

## OECD Project in Portugal

### *More Effective, Efficient and Accountable Environmental Permits and Inspections*

#### **Output 5: Recommendations for conceptualisation of the next generation of the Single Environmental Licensing Scheme (i.e. LUA 2.0)**

### **Comments and Contributions from APQuímica, the Portuguese Association for the Chemical, Petrochemical and Refining sector**

27.03.2024

#### **1. Introduction**

APQuímica, the Portuguese Association for the Chemical, Petrochemical and Refining sector, would like to thank once again for the opportunity to be part of the group of stakeholders consulted within the scope of the OECD “*More Effective, Efficient and Accountable Environmental Permits*” Project, developed during the last two years in Portugal.

Following our participation, supported by a group of member companies, in the OECD Workshop held at APA (Portuguese Environment Agency) on March 13<sup>th</sup> 2024, to present the diagnostic and main recommendations identified by the OECD team during this project and included in its draft final report <sup>1</sup>, we appreciate the opportunity to put forward additional comments for consideration by the project team at this stage, while completing the final report and the project.

This document intends to reinforce and complement the views and proposals for improvement that we have already presented in that Workshop, as well in previous stages of the project, and in other interactions<sup>2</sup> with national public entities focusing on environmental permitting / licensing procedures and legislation in Portugal, but

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<sup>1</sup> Draft Output 5: Recommendations for conceptualisation of the next generation of the Single Environmental Licensing Scheme (i.e. LUA 2.0), version from 19.02.2024.

<sup>2</sup> Namely in the public consultation held in 2022 during the process ["SIMPLEX Ambiente"](#) – “Simplification of Licenses / Permits and Procedures for Companies in the Environmental Area” (cf. [APQuímica contributions](#) to the “SIMPLEX Ambiente” process).

also on the enforcement and inspection procedures and practices in place at national level for environmental areas.

## **2. Overall assessment of the Project and of the Recommendations and Improvement Proposals identified in the Draft Final Report<sup>3</sup>**

First of all, we would like to reinforce the importance of the project as a whole, of the evaluation carried out and of its conclusions. We would also like to stress the relevance of the recommendations and improvement proposals put forward in the draft final report released.

From our point of view, the report clearly highlights several issues and bottlenecks currently observed in the legislation, procedures and practices in place in Portugal for environmental areas regarding permits / licenses and enforcement / inspections.

Also, it presents several improvement proposals, in line with the good practices in use in other European countries, which we consider very relevant, particularly the following recommendations:

- better coordination between the different public entities participating in the processes;
- better involvement and effective consultation of stakeholders and consideration of their proposals for process improvement;
- greater simplification, effectiveness, efficiency and speed in processes / analysis, as well as in the information requested and in the approaches to be adopted;
- greater focus on the issues / situations that are actually relevant for environmental (or human health), and towards a policy of continuous and effective improvement of the activities / companies, through joint work between public entities and companies / business associations, instead of an action more oriented towards “searching for the failure” via a strict and often blind application of the law, centred on fines and penalties.

Without compromising the protection of the environment, the safety of people and goods and the sustainability, and for the sake of the country's competitiveness, we believe it is critical to introduce mechanisms for optimization, simplification, reduction of bureaucracy and elimination of delays and excessive administrative burdens in

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<sup>3</sup> Draft Output 5: Recommendations for conceptualisation of the next generation of the Single Environmental Licensing Scheme (i. e. LUA 2.0), version from 19.02.2024.

legislation / procedures applicable to the industry, in an effective way, namely in the permitting and licensing procedures, and particularly in relation to the environmental component.

We believe that directing the focus of action towards the issues that are essential to the effective protection of the environment, diverting it from the more bureaucratic control of processes, will make it possible to simplify and speed up procedures and free up resources (from public administration and companies) that will make everyone's work, both in companies and public authorities, more efficient and effective, allowing to speed up the implementation of optimization measures and new projects, with a view to an effective continuous improvement namely in the environmental and sustainability areas.

