Legal aspcts of climate change.

In particular, emissions trading mechanisms

Portuguese perspective

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List of questions to be addressed

1.- Council Decision 2002/358 introduced, among others, a compulsory burden sharing for EC Member States as regards the commitments under the Kyoto Protocol (annex II). Was there any legal discussion in your country as regards the method of calculation of this burden sharing, and its fairness; was there any participation of the public as regards the opportunity to accept the political burden sharing of 1997 and its legal fixation of 2002?.

1. The political burden sharing of 1997

Because the 1997 agreement was considered in relative terms very favourable to Portugal – national industry is allowed a 27% raise of the 1990 emissions until 2008 – by the majority of the stakeholders, the environmentalists are the only ones complaining about political burden sharing.

Environmentalist movements in Portugal are suspicious of the Government's good intentions, and make pessimistic predictions, blaming the competent authorities more than they blame the CO2 producers.

They argue that the target of 27% increase in emission levels lacks ambition and that Portugal, as a Member State of the European Union, should assume stricter responsibilities. Besides, they even deny the data[1] on which the government based its calculations for the fulfilment of Quito targets and claim that Portugal is not going to meet the target by 2008.

The main reason is that until now national emissions have risen at a rate higher than 27%. So, in the next years Portugal would have to cut back very hard in CO2 emissions to keep up with the agreed levels.

In the beginning, it didn't seem that there was a strong political will to do that[2].

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[1] The governmental inter-ministerial Commission studying the evolution of national economy for preparation of the NAP based its assumptions on an estimate of 54% to 63% increase of relevant emissions in 2010 without any reduction measures. Portugal would therefore have to reduce 16 Mt to 21 Mt of Carbon Dioxide equivalent (MtCO2e). Considering the NAP provides for a 16,8 MtCO2e reduction, a supplementary reduction of 5,6 MtCO2 will be necessary by means of supplementary measures, namely the project based measures foreseen in Quioto and the emission trading.

[2] Before 2005, when accused of not being able to meet the national targets, ministers used to strike back that "Kyoto is not even in force yet" or "we are very lucky we were authorised to raise our emissions by 27%. We are not going to try harder than necessary to decrease emission levels".

2. The competent authorities attitude

However, the concern is growing stronger. In the Ministerial decision that approves the National Strategy for Climate Change[3], the Council of Ministers has already considered the situation in 2001 very worrying, since recent simulations based on emission inventories and on several scenarios, showed that there might be a considerable deviation from the compromise signed in 1997... Moreover, the Commission approved the National Allocation Plan with three restrictions, the most important of which was a cut back of 2,1Mtons in the total amount of emissions. This is enough to show how serious this suspicion can be.

Given the special weight of the energy sector in the decarbonisation strategy of the Portuguese economy (as explained below), investments in renewable energy sources became top priority and some sense of proportionality is lost. Nowadays, the promotion of renewable energy sources prevails over almost any other environmental value. The need to fulfil the Kyoto targets has been used as justification for the prompt authorisation of rather questionable projects like building a dam on the "Sabor" river. This was a much debated decision taken in October 2004. The environmentalist movements strived very hard against this decision first, for symbolic reasons: this was the last savage river in Portugal, the only one whose bed hadn't been changed by man. But other legal and perhaps stronger reasons were against this project: it would affect, due to its location, a Special Protected Area for the birds as well a future Nature 2000 site.

And yet, the political grounding of the decision was the international obligation to reduce the greenhouse gas emissions.

Other projects quickly authorised are installations for the harnessing of wind power for energy production. The wind farm boom is not at all wrong, but some attention should be given to the localization choice. Between 2001 and the current year around 60 wind farms have been authorised on protected land. Nature 2000 Sites, Special Protected Areas for the birds, and National Ecological Reserve land are being burdened with the installation of wind farms. Relying almost entirely on environmental impact assessment, these projects are approved after oversimplified procedures that release the developer from several legal duties. Duties like obtaining previous opinions from the public authorities involved in the project (that would normally be required from other the developers) are exempted in the case of wind farm projects or are legally presumed to be favourable (which is considered an even worst solution by the parties involved).

2. Directive 2003/87 (OJ L 275/203 p. 32) introduces a system of how emission rights shall be allocated and how they can be traded.

a) Was there any legal discussion of the major elements of this directive in your country? Was the basic approach – i.e. tradable emission allowances – easily accepted ? Were frictions discussed in relation to BAT-approaches, voluntary committments, or emission charges/taxes schemes?

