

## AVOSETTA RIGA MEETING

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### Topic: “Permit procedures for industrial installations and infrastructure projects: Assessing integration and speeding up”

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## QUESTIONS

### A. Baseline information

#### I. Industrial Installations<sup>1</sup>

##### 1. *Forms and scope of permits*

*In broad terms, what are the forms and scope of permits<sup>2</sup> necessary to construct and operate an industrial installation (e.g. an industrial installation in the sense of Annexes I or II of Directive 2011/92/EU)?*

General explanation:

The two pillars of environmental modernization in the second phase are the Single Environmental Licensing (SEL<sup>3</sup>) and the Responsible Industry System (RIS<sup>4</sup>), the first one mainly concerns procedural simplification and the second one aims to introduce new rules for substantial improvement of industrial activities. Both laws were adopted in May 2015, with only a few days in between. The Responsible Industry System corresponded to a legal regime that had existed since 2012 but undergone comprehensive revision in 2015. The Single Environmental Licensing was a brand new legal instrument. In view of the narrower scope of the Responsible Industry System, which is applicable only to industrial activities, the analysis will start with the Single Environmental Licensing, the broader regime.

#### 1. Single Environmental Licensing

The Single Environmental Licensing condenses up to ten different legal regimes and several administrative decisions into one single title (called Single Environmental Title or SET):

- a) Environmental impact assessment;
- b) Assessment of the environmental effects of certain energy production units;
- c) Prevention and control of major-accident hazards involving dangerous substances<sup>5</sup>;
- d) Industrial emissions;
- e) Emissions trading scheme;
- f) Waste management;
- g) Landfilling of waste;

<sup>1</sup>We start here from the hypothesis that the construction and the operation will take place in an area in which, according planning law or nature protection law, there is, *prima facie*, no legal obstacle to do this (e.g. in an industrial area not in the vicinity of a *natura2000* site, etc..)

<sup>2</sup> Or similar acts such as mandatory favourable opinions.

<sup>3</sup>The UEL (or LUA in the Portuguese acronym) regime was adopted by the Decree-Law 75/2015 of 11 May.

<sup>4</sup>The RIS (or SIR in the Portuguese acronym) regime by the Decree-Law 169/2012, of 1 August, and subsequently modified by Decree-Law 73/2015 of 11 May.

<sup>5</sup> The Decree-Law 150/2015, transposing the Seveso III Directive entered into force in August 2015.

- h) Mineral deposit waste management;
- i) Integrated centres for recovery and disposal of dangerous wastes;
- j) Use of water resources.

Considering the different simplification techniques normally identified — elimination, reduction, rationalization and computerizing<sup>6</sup> — the SEL mostly relies on computer-based digital platforms intended to streamline procedural steps and shorten decision deadlines<sup>7</sup>.

### 1.1. SILiAmb platform

The Single Environmental Title is an electronic document, issued following the applicable administrative procedures depending on the type of project. It is requested using the online platform called 'integrated system of environmental licensing' or 'SILiAmb' in the Portuguese acronym. Using this platform, the operator can request all environmental authorizations, opinions, prior consents and so on; needed to obtain the environmental permit. A Ministerial Ordinance adopted in 2015<sup>8</sup> lists in detail all the documents and information necessary for environmental licensing. The documents required can be uploaded all at once or at different times.

The drawback is that sometimes the documents necessary to complete the process are not available in digital form and have to be scanned by the applicant. This is particularly the case with public documents issued by local entities. Undoubtedly, changing documents into digital form reduces environmental impacts but it increases administrative burdens if it has to be done by the applicant.

When a particular document is already held by the Administration, the corresponding field is automatically filled in.

After the initial push by the applicant, the SILiAmb platform automatically sends out notifications to all the public services that should actually be involved in the procedure, taking into account the nature of the activity and the types of authorizations requested. The same thing occurs whenever new elements are added to the process.

All the documents (be it those uploaded by the applicant or those produced by the public entities involved in the administrative procedure) are accessible online to all the public authorities involved. The SILiAmb platform alerts the users to the deadlines applicable to each administrative step and allows the applicant to follow all the procedural stages until an environmental permit is either issued or denied.