From our point of view, equally or even more important than the supporting legal text, currently published in the Portuguese Decree-Law n.º 11/2023, of 10 February (SIMPLEX Ambiente), the development of the following three pillars will be critical to ensure an effective implementation of the simplifications and improvements that are intended to be introduced, particularly related to adaptation / upgrade:

1. in the relevant processes, procedures and methodologies;
2. in the IT tools to operationalize the simplifications within the involved public entities (back-office) and in the interfaces with companies (front-office);
3. in the information and guidelines to support economic agents and the technical work in the public entities.

Also essential is to ensure that the public entities involved in these processes have the necessary resources, namely human resources in sufficient number and with adequate knowledge considering the challenges involved.

From our point of view, there are several areas in permitting / licensing procedures and legislation in Portugal, as well as the enforcement and inspection procedures and practices in place at national level for environmental areas, where clear improvements could be introduced regarding clarity, transparency, predictability and streamlining of procedures, availability of guidelines and complementary information available to support economic agents. A better functioning and ease of use of the available tools, particularly IT, to support the implementation of the legislation would also be critical.

Based on the accumulated experience regarding these processes in our sector, it is possible to list several examples in which, for the same European regulatory framework, Portugal compares in a (quite) negative way to equivalent situations in other EU countries, due to greater bureaucracy, complexity and less clarity and predictability in the administrative processes involved, in the effective deadlines verified (wider overall), leading

to a lower guarantee of predictability in the schedule to implement new industrial projects, motivated by inefficiencies and uncertainty in the development of the aforementioned administrative processes.

Although this type of constraints affects the entire industry at national level, its impact tends to intensify even more in sectors such as the Chemical, Petrochemical and Refining sector, among others, characterized by a capital-intensive nature, with long investments cycles, mostly intensive in energy use and, in many situations, also intensive in carbon use / incorporation.

Indeed, in the case of the chemical, petrochemical and refining industries, as a result of the great diversity of raw materials used, the different value chains involved, as well as the type of activities and processes used, mostly of a complex nature, it is very common to have unique systems, with relevant particularities / specificities to consider, and with associated regulatory frameworks that are equally diverse and complex, for example within the framework of the respective permitting processes, particularly in the environmental area.

Exemplifying in a more concrete way the type of constraints identified in our sector, we can mention the relevance of resolving a wide range of (environmental) permitting processes that are in delay, mainly due to procedural issues, and that have been dragging on for several years (on average 4 to 6 years) and which, if not resolved in a timely manner, could prevent, in several cases, the submission of new permitting requests for new projects by the companies, several of which are relevant structuring industrial projects (some of them linked to the PT Recovery and Resilience Plan (RRP)), with very limited execution deadlines.

Several of the issues identified and of the recommendations and improvement proposals highlighted in the OECD draft report, despite being referenced in more general terms, meet the main points and improvement proposals that have been identified by APQuímica and our member companies in previous moments, as well as by other sectors.

By way of illustration, seeking to clarify with real examples identified in our sector, and due to their relevance, we would like to reinforce – in the following sections / pages – some of the points that we consider critical to be improved and which arise from the significant constraints that can currently be observed.

In a moment of significant investments and new relevant industrial projects being implemented in Portugal, we consider essential to overcome these issues in the short term and, therefore, present also in the following sections/ pages some improvement proposals in that regard.

### 3. Examples of critical issues identified at national level and improvement proposals

#### 3.1 Environmental permitting / licensing procedures

- **Improve the LUA / SILiAmb Platform in order to allow more than one permitting process from the same installation / company to be simultaneously ongoing.**

As it is the case with the environmental permitting platforms in other EU countries, particularly in Spain, different permitting processes from the same installation / company must be able to run in parallel considering the different phases / precedence of the various procedures involved.

Accordingly, the beginning of the permitting process of a new project must be allowed also in the cases where other previous processes of the same installation are still ongoing / being evaluated.

- **Introduce improvements in the LUA simulation step** prior to the presentation of the permitting request, given that the simulator is often not clear in the questions being asked, leading to results that are not compatible with the specificities of the installations and/or even with the legislation in some situations, especially for more complex situations and/or when several environmental regimes are involved.

