
Changes to the Regime on the Use of Water Resources and the Legal Regime on Environmental Impact Assessment

Decree-Law 87/2023 of October 10 amends the Regime on the Use of Water Resources and the Legal Regime on Environmental Impact Assessment (“LREIA”)

Portugal - Legal Update

October 10, 2023



Key aspects

- Eliminates the preemption right of the previous holder of the water resources license or concession.
- Adds the requirement that unforeseen additional investments which may justify the extension of the concession period “be necessary for the performance of the contract.”
- Extends the obligation to notify all potentially affected states about projects with a crossborder impact, not just European Union (“EU”) Member States.
- Tightens requirements for the waiver of environmental impact assessments (“EIA”) by ministerial order.
- Clarifies certain aspects of the schedules to the LREIA.



Changes to the Regime on the Use of Water Resources

The amended articles are articles 21, 24 and 35 of Decree-Law 226-A/2007 of May 31. The most significant changes are as follows:

- > In tenders for granting a license or concession for private use of the public water domain following an application submitted by a private entity, the previous holder's preemption right (which would have overlapped with the preemption right of the first applicant) no longer applies. This change will apply as of October 11, 2024.
- > An addition was made to the provision governing the extension of the concession period based on investments other than those initially established in the contract—these investments will now “have to be necessary for the performance of that contract.”

LREIA changes

The changes affect articles 4, 33 and 34 and schedules i, iii, v, and vi of Decree-Law 151-B/2013 of October 31 and the aim is “*the full alignment of these provisions with the spirit of the above-mentioned Directive 2011/92/EU.*” The main changes are as follows:

- > The full or partial waiver, by ministerial order, of the EIA procedure established in article 4 of the LREIA is now contingent on (i) the project objective being thwarted by the application of the procedure, and (ii) meeting the LREIA objectives.
- > The obligation of the national EIA authority to notify the authorities of states potentially affected by projects that can cause substantial environmental impacts now covers all states and not just EU Member States.
- > The potentially affected state will have three months to consult entities and the interested public about potential crossborder effects and measures to reduce or eliminate them.
- > The criteria for deciding whether projects are subject to EIA on a case-by-case analysis will now include the availability of resources at the location.
- > Regarding the accumulation of effects with other existing or approved projects, the decree-law clarifies that environmental problems relating to areas of special environmental importance that may be affected or the use of natural resources are considered.
- > The list of items to be included in the announcement about the public consultation period will now also include the draft decision, if any, or the nature of possible decisions.

The decree-law enters into force on October 11, 2023.



For additional information on the contents of this document, please contact *Cuatrecasas*.

©2023 CUATRECASAS

All rights reserved.

This document is a compilation of legal information prepared by Cuatrecasas. The information and comments included in it do not constitute legal advice.

Cuatrecasas owns the intellectual property rights over this document. Any reproduction, distribution, assignment or any other full or partial use of this legal flash is prohibited, unless with the consent of Cuatrecasas.



IS 713573