No, there wasn't a significant legal discussion of the major elements of this directive. The approach based on tradable emissions allowances was imposed without

[3] Council of Ministers Resolution No. *59/2001 of* the 30th May 2001.

previous notice and almost without discussion. After realising that bargaining was unfruitful the enterprises accepted to fulfil the formal obligations hoping that either monitoring, certification or sanctioning would fail, allowing them to go on with the activities in the usual way. During public discussion of the National Allocation Plan the participating entities discussed the formal functioning of the System (namely the inclusion or exclusion criteria), rather than the grounds of System itself. The relative flexibility of the System allows us to imply that the addressees prefer this to the taxes approach.

b) Have there been considerations in your country whether there was an EC competence in this matter; whether Article 175(1) was the right legal basis, instead of Article 175(2)?

No

c) Were there any considerations in your country to recur to Article 176 and to include other sources of climate gases into the emission trading system than those listed in Directive 2003/87? Has there been any thinking, whether Article 24 of Directive 2003/87 is not compatible with Article 176? What do *you* think of this argument?

Article 24 of the directive contains the formal *a priori* expression of the European Institutions' opinion (and namely, the Commission) on the incompatibility of a European Tradable Emission Allowances System with other Treaty norms and principles. . The enlargement of the scheme to different gases or different polluting sources as an individual measure taken by one or some (but not all) of the Member States would have such an impact in the internal market and in the competition in the EU that, in principle, it could not be authorised. It follows from this article that the official position of the EU institutions is against individual measures considering that environmental protection springing from the enlargement of the system to new sources or new gases is not important enough, in what concerns the resulting environmental protection, to compensate for the market disturbance caused.

However, it would not be incompatible with article 24 and thus should be allowed by the European Commission, if **all** the Member States, acting together, would ask the Commission for authorisation of more stringent measures under article 176. In this case, the argument of distortion of Common market rules would be overruled. However, this is not likely to happen.

On the other hand, a go it alone measure by a single Member State would only be a mere anticipation of a measure that, in the future, will be mandatory for all. The spirit of article 176 is allowing pioneer, innovative and substantial measures that will be the first step for the protection of the environment in fields or in such ways that the community hasn't yet planned. Only in this latter case it would be worth while, in respect of the proportionality principle, and according to a cost benefit analysis, to accept individual measures of significative environmental impact having other undesired side effects.

d) When and by what legal act (if at all) was the Directive transposed into national law? Was it transposed in due time? What kind of public atention was given to the performance of the country in the transposition of the Directive?

The main act of transposition of the directive is an act of legal nature adopted by the Government, the Decree-law[4] 233/2004, of the 14th December which was published with many imperfections[5], and was corrected by the Decree-law 243-A/2004 published on the 31st December.

The formal transposition was only concluded on the last day of 2004, one year after the deadline, but the National Allocation Plan, instead, was submitted to public discussion on 17th March 2004, was notified to the European Commission in the 4th May 2004 and was adopted on the 3rd March 2005 by a Resolution of the Council of Ministers, a general act of administrative nature (regulation).

At the time of public discussion the national operators had a clue of what was going on because they had been contacted by the task group, but still had no legal instrument for establishing the legal framework of the system that they were going to be submitted to.

.**3.-** According to Article 9 of the Directive national allocation plans have to be established.

a) Do they have to be *national* or could they also be regional? Compatibility with Article 175/176 (interference with rights of the regions)? Are there *regional* plans in your country? Please provide exact dates of the approval/publication of the plan or plans.

The allocation plan has to be *national*. The draft version of the National Allocation Plan was disclosed for public discussion on the 17th March 2004, it has been notified to the European Commission on the 4th May 2004, it was approved on the 13th January 2005 and it was finally published on the 3rd March 2005.

b) Was the public informed of the draft national allocation plans (NAC)?

Yes, the draft National Allocation Plan was published in the website of the Ministry of the Environment.

Was there a possibility to comment or to rectify the original data?

Yes.

Or was the content of the plan discussed with affected industries only?

In theory no, but in practice only two participants were not industries.

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[4] Since 1997, according to the Constitution, the transposition of directives has to be adopted by Law or Decree-law.

[5] Namely, the "banking" permission.

Was there a publication of the plan in draft form?

