, in favor of hydroelectric power as a means to slow climate change and claim for less irreversible alternatives.

#### **4. Transposition of directives and implementation of regulations**

A large number of directives have been transposed to national law. In some cases it's the first time the directive are transposed as a whole, in other cases it's a revision of the legal regime in force, and finally, in other cases, it's a complementary regime to complete the existing norms.

The most important laws passed in 2008 are on placing in the market of biocide products, on protection of underground waters, on classification, packaging and labeling of dangerous preparations, on environmental liability with regard to the prevention and remedying of environmental damage, on management of waste from the extractive industries, on integrated prevention and pollution control, on nature conservation and biodiversity, on waste batteries and accumulators, on the promotion of the use of renewable fuels for transport, on emissions from air-conditioning systems in motor vehicles, on urban wastewater treatment, on management of construction and demolition waste, on the economic management of water, on assessment and management of environmental noise, namely the acoustic features of the buildings, and on shipments of waste.

#### **5. Other relevant laws**

Some other laws, not directly intended for the transposition of EC directives, were approved.

- It's the case of the new laws on integrated actions for the requalification and valorization of coastal areas, on management of intensive energy consumption and energetic efficiency, on information about energy sources used, on industrial activities and on intensive livestock breeding. These laws integrate the environmental concerns in the licensing procedure in a very strong way.
- Since 2005 a new system for a smooth and speedy licensing of projects having a potential national interest (PIN) has been in force. These are large investment projects (with an investment of over €25 000 000,00 = 25M€), creating at least 100 direct jobs, aiming at strategic fields like territorial planning, environment, new technologies, energy, and so on, as long as they prove to be energetically efficient and environmentally sustainable, can be considered PIN and benefit from a specially fast and efficient procedure, normally with an anticipated positive outcome. In 2008 the government adapted the regime and approved a legal system for the suite of these projects and gave even more celerity on procedural steps like publicity and public participation.
- The regime of the national ecological reserve, created in 1983 and criticized for more than two decades, was — finally — entirely reformed. The national

ecological reserve is a collection of areas (with no special relation among each other) which are ecologically sensitive or likely to suffer from natural hazards and where construction is supposed to be strictly forbidden or at least authorized under very severe conditions.

- One of the most innovative instruments to come into force in 2008 was the Environmental Intervention Fund (or FIA, in the Portuguese abbreviation). This Fund was already mentioned in the law regulating the administrative illicit environmental actions, in 2006, but was never regulated in detail. The FIA is an autonomous Fund, with its own sources of revenue. The revenue of the FIA comes from the taxes, compensations, indemnities, and so on. The fund will be used mainly in cases where the environmental damage is due to human action (although it can also be used in damages caused by natural causes, without human interference) and if it is not likely to be solved quickly in any other way. The objective is to make sure that the State has the material resources necessary to help and minimize the damages in situations of ecological disaster or orphan sites, requiring urgent intervention.
- Madeira autonomous region has passed a recommendation to the European parliament for excepting the ultra peripheral and insular regions from the application of the emission trading system to the aviation sector. Considering the importance of territorial cohesion and the harsh difficulties felt in these relatively distant islands, this resolution was approved by unanimous vote of all the members of the Madeira Parliament.
- Additionally, three national plans were adopted: on health and environment, on the Natura 2000 network, on dams with high hydroelectric power, on integrated estuary management.
- Finally, new laws on economic sectors with growing importance in the national economy (like maritime-touristic activities and aquaculture) are being prepared.

## **5. Judicial decisions**

A very debated issue was decided by the courts during 2008: the dangers of living near a high tension station were for the first time considered relevant granting the right to suspend the construction of such stations.