

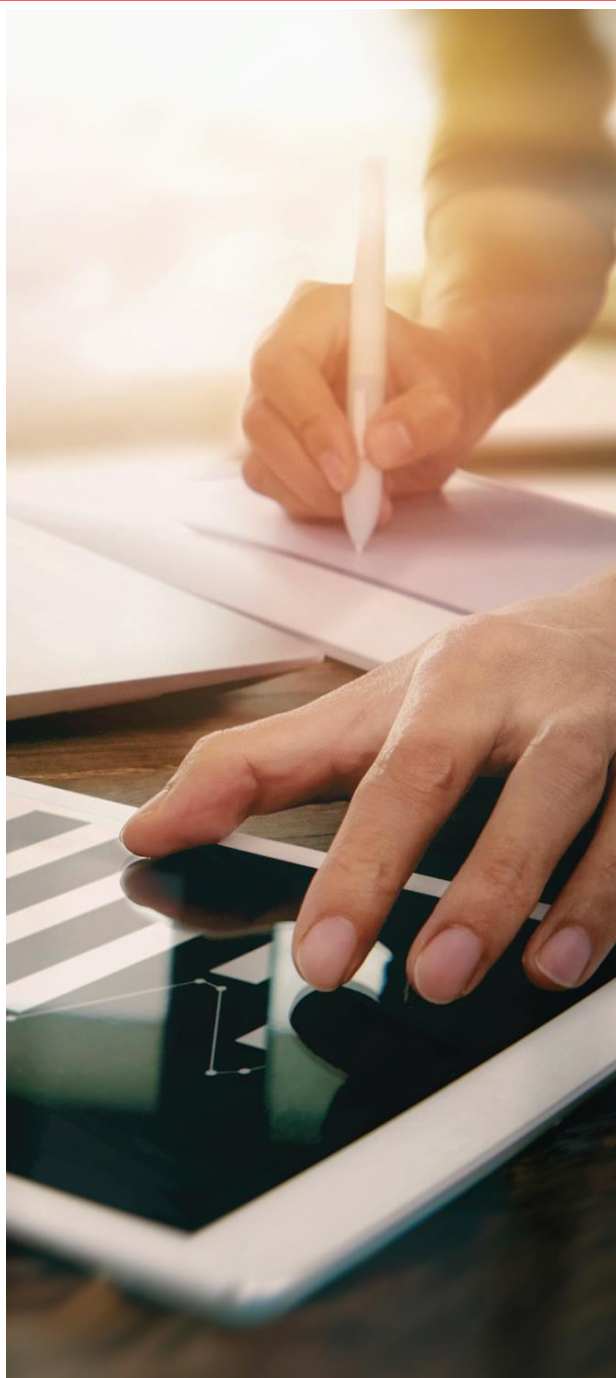
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# Public Law

Newsletter | Portugal

2<sup>nd</sup> Quarter 2020

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## I. Decree-Law 12/2020, of April 6, establishes the legal framework applicable to the greenhouse gas emission allowance trading system

On April 6, 2020, Decree-Law 12/2020 was published, establishing the legal framework applicable to the greenhouse gas emission trading system and transposing into national law Directive (EU) 2018/410, of the European Parliament and of the Council, of March 14, 2018, which amends Directive 2003/87/EC and Decision (EU) 2015/1814 to encourage cost-effective emission reductions and low-carbon investments.

Directive (EU) 2018/410 was approved within the European Union's (EU) climate and energy policy to reduce greenhouse gas emissions. The European Union emissions trading system ("EU ETS") is a particularly important cost-effective measure to achieve the target of reducing greenhouse gas emissions by 43% (compared to 2005) by 2030.