The fact that all the necessary administrative procedures are triggered simultaneously and all the deadlines for producing the intermediate formalities start concurrently and run in parallel is the greatest achievement of the SILiAmb system – it significantly reduces the overall timing for the final decision. In order to enhance the legal certainty and attract investment, the law includes an annex list of maximum deadlines applicable to each environmental regime covered by the Single Environmental Licensing scheme.

Furthermore, the SILiAmb platform offers an online simulation tool. Based on a few pieces of data (namely the classification code for the economic activity according to the national version of an international standard of classification for all economic activities and the type and quantity of dangerous substances),

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<sup>6</sup> According to Alessandro Natalini, *Le semplificazioni amministrative*, Il Mulino, Studi e Ricerche, Bologna, 2002.

<sup>7</sup> The deadlines for each administrative procedure are not changed but the different administrative procedures now start simultaneously right after the initial requirement and do not succeed to one another. As a consequence, deadlines are not added to each other and the final deadline applicable is simply the longest individual deadline. As a consequence, the overall time required for the Single Environmental Title is shorter.

<sup>8</sup> Ordinance 279/2015 of 14 September.

the system calculates the deadlines required for issuing the permit, the indispensable paperwork, the taxes applicable and the public authority that coordinates the authorization process. One of the strongest deterrents of investment — the psychological costs of uncertainty — are attenuated by this simulation tool.

In the end, the Single Environmental Title is available for the interested public authorities to check the contents, conditions, expiry date and other vicissitudes of the authorizations. In fact, the permit is automatically updated when relevant decisions are taken, modifications are agreed on, or other relevant events happen to the operator, to the activity or to the installation. These facts are registered in the same platform so that the whole life-cycle becomes visible.

The following events must be automatically registered and visible in the platform:

- a) Administrative acts modifying, suspending or revoking the permit;
- b) Prior controls and inspections performed;
- c) Court rulings declaring the nullity, annulling or determining the suspension of the effectiveness of the permit or of any licenses or opinions issued during the procedure;
- d) Administrative decisions addressed to the operator on any environmental administrative offenses committed;
- e) Interim measures applied to the activity.

Another advantage of the integrated approach to permitting is the fact that the applicant pays only one single fee of a value below the aggregate previous sectoral taxes. Even more importantly, the amount to be paid is known from the beginning of the procedure, thereby increasing predictability and mitigating the psychologic costs.

In the previous licensing system, the licensing authority was the main public body with which the applicant had to engage in dialogue. Now other entities – both public and private – assume important roles.

Private entities can become certifiers after submission to an accreditation procedure before the Portuguese Environmental Agency<sup>9</sup>. These entities certify the compliance of the request with the legislation in force and issue a compliance report to be submitted along with the request. The presence of compliance certification has the beneficial effect of reducing (in some cases by half) the applicable deadlines<sup>10</sup>.

The procedure manager plays a key role in coordinating and speeding up the process: monitoring the permit applications to ensure compliance with deadlines and avoiding delays; providing information on the status of the procedure; gathering the information necessary for the proper instruction of the procedure; and meeting with the applicant, the coordinating entity, the licensing authority and other stakeholders.

## 1.2. Assessment

The merits of the reform are not limited to the creation of a digital support. When analysing the overall advantages of the new UEP scheme, 3 main axes can be identified:

1. Transparency – From the point of view of the operator, he/she can know beforehand the total taxes to be paid, the procedures applicable, the administrative requirements and the deadlines for the issuance of the permits. From the point of view of the administration, all relevant events in the life of the installation are available online.
2. Cooperation – There is a horizontal dialogue and cooperation among public entities all contributing to the authorization of the same activity and taking into account each other's opinions to achieve the best environmental options. But the dialogue is also vertical, between the public entities and the applicant. This communication is based on trust and responsibility: the operator doesn't need to provide a priori

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9 The list of accredited bodies is available in the website of the Portuguese Institute of Accreditation, the IPAC (<http://www.ipac.pt/pesquisa/acredita.asp>).