Yes.

c) What allocation criteria were followed in your country?

1. Criteria chosen for allowance allocation

The basic criterion used for allowance allocation was a projection from the historical data on CO2 emissions. An average of the two worst performing years was calculated out from a set of three years (2000-2002 or 2001-2003).

However, from the beginning the task group constituted for the preparation of the National Allocation Plan has declared the intention not to consider "early action", as permitted by Annex III No. 7 of 2003/87 Directive[6]. And this was the most criticised aspect of the national allocation criteria. The critics were especially serious considering that some industrial operators have been asked a big effort of modernization in the last years, namely as a result of the entry into force of two major diplomas: Environmental Impact Assessment in October 1997 and Integrated Prevention and Pollution Control in September 2000. Besides, many other laws of strict environmental content have been adopted quite recently making it hard for those operators to make significant efficiency improvements in the first years and this fact was simply disregarded by the authorities.

Supposedly due to a lack of time to consider all the individual cases[7] the task group tried to overcome this handicap with the concept of "mix combustible". These were the main steps of the reasoning: first, they admitted that the most relevant alterations, in terms of best available technologies, would be shifting from a heavily polluting combustible to natural gas; next all the industries were presumed to run on a mixture of combustibles that would favour the most efficient and less polluting ones in regard of the most obsolete. In fact, for those industries that had already introduced a low CO2 combustible, the number of allowances to be allocated was in fact overestimated. So, it would be easier to meet the targets even in the case of a production raise owing to an increase in the demand.

2. The operators' point of view

However, the application of these criteria gave rise to some incongruence in the National Allocation Plan, perceived as unfairness by those concerned. Thus, the weakest aspects of the Emission Trading System, in terms of burden sharing, as pointed out by the operators, are: diachronic, inter-sector, intra-sector, and scale fairness problems.

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[6] Annex III – Criteria for national allocation plans referred to in article 9, 22, and 30: (…) "The plan may accommodate early action and shall contain information on the manner in which early action is taken into account. (…)".

[7] Over two hundred operators are covered by the emission trading system. The first contacts of the task group with the operators, in order to check the relevant data, date back to January 2004 and the draft version of the National Allocation Plan for public discussion was ready on the 17th March of that same year.

a) Diachronic fairness (fairness between existing operators and new operators)

The national competent authorities decided to keep a stock of 5,6 Mtons Co2 for new installations. The total amount of allowances kept in stock is a little over 1,6% of the total number of allowances distributed per year to all sectors. According to the authorities, this will allow new operators (the ones that will come to existence during the pilot phase of 2005-2007) to have access to free allowances in the same conditions as existing installations.

However, this option was felt as unfair by all the operators in the different sectors covered by emissions trading. In fact, the majority of the installations are running below the plant capacity (often 70% below) due to a low demand or other market reasons, and nevertheless, the first share of allowances was attributed according to real historic data on consumption and production levels. This means that if an existing operator wants to produce more making use of the full installed capacity of his equipment, he will have to buy the necessary additional allowances in the market. And yet, a whole new installation starting to operate at the same time will have the allowances for free.

Furthermore, the National Allocation Plan doesn't explain how and according to which criteria the stocked allowances are going to be allocated to the new operators and the existing ones suspected it would be a casuistic procedure[8].

b) Inter-sector fairness (fairness between the energy sector and all the other sectors)

Realising that drought or settled rain condition very strongly the decarbonisation possibilities of the Portuguese economy, the competent authorities have considered hydrology an important factor in the allowance allocation calculations.

This influenced the National Allocation Plan in a decisive way. In fact, it is now generally acknowledged that the energy sector has been granted an excessive number of allowances in Portugal. The reason was still the criterion used for allowance allocation: mainly, the historical data on combustible consumption.

Once the base years considered for calculation were very dry years, an excessive number of allowances was initially distributed to the energy sector. In very dry years, hydroelectric energy production decreases dramatically and thermoelectric plants have to work twice as hard using intensive CO2 combustibles like pet cock or fuel oil[9].

However, the current year being an exceptionally dry year, this excess will not be too noticed. Portuguese thermo electrical plants which should normally be using no more then 40% of their installed capacity, are working at 80% to 90% during the current year due to the severe drought felt even well before the summer, which obliged the authorities to start rationing water consumption in some municipalities. National authorities are making efforts to demonstrate that this exceptional situation constitutes *force majeure* according to article 29, in order to issue additional non transferable allowances.

