

New rules on dredged sediment management introduced

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Legislative framework

Ministerial Decree 172/2016

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On September 6 2016 two new ministerial decrees regarding dredged sediment management were published in the *Official Gazette*:

- Ministerial Decree 172/2016 on the methods and technical standards for dredging operations in remediation sites of national interest; and
- Ministerial Decree 173/2016 establishing the procedures and technical criteria for the disposal of dredged materials at sea.

Legislative framework

Article 185(3) of Decree-Law 152/2006 on exclusions from waste legislation provides that:

"Without prejudice to obligations under other relevant Community legislation, sediments relocated inside surface waters for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts or land reclamation shall be excluded from the scope of Part Four of this Decree if it is proved that the sediments are non-hazardous pursuant Commission Decision 2000/532/EC of 3 May."

Ministerial Decree of February 5 1998 identifies non-hazardous waste that may be subject to simplified procedures for recovery. Point 12.1 of Annex I therein identifies the following recovery operations that may be conducted on dredged mud deriving from "dredging of lake bottoms, ship or irrigation canals and water courses (internal waters), cleaning of water basins":

- the construction of road embankments and foundations, after drying and possible sanitisation;
- the construction of banks and dikes, excluding works in direct or indirect contact with the marine environment, after drying and possible sanitisation; and
- the re-assessment of the morphometry of a riverbed after drying and possible sanitisation

Ministerial Decree 161/2012 regulates the terms and conditions under which excavated materials may be re-used as by-products and managed as non-waste. This regulation also applies to "lithoid material in general and all other possible granulometric fractions from excavations from the beds of surface water bodies and hydraulic networks, in flood plains, beaches, seas and lakes bottoms". On July 14 2016 the Council of Ministers approved a new regulation on uncontaminated soil and other naturally occurring materials (which will enter into force after its publication in the *Official Gazette*), which contains no rules on lithoid materials.

Article 39(13) of Decree-Law 205/2010 specifies that the notion of a 'by-product' also applies "to the material removed, exclusively for hydraulic security reasons, from the bed of rivers, lakes and creeks".

Article 5**bis** of Law 84/1994 contains rules concerning dredging operations at ports or coastal

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marine areas at sites of national interest. (1) Dredging operations at these sites that are not detrimental to site remediation may be conducted as part of a project approved by the competent authority. Under Paragraph 6 of Article 5*bis*, technical rules for the re-use of dredged materials will be set by Ministerial Decree 172/2016. Further, Paragraph 2(D) provides that, where values found in dredged materials are below the threshold set by the Ministerial Decree of June 8 2016, the relevant areas should be excluded from remediation sites of national interest. Under Paragraph 8, materials dredged outside sites of national interest may be disposed of at sea pursuant to Article 109 of Decree-Law 152/2006 or used for beach nourishment, even with spill, as part of an active submerged beach or the construction of infilling tanks or other coastal retaining port structures.

Article 109 of Decree-Law 152/2006 allows for the disposal at sea, under authorisation of the competent authority, of "excavated materials from marine or salty bottoms or emerged coastal soils". The authorisation will be issued according to Ministerial Decree 173/2016.

Ministerial Decree 172/2016

Article 5*bis* of Law 84/1994 addresses the dredging of marine coastal areas within sites of national interest and states that dredged materials may be:

- disposed of in the same body of water if they:
 - are similar to the sediment level of the site of origin;
 - are suitable for the destination site; and
 - pass the relevant ecotoxicity tests;
- re-used on land if pollutants contained therein do not exceed certain thresholds; or
- stored in coastal retaining tanks if they are non-hazardous.

Ministerial Decree 172/2016 allows for the concurrent application of various re-use procedures. Dredged materials will have different destinations depending on the concentration of pollutants found, while materials that fail to meet the minimum quality requirements will be managed as waste. The ministerial decree also highlights the priorities during dredging operations of remediation sites of national interest, namely:

- prevent or reduce as much as possible, environmental impact – in particular, significant and measurable environmental degradation; and
- have no effect on site remediation.

Dredging project

The key document for dredged sediment management of remediation sites of national interest is the dredging project, which determines the suitability of dredged materials to be:

- disposed of in the same body of water or used for:
 - beach nourishment;
 - coastline restoration; or
 - seabed improvement through capping activities;
- re-used on land or in areas with naturally saline groundwater; or
- stored in confined disposal facilities.

