

# DIRITTI COMPARATI

Comparare i diritti fondamentali in Europa

## ***LEI DE BASES DO CLIMA: A PORTUGUESE LEGAL RESPONSE TO THE BIGGEST GLOBAL CHALLENGE OF OUR TIME***

Posted on 10 Marzo 2022 by [Tiago de Melo Cartaxo](#)

### *1. Background*

Lawmakers all over the world are increasingly acknowledging the need to find legal instruments for their societies to [tackle and adapt to climate change](#). It certainly is [the most challenging battle of our times](#) and since the signing of the United Nations Framework Convention on Climate Change (UNFCCC), in 1992, the world has become even more aware of it. Nevertheless, after the difficult experience of the Kyoto Protocol, the timid outcomes of the Doha Climate Gateway, and even the slow way how the Paris Agreement is being implemented, International Climate Law has demonstrated not to be strong enough to change the pathway to a zero-carbon world.

Based on this reality, several countries have been enacting legislation specifically intending to address the climate crisis. Examples of this reality are the United Kingdom's [Climate Change Act 2008](#), amended in 2019 to commit the country to 'net zero' by 2050, the German Federal Climate Protection Act and to change further regulations ([Bundesklimaschutzgesetz or KSG](#)), passed in December 2019 and amended in June 2021, or the [French Law No. 2021-1104](#) on the fight against climate change and the

reinforcement of resilience in the face of its effects (Climate and Resilience Law), approved in August 2021. Simultaneously, the Netherlands have faced an important moment with regards to the national implementation of the Paris Agreement, which was known as the *Urgenda case*. In fact, a Climate Act had already been enacted in July 2019 ([Klimaatwet](#)), mandating the government to reduce its total GHG emissions by 95%, compared with a 1990 baseline. However, the *Urgenda case* represented an important milestone on the road to more legislative and policy climate action, as [the Supreme Court of the Netherlands concluded](#) that the Dutch government was responsible for management of carbon dioxide emissions and was bound to protect human rights, reiterating that 'every country is responsible for its share'.

Therefore, other countries around the world have followed these footsteps and Portugal was one of the most recent ones, having approved its [Climate Framework Law No. 98/2021](#) (*Lei de Bases*) in the last months of 2021.

## *2. The Road to a Portuguese Climate Law*

It took a long way for the Portuguese parliament to agree on approving a specific legislative act to address climate change. Other previous national legislation had already mentioned climate challenges and the need for enhancing social-ecological resilience, such as the [Law No. 93/2001 establishing procedures in order to prevent climate changes and their effects](#) or the [Law No. 82 D/2014 establishing a set of green fiscal rules](#). Additionally, from a policy perspective, the [Resolution of the Council of Ministers No. 56/2015](#), which was [lately amended in 2020](#), had already approved a National Strategy for Adaptation to Climate Change.

Nonetheless, only after the European Union approved its 'Climate Law' through the enactment of Regulation (EU) 2021/1119 the parliamentary groups in Portugal ended to join their efforts for a consensus on a national framework law to tackle climate threats. On 5 November 2021 the Portuguese parliament finally approved a bill condensing the basic guidelines for a Portuguese climate policy and admitting the anticipation of the country's carbon neutrality. Only on the last day of 2021 the Portuguese legal system could finally see the publication of a legislative

act specifically addressing the challenges of climate change, through the Law No. 98/2021. This new law eventually entered into force on 1 February 2022.

The final version of the law, which brought together bills presented by the Socialist Party (PS), the Social Democrat Party (PSD), the Greens (PEV), the Party for People, Animals and Nature (PAN), the Left Block (BE) and two non-registered MPs, was approved in a final global vote by the PS, PSD, Christian Democrats (CDS-PP), PEV, PAN, and the two non-registered, receiving the abstention from the Communist Party (PCP) and a rejection vote from the Liberal Initiative (IL). The reason why the communists did not support the final version of the bill was because their own proposal was rejected by most of the MPs. As a matter of fact, their proposal was generally considered as having 'a vision that is too anchored in the logic of subjugation and instrumentalization of nature to human interests and does little more than collect and duplicate legal norms that are already found in other legislative instruments, thus contributing very little to legislative clarity', [as analysed by the Free Party \(Livre\)](#). On the other hand, the Liberal Initiative has voted against the Climate Law, as this still is a recent party which supports general deregulation of the society – even if with certain limitations – and consequently did not consider the proposal as the most relevant for the time being.

Most of environmental [NGOs welcomed the process](#) of wide consultation carried out mainly within the parliamentary committee on environment, energy, and spatial planning. They congratulated the approval of the law which received a large majority of support among MPs- and the society.

### *3.A Legal Instrument Envisaging the Near Future*

The new law sets out the guidelines (*bases*) for the national climate policy (article 1), legally acknowledging a situation of climate emergency (article 2, no. 1). This acknowledgement does not consist of declaration of state of emergency in accordance with the country's constitution, although it could be declared in the future due to specific climate reasons (article 2, no. 2).