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[8] According to unofficial information a legal text establishing these criteria is being prepared by the Ministry of the Environment.

[9] The main plants are not yet converted to natural gas.

c) International intra-sector fairness (between operators from the ceramic sector in Portugal and Spain)

There are specific fairness problems raising from the "installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory ricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, and/or with a kiln capacity exceeding $4m^3$ and with a setting density per kiln exceeding 300 kg/m^3".

Many of the installations manufacturing ceramic products in Portugal produce glazed tile and mosaic. This product is often used in Portugal and Spain for surface coating of interior and exterior walls and floor, and is made of a very light raw material. Comparing the criteria set out in Annex I of Decree-law 233/2004 establishing the National Emission Trading System, (and which transcribes literally the same Annex of the 87/2003 Directive) and the actual figures on ceramic production, one can see that in most cases only the kiln capacity (more than 4m3) criterion is present. The other two (production capacity and density) are not. Still, the national authorities' interpretation of the rule is: even if only one of the criteria is met (be it the kiln capacity expressed in m3, the production capacity expressed in tonnes or the density of the material expressed in kg/m3) the installation falls in the scope of the Emission Trading System.

It seems that this interpretation was not followed in Spain. On the contrary, the consideration that only the installations that fulfil simultaneously the three criteria were to be submitted to the Emissions Trading System prevailed. Giving priority to the "and" instead of the "or", the outcome was the global exclusion of the ceramic cluster in Spain. National operators consider this an outrageous discrimination, claim for a fair burden sharing and fear competition distortions in the Iberian market.

d) Scale fairness (between large industrial plants and small size operators)

Emission trading was spontaneously organized by market functioning for big quantities of allowances, usually lots of 5.000 units each. In Portugal the majority of the operators (except for the energy sector) are small size installations, so the number of additional allowances that they will have to buy in the market will always be relatively low: normally no more than a few hundred. For this kind of small deals they will have to turn to the retail market and pay a price much higher than the average (differences of €0,5 to €2 per ton are frequently found).

Or does the plan just mirror political power play?

In some aspects, yes.

What kind of empirical information was used in order to draft the plan?

Historical information on the performance of the each operator supported by documents.

Was it really accurate/updated?

It referred to the previous years of 2000-2002. When available, 2003 data were also considered. The data were supplied by the operators themselves.

d) What happens if the Commission exceeds the three months attributed to it under Article 9(3)? What is the situation in your country in similar legislative cases?

Normally nothing happens, but in theory, the omission can be declared unconstitutional by the Constitutional Court.

e) Would Article 10 allow Member States to recur to Article 176 EC Treaty? If so, did your state allocate lower percentages?

No.

f) What is the weight of Clean Development Mechanisms as compared with pure „reductions“ in emissions?

No weight. The "linking" directive is not transposed and there are no examples of projects of CDM or JI known by the Ministry.

4.- Article 11(1) provides that before 1 October 2004 Member States shall decide on the total number of allowances and their repartition on each installation, "taking due account of comments from the public".

Did the public have the opportunity to make comments? How did this procedure develop? Was the draft decision published? Was it transparent?

Public participation in the National Allocation Plan

1. The background

In 2003 a special task group[10] was constituted which had less then three months (from December 2003 to March 2004) to prepare the National Allocation Plan. In addition to this it should create and regulate the national registry of transactions, to institute a monitoring system and to create directives for the use of Clean Development Mechanism and Joint Implementation.

In January 2004 over 200 industrial operators were contacted by the task group, by a letter on behalf of the Ministry of the Environment. For the preparation of the National Allocation Plan, they were asked, on a voluntary basis, to submit information and data on the input of raw materials and combustibles and on the output (products) quantities of the installation in the previous years. They were informed that, in consequence of European mandatory obligations, they might, in the near future, be submitted to the new emission trading mechanism for CO2 emissions. Their inclusion in the System or exclusion from the System would depend on the accurateness and reliability of the data.

The data collected allowed the task group to prepare the National Allocation Plan which was the first act of transposition of Directive 2003/87 into national law, since the

[10] The task group was created by the Joint Dispatch 1083/2003 of the Ministries of the Environment and Economy, of the 13th December 2003.

main transposition act – Decree-law 233/2004 corrected by Decree-law 243/2004 - wasn't approved until the 31st December 2004.