Always ensuring, since the beginning of the simulation step, the involvement of experienced technicians from the authorities in the permitting of the specific installations concerned would be an added value that could ensure a better instruction of the processes and would save time (for authorities and companies) in the next phase (i.e. the permitting process itself).

- **Introduce improvements to the data loading interface on the LUA / SILiAmb Platform, namely:**
  - allow the upload and download of data from excel files and / or other templates;
  - allow structuring the information entered on the platform in a defined order, making it possible, in particular, to order the information in each table;
  - prevent data / information previously reported by the installation / company to the environmental authorities (e.g. monitoring data) from having to be re-inserted into the platform again when submitting a permitting request for a new project (this still continues to happen in several situations).
- **Introduce mechanisms to speed up the permitting processes at the stage of requesting additional elements / clarifications** by the authorities to the operator (e.g. using meetings, site visits, etc.). These requests constitute, in most of the situations, particularly in the environmental permitting processes, a relevant reason for important delays in the processes.

Some of the doubts identified by the authorities in the processes would be clarified in a much more effective and productive way using meetings, site visits, etc., than through a written request for clarification, which involves a lot of work and takes a lot of time to prepare by the authorities and to respond by the companies. Some of the technical questions would be much more effective to clarify during a visit to the facilities. It is therefore suggested that this kind of questions would be preferably clarified through this more expeditious way (site visits / meetings), reserving the request for additional written information only for those elements effectively essential to the instruction / completion of the processes.

The clarification of “current management” issues associated with existing and already licensed activities / processes should be reserved for other follow-up moments most appropriate for that purpose and not during the permitting processes for new projects.

Also, if the follow-up process after issuing an environmental permit / TUA is improved and made more effective, considering the periodic information already reported by the companies, this could also greatly minimize the doubts arising from the Authorities in the next permitting process for future new projects.

### **3.2. Enforcement and inspection procedures and practices for environmental areas**

Currently the inspection processes at national level are more focus on a “rigid” application of the law, which often conduces to a “search for the failure”, instead of directing the focus to issues / situations that are actually relevant for environmental (or human health) improvement, and for a continuous and effective improvement of activities, through a joint work between the relevant stakeholders (namely between public authorities and industrial companies).

The current focus frequently leads to disproportionate and unjustified application of high fines / penalties for purely administrative / bureaucratic reasons, without any relevant impact on the environment or human health.

As concrete examples of this situation, we can highlight:

- the application of fines in situations of submission of a monitoring report some hours / days after the deadline defined in the legislation (e.g. a few hours after the end of the deadline), even when all the emission limit values are met.
- the application of fines regarding pagination issues in safety data sheets (where different interpretations of the legal text are possible) or for other issues concerning form (and not content) in safety data sheets.
- the application of fines in situations of “involuntary legal non-compliance”, for reasons beyond the control of the companies, as is currently the case of the application of EPR (extended producer responsibility) for

packaging of industrial / professional products, in which the solutions and the necessary implementing legislation and conditions are still being developed in Portugal by the public administration / government.

Although the three examples above correspond to purely administrative / bureaucratic aspects, without any relevant negative impact on the environment or human health, in the interpretation made by the inspection entities, based on the legal text, they are classified as environmental fines / penalties (often serious or very serious). This results in very relevant negative implications for companies in terms of costs and reputation, including also penalization (or even inhibition) in access to public tenders or funds / incentives (e.g. inhibition in accessing the ETS fund for indirect costs or even the PT Recovery and Resilience Facility for financing new decarbonization projects) and court processes.

Therefore, the inspections / enforcement actions should be more pedagogic / formative. Small delays in meeting deadlines or updating documentation, or other not reiterated non-compliances concerning other administrative procedures, which have no significant impact on the environment or health should only be subject to a warning (or a small tax) with a deadline to correct the non-compliance and without a fine / penalty procedure, with all the above-mentioned negative consequences.

Other important improvement recommendation is the need for better coordination between the permitting authority (APA, in most situations) and the inspection / enforcement entity (IGAMAOT, in most situations), so that the specificities of concrete situations can be duly considered during inspection / enforcement procedures.