10 For instance, the maximum deadline for an ordinary environmental impact assessment procedure is 100 days. With the intervention of an accredited body the deadline is reduced to 70 days. For the environmental impact assessment of industrial activities, the deadline varies between 80 and 60 days depending on the case. Lastly, obtaining an environmental permit for an IPPC installation takes 80 or 40 days, depending on whether there is certification or not by an accredited body.

evidence of certain facts or status but he/she must bear the consequences if he/she is found, as a result of inspections, to have neglected his/her obligations<sup>11</sup>. Finally, the dialogue is also diagonal when it is carried out between the private independent entities, the operator, and the public environmental authorities. All the parties contribute to the same goal, namely achieving the most sustainable result.

3. Speed – During the procedure to obtain an environmental permit, the timings run in parallel and the deadlines are shortened. After the permit is issued, all relevant events are immediately registered and automatic notifications are issued to the public authorities, so that all the entities concerned, namely those responsible for environmental supervision and inspections, are aware of the actual situation.

Although the legal reform operated by the SEL has mainly remained a formal organization of procedures<sup>12</sup> designed to integrate ten authorization regimes into one single platform, there are substantial obligations imposed on the operator that are compiled in an article, the objectives of which are mainly pedagogic. In fact, these obligations are already present in other legal regimes such as EIA, IPPC, Seveso, environmental liability, waste management, water protection, and so on. Their repetition in this law is emphatic but somehow redundant. Yet, two of the obligations are worth mentioning.

Firstly, the holder of an environmental permit has the duty to adopt an ethical, transparent and socially responsible behaviour that is in accordance with the environmental provisions of laws and regulations applicable<sup>13</sup>.

Secondly, the holder must use natural resources in an efficient and sustainable way<sup>14</sup>.

Despite the difficulties of implementation, these broad norms are quite inspiring in terms of their ambition, their comprehensiveness and their far-reaching effects.

## 2. Responsible Industry System

The Responsible Industry System provides a legal framework for the industrial activities listed in an annex to the law. It is a long and quite complex law, containing over 80 articles and 3 annexes. The legal act distinguishes three different systems applicable to three categories of industrial installations, depending on the risks associated with the activity<sup>15</sup>.

According to the legal act, the main purposes of the new Responsible Industry System are twofold:

- firstly, environmental sustainability and corporate social responsibility;
- secondly, simplification and debureaucratization to increase competition and boost economic dynamics.

To achieve these objectives, several actions are foreseen by the law. Some are merely formal while others are more substantial. The formal approaches are the use of plain language<sup>16</sup> in the dialogue between the administrative authorities and the industrial operator, and the use of flowcharts to show the sequence of tasks and administrative acts.

The more substantial approaches are the reduction of the applicable deadlines by all means possible, the use of digital media as communication tools, the adoption of ‘standardized technical conditions’ and the creation of ‘responsible business zones’.

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11 As a consequence of the greater responsibility placed on the industrial operator, the sanctions are now more severe, ranging from € 250 to € 2500 in the case of individuals, or from € 2500 to € 44 000 in the case of legal persons.

12 The government’s intention at the time was to carry out a substantial revision and harmonization of the material and technical requirements applicable to each of the various environmental frameworks in the future.

13 Article 18 b) of the Decree-Law 75/2015 of 15 May.

14 Article 18 k) of the same Decree-Law.

15 Type 1 industries are those submitted at least to one of the following regimes: EIA, integrated prevention and pollution control, major accidents involving dangerous substances, some waste management activities, production of food and feed using raw materials of animal origin.

Type 2 industries are those not included in type 1 and submitted to the emissions trading scheme or to waste management controls.

Type 3 industries are those included in neither type 1 nor type 2. Type 3 industries receive an operating title automatically and immediately upon prior communication by the operator to the public authorities through the electronic platform and after payment of the applicable fee.

16 Plain Portuguese language is a linguistic variant that can be understood by the ordinary person, instead of a complex technical jargon.