Under Decree-Law 12/2020, which establishes the rules for the fourth period of EU ETS (2021-2030), operators carrying out the activities listed in Annex II to Decree-Law 12/2020 that emit greenhouse gases (carbon dioxide, methane and nitrous oxide) or that will be bound by this legal scheme because of decisions taken at an EU level, must obtain a greenhouse gases emissions permit issued by *Agência Portuguesa do Ambiente* (APA, I.P.). The installations referred to in article 2(2) of Decree-Law 12/2020 (i.e., installations or parts of installations used to research, develop and test new products or processes) are not within the scope of this legal framework.

The operator must submit the request for a greenhouse gases emissions permit, and the request must be accompanied by the information listed in article 7 of Decree-Law 12/2020 (i.e., the identity of the operator, a description of the installations and activities carried out, the raw materials, sources and greenhouse gases emitted, and the monitoring and reporting of emissions). Following the application, provided the operator complies with the above obligation, APA, I. P. will issue the permit. This permit allows the operator to emit the gases referred to in Annex I to Decree-Law 12/2020, either for part or all of the installation, once the operator has proven that it is capable of monitoring and reporting the emissions according to Regulation (EU) 601/2012. The permit may cover one or more installations located at the same site and operated by the same operator.

Decree-Law 12/2020 also establishes the legal framework applicable to the allocation of greenhouse gas emission allowances, each allowance permitting the emission of one ton of carbon dioxide equivalent (CO<sub>2</sub>-eq) during a certain period.

Under Decree-Law 12/2020, and in line with the provisions of Directive (EU) 2018/410, in the period starting in 2021, the total quantity of emission allowances issued annually within the EU should be



reduced by 2.2% compared to the average total annual quantity the Member States issued under the European Commission's decisions on their national allocation plans between 2008 and 2012.

Within the free allocation of greenhouse gas emission allowances, two allocation periods (from 2021 to 2025 and from 2026 to 2030) are highlighted, for which the calculating methods for allocating free allowances to each installation are set out according to the *ex-ante* benchmarks set at an EU level in Delegated Regulation (EU) 2019/331, on determining transitional Union-wide rules for the harmonized free allocation of emission allowances.

For the period beginning in 2021 and ending in 2026, the rule of reducing the quantity of allowances to be freely allocated over the EU ETS period, which corresponds to 30% of the preliminary quantity determined under the free allocation procedure, is maintained. To reach the goal of having no free allocations in 2030, except for district heating, free allocations must decrease by equal amounts after 2026.

Operators must submit the request for free allocation to APA, I.P. under the provisions of article 5 of Delegated Regulation (EU) 2019/331. Operators must hold a Methodological Monitoring Plan (PMM) approved and issued by the competent authority. The PMM should contain a description of (i) the installation and its sub-installations; (ii) the monitoring methodology of the activity levels to be considered when determining the quantity of allowances to be freely allocated; and (iii) the annual reporting of activity levels.

Operators that apply for the free allocation of allowances must monitor the respective activity levels according to the PMM, and, by March 31 of each year, they must submit to APA, I.P. the activity level report that contains all the relevant information regarding the previous year's activity level. An accredited entity must verify this information. The annual quantity of allowances to be freely allocated to operators is adjusted considering each installation's registered and reported activity level.

Operators may request that small installations that emit less CO<sub>2</sub>-eq in each of the three years before the beginning of each allocation period and that meet the conditions set out in article 27 of Decree-Law 12/2020 be excluded from the EU ETS. However, those small installations may have to adopt equivalent measures to assess their emissions in each calendar year (i.e., measures allowing an equivalent contribution to emission reductions).

Emission allowances not freely allocated or placed in the market stability reserve established by Decision (EU) 2015/1814 of the European Parliament and of the Council of October 6, 2015, will be subject to auctioning, under the operational rules established in Regulation (EU) 1031/2010 and in the applicable legislation.

Decree-Law 12/2020 entered into force on April 7, 2020 (cf. article 49). However, to ensure the EU ETS operates correctly, article 46 establishes a transitory rule, which is valid until December 31, 2020.