The project of National Allocation Plan containing a preliminary proposal of allocation of allowances for the period 2005-2007 was submitted to public discussion for 14 days (between the 17th and the 31st March 2004). This proposal could be altered on grounds of historical data corrections, incorporation of additional information (namely 2003 data), or identification of new installations. Indeed, the final version of the Plan was altered including several new installations and excluding some others.

The National Allocation Plan was notified to the European Commission on the 4th May 2004 and finally approved by a Resolution of the Council of Ministers on the 3rd March 2005[11].

2. Material aspects of Public participation

In fact, the Public Consultation Report admits that only a few operators were especially invited to the public discussion meetings and all the others knew about it through the media. The operators, however, question the efficiency of the publication of advertisements in national newspapers. They base their arguments on the fact that the majority of the operators affected (a little over 200) was directly contacted in the beginning of the process, in some cases two or three times, in order to elucidate some doubts of the public authorities in what concerns energy and fuel consumptions. So, they can't really understand why they weren't also notified for purposes of public consultation.

Besides, the consultation period was too short: 14 days (or 10 days if you consider only weekdays). To prove the shortness of the established period, the Report also admits that all the contributions, received after that period, until the 16th April, were accepted. The consultation period, in practice, was doubled (although those interested in participating couldn't know that it was so because there wasn't a formal extension of the delay but just a subsequent decision to accept all the contributions, or otherwise public consultation would have been a political failure) and even so, no more then 17 contributions on the National Allocation Plan were received.

Furthermore, public consultation was extemporaneous because it took place **before** the adoption of any legislation that might indicate the operators' submission to the emission allowance trading scheme.

According to the directive, national implementation measures should have been adopted no later then December 2003, leaving a three months period for the process of preparation of the National Allocation Plan which should be notified to the Commission by the 31st March 2004 at the latest.

And yet, in Portugal, the transposition only occurred in December 2004, so the installations contacted by the national authorities suspected they were going to be affected by the System, but didn't worry about that until the publication of the law. By the time they were starting to see the whole picture, it was too late to influence the

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[11] Resolution No. 53/2005.

allocation criteria and they realised they hadn't expressed their points of view in due time.

Seventeen contributions were received (12 from individual operators, 3 from industrial associations, 1 from an environmental association, and 1 from an individual. Although most of them arrived after the deadline, they were nevertheless taken in consideration by the EI. For some stakeholders, this fact proves that either the public discussion period was short, or that it was not publicised enough, or both.

Most of the objections raised were directed at the ignorance of "early action", at the disregard of "installed capacities" and at the "mixed combustible" criterion. Except for the environmental association, all the participants praised unanimously the permission of "banking" allowances. However, this possibility was expressly prohibited when the directive was finally transposed (on the 31st December 2004, by the Decree-law 233/2004, as corrected by the Decree-law 243-A/2004).

a) What distributional choices were involved in the repartition on the single installations?
(See above)

5. Art. 12 provides that the trading of emission allowances shall be possible.

a) How is trading supervised in your country?

Trading is supervised by the competent authority on emission trading: the "Environmental Institute", an organ of the Ministry of the Environment.

b) Is trading also possible for other bodies than installations, such as a fund, a charity, a millionaire who has an interest in preventing climate change?

Yes, the law allows for any person to trade. The only information on such a case refers to an individual wanting to act as "dealer", buying and selling emission allowances and making profit out of it.

c) To which extent is transparency for the public ensured?
(knowledge of trading transactions, etc)

Not ensured.

d) How has „allowance" been *translated* in your country? Does your national linguistic version of the term „allowance" convey the idea of a „right" (subjective/objective) to pollute? (like the Spanish does)

Allowance (in Portuguese "licença"), is defined in the law (Decree-law 233/2004, amended) as "a license, tradable in accordance with the present diploma, to emit one ton of CO2 equivalent during a certain period".

A "**licença**" (license?) is a special permit given by an administrative authority to exercise an activity which is not a natural right of the individuals (ex: possession of guns). It's different from "**autorização**" (authorisation?), which is also an administrative permission to the development of certain activities which naturally

belong to the individuals but have been conditioned for practical reasons (ex. house building in urban areas, owing pets, etc.).

In case of delay in the emission of a licence, a positive act is presumed. In spite of the administrative bodies' silence, the individual has the right to go forward with his intention. If the administration wants to prevent this, it has to revoke the act.