The next sections will address these substantial approaches in more detail.

### **2.1. Main simplification steps in RIS**

Simplification measures are positive if they successfully reduce bureaucracy while ensuring the same or even a higher level of environmental protection. As will be shown, this is not the case of the actions taken to reduce deadlines, but it can be the case with digital platforms, standardized conditions and mainly responsible business zones.

### **2.2. Reducing deadlines**

The reduction of deadlines is central in the law establishing the Responsible Industry System: the deadlines are counted in working days, they cannot be interrupted by any cause whatsoever; when there are two deadlines they do not cumulate (the longest one applies) and, in the absence of special provisions, the deadline to practice any acts, by default is 5 days.

Much more controversial is the legal recognition of tacit deferrals. If the competent authorities do not upload to the electronic platform the documents substantiating the necessary authorization, it is considered that there is a tacit approval of the applicant's request. Further, no subsequent administrative or judicial act is necessary. Only if there is a substantial cause for rejection (a missing EIA for instance) will the digital title not be issued.

It is needless to express the deep contradiction between tacit approvals and the essential avoidance approach adopted in environmental law. As declared by the Court of Justice of the EU, in environmental matters, tacit approvals are contrary to the precaution and prevention principles<sup>17</sup>.

In any case, this questionable streamlining solution is not exclusive of this legal regime. It has been present for years in the environmental impact assessment and several other environmental law regimes<sup>18</sup>.

### **2.3. Digital platforms**

The Responsible Industry System is coherent with the Single Environmental Licensing system and uses the same electronic platform, SILiAmb, to obtain the digital authorizations after a fully dematerialized procedure. Likewise, there are automatic notifications of the public entities when the applicant submits a new document or of the applicant when an entity adopts an act regarding the procedure at stake<sup>19</sup>.

Additionally, the digital platform displays two features, which are mentioned in the Responsible Industry System but omitted in the Single Environmental Licensing, that are worth mentioning. Firstly, the platform SILiAmb provides information to users on the means of judicial or extrajudicial reaction against the decision of the competent administrative authorities, thus implementing the third pillar of the Aarhus Convention. Secondly, the platform provides a geo-referencing tool to visualize the most suitable areas for the installation and operation of industrial plants and of responsible business zones, in line with the Inspire Directive.

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17 See, for instance, the Judgment of the Court of Justice of the European Union of 14 June 2001 in Case C-230/00, and the commentary article by Aragão, Alexandra, «A avaliação europeia de impacte ambiental: a sina belga e a ventura lusa», in: Revista do CEDOUA, no.1, vol. 3/1999, page 87 to 113 (also available online: <https://impactum.uc.pt/content/revista?tid=13820%2C%2013820>)

18 Presently it is article 19 of the Decree-Law 151-B/2013 of 31 October.

19 There is a procedure manager and private certifying entities as well.

## 2.4. Standardized technical conditions

The standardized technical conditions are a set of predefined rules and specifications for a particular activity or operation<sup>20</sup>. This system of “*ready-to-wear*” conditions<sup>21</sup> replaces a case-by-case analysis strengthening transparency and legal certainty.

The standardized technical conditions shall be adopted “*progressively and incrementally*”<sup>22</sup> by the public entities intervening in the Responsible Industry System.

The standardized conditions can be implemented in the operation of an industrial plant provided that on one hand, there is a correspondence between the features and specifications of the industrial activity concerned and the standard, and on the other hand, the operator formally declares accepting and assuming to respect all the technical conditions imposed.

To stimulate the operator to do so, there are some incentives laid down in the law: appreciation of the request by all the public entities normally involved is waived; preliminary inspections are also waived (except for industrial establishments using raw materials of animal origin for producing food or feed or some waste management operations); the amount of the payable fee is reduced to one-third.

It is important to stress that the existence or not and the application or not of standardized technical conditions does not affect the duty of the operators to adopt the best available techniques.

Finally – in some cases, namely when environmental laws require public participation – the adoption of standardized technical conditions may not be appropriate. This reduces considerably the scope of the measure.

