



Provisional Measure 1.710/98

05/09/1998

Provisional Measure N°. 1710 (“MP”) was published on August 10, 1998. By means of this MP, article 79-A was included in Law No. 9605 of February 12, 1998, which provides for criminal and administrative sanctions on any conduct that harms the environment.

This MP authorizes environment control regional agencies to sign commitment instruments with individuals or legal entities responsible for the building, setting-up, expansion and operation of actually or potentially polluting activities. The purpose of these commitment instruments is to allow individuals and legal entities to adapt their activities in order to conform with prevailing environmental rules, without the risk of being subject to the administrative penalties set out in Law No. 9605/98 during this adaptation period.

Enterprises that on March 30, 1998 were already built, set up, expanded or in operation must request in writing the environmental agencies authorization to sign these commitment instruments by December 31, 1998. The term of effectiveness of the commitment instrument, that is, the period the environment control agency grants the entrepreneur to adapt the enterprise to environment regulations under such instrument may vary from a minimum of 90 days to a maximum of 5 years, and may be extended for an equal period.

As from the request for signing of the commitment instrument, and within the time frame granted by the environment control agency, imposition and execution of all administrative penalties against the entrepreneur with regard to the irregularities provided for in the commitment instrument will be suspended.

These commitment instruments are not a novelty introduced by the MP. It has been a common practice in the last few years to sign commitments for adjustment or other commitment instruments with the environment control agencies with a view to establishing by mutual agreement the environment control measures to be adopted, and granting companies the time necessary to adopt these measures, which at times may require the best technology available and considerable funding.

The innovation in this MP resides in the fact that it included in Law N°. 9605/98 the option to sign commitment instruments, which specifically provide enterprises with the time frame necessary to adapt their activities to the strict requirements stipulated in law.

This adaptation period, granted by the MP, strengthens rather than weakens the effectiveness of Law N°. 9605/98, contrary to what is claimed by those who criticize it, who alleged that the MP changed the statutory nature of the law. In fact, it is widely known that Law N°. 9605/98 defines as a crime situations that occur quite often in the Brazilian industry, and should the law be strictly enforced, no activity in Brazil would be unaffected by its provisions. Therefore, two alternatives may be considered: either the law would not be fully and effectively enforced, in view of the absence of a properly dimensioned repressive structure, and would therefore be added to the list of unenforceable laws, or it would be strictly enforced through an unimaginable nationwide effort, which would reduce production activities to a fraction of those existing today, creating hundreds or even thousands of exemplary sentences.

Our intention here is certainly not to defend activities that are polluting or fail to conform to environmental regulations. However, one may not ignore the undisputed fact that many Brazilian companies do not have the environmental licenses required by law for all their production lines. It is also known that the operations of many companies have not yet fully met the standards that regulate the use of vegetal products, and due to their lack of documents and compliance with formal requirements, these companies may be subject to the same penalties imposed on companies that actually carry out activities to commercially develop products of a vegetal origin, irregularly. Furthermore, one must not forget that great part of the industry stores significant amounts of waste, which many times are not disposed of in full compliance with applicable regulations because of the small number of landfills and incinerators capable of safely disposing of this waste.

These types of conduct, which were listed on an exemplary basis, are subject to heavy penalties, including legal penalties that deprive persons of their freedom, namely imprisonment and confinement. Furthermore, all the situations described above and many others provided for by law also affect companies that have been conscious from an environmental standpoint, and which have traditionally protected environmental values, allocating funds for this purpose.



Law N°. 9605/98 has a clearly didactic orientation insofar as the strictness of its penalties not only seeks to provide an answer to demands made by environmental consciousness but also to accelerate this process of awareness. The examples above show that the law would end up by imposing penalties on situations that occur very often and companies that cannot be typified as environmentally irresponsible. For this reason, it is fair enough to grant companies a certain period, at the discretion of the technical agency, to adapt to the strict requirements imposed by the new law.

Instead of weakening the law, as alleged by its critics, the MP could even provide further support for enforcement of Law N°. 9605/98 by temporarily exempting from these administrative sanctions the production sources that are actually willing to conform to all formal environmental standards and requirements. To evidence that the MP could even provide further support for enforcement of Law N°. 9605/98, it will suffice that many companies sign commitment instruments with the controlling agencies and actually conform their activities to prevailing rules and regulations, as suggested in the MP. After all, this is the main objective of Law N°. 9605/98 and of course of all legal writings on environment protection.

Fonte: https://conjur.jumps.com.br/1998-set-05/provisional_measure_171098/