

THE REALITIES OF PORTUGAL'S NEW WATER FRAMEWORK - ABREU ADVOGADOS

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The Water Framework Directive was transposed into Portuguese Law in December 2005 and further complemented by special legislation mostly in 2006 and 2007. However, recent events have shown that public awareness of the consequences of the new rules governing the management of water resources is severely lacking in Portugal.

The first of these was the public outcry when the recently-created River Basin Administration – with responsibilities including authorising and monitoring the use of water resources – started requesting information from citizens and companies to determine the amount of the fees due for their use of these resources.

The Water Resource Fee was clearly foreseen in the Water Framework Law (58/2005 of 29 December 2005), its purpose being to internalise the negative consequences not only of the simple use of water resources, thereby stimulating a rational and sustainable consumption, but also of the degradation of water quality, and thus favour less impactful uses of water resources. Yet despite the fact that the future existence of this fee was clear from the start, the delay in regulating it – the actual structure and amount of the Water Resource Fee was determined only in June 2008 – seems to have caused the subject to fade from the minds of those who will be affected by it. And now it has come back with a vengeance.

La recién fundada Administración de Cuencas Fluviales, órgano portugués con responsabilidad para la autorización y control del uso de recursos hidrológicos dentro del marco de las leyes relevantes que entraron en vigor entre 2005 y 2007, se encuentra en una situación de malestar debido a la inminente imposición de una tasa por sus servicios. Guilherme Mata da Silva, de Abreu Advogados, explica que, después de fuertes protestas por varios granjeros y municipios, el gobierno ha optado por posponer la fecha límite para la tramitación de las licencias necesarias, hasta el 31 de mayo de 2010.

As it became clear that the Water Resource Fee would constitute a hefty additional cost for certain activities, municipalities (many of which are responsible, directly or indirectly, for the abstraction and supply of water, as well as for the treatment of waste water) and farmers (some of the most intensive users of water resources), among other groups, started to protest fervently, even as to its constitutionality or to the convenience of creating additional costs within the context of a recession. However, the truth is that there was little or no opposition to the fee when it was originally laid down in the Water Framework Law.

Furthermore, while the specific model of the fee may be subject to debate, some change is inevitable in view of the principle of resource and environmental cost recovery contemplated in the Water Framework Directive.

The second event was the announcement by the Portuguese Government that it would extend the two-year grace period for obtaining the necessary permits for the use of water resources.

According to a provisional norm in the 2007 statute that governs the use of water resources, users without a valid permit can request one until 31 May 2009 without being subject to fines.

Incidentally, the River Basin Administration seem blissfully unaware of this rule and have applied fines in certain cases even though the original grace period has not yet lapsed. Such decisions are now starting to reach the courts, where they are being overturned, but most victims of this practice are uninformed about the possibility of challenging the fines.

Now the Portuguese Government is announcing the intention to extend the grace period until 31 May 2010, based on the fact that the delay in setting up the River Basin Administration prevented them from carrying out effective information campaigns aimed at ensuring the broadest possible compliance. While such concerns about educating citizens and companies are commendable, they may seem odd considering that most uses currently subject to authorisation have been so for over a decade.

These examples are signs of the large gap which continues to exist in Portugal between environmental regulations in paper and in practice. This is an issue that citizens and companies cannot afford to maintain for long, under penalty of realising only too late that environmental constraints might make their private or entrepreneurial projects financially untenable – in addition, of course, to environmentally unsustainable. Nevertheless, it is the Government's responsibility to close this gap which it so often contributed to creating through less than perfect lawmaking and inadequate disclosure.

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