## 2.5. Responsible business zones

Responsible business zones are well-defined areas intended for the installation of industrial, commercial or service activities, administrated by a management entity. There are also multipolar business centres that are geographically separated but functionally linked together and administered by the same manager.

Although not expressly mentioned, by creating responsible business zones, the plan is to promote associations between industries which prove to be beneficial for the environment. In fact, industrial symbiosis have a large potential to minimize waste production, to maximize energy efficiency, to save fuel and generate economies of scale in the transport of raw materials, products or even workers or to implement redundant and stronger risk prevention measures.

To boost the creation of RBZ and encourage companies to settle in, several exemptions to the normal iterations of environmental licencing are foreseen. For instance, no EIA is required, no environmental authorization is necessary, no water resource use permit is prescribed, no prior inspection is imposed, as long as the RBZ itself has submitted to EIA and obtained all the authorizations, permits and inspections indispensable for certain types of activities. It is up to the manager of the respective zone to check compliance with all the legal requirements.

## 2.6. Compensating administrative simplification

However, there are some trade-offs in this extreme simplification of installations operating in a RBZ.

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<sup>20</sup> The standardized authorization system in force since 2012 was repealed in 2015 and only the standardized technical conditions subsisted.

<sup>21</sup> The expression is used by Maria Manuel Leitão Marques, Fernanda Paula Oliveira, Ana Cláudia Guedes and Mariana Rafeiro in their book commenting the law: Sistema da Indústria Responsável, Comentário ao novo Regime de Acesso à Atividade Industrial, Almedina, Coimbra, 2014.

<sup>22</sup> Article 8 no.1 of the Decree-Law 169/2012 of 1 August, amended by the Decree-Law 73/2015 of 11 May.

In fact, to compensate the risks emerging from downgrading public controls there are some redundancies and some precisions. Liability insurance is mandatory for the operator, for the manager of the responsible zone, as well as for the accredited bodies<sup>23</sup>. In addition, activities of type 1 and 2 are subject to review every 7 years; every 5 years the responsible zone is submitted to supervision and, if necessary, revision of operating conditions.

Moreover, the substantial obligations of the industrial operators are developed in detail.

As in the Single Environmental Licencing system, the general obligations are, first of all, to adopt an *“ethical, transparent, socially responsible behaviour, and in accordance with the applicable legal and regulatory provisions”*<sup>24</sup>. Then, to adopt *“prevention and control measures to eliminate or reduce the likely risk of affecting people and property, ensuring safety and health conditions at work, fire safety in buildings, as well as respect for environmental rules, minimizing the consequences of any accidents”*<sup>25</sup>. Surprisingly, in this case natural resources are not mentioned.

In terms of specific duties, the list is a little longer. Specific duties can be analyzed according to their intensity, ranging from quite basic requirements to very far-reaching burdens.

In this sense, the very basic requirements are the duties to:

- respect the rules under the Labour Code, particularly the norms on the promotion of safety and health at work;
- implement fire safety systems and security and health systems appropriate to the type of activity, including an emergency plan and self-protection measures, where applicable;
- adopt food safety management systems appropriate to the type of activity, when applicable;
- promote prophylaxis and adopt health surveillance measures legally established for the type of activity in order to protect public health as well as that of the workers.

More ambitious requirements are the duties to:

- adopt the best available techniques;
- implement environmental management systems;
- adopt risk prevention measures and to limit the effects of accidents;
- apply the necessary measures to avoid risks and pollution, so that the industrial location is in a satisfactory condition at the time of the final shutdown of the industrial establishment.

Finally, a completely innovative demand is the requirement for the operator to *“adopt principles and practices of eco-efficiency of materials and energy as well as eco-innovation practices”*<sup>26</sup>.

In the words of the law, eco-efficiency is *“the operating strategy conducive to the provision of competitive goods and services that satisfy human needs and, simultaneously and progressively reduce the negative environmental impacts and the resource intensity throughout the life cycle of products”*<sup>27</sup>.

