

**Consideration regarding the new legal rule - Decree Law n. 197/2005 of November 8th-
concerning Environmental Impact Assessment (January 2006)**

The recent publication of Decree Law n. 197/2005 of November 8th, partially transposing Directive n. 2003/35/EC of the European Parliament and of the Council and introducing changes to ensure the selection of certain projects subject to Environmental Impact Assessment procedures, led this Council do consider some relevant aspects, namely in what concerns the strategic assessment of plans and programmes that still lack regulation at the national level.

What follows are four short notes about aspects that need to be considered due to their relevance for the issues at stake:

1. The definition of “**public concerned**” in article 2, item r) of the above-mentioned decree law, although representing a progress vis-à-vis previous versions, clearly mentions environmental non-governmental organizations but is still far from the intent of both the directive (article 3, n. 1) and the Aarhus Convention based on which it was developed (article 2, n. 5). In fact, the national transcription could limit the meaning of “public concerned”, except for the environmental non-governmental organizations, to the “*holders of subjective rights or legally protected interests*”.

2. This decree law strengthens the already existing trend to significantly reduce the “**public hearing**” mechanism of public participation processes. In addition, even in what concerns the “**public consultation**”, this decree law provides room for the tenderer to choose whether or not to consult the public in terms of the scope definition of environmental impact assessment (article 11, n. 5).

3. In the way it is formulated, the provision regarding *tacit approval* may incur the risk of becoming one of the most usual ways of granting authorization, using the silence of the competent authority rather than an explicit and founded decision. In addition, such tacit approval is by its own nature exceptional and legally controversial.

4. There is a significant omission regarding Chapter V-“**auditing and penalties**” -, and it lacks penalty measures for the non-fulfilment of the procedure in the public participation process by the competent public authorities.