

Environmental Law in Portugal

Recent developments

The bad news (1): oil drilling

Deep offshore oil prospecting is causing great concern among citizens. Portugal has never been an oil producer and EIA law was not clear on whether oil prospecting was subject to a mandatory environmental impact assessment and there were rumours that the Government had the intention to exempt both projects from impact assessment. To prevent this the Parliament passed a law imposing mandatory the evaluation of environmental impact in the exploration, exploration and extraction of hydrocarbons operations¹. Yet the governmental strategy consisted on a preliminary assessment² of the need to perform an environmental impact assessment, after which the exemption can be legitimized.

The deadline for public participation has expired in mid-April but the result is still unknown. It is not impossible that the conclusion is favourable to an exemption of EIA.

20 ENGOs have teamed up and created an *ad hoc* NGO — PALP³ — expressly to start an *actio popularis* to bring an injunction to suspend any prospecting activity, require an EIA for the prospecting works and fight the political decision to accept an anachronistic oil production. The case is still pending in the Court.

Even worse is the project to produce onshore shale gas⁴ using the same strategy: a preliminary assessment based on a very superficial description of the project submitted to public participation, to discard the need for an EIA. And, of course, after prospecting has taken place, with or without an EIA there are less arguments to refuse extraction, paving the way for a *de facto* policy.

The bad news (2): wildfires

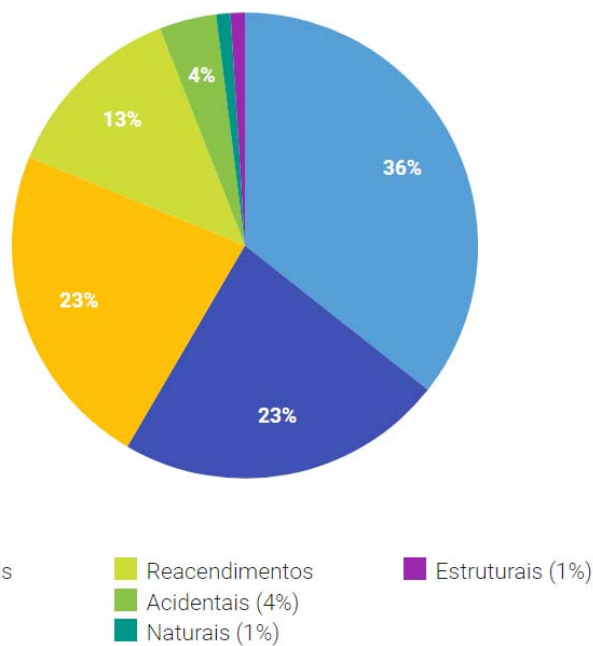
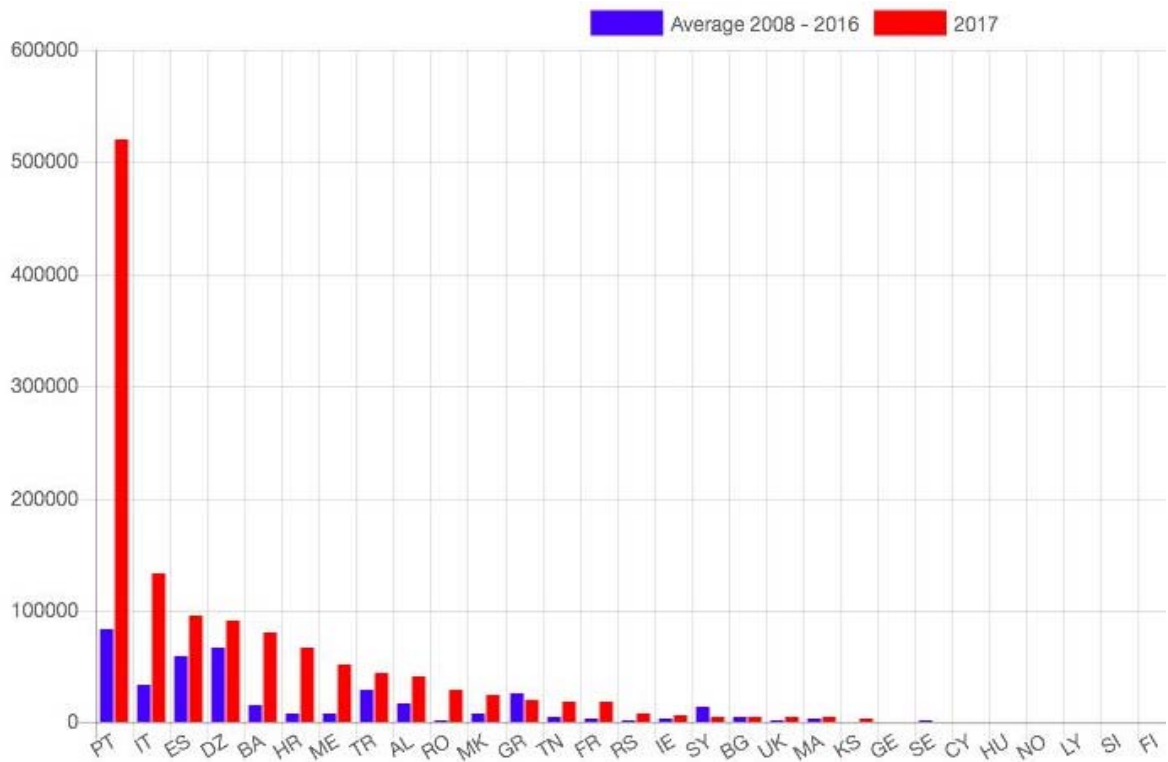
Over 100 deaths was the result of the immense wildfires in Portugal on June 17 and October 15, 2017. This was the worst day ever, with 500 reported fires simultaneously in one day. In total, 500 hectares were lost in Portugal, more than all the area burned in Europe put together.