On the contrary, in case of delay in giving an authorisation, an administrative act with a negative content is presumed. Therefore, the individual has to attack this "refusal" before the courts in order to obtain the right to proceed.

However, the legal denomination – as "licence" or "autorização" is not conclusive because there are cases of non correspondence between the legal label and the true juridical nature of the act.

In the case of Emission Trading it seems that the label is in accordance with the nature of the allowance, so the operators *a priori* don't "own" the emission "right", but instead it is granted by the administration (or in the last resource it is brought in the market).

e) What is the legal nature of the „trading"? Is there any doctrinal controversy about the possibility of „trading" on „rights"? (provided the question to „d" was positive)

No.

f) Has there been much discussion about other areas of law that might be relevant to this dogmatic issues (eg.property rights, tax law, administrative law, etc.)

No.

. 6. Arts. 14 – 16 provide guidance for monitoring, verification and penalties.

a) How is monitoring and verification organised in your country?

Monitoring and verification are supervised according to criteria approved by an administrative act ("portaria"). There is a two level verification. First, the verification of the monitoring report is made by independent verifiers. The conditions for carrying out the verifying activity as established in another administrative act. Nevertheless, the Environmental Institute (an organ of the Ministry of the Environment) can disagree with the first approval given by the verifier and decide to re-verify the monitoring report.

b) What about the penalties that were fixed according to Article 16? Are they effective, proportionate and dissuasive? Are they of criminal, administrative or civil law nature? Are they comparable to national sanctions in similar, comparable cases? Is there any fear that penalties might be too divergent from one country to the other?

The penalties fixed according to article 16 (40€ per ton) are considered to be relatively high, if compared with the administrative sanctions prescribed for breach of other duties. The duty to apply for a greenhouse gas emissions permit, the duty to communicate any modification in the installation, or the duty to monitor and report

emissions, or the duty not to transfer emission allowances in case the monitoring report is not approved, are sanctioned with an administrative sanction ranging from €1500 to €3740 in the case of individuals, and from €3500 to €44890 in the case of legal entities.

An excess emission of 1200 Ton CO2 would correspond to a €48000 penalty, while the maximum administrative sanction value admitted according to the law is €45000. This is one of the reasons why, in spite of being called "penalties", these payments have a different juridical nature: they are not an administrative penalty, not only because they exceed the maximum value admitted by law, but also because the amount of the payment is fixed and doesn't depend on the damage caused, on the blame of the author, on the preventive needs and other criteria for settling the measure of the penalty. But of course these payments are not a penal fine too. Their nature has not been clearly defined yet, but in national law they could well be considered be non fiscal taxes.

c) How is transparency of monitoring and verification results ensured?

According to the law, the competent authorities must publish a list with the name of the operators that don't surrender enough allowances according to the permit.

7. The emission allowance scheme and traditional BAT approach under the IPPC Directive 96/61 somewhat conflict with each other.

a) Is there a discussion in your country on whether there are vested rights and permits of industry disallowing to turn them into allowances which must finally be purchased.

No.

b) Inversely, Article 26 provides that permits under Directive 96/61 shall not contain emission limit values for greenhouse gases, when the installation participates in emission trading. Is there any discussion in your country, whether this is a departure from the concept of "best available technology"? May countries not provide for this derogation (under Article 176 EC)?

No.

8. Directive 2004/101 (OJ 338/2004 p. 18) provides a framework for joint implementation („JI") (see Art. 6 Kyoto Protocol) and the clean development mechanism („CDM")(see. Art. 12 Kyoto Protocol).

a) Is there a discussion in your country about whether JI and CDM will be used?

No.

a) What will be the organisational devices in your country ensuring the requirements of a fair use of JI and CDM, and in particular its additionality, truthfulness and transparency?

The directive is not yet transposed.

9. Could or should emission trading be introduced in other sectors (water, waste)?

Yes, it should, as long as other measures aren't adopted.

10. To which extent emissions trading has been discussed so far in your national legal literature?

Not discussed.

11.- Besides emissions trading and national plans, does your national legislation create other kinds of devices, such as a specific permit for releasing greenhouse gases emissions? If this is the case, what is the relation between the plan, the trading mechanism and the permit? What body/level of Administration is responsible for performing the respective duties and responsibilities?

Only the wild promotion of renewable energy sources (see above).