



The Portuguese new greenhouse gases emission permits

This new framework enhances cost-effective emission reductions and low-carbon investments and maintains the obligation to obtain an emission permit for issuing greenhouses gases fixed facilities that carry out activities under the Community's Emission Trading Scheme ("ETS").

The Portuguese Government approved the Decree-law 12/2020, of 6 April transposing Directive (EU) 2018/410 of the European Parliament and of the Council, approved in the sequence of the Paris Agreement and its decarbonization goals.

Entities on the national list of facilities covered by the ETS list may benefit from free of charge emission permits, upon request to the Portuguese Environmental Agency (*Agência Portuguesa do Ambiente, I.P.*) ("**APA**") in a specific form for the collection of data and methodology report. The criteria for the allocation of free of charge emission permits are based on fully standardized measures which set benchmarks at Community level.

Emission permits not granted under the free of charge method shall be subject to a sale in auction, the revenue from which shall be used for measures contributing to the development of a competitive and low carbon economy.

✉ Contacts

João de Macedo Vitorino
jvitorino@macedovitorino.com

Frederico Vidigal
fvidigal@macedovitorino.com

For the first time in Portugal, ETS of low emission installations (up to 25.000 tCO₂eq) will not need an emission permit, provided that they are subject to measures allowing an equivalent contribution of emission reductions, or very low emission installations (up to 2.500 tCO₂eq), without any equivalent measure. In addition, the amount of free emission permits is adjusted to the operators' activity if its levels decrease or increase by 15% compared to the level used to establish the emissions.

Failure to obtain an emission permit, when mandatory, is an administrative offence and the owner of the relevant facility may be subject to the payment of a penalty up to the amount of 5 million euros if committed with intent, or 144 thousand euros if committed by negligence.

On the other hand, failure to comply with the threshold of the emission permit, entails the duty to financially compensate the Portuguese State, under the "polluter pays" principle, corresponding to the emission excess, and taking into account the possible costs that the owner would have incurred by buying more emission licenses in the auction.

The new regulation becomes effective on 7 April 2020.

© Macedo Vitorino & Associados

This information is provided for general purposes only and does not constitute professional advice.