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## II. Legislation

### > Energy

**Ministerial Order 83/2020 – Official Gazette 65/2020, Series I of April 1, 2020**

**Ministry of the Environment and Climate Action**

Anticipates the extension periods for terminating transitional fees for energy supplies on medium voltage and special low voltage for 2021 and 2020, respectively, and for natural gas supplies on low voltage for 2022

**Directive 5.º-A/2020 - Official Gazette 66/2020, 3<sup>rd</sup> Supplement, Series II of April 2, 2020**

**Energy Services Regulatory Authority (ERSE)**

Updates the energy fees for the electricity sector

**Regulation 455/2020 - Official Gazette 90/2020, Series II of May 8, 2020**

**ERSE**

Approves the first amendment to the Natural Gas Sector Tariff Regulation System

**Parliament Resolution 26/2020 - Official Gazette 97/2020, Series I of May 19, 2020**

Recommends that the government monitor the process of sale by Energias de Portugal, S. A. of six dams in the district of Bragança and Vila Real

**Regulation 496/2020 - Official Gazette 102/2020, Series II of May 26, 2020**

**ERSE**

Approves the addendum to the Electricity Sector Tariff Regulation

**Directive 8/2020 - Official Gazette 104/2020, Series II of May 28, 2020**

**ERSE**

Approves the general conditions of the agreements of adherence to the electrical mobility network and the methodology for calculating the guarantees to be provided to the Electrical Mobility Network Managing Entity

**Ministerial Order 158/2020 - Official Gazette 122/2020, Series I of June 25, 2020**

**Ministry of the Environment and Climate Action**

Amends, for the first time, Ministerial Order 172/2013, of May 3, establishing the verification regime of the availability of electricity generating plants

**Directive 12/2020 - Official Gazette 125/2020, Series II of June 30, 2020**

**ERSE**

Updates the natural gas sector's electricity fees for 2019-2020



## **Order 6740/2020 - Official Gazette 125/2020, Series II of June 30, 2020**

### **Environment and Climate Action – Office of the Deputy State Secretary and State Secretary for Energy**

Establishes the value of the payment on account to be applied in 2020 to electricity producers covered by the competitive balancing mechanism

## **> Spatial planning**

### **Rectification 16/2020 – Official Gazette 66/2020, Series I of April 2, 2020**

#### **Parliament**

Rectifies Parliament Resolution 18/2020, of March 24 that recommends to the government to prepare a report analyzing the Independent Technical Observatory's recommendation regarding preparing a National Plan for the Integrated Management of Rural Fires

### **Ministerial Order 125-A/2020 – Official Gazette 101/2020, 1<sup>st</sup> Supplement, Series I of May 25, 2020**

#### **Ministry of Agriculture**

Extends the deadline established in article 14(5) of Ministerial Order 151/2016, of May 25, creating the Agriculture and Forestry Advisory System (SAAF)

### **Resolution of the Council of Ministers 45-A/2020 – Official Gazette 115/2020, 1<sup>st</sup> Supplement, Series I of June 16, 2020**

#### **Presidency of the Council of Ministers**

Approves the National Plan for the Integrated Management of Rural Fires

### **Decree-Law 27/2020 – Official Gazette 116/2020, Series I of June 17, 2020**

#### **Presidency of the Council of Ministers**

Amends the organization of the regional coordination and development committees

### **Resolution of the Council of Ministers 48/2020 - Official Gazette 121/2020, Series I of June 24, 2020**

#### **Presidency of the Council of Ministers**

Regulates the governance model for implementing the National Program for Spatial Planning Policy

### **Resolution of the Council of Ministers 49/2020 - Official Gazette 121/2020, Series I of June 24, 2020**

#### **Presidency of the Council of Ministers**

Creates the Landscape Transformation Program

### **Decree-Law 28-A/2020 – Official Gazette 123/2020, 1<sup>st</sup> Supplement, Series I of June 26, 2020**

#### **Presidency of the Council of Ministers**

Establishes the legal regime on landscape conversion



## > Environment

### **Decree-Law 12/2020 - Official Gazette 68/2020, Series I of April 6, 2020**

#### **Presidency of the Council of Ministers**

Establishes the legal framework applicable to the greenhouse gas emission allowance trading system, transposing Directive (EU) 2018/410 into national law

