

University of Lisbon School of Law

Environmental Law

Course Syllabus

Academic year 2019/2020

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Class	Topic [<i>specific legal source</i>]	Reading reference
1	Introduction	
2	Legal protection of the Environment Evolution of the legal framework: international, European and national law.	A) 3-16, 22-50, 888-898 B) 4-10, 18-42, 169-173, 176-200
3	The right to environment <i>[Portuguese Constitution articles 9, 52 and 66; Charter of Fundamental Rights of the European Union, article 37]</i>	A) 775-789 B) 13-15
4	General environmental principles Sustainable development principle; polluter pays principle; <i>[Treaty on the functioning of the European Union articles 11, 191]</i>	A) 187-200, 206-217, 228-238 B) 56-67, 231
5	Environmental principles: preventive action, precautionary principle	A) 200-203, 217-228 B) 68-76
6	Environmental information <i>[Aarhus Convention 1998; Directive 2003/4/EC on public access to environmental information]</i>	A) 624-657 B) 314-334
7/8	Public participation and access to courts in environmental matters <i>[Aarhus Convention 1998; Directive 2003/35/EC providing for public participation; Portuguese Constitution articles 52 and 66]</i>	A) 648-657 B) 334-354
9/10	Environmental impact assessment <i>[Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (EIA Directive); Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive)]</i>	A) 601-624 B) 452-495
11	Integrated pollution prevention and control <i>[Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control)]</i>	B) 498 – 529
12	Natura 2000 Network and the protection of biological diversity <i>[Birds Directive 2009/147/EC and Habitats Directive 92/43/EEC]</i>	A) 384-454 B) 717-769
13	Emissions trading schemes <i>[Kyoto Protocol 1998; Paris Agreement 2015; Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading]</i>	A) 283-291 B) 543-558
14	Environmental Liability <i>[Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage]</i>	A) 700-771 B) 388-393

(A) Sands and Peel, Principles of International Environmental Law, 3rd edition, Cambridge

(B) Bell, McGillivray and Pedersen, Environmental law, 8th edition, Oxford

Portuguese Constitution 1976

Article 9

(Fundamental tasks of the state)

The fundamental tasks of the state are:

...

d) To promote the people's well-being and quality of life and real equality between the Portuguese, as well as the effective implementation of economic, social, cultural and environmental rights by means of the transformation and modernisation of economic and social structures;

Article 52

(Right to petition and right of actio popularis)

....

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) ...

Article 66

(Environment and quality of life)

1. Everyone has the right to a healthy and ecologically balanced human living environment and the duty to defend it.

2. In order to ensure the right to the environment within an overall framework of sustainable development, the state, acting via appropriate bodies and with the involvement and participation of citizens, is charged with:

a) Preventing and controlling pollution and its effects and the harmful forms of erosion;

b) Conducting and promoting town and country planning with a view to a correct location of activities, balanced social and economic development and the enhancement of the landscape;

c) Creating and developing natural and recreational reserves and parks and classifying and protecting landscapes and places, in such a way as to guarantee the conservation of nature and the preservation of cultural values and assets that are of historic or artistic interest;

- d) Promoting the rational use of natural resources, while safeguarding their ability to renew themselves and ecological stability, with respect for the principle of inter-generational solidarity;
- e) In cooperation with local authorities, promoting the environmental quality of rural settlements and urban life, particularly on the architectural level and as regards the protection of historic zones;
- f) Promoting the integration of environmental objectives into the various policies with a sectoral scope;
- g) Promoting environmental education and respect for environmental values and assets;
- h) Ensuring that the fiscal policy renders development compatible with the protection of the environment and the quality of life.

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## **Treaty on the Functioning of the European Union**

### **Article 11 (ex Article 6 TEC)**

Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

## **TITLE XX**

### **ENVIRONMENT**

#### **Article 191 (ex Article 174 TEC)**

1. Union policy on the environment shall contribute to pursuit of the following objectives:
  - preserving, protecting and improving the quality of the environment,
  - protecting human health,
  - prudent and rational utilisation of natural resources,
  - promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.
2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take

provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. In preparing its policy on the environment, the Union shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the Union,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

#### **Article 192 (ex Article 175 TEC)**

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

(a) provisions primarily of a fiscal nature;

(b) measures affecting:

- town and country planning,
- quantitative management of water resources or affecting, directly or indirectly, the availability of those resources,
- land use, with the exception of waste management;

(c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, may make the ordinary legislative procedure applicable to the matters referred to in the first subparagraph.

3. General action programmes setting out priority objectives to be attained shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary

legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or 2, as the case may be.

4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall lay down appropriate provisions in the form of:

— temporary derogations, and/or

— financial support from the Cohesion Fund set up pursuant to Article 177.

**Article 193**  
**(ex Article 176 TEC)**

The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission.