

**REPORT OF PORTUGAL ON THE  
IMPLEMENTATION OF THE CONVENTION ON  
ENVIRONMENTAL IMPACT ASSESSMENT IN A  
TRANSBOUNDARY CONTEXT**

in the period 2006–2009

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# PART ONE – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

*In this part, please provide the information requested, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should describe the framework for your country's implementation, and not experience in the application of the Convention.*

## Article 2

### General Provisions

#### DOMESTIC IMPLEMENTATION OF THE CONVENTION

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (art. 2.2).*

The Portuguese legal regime on EIA has been initially established by Law Decree n.º 186/90 of 6 June, which transposed into national law the European Directive n.º 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 n.º 97/11/EC amending Directive n.º 85/337/EEC.

Later on, also Portugal, as a sovereign state, has approved, into national law, the Espoo Convention through Decree n.º 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 This legal act, which repealed the previous Law Decree n.º 186/90, establishes specific provisions concerning EIA in a transboundary context, setting the obligation to notify and consult any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.º 69/2000 was amended and republished by Law Decree n.º 197/2005 of 8 November, partially transposing Directive n.º 2003/35/EC, of 26 May, which amends Directive n.º 85/337/EEC and Directive n.º 97/11/EC.

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 the documentation submitted in the scoping, EIA and post assessment phases.

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.

2. *Indicate any further measures to implement the provisions of the Convention that are planned for the near future.*

No further measures are planned for the near future.

#### TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE

3. *Describe your country's national and transboundary environmental impact assessment (EIA) procedures and authorities (art. 2.2):*

- a. *Describe the EIA procedure in your country and indicate which steps of the EIA procedure include public participation;*

In Portugal, EIA follows a multi-stage procedure as established by the European Community law, to be undertaken prior to the development of certain projects, which may entail significant environmental impacts.

The EIA procedure begins with the submission, by the proponent, of the environmental impact study (EIS), along with a preliminary design project, to the licensing authority.

However, a scoping phase may take place previously. It consists on a non-mandatory step, which the proponent may opt to carry out before submitting the whole project to EIA. This scoping phase aims to identify and select the most important aspects of the project in terms of its potential environmental impacts and by this way determining the content and extent of the matters, which should be covered in the EIS. Although optional, this stage is important in order to facilitate and improve the EIA process. The proponent submits a proposal for scope definition to the EIA authority that shall include a brief description of the project and its location. The EIA authority then appoints an Assessment Committee that will analyse and deliberate over the scoping proposal. In this stage a 20 days public consultation period may take place following the proponent's suggestion or the decision of the Assessment Committee. The Committee's deliberation shall be issued within 30 days defining the scope of the environmental information to be submitted in a subsequent phase and the terms of reference for the environmental studies to be undertaken. This scoping deliberation will then become binding either to the proponent either to the Assessment Committee.

After submission of the EIS, the licensing authority will forward the process to the EIA authority that will appoint an Assessment Committee. This Committee will, within 30 days, pronounce itself over the conformity of the EIS with the legal and technical guidelines established and the scoping deliberation, in case this preliminary phase has taken place.

If the Committee finds the EIS inadequate to provide a well-based technical analysis of the project, a declaration of unconformity is issued and the EIA procedure is concluded. Nevertheless, the proponent has the right to contest such decision, presenting a written statement with the respective allegations.

If otherwise the Committee considers the EIS in accordance with the legal and technical requirements a declaration of conformity is issued despite an eventual request for additional information.

After this declaration, the EIA authority has 15 days to begin the public hearing phase that will happen in a period of 30 to 50 days, for projects listed under Annex I, and 20 to 40 days, for projects listed under Annex II.

After the conclusion of the public hearing phase, the EIA authority must forward a report of the main findings to the Assessment Committee. This report will be integrated in the Committee's opinion, which will be issued to the EIA authority.

Based on the Committee's opinion, the EIA authority shall draw up a proposal for the Environmental Impact Statement, and forward it to the Ministry responsible for the environmental matters.

The Minister has then 15 days to issue the Environmental Impact Statement. This decision is binding and in case it is unfavourable the project can not be developed. In case of a favourable statement, conditions for the project implementation may be set out (project conditionally approved) or not (project approved without restraints).