¹ Law No. 37/2017 of June 2 is amendment to Decree-Law no. 151-B / 2013, of October 31, which establishes the legal regime of environmental impact assessment public and private projects likely to have significant effects on the environment.

² <http://participa.pt/consulta.jsp?loadP=2160> .

³ <https://www.palp.pt/> .

⁴ <https://zero.org/zero-contra-exploracao-de-gas-de-xisto-em-aljubarrota-e-quer-avaliacao-de-impacte-ambiental-da-prospecao/>



The devastating fires had political consequences and the minister of the interior was dismissed. To avoid future similar catastrophes several legislative measures were adopted, some of them ⁵ quite controversial: mandatory clearing of forest (cutting down trees, bushes and vegetation in general in areas around buildings (residential or not) both in urban and rural areas, at the owner's expense.

⁵ Decree-Law No. 10/2018 of February 14 <https://dre.pt/home/-/dre/114685734/details/maximized>

The good news (1): access to legal information

Portuguese legislation has summaries in plain language again. For instance, the Decree-Law⁶ transposing the 2014 EIA Directive, has one summary in plain portuguese, and another in plain english (both without legal value)

What is it?

This decree-law defines new rules for the assessment of environmental impact of public and private projects with the potential to have significant effects on the environment. For this, it introduces into Portuguese law the European directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment.

What will change?

There will be new factors to take into account when assessing projects

The following issues will be more important in project assessment and decision-making: efficiency and sustainability of resource use

biodiversity protection

climate change

the type of territory and soil.

For this, rules will be defined so decisions about projects will take into account:

the effects on the soil

the assessment of the project's effects on climate (the type and volume of greenhouse gas emissions)

the projects' vulnerability to climate change

the projects' impact on population health and well-being.

Project risk assessments will change

The environmental risks of projects will also be considered, such as:

the probability of major accidents or catastrophes

the projects' ability to withstand such major accidents or catastrophes.

Requirements will be created for experts who assess the environmental impact

Criteria will be created to ensure that the experts participating in the environmental impact studies of these projects have the necessary qualifications and skills to provide quality information.

Deadlines for public consultation and communication will change

There will be new deadlines for the State when, during the project evaluation phase, it has to:

consult the public

communicate decisions or information.

The rules on project evaluation for the Portuguese Environment Agency (APA — Agência Portuguesa do Ambiente) will change

In projects where APA is both an environmental impact assessment authority and a project bidder, the rules on who issues the Environmental Impact Statement (DIA — Declaração de Impacte Ambiental) will change.

What are its benefits?

This decree-law is intended to improve the assessment of the environmental impact of projects.

For this:

the assessment requirements will be more demanding

procedures will be simplified

process efficiency will be improved.

When does it come into effect?

⁶ Decree-Law no. 152-B / 2017 of December 11.

This decree-law comes into effect the day after being published but the changes it introduces take place from 1 January 2018.

This text is intended to present the content of the legal act in accessible, plain and understandable language for citizens. The summary of the legal act in plain language has no legal value and does not replace the consultation of the legal act in the Diário da República.

The good news (2): better regulation

Several better regulation initiatives are contributing to clarify the legal landscape in Portugal. On the 8th May⁷ one single decree law expressly revoked 2270 laws adopted between 1975 and 1980 in some cases because they had been tacitly revoked, in other because they had expired.

The good news (3): the environmental fund and ecosystem services

The Environmental Fund⁸ is being used for beneficial uses such as support to electric vehicles to perform environmental services in municipalities (namely waste collection).

The last governmental initiative is to celebrate partnership agreements with the academia to develop a pilot system of payment for ecosystem services in nature conservation areas.

⁷ Decree-Law No. 32/2018 of 8 May.

⁸ Decree-Law no. 42-A / 2016 of 08 December