As concrete examples of this last situation, we can mention:

- the need for better articulation between APA / IGAMAOT for cases that have ongoing evaluation of environmental permitting processes;
- the need for better APA / IGAMAOT coordination in situations of “involuntary legal non-compliance” due to a legal void / deficiencies in legislation / delays in developing appropriate solutions, for reasons beyond the control of the companies, as is the above-mentioned example concerning ERP (extended producer responsibility) for packaging of industrial / professional products.

As a benchmark, several of our member companies that belong to multinational groups have reported us their experiences regarding inspection / enforcement activities in the environmental area as performed in other EU countries. A common governance aspect that has been adopted in the majority of these countries, and also referenced in the OECD draft report, was highlighted as very positive: a single entity has both licensing / regulatory powers and inspection / enforcement powers. This way of operating facilitates and makes more effective the

articulation and better consideration of the various relevant aspects arising from permits and observed in inspections / enforcement actions.

In inspection / enforcement actions in these countries, a more collaborative and constructive attitude from the inspection entities is also observed. When deviations from permit conditions are identified, the inspection entities immediately suggest specific aspects of improvement to be considered / implemented by the companies, with a deadline for their implementation / correction before fines / penalties are considered. This is not usually observed in Portugal and would be a major improvement to implement.

#### 4. Final remarks

Several of the issues identified and of the recommendations and improvement proposals highlighted in the OECD draft report, despite being referenced in more general terms, meet the main points and improvement proposals that have also been identified by APQuímica and our member companies in previous moments, as well as by other sectors.

We are aware that detailed work is decisive for the practical implementation of the simplification and improvement measures to be adopted. Therefore, on behalf of APQuímica and our member companies, we would like to reinforce our total availability and interest in maintaining and intensifying the dialogue, collaboration and technical work with the different stakeholders, for a deeper joint work in these areas.

We would also like to propose that mechanisms for monitoring the practical implementation of the improvement measures in these areas should be operationalized in the short term, with close involvement of all the stakeholders (public entities, representatives of industrial / business sectors, etc.), in order to ensure:

- firstly, a rapid and effective operationalization, in the shortest possible time, of measures designed to improve, simplify and streamline procedures / processes / methodologies / tools and the functioning of IT platforms in all the different relevant areas;
- the subsequent close, periodic and continuous monitoring of the measures that are being implemented in the various areas, with consultation on their use, in practice, by the various actors involved (representatives of the industrial / business sectors, public agencies, etc.) in order to assess the situation over time considering the improvements that are being introduced, their effective suitability / feasibility, as well as the identification of relevant additional adjustments / improvements to be made, etc., from a perspective of continuous and dynamic improvement of these processes.



Given the complexity of the topics involved, the respective applicable (national and European) regulations, the associated operationalization mechanisms and platforms, its high technicality and significant number of actors directly engaged in these processes, we reinforce the greater relevance of this close, periodic and continuous monitoring and involvement of relevant stakeholders over time. We believe that, otherwise, the enormous potential of these simplification and improvement measures could become, in practical terms, seriously compromised / limited, thus resulting, in the end, in a significant reduction of the positive impacts that were achieved when compared to the anticipated benefits that could have been accomplished by this reform.

APQuímica

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*APQuímica is the Portuguese reference association for the Chemical, Petrochemical and Refining sector. It integrates more than 60 associate entities, including major industrial companies, SMEs, startups, universities, R&TD centres and other entities with relevant operation along their value chain.*

*APQuímica's EU Transparency Register n.º: 089396732826-79*

*The Chemical, Petrochemical and Refining sector in Portugal accounts for:*

- 11 billion of annual turnover
- 181 countries as the sector exports' destinations
- 1,6 billion of Gross Value Added (GVA)
- 52 000 direct and indirect jobs
- 12% of total Portuguese exports
- 1/5 of the total investment in innovation amongst the manufacturing industry

Source and additional information: [www.apquimica.pt](http://www.apquimica.pt) / [info@apquimica.pt](mailto:info@apquimica.pt)