When the EIA occurs in a phase of prior study or ante-project, a post assessment procedure must take place before the project implementation. This procedure consists basically in verifying if the implementation of the project complies with the conditions established by the Environmental Impact Statement.

As occurs in the EIA procedure also the post assessment begins with the submission, by the proponent, of a report regarding the environmental conformity of the final design project. The Assessment Committee appointed has a 40 days period to issued its opinion to the EIA authority. In this stage of the process the concerned public can also comment the project and the results of such participation will be taken into account in the final decision, issued by the EIA authority, no more than 5 days after the Assessment Committee has forward its opinion.

After the development of the project, a post-project analysis may be carried out including auditing and monitoring activities. This occurs during the construction, operation and deactivation phases of the projects.

- b. Describe how the different steps of the transboundary EIA procedure set out in the Convention fit into your country's national EIA procedure;*

Every time the Portuguese authorities are evaluating a project likely to have significant transboundary impacts, the EIA authority notifies the affected state, as soon as the Portuguese public is informed. The notification is sent through the competent services of the foreign affairs office and shall include the following elements:

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

After this notification, the affected State 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:

1. A description of the project comprising information on the site, design and size of the project

2. The environmental impact study which includes:

- 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 description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- monitoring programmes.

3. A non-technical summary of the information mentioned in the previous indents.

The results of such participation shall be forward to the Portuguese authorities, within the legal deadlines in order to be taken into consideration by the Assessment Committee in its technical opinion. As soon as the EIA procedure has ended, the competent services of the Ministry of Foreign Affairs shall forward the Environmental Impact Statement as well as the final licensing decision, to the competent authorities of the affected State.

Whenever the Portuguese State is notify by another Member State that a project, likely to have significant environmental impacts in national territory, is going to be developed, the EIA authority promotes a public hearing procedure disclosing all the information submitted by the State of origin. The outcome of such public consultation will be forward to the national competent authorities in order to be considered. The national EIA authority will make available to the public all the information received from the State of origin regarding the final decision of the EIA procedure.

Correspondence between the national EIA legal provisions and the Convention requirements:

- Article 33 of Law Decree 197/2005: Article 3 of the Convention;
- Article 34, n.º 1 of Law Decree 197/2005: Article 4, n.º 1; Article 4, n.º 2, 1st statement and Article 5 of the Convention;
- Article 34, n.º 2 of Law Decree 197/2005: Article 6, n.º 1 of the Convention;
- Article 34, n.º 3 of Law Decree 197/2005: Article 6, n.º 2 of the Convention;
- Article 35, n.º 1 and n.º 2 of Law Decree 197/2005: Article 4, n.º 2, 2nd statement of the Convention.

- c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure (notification, consultation between Parties, public participation, etc.). Also list the authorities responsible for the domestic EIA procedure, if they are different;*

The different entities and authorities involved in the domestic EIA procedure are the following:

- Proponent: has the initiative to develop the project and is responsible for the submission of all the information necessary for the EIA procedure, namely the EIS, the project description, and the non-technical summary;
- Licensing authority: responsible for sending to the EIA authority all the relevant information and data submitted by the proponent and for communicating and disclosing to the public the final decision on the licensing of the project
- EIA authority: responsible for coordinating the EIA procedure (scoping phase, EIA, post assessment phase and post-project analysis), for appointing the Assessment Committee, for promoting and ensuring the public hearing phase and for analysing the opinion submitted by the Assessment Committee and proposing a draft

version of the Environmental Impact Statement to the Ministry of the Environmental;

- Assessment Committee: responsible for the technical analysis of the proposal for scope definition, of the EIS and the post assessment report.
- Ministry responsible for the environmental matters, who issues the Environmental Impact Statement.

These entities and their responsibilities are the same for transboundary EIA procedures. However the communication between the EIA national authority and the environmental authorities of the affected State is made through the competent services of the foreign affairs office.

- d. *Is there one authority in your country that collects information on all the transboundary EIA cases? If so, name it. If not, does your country intend to establish such an authority?*

There is not a specific authority for transboundary EIA cases. All the information regarding EIA is collected and managed by the EIA national authority - the Portuguese Agency for the Environment (APA - Agência Portuguesa do Ambiente). However, the Ministry of Foreign Affairs and Cooperation participates in all the transboundary EIA cases.

4. *Does your country have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

Given its geographical context, Portugal only has inland borders with one EU Member State, Spain. There are no specific provisions for joint cross-border projects.

There is however a cooperation protocol signed on 19<sup>th</sup> February 2008 between Portugal and Spain, regarding environmental assessment plans, programmes and projects likely to have significant transboundary effects.

#### IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING ENVIRONMENTAL IMPACT ASSESSMENT UNDER THE CONVENTION

5. *Is appendix I to the Convention transposed into your country's national legislation? Does your country's legislation already cover the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7), and if so, how? Please describe any differences between the national list and appendix I to the Convention. Please explain how your country interprets terms such as "large" and "major" used in appendix I (including in items 4, 8, 11, 14, 16, 17 and, as appropriate, 22).*

The national legal EIA regime lists the types of projects subjected to EIA according to the European EIA Directive, which includes all the activities listed in the Appendix of the second amendment to the Convention except for the "offshore hydrocarbon production".

The national legal EIA regime does not use the terms "large" and "major". These have been replaced through thresholds above which EIA is obligatory.

6. *Please describe:*

- a. *The legislation and, where appropriate, the procedures your country would apply to determine that an "activity", or a change to an activity, falls within the scope of appendix I (art. 2.3), or that an activity not listed should be treated as if it were (art. 2.5);*

Any project within the scope of the national legal EIA regime is considered within the scope of Appendix I if, due to its proximity to the border, may entail significant transboundary impacts.

Article 1, n.º 3 of the Law Decree 197/2005 establishes that an EIA procedure shall be mandatory to all the projects listed under Annex I or II of this legal act.

The licensing authority may, on a case-by-case examination, decide whether a project included in any of the categories foreseen in Annex I, but which does not reach the minimum thresholds provided, shall be subjected to EIA procedure or not, according to the selection criteria established under Annex V.

Despite its inclusion or not in any of the categories defined under Annexes I and II, any project may be subjected to EIA procedure, by means of a joint decision from the Minister responsible for the Environment and the Minister responsible in the field of the project, if given its location, dimension or nature, and in accordance with the criteria foreseen in Annex V of the Law Decree 197/2005, the said project may entail significant environmental impacts.

This case-by-case analysis also applies to any project with transboundary impacts.

The selection criteria under Annex V of the Law Decree 197/2005 correspond to the ones provided in Annex III of the European EIA Directive.

- b. How your country conducts transboundary EIA cooperation (through points of contact, through joint bodies or within bilateral or multilateral agreements);*

The 2008 cooperation protocol defines the practical requirements for the EIA procedures likely to have significant transboundary effects.

Also the bilateral commission established within the framework of the Albufeira Convention between Portugal and Spain (which applies to projects affecting the waters of the Portuguese-Spanish hydrographical catchments) is a good example of a well succeeded cooperation.

- c. How a change to an activity is considered as a “major” change;*

The national legal EIA regime does not define "major change" only providing for a definition of "change" as follows: any change in the dimension, location, technological or operational profile of a project which may have environmental effects not yet evaluated.

- d. How such an activity, or such a change to an activity, is considered “likely” to have a “significant” adverse transboundary impact (art. 2.3 and 2.5, and the Guidelines in appendix III).*

Any change to or extension of projects listed in Annex I shall be submitted to EIA procedure whenever such a change or extension in itself meets the thresholds, if any, set out, or, even if such thresholds are not met, significant negative impacts are expectable.

Also any change to or extension of projects listed in Annex II shall be submitted to EIA procedure whenever such change or extension may cause significant negative impacts.

This applies to both domestic and transboundary EIA procedures.

The screening of projects is made taking into account the criteria defined in Annex V of the Law Decree 197/2005 that transposes Annex III of the European EIA Directive, which is similar to the appendix III of the Espoo Convention.

#### PUBLIC PARTICIPATION

7. *Does your country have its own definition of “the public” in national legislation, compared to article 1(x)? How does your country, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your country’s public as required in article 2, paragraph 6?*

The Law Decree 197/2005 in Article 2 sets the definition for "public" and "public concerned" as follows:

- public: one or more natural or legal persons and their associations, organisations or groups;
- public concerned: the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures, namely, environmental non-governmental organisations.

The affected State shall promote the public participation according to its domestic EIA legal regime.

### Article 3

#### *Notification*

#### QUESTIONS TO PARTY OF ORIGIN

8. *Describe how your country determines when to send the notification to the affected Party, which is to occur “as early as possible and no later than when informing its own public”? At what stage in the EIA procedure does your country usually notify the affected Party (art. 3.1)*

Every time the Portuguese authorities are evaluating a project likely to have significant transboundary impacts, the EIA authority notifies the affected State, as soon as the Portuguese public is informed.

9. *Does your country provide any information to supplement that required by article 3, paragraph 2?*

The notification includes the following elements:

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

Further information is provided if the affected Party declares its intention to participate in the EIA procedure.

10. *Does your country use the format for notification (as decided by the first meeting of the Parties, decision I/4, in document ECE /MP.EIA/2)? If not, in what format does your country normally present the notification?*

The notification does not use this format , but the information provided is quite similar.

11. *Describe the criteria your country uses to determine the time frame for the response to the notification from the affected Party (art. 3.3, “within the time specified in the*



*notification”)? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how does your country react?*

Law Decree 197/2005 in Article 33º, n.º 2, sets a 15 days period, after the notification is sent, for the affected State to declare whether it wishes to participate in the EIA procedure or not.

However, the 2008 Protocol of Cooperation between Portugal and Spain enlarges this period to a maximum limit of 30 days.

If Spain does not answer the notification the EIA will go on within the usual domestic procedure.

There is some flexibility though if the affected Party requests an extension of this period.

12. *Describe when your country provides relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in article 3, paragraph 5. Already with the notification, or later in the procedure?*

This information is provided along with the notification. All the remaining documents and detailed data regarding the procedure are sent to the competent national authorities of the affected State as soon as the State declares formally its intention to participate in the EIA procedure. Such information includes:

1. A description of the project comprising information on the site, design and size of the project
2. The environmental impact study which includes:
  - 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 description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
  - monitoring programmes.
3. A non-technical summary of the information mentioned in the previous indents.

13. *How does your country determine whether it should request information from the affected Party (art. 3.6)? When does your country normally request information from the affected Party? What kind of information does your country normally request? How does your country determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (art. 3.6)?*

As provided in Article 7, nº 4 of the European EIA Directive the States concerned shall enter into consultations regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.

14. *Please describe:*

- a. *How your country cooperates with the authorities of the affected Party on public participation (art. 3.8), taking into account that the Party of origin and affected Party are both responsible;*

According to the 2008 Protocol of Cooperation between Portugal and Spain, the affected Party is the main responsible for promoting public participation in its national territory and according to its domestic EIA legal regime.

However, as provided in Article 7, n° 3 of the European EIA Directive the States concerned, each insofar as it is concerned, shall :

- arrange for the information on the EIA procedure to be made available, within a reasonable time, to the authorities and the public concerned in the territory of the affected State;
- ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied.

- b. *How your country identifies, in cooperation with the affected Party, the “public” in the affected area;*

According to the 2008 Protocol of Cooperation between Portugal and Spain, the affected Party is the main responsible for promoting public participation in its national territory and according to its domestic EIA legal regime.

- c. *How the public in the affected Party is notified (what kinds of media, etc are usually used). What is normally the content of the public notification?;*

According to the 2008 Protocol of Cooperation between Portugal and Spain, the affected Party is the main responsible for promoting public participation in its national territory and according to its domestic EIA legal regime.

- d. *Whether the notification to the public of the affected Party has the same content as the notification to your country’s public. If not, describe why not. At what stage in the EIA procedure does your country normally notify the public of the affected Party?*

According to the 2008 Protocol of Cooperation between Portugal and Spain, the affected Party is the main responsible for promoting public participation in its national territory and according to its domestic EIA legal regime.

15. *Does your country make use of contact points for the purposes of notification as decided at the first meeting of Parties (ECE/MP.EIA/2, decision I/3), and as listed on the Convention website ([http://www.unece.org/env/eia/points\\_of\\_contact.htm](http://www.unece.org/env/eia/points_of_contact.htm))?*

Usually the points of contact aren't used because the notification is always sent through the Ministry of Foreign Affairs.

According to the institutional arrangements set by the 2008 Protocol of Cooperation between Portugal and Spain, official communications between the two states are made through their Ministries of Foreign Affairs.

However the Portuguese Environment Agency is the competent authority to facilitate consultations and exchanges of information in transboundary EIA procedures.

Any cross-border communication is made known by e-mail to the respective authorities.

Competent authorities hold meetings every six months for analysis of institutional and procedural aspects.

## QUESTIONS TO AFFECTED PARTY

16. *Describe the process of how your country decides whether or not to participate in the EIA procedure (art. 3.3)? Who participates in the decision-making, e.g. central authorities, local competent authorities, the public, environmental authorities? Describe the criteria or reasons your country uses to decide.*

Having analysed the documentation submitted by another Member State on the characteristics of the project and its environmental impacts in national territory, EIA authority decides whether or not to participate in the EIA procedure. The EIA authority may also contact other authorities concerned.

The criteria used for this decision consist mainly in the significance of the impacts foreseen in national territory.

17. *When the Party of origin requests your country to provide information relating to the potentially affected environment, how does your country determine what is “reasonably obtainable” information to include in its response? Describe the procedures and, where appropriate, the legislation your country that would apply in determining the meaning of “promptly” in the context of responding to a request for information (art. 3.6)*

Such concepts will depend on the scope and characteristics of the project.

18. *Please describe:*

a. *How your country cooperates with the authorities of the Party of origin on public participation (art. 3.8), taking into account that the Party of origin and affected Party are both responsible;*

According to the 2008 Protocol of Cooperation between Portugal and Spain, the Party of origin is the main responsible for promoting public participation in its national territory and according to its domestic EIA legal regime.

b. *How your country identifies the “public” in the affected area;*

The Law Decree 197/2005 in Article 2 sets the definition for "public" and "public concerned" as follows:

- public: one or more natural or legal persons and their associations, organisations or groups;

- public concerned: the public affected or likely to be affected by, or having an interest in,

the environmental decision-making procedures, namely, environmental non-governmental organisations.

The Party of Origin shall promote the public participation according to its domestic EIA legal regime.

c. *How the public is notified (e.g. what kinds of media, etc., are usually used). What is normally the content of the public notification?;*

d. *At what stage in the EIA procedure does your country normally notify its public?*

- During the scoping phase (non-mandatory step)

- After the declaration of conformity is issued, the EIA authority has 15 days to begin the public hearing phase that will happen in a period of 30 to 50 days, for projects listed under Annex I, and 20 to 40 days, for projects listed under Annex II.
- During the post assessment procedure (before the project implementation).

## Article 4

### *Preparation of the environmental impact assessment documentation*

#### QUESTIONS TO PARTY OF ORIGIN

19. *What is the legal requirement for the minimum content of the EIA documentation (art. 4.1, appendix II)?*

The EIA documentation must include:

1. A description of the project comprising information on the site, design and size of the project
  2. The environmental impact study which includes:
    - 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 description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
    - monitoring programmes.
  3. A non-technical summary of the information mentioned in the previous indents.
20. *Describe your country's procedures, if any, for determining the content of the EIA documentation on a case-by-case basis (scoping procedure) (art. 4.1).*

The content of the EIA documentation must be in accordance with the technical guidelines set by Order n.º 330/2001.

However, in case a scoping procedure takes place previously the scope of the environmental information to be submitted in the EIA documentation will be specifically established in this phase as well as the terms of reference for the environmental studies to be undertaken.

21. *How does your country identify "reasonable alternatives" in accordance with appendix II, paragraph (b)?*

This is decided on a case-by-case analysis and it depends on the technical characteristics of the project, its location and dimension, as well as the environmental, social and economical characteristics of the area concerned.