Eco-innovation is, on the other hand, *“any form of innovation enabling or intending to reach demonstrable and significant progresses towards the goal of sustainable development, through reduced impacts on the environment, enhanced resilience to environmental pressures, or through a more efficient and responsible use of natural resources”*<sup>28</sup>.

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<sup>23</sup> In September 2015 the Ministerial Ordinance 307/2015 regulated the regime, establishing the general conditions for the insurances: minimum capital, insurance coverage, temporal and territorial scope, exclusions, possibility of establishing an excess and conditions for a refund.

<sup>24</sup> Article 3 no.1 a) of the Decree-Law 169/2012 of 1 August, amended by the Decree-Law 73/2015 of 11 May.

<sup>25</sup> Article 3 no.1 b) of the Decree-Law 169/2012 of 1 August, amended by the Decree-Law 73/2015 of 11 May.

<sup>26</sup> Article 3 no.2 a) of the Decree-Law 169/2012 of 1 August, amended by the Decree-Law 73/2015 of 11 May.

<sup>27</sup> Article 2 g) of the Decree-Law 169/2012 of 1 August, amended by the Decree-Law 73/2015 of 11 May.

<sup>28</sup> Article 2 h) of the Decree-Law 169/2012 of 1 August, amended by the Decree-Law 73/2015 of 11 May.

These two concepts, unprecedented in national legislation, do not appear anywhere else in this law, besides the specific obligations of the operator. As a consequence, there is no other legal support for interpretation. The relation between the two concepts and the best available technologies remains unclear. No consequences of non-fulfilment of the eco-efficiency and eco-innovation duties are foreseen.

It would be desirable for these two promising concepts to benefit from further legislative developments in the future.

### 3. Conclusion

The recent legislative reforms carried out in Portugal represent a great effort to streamline the environmental licensing system.

Some simplification measures such as tacit deferrals may jeopardize the preventive character, the effective safeguard and the high level of protection required by environmental standards. Other measures like digital platforms seem quite effective in overcoming unnecessary formalities and making it easier to cope with the bureaucratic entropy of environmental permitting.

To balance the risks, ethical and environmental standards are imposed on those who develop activities having relevant environmental impacts. An ethical, transparent, socially responsible, eco-efficient and eco-innovative behaviour is now the rule.

## 2. Procedures

*2.1. Short case study: Can you present a simple flowchart of a permitting procedure for the following installation, indicating the (estimated) time frames of the various steps, key authorities involved, including EIA, and the total time needed to go through the whole procedure in case of administrative appeal ?*

“Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day” (Annex I, pt. 10 EIA Directive).

Deadlines for waste incineration (see synthesis table below) : Total maximum time frame: 90 days. Alternatively, with the intervention of an accredited entity, the total maximum time frame is 72 days. If the EIA was carried out in a when the precise project configuration is not yet defined (in the so called pre-project phase), after the Declaration of environmental impacts, a second faster procedure is required to access the conformity of the project with the conditions imposed in the Declaration. The document certifying the compliance of the project with the environmental conditions is the Report on the environmental conformity and should be issued within 60 days. Alternatively, with the intervention of an accredited entity, the total maximum time frame is 48 days. In the case where the time frames are not respected, the tacit deferral applies. Deadlines for chemical treatment: Total maximum time frame: 90 days. Alternatively, with the intervention of an accredited entity, the total maximum time frame is 70 days. If the EIA was carried out in the pre-project phase the Report on the environmental conformity and should be issued within 60 days. No possibility of intervention of an accredited entity in this case. Key authorities involved: a) Issuing the authorizations:



Portuguese Environmental Agency (nationwide competence) Coordination and Regional Development Commissions (regional competences for the 5 continental regions) Regional Directorate-General for the environment (for the two insular regions). b) Coordinating the procedure:

For waste incineration and chemical treatment the procedure is coordinated by the same entities mentioned earlier. For other types of projects (industrial infrastructure) depends on the nature of the project. Can be the Ministry of Economy (for industrial activities), Ministry of planning and infrastructures (for transports or other infrastructures), etc. c) Issuing opinions:

Authority for Working Conditions, National Civil Protection Authority, Directorate General for Health, Institute of Nature Conservation and Forests (nature conservation areas), National Agricultural Reserve Authority (agricultural areas), National Ecological Reserve Authority (areas integrated in the National Ecological Reserve).