Further, the dredging project must contain:

- a description of the area to be dredged and, if necessary, a description of the re-use site;
- details of dredged sediment management methods, in accordance with Annex A and the related time schedule;
- details of methods and measures to mitigate any expected environmental effects, in accordance with Annex A;
- a monitoring plan, in accordance with Annex A;
- details of procedures to verify the dredged seabed;
- details of the infilling tanks or others coastal retaining structures to be built when necessary; and
- details of procedures for dredged sediment management and re-use on land pursuant to Article 5*bis*(2) of Law 84/1994.

Annex A

Annex A of Ministerial Decree 172/2016 provides technical rules and standards to be applied during dredging operations with reference to the Ministerial Decree of November 7 2008. With regard to dredging operations, the norm makes reference to 'conventional dredging' and 'environmental dredging', but provides no clear distinction between the two.

Ministerial Decree 173/2016

Article 5bis of Law 84/1994(8) concerns port areas outside sites of national interest and provides that:

"Materials dredged from the bottom of ports outside a S.I.N. [site of national interest], provided by Article 252 of Legislative Decree n. 152/2006 and subsequent amendments, may be immersed at sea, under authorization of the competent authority, pursuing Article 109, par. 2 of Legislative Decree n. 152/2006. Those materials may be otherwise used for beach nourishment, even with spill in the part of the active submerged beach, or for the construction of infilling tanks or others coastal retaining structures in ports pursuant the Port strategic plan or along the seaboard for the restoration of the coastline, under authorization of the competent regional authority provided by Article 21of Law n. 179/2002."

Ministerial Decree 173/2016 provides procedures and technical standards for the disposal at sea of excavated materials from the seabed, beach nourishment and filling in confined disposal facilities.

Disposal at sea of dredged materials

Disposal at sea is the deposition of materials excavated from the seabed or emerged coastal soils in areas that are more than three sea miles from the coastline or deeper than 200 metres.

Under Article 109(2) of Decree-Law 152/2006, regional authorities grant authorisation for the disposal at sea of materials excavated from the seabed or emerged coastal soils, except for operations in protected areas, for which the minister for the environment is the competent authority. In the case of operations subject to an environmental impact assessment, authorisation for the disposal of dredged material at sea will be issued by the competent authority. Disposal at sea can be authorised only if it is demonstrated that the materials excavated cannot be used for beach nourishment or filling in confined disposal facilities.

The competent authority will seek the opinion of other relevant authorities and adopt its final decision within 90 days from the request date. An application must be submitted with a document that describes the area to be excavated. The document must be completed pursuant to Annex 1 of Ministerial Decree 173/20016 and updated every 24 months. Authorisation will be valid for the excavation work for a maximum of 36 months. However, under certain conditions, the authority can extend authorisation for another 36 months. Authorisation may be modified, suspended or revoked if the operator fails to:

- comply with the authorisation's provisions; or
- ensure the operation's compatibility with environmental protection law.

The applicant for authorisation will conduct the classification and identification of management procedures and monitoring activities at its own expense.

Beach nourishment and filling in confined disposal facilities

According to the hierarchy established by Ministerial Decree 173/2016, beach nourishment and filling in confined disposal facilities should be preferred over the disposal of dredged materials at sea. 'Beach nourishment' is the process by which dredged materials are used to add sand to beaches in order to combat coastal erosion. A confined disposal facility is an area specifically designed for the containment of the dredged material. Beach nourishment and filling in confined disposal facilities will be authorised according to the procedure detailed in Annex A of Ministerial Decree 172/2016.

Exceptions

Article 1 of Ministerial Decree 173/2016 lists operations outside the scope of the regulation for which no authorisation is required, including:

- the movement of dredged material within a port and the movement of materials linked to the disposal of material at sea pursuant to Article 109 of Decree-Law 152/2006;
- the restoration of shorelines, meaning activities that take place within the same site according to a seasonal cycle (or after a storm) and consist of levelling surfaces by the shedding and redistribution of accumulated sediment that require the movement of less than 20 cubic metres of sediment per linear metre of beach; and
- the movement of sediments within a site linked to the disposal at sea of inert materials, inorganic geological material or artefacts, where environmentally compatible.

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Endnotes

(1) Sites of national interest are sites protected by law, for which the Ministry of the Environment is the competent authority for the management and remediation of environmental issues.

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