After setting the general objectives (article 3) and principles (article 4) for the country's climate policy, this law specifically dedicates a noteworthy Chapter II to climate rights and duties. Here public and private entities

concerned by climate-related actions that lie under the legal umbrella of this law are clearly identified (article 8). They are the state, public institutes, autonomous regions, local authorities, the Climate Action Council, independent administrative entities with regulatory functions for the economic activity, civil society entities including NGOs and investment groups, and citizens, private companies and other entities governed by private law (article 8, paras. a to i). In addition to this, an individual norm focuses on the right of citizens to participate in the processes of drafting and reviewing climate policy instruments (article 9, no. 1). More specifically, the law gives to groups of citizens, in a minimum of 30 people, the legitimacy to request the Public Administration awareness and informative meetings with decision- and policymakers in climate action (article 9, no. 2). Information and transparency are, therefore, assumed as an essential element for an always adaptive and evolving climate policy (see article 9, no. 3). In addition, a Council for Climate Action is created in order to monitor national climate action in an impartial and objective way (article 12).

Under the principles of a climate external policy, the Portuguese Climate Law sets out the Government must adopt a global and integrated vision of the pursuit of climate objectives, respecting the limits of sustainable use of the planet's natural resources and the development paths of each country, actively defending, in terms of foreign policy and in the context of climate diplomacy that the country should contribute to limiting the rise in the global average temperature until the end of the century to 1.5 degrees in relation to the pre-industrial era (article 15, no. 1, para. f) and the principle of a stable climate as a common concern of humankind recognised by the UN shall be promoted (article 15, no. 1, para. f), in accordance with the first recital of the UNFCCC.

It provides that the Parliament will approve on a five-year basis and within a 30-year horizon' national targets for the reduction of greenhouse gas emissions (article 19, no. 1). It also assumes that Portugal should reduce its emissions – in relation to 2005 values – by at least 55% by 2030, between 65% and 75% by 2040 and at least 90% by 2050 (article 19, no. 2). Moreover, the law commits to the possibility of 'anticipating the climate

neutrality target' at least by 2045 (article 18), previously envisaged for 2050 in the National Strategy which was already in force.

Moreover, economic and financial instruments are set out for climate action, such as a green income tax incentive (article 30), the obligation for agents in the financial system to take into account the risk and climate impact in financing decisions (article 35) or decarbonization programmes for the Public Administration (article 37).

This legal instrument also provides that there will be no production of electricity based on coal after 2021 (article 40, no. 1, para. b) and the use of natural gas for electricity production will be banned by 2040 (article 40, no. 1, para. c). After 2035, cars 'powered exclusively by fossil fuels' will not be sold, even if the terms are to be defined by further legislation (article 48). In addition to all these provisions, the principles of the green economy (article 67) and the just transition (article 69) are reinforced, as the Government is expected to present the Parliament a green industrial strategy within the next 24 months (article 68).

As a result, a robust set of principles, milestones, and possible tools are suggested to engage public and private entities, as well as citizens with the needed process of tackling and adapt to climate change, also giving them the opportunity to participate in decision-making.

#### *4. Conclusions and Future Perspectives*

As explained, the Portuguese Climate Framework Law notably intends to be a structured and densified legal regime, which aims at going beyond general aspirations. As mentioned, this law sets out several climate rights and duties, identifying a list of subjects, and simultaneously envisages to enact accurate rules for climate policy governance in the country. These provisions are consequently to be developed by planning and evaluation tools, which are accompanied by economic and financial instruments, as well as sectoral climate policy mechanisms.

This new law must naturally be interpreted under the scope of [article 66 of the Portuguese Constitution](#), which, since 1976, provides that 'everyone has the right to a human, healthy and ecologically balanced environment and the duty to defend it'. In fact, [as the Portuguese Constitutional Court recently concluded](#) in a decision on compensations for damages caused

by the species of Iberian wolf and in light of that constitutional provision, 'the duty to promote a balanced, harmonious and, above all, sustainable relationship between the human species and its environment, endangered by the decline of biodiversity, constitutes a consequence of such a right to the environment'. In effect this new law aims at protecting environmental (and climate) rights but clearly stresses out the relevance of complying with each one's duties.

What still needs to be proved now is the actual capacity of all subjects identified by the Portuguese Climate Law to effectively act and implement the principles and norms which are now brought out to the national legal system. Nevertheless, for what was already demonstrated it seems to be a fair advanced legal instrument which was built on known science and on the accomplishments of previous experiences in other national legal systems. It acknowledges the current climate emergency situation and identifies subjects, tools and adaptive, monitorable, and accountable ways of implementation. Let us now hope for the years to come in order to test its effectiveness.