**Synthesis table:**

Legal regime	License types	Term (days)	Accredited entity
Environmental Impact assessment*	Declaration of environmental impacts (other projects)	100	70
	Declaration of environmental impacts (Industrial projects)	80	60
	Report on the environmental conformity**	50	--
Accident prevention involving dangerous substances (Seveso) Low hazard level	Opinion (compatibility assessment)	30	--
Accident prevention involving dangerous substances (Seveso) High hazard level	Opinion (compatibility assessment)	30	--
	Safety Report Approval	90	--
	Safety Report Approval (industrial projects)	80	
Industrial emissions	Environmental licence	80	40
	Environmental licence + Declaration of environmental impacts* (industrial projects)	90	70
	Environmental licence+Declaration of environmental impacts	110	80
	Environmental licence + Environmental conformity report	60	--
	Installation licence – incineration activities	50	40
	Installation licence – incineration activities+ Declaration of environmental impacts	90	72
	Installation licence – incineration activities+Environmental conformity report	60	48
	Operating licence	10	10

*2.2 What are the main characteristics of the applicable permit procedure or procedures?*

The questions are about the different permits if more than one permit is needed for an 'intended activity'. Who is (are) the competent authority (authorities)?

The Portuguese Environmental Agency as a rule.

Is EIA integrated in the permitting procedure or is it an autonomous procedure that precedes the introduction of an application for a permit (or for the various permits)? In the latter case, can EIA be carried out once more at the next stage of the development process (e.g. in the building or environmental permit procedure)?

The EIA is integrated in the permitting procedure.

- Is there a differentiation between large, intermediate and smaller installations?

For SMALL installations EIA may not be required

- Is a notification to the relevant public authority in some cases sufficient?

Yes

- Is there a possibility to exclude certain installations even from the notification requirement?

No

- Are competent planning and environmental authorities consulted during the decision-making procedure or procedures, if more than one permit is needed? Within what time limit have they to give their opinion? Are these opinions binding or not?

Yes, absolutely. They can simply stop the project.

- Do they have some weight in practice?

Yes, but there is a strong self-restraint and the environmental Agency rarely uses its veto power. In most cases it just imposes environmental conditions.

- Is there public participation in every case?

Yes

- At which stage of the development?

In beginning of the EIA procedure. There can be 3 periods of public participation: 1. Before the submission of the project, when the developer expresses his will to develop the project (public participation is voluntary and depends on the acceptance by the promoter). 2. Right after the submission and approval of the EIA and its non-technical summary (mandatory). 3. During the confirmation of the compliance of the project with the declaration on environmental impacts (only in case of a pre-project).

- Is it broadly announced and used?

YES, it is broadly announced, but the feedback from the public is quite scarce. Public participation is far from being massively used by the citizens.

- What time frames apply?

20 days in general, 10 days if the project is reformulated. 15 days for industrial projects. 15 days for the conformity report. Timeframe determined on a case-by-case basis for voluntary participation.

- Is the public participation on the application or on the draft decision?

On the application.

- What time frame applies from the introduction of the application to the decision in first administrative instance (i.e. when a developer receives final decision allowing to start development, however, before possible appeal to a higher authority)?

(see synthesis table above)

- Is there an administrative appeal against a decision on a permit or the various needed permits?

Yes.

- What is the competent authority (or authorities) to whom an appeal can be lodged?

Ministry of the environment.

- Who can lodge the appeal (only parties of the proceeding, NGO, everybody), within what time?

For the protection of diffuse interests, everybody.

- What time frame applies to reach a decision on appeal?

15 days for a complaint to the same authority, 30 days for an administrative appeal.

- What if the time frames are not respected?

