

PORTUGUESE LEGAL PROCEDURES REGARDING ENVIRONMENTAL IMPACT ASSESSMENT ON A TRANSBOUNDARY CONTEXT

Brief memorandum

The Portuguese legal regime on Environmental Impact Assessment (EIA) has been initially established by Law Decree n. ° 186/90 of 6 June, which transposed into national law the European Directive n. ° 85/337/EEC, of 27 June, on the assessment of the effects of certain public and private projects on the environment.

In 1997, the European Union (EU) became a Party to the Espoo Convention. In order to include the provisions of the Convention into Community law, the European Council approved Directive 97/11/EC amending Directive 85/337/EEC.

Later on, also Portugal, as a sovereign state, has approved, into national law, the Espoo Convention through Decree n. ° 59/99 of 17 December.

In this sense, and aiming to adjust its national EIA regime to the new legal framework, Portugal approved, in 2000, a new legal act, Law Decree n.º 69/2000 of 3 June. This legal act, which repealed the previous Law Decree n. ° 186/90, establishes specific provisions concerning EIA in a transboundary context, setting the obligation to notify and consult any Party that may be affected by any project likely to have a significant adverse environmental impact across borders.

In 2005, Law Decree n. ° 69/2000 was amended and republished by Law Decree n. ° 197/2005 of 8 November, partially transposing Directive n. 2003/35/EC, of 26 May, which amends Directive n. ° 85/337/EEC.

The Portuguese EIA legal regime also includes Order n.º 1257/2005, of 2 December, establishing the applicable fees to the EIA procedures and Order n.º 330/2001, of 2 April, setting technical guidelines for environmental impact studies.

By establishing this legal framework, Portugal has guaranteed the implementation of the Espoo Convention provisions, to which the country has directly committed itself, by approving the Convention into national law, and indirectly while transposing the European Community law.

Given its geographical context, Portugal only has inland borders with one Member State, Spain. Both countries have shared a tradition on mutual communication whenever a project is being planned for an area near the national borders.

Every time the Portuguese authorities are evaluating a project likely to have significant effects on the environment across the Spanish borders, a notification is sent to the Spanish authorities, as soon as the Portuguese public is informed.

The notification includes the following elements:

- A description of the project, together with any available information on its possible transboundary impact;
- Information on the nature of the decision, which may be taken by the authorities.

After this notification, Spain has a 15 days period to declare whether it wishes to participate in the EIA procedure or not. In case it intends to participate, Portugal sends to the competent national authorities all the information regarding the said procedure, namely:

- A description of the project comprising information on the site, design and size of the project
- The environmental impact study which includes:
 - a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
 - the data required to identify and assess the main effects which the project is likely to have on the environment,
 - an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects,
- A non-technical summary of the information mentioned in the previous indents.

The Spanish authorities are then responsible for guaranteeing the participation of all the entities and the public concerned.

The results of such participation shall be forward to the Portuguese authorities, within the legal deadlines in order to be taken into consideration in the development consent procedure.