22. *How does your country identify "the environment that is likely to be affected by the proposed activity and its alternatives" in accordance to appendix II, paragraph (c), and how does it define "impact" in accordance with article 1(vii)?*

This is decided on a case-by-case analysis and it depends on the technical characteristics of the project, its location and dimension, as well as the environmental, social and economical characteristics of the area concerned.

23. *Does your country give the affected Party all of the EIA documentation (art. 4.2)? If not, which parts of the documentation does your country provide?*

The Portuguese authorities send all the information and data concerning the EIA procedure to the affected Party.

24. *How does your country cooperate with the authorities of the affected Party on distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the Party of origin and affected Party are both responsible? How does the competent authority in your country (as the Party of origin) deal with the comments (art. 4.2)?*

According to the 2008 Protocol of Cooperation between Portugal and Spain, the Party of origin is the main responsible for promoting the public participation in its national territory and according to its domestic EIA legal regime.

The communication process is made through the competent services of the Ministry for Foreign Affairs.

The comments received from the affected Party are handled in the same way that the comments received from the national public. A report with the main findings will be made by the EIA authority and analysed by the Assessment Committee, which will integrate it in its opinion trying to give an answer to all the concerns exposed.

25. *Describe the procedures and, where appropriate, the legislation that define the time frame for comments provided “within a reasonable time before the final decision” (art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how does your country react?*

The general criteria is to use the same time frame than in the national procedure, but with some flexibility.

However, the 2008 Protocol of Cooperation between Portugal and Spain establishes a 3 month period for a response. There is also some flexibility if the affected Party requests an extension of this deadline.

26. *What material does your country provide, together with the affected Party, to the public of the affected Party?*

Although the affected Party is the main responsible for promoting the public participation in its national territory, according to its domestic EIA legal regime, all the information and data concerning the EIA procedure, which is made available to the Portuguese public, is also available to the public of the affected State.

27. *Does your country initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?*

The public of the affected Party may participate in our public hearing phase whenever such public is considered as “public concerned”, in the same terms applicable to Portuguese natural or legal persons.

#### QUESTIONS TO AFFECTED PARTY

28. *Describe the procedures and, where appropriate, the legislation your country would apply to determine the meaning of the words “within a reasonable time before the final decision”, this being the time frame for comments (art. 4.2)?*

The 2008 Protocol of Cooperation between Portugal and Spain establishes a 3 month period for a response. There is some flexibility though if the affected Party requests an extension of this deadline.

29. *How does your country cooperate with the authorities of the Party of origin on the distribution of the EIA documentation and the submission of comments (art. 4.2), taking into account that the Party of origin and affected Party are both responsible?*

According to the 2008 Protocol of Cooperation between Portugal and Spain, the Party of origin is the main responsible for promoting public participation in its national territory and according to its domestic EIA legal regime.

30. *Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the affected Party, with the legislation of the Party of origin, with ad hoc procedures, or with bilateral or multilateral agreements?*

According to the 2008 Protocol of Cooperation between Portugal and Spain, the affected Party is the main responsible for promoting public participation in its national territory and according to its domestic EIA legal regime.

## **Article 5**

### ***Consultations***

#### **QUESTIONS TO PARTY OF ORIGIN**

31. *At which step of the EIA procedure does the consultation in accordance with article 5 generally take place? Describe the procedures and, where appropriate, the legislation your country would apply to determine the meaning of “undue delay”, with regard to the timing of the entry into consultation? Does your country normally set the duration for consultations beforehand? If there seems to be no need for consultation, how does your country determine not to carry out consultations?*

The EIA authority notifies the affected State, as soon as the Portuguese public is informed, that is after the Assessment Committee issues the declaration of conformity for the EIS submitted. All the EIA procedures, domestic or in a transboundary context, include a period for consultation of the concerned authorities and public participation, subjected to the following timeframes: 30 to 50 days, for projects listed under Annex I, and in a period of 20 to 40 days, for projects listed under Annex II.

32. *On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, exchange of written communications?*

The level for consultation depends on the scope and characteristics of the project. Consultations are normally made by exchange of written communications, through the Ministry of Foreign Affairs.

#### **QUESTIONS TO AFFECTED PARTY**

33. *On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means does your country usually communicate in consultations, for example by meeting or