### **Ministerial Order 92/2020 - Official Gazette 74/2020, Series I of April 15, 2020**

#### **Economy, Digital Switchover, Finance and Environment and Climate Action**

Establishes the fees to be collected from operators subject to registration on the electronic platform referred to in article 30(1) of Decree-Law 145/2017, of November 30, created so that operators can report data to the Portuguese Environment Agency, I.P. on the use of equipment containing fluorinated greenhouse gases and on the purchase or sale of fluorinated greenhouse gases

## > Digital switchover

### **Resolution of the Council of Ministers 29/2020 - Official Gazette 78/2020, Series I of April 21, 2020**

#### **Presidency of the Council of Ministers**

Establishes the general principles for creating and regulating technological free zones, providing a legislative framework that promotes and facilitates the carrying out of research, demonstration and testing activities in Portugal of innovative technologies, products, services, processes and models

### **Resolution of the Council of Ministers 30/2020 - Official Gazette 78/2020, Series I of April 21, 2020**

#### **Presidency of the Council of Ministers**

Approves the Action Plan for the Digital Switchover, as well as its strategic measures and actions, as an effective intervention instrument for the digital switchover of the Public Administration, companies and citizens in general

### **Resolution of the Council of Ministers 31/2020 - Official Gazette 78/2020, Series I of April 21, 2020**

#### **Presidency of the Council of Ministers**

Creates the Portugal Digital Mission Structure as a technical structure to monitor the implementation measures of the government's Digital Switchover Program and to support the coordination of public policies on the digital transformation of society and the economy

## > Public finances

### **Resolution of the Council of Ministers 18-A/2020 - Official Gazette 65/2020, 1<sup>st</sup> Supplement, Series I of April 1, 2020**

Authorizes the issue of public debt in execution of the State Budget for 2020

### **Resolution of the Legislative Regional of Madeira Autonomous Region 16/2020/M - Official Gazette 76/2020, Series I of April 17, 2020**

Presents to the Portuguese Parliament the draft legislation on guaranteeing the financing of local authorities in the autonomous regions, being the tenth amendment to the financial regime of the local authorities and intermunicipal entities, approved by Law 73/2013, of September 3, in its current version



## > Justice

**Ministerial Order 121/2020 – Official Gazette 100/2020, Series I of May 22, 2020**

**Ministry of Justice**

Sets September 1, 2020, as the date the specialized bodies of administrative and tax courts will enter into operation

## > Administrative organization

**Decree-Law 14-A/2020 - Official Gazette 69/2020, 1<sup>st</sup> Supplement, Series I of April 7, 2020**

**Presidency of the Council of Ministers**

Amends the deadline to implement electronic invoicing in public procurement procedures

**Resolution 1/2020 – Official Gazette 86/2020, 1<sup>st</sup> Supplement, Series I of May 4, 2020**

**Portuguese Court of Auditors (*Tribunal de Contas*)**

Establishes the use of electronic means in prior inspection procedures

**Decree-Law 27-A/2020 - Official Gazette 118/2020, 2<sup>nd</sup> Supplement, Series I of June 19, 2020**

**Presidency of the Council of Ministers**

Amends the legal regime on the organization and operation of the XXII Constitutional Government



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Cuatrecasas has set up a Coronavirus Task Force, a multidisciplinary team that constantly analyzes the situation emerging from the COVID-19 pandemic. For additional information, please contact our taskforce by email [TFcoronavirusPT@cuatrecasas.com](mailto:TFcoronavirusPT@cuatrecasas.com). On our [website](#), you can read publications or attend webinars on legal issues arising from the pandemic and the measures adopted to mitigate it. You may also find our publications in [Portuguese](#) and [Spanish](#).

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