If the time frames for the decision in the licencing procedure are not respected, the tacit deferral applies. If the time frames for the decision of the appeal are disregarded it is a tacit confirmation and only the Court can annul it.

## II. Infrastructural Projects

Here we would like to investigate how according to environmental and planning law a project that is not as such provided for in the land use plans can be realized.

We can take as an example the construction of a highway of the type indicated in Annex I, point 7, (b), of the EIA Directive

*1. Is there a need to draw up a plan or to review a plan in the sense of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment?*

If yes, can you in a concise way give an overview of what this means in terms of procedure, including SEA, public participation, administrative appeal (if any), and time frames?

You may refer, when the occasion arises, to what has been said under part I of the questionnaire.

Planning procedures are extremely time consuming. Drawing or reviewing a plan can take one to two years. Strategic assessment (Decree-law 232/2007 of 15 June) is mandatory and so is public participation for at least 30 days. Obtaining opinions from public entities (other than those

preparing the plan) is mandatory during SEA. Each entity has 20 days to issue an opinion. There is no general deadline for the preparation of the final environmental report.

The procedure for revision of a plan (Decree-law 80/2015 of 14 May) is complex and requires concertation among public authorities, 20 days for opinions and at least 30 days for public participation. In both cases, the parties have 30 days to start the administrative appeal and the administrative authorities have 30 to 90 days for deciding the appeal.

*2. Would there be a need to obtain one or more permits to construct and operate the highway mentioned under point II? Is an EIA necessary? Is there a coordination mechanism integrating the substance and procedure of the permits? If appropriate and available, a flow chart could be attached. What are the characteristics of the procedures?*

You may refer, when the occasion arises, to what has been said under part A of the questionnaire.

The Single Environmental Permit applies so there is only one contact point, but several public entities involved (see part A of the questionnaire)

## **B. Describing and evaluating integration and speed up legislation**

*Have there been initiatives in your legal order to introduce specific legislation to integrate and speed up decision making for infrastructure projects/industrial installations?*

If so:

- (a) When was this done?
- (b) What was the general justification?
- (c) What types of projects does it apply to?
- (d) What key aspects of procedure are speeded up? (public participation, greater integration of criteria and procedures to avoid duplication, notification instead of permit requirement, consent by time lapse, stepwise permitting etc.)
- (e) Have there been any legal challenges to the changes? (e.g. non-compliance with EU environmental law, Aarhus etc.)
- (f) Has there been any evaluation of previous situations and/or the impact of speeding up?

(See part A of the questionnaire)

What is your own assessment of integration and speeding up measures?

Seems very effective, but not yet sufficiently tested to be sure.

### **C. Locus standi for a local government within the permitting procedure**

Under what conditions (and whether at all) a local government may file a complaint against an environmental permit for an installation or infrastructure project.<sup>29</sup>

If the conditions for *actio popularis* are met the local government can file a complaint. Article 52 of the Constitution: “1. Every citizen has the right to individually, or jointly with others, submit petitions, representations, claims or complaints in defence of their rights, the Constitution, the laws or the general interest to the entities that exercise sovereignty, the self-government organs of the autonomous regions, or any authority, as well as the right to be informed of the result of the consideration thereof within a reasonable time limit. 2. The law shall lay down the terms under which collective petitions that are submitted to the Assembly of the Republic and the Legislative Assemblies of the autonomous regions are considered in plenary sitting. 3. Everyone is granted the right of *actio popularis*, including the right to apply for the applicable compensation for an aggrieved party or parties, in the cases and under the terms provided for by law, either personally or via associations that purport to defend the interests in question. The said right may particularly be exercised in order to: a) Promote the prevention, cessation or judicial prosecution of offences against public health, consumer rights, the quality of life or the preservation of the environment and the cultural heritage; b) Safeguard the property of the state, the autonomous regions and local authorities.”

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<sup>29</sup> Right now this is topical issue in Latvia as well as locus standi for municipality was recently intesively discussed before the Aarhus Convention Compliance Committee in connection with admissibility of the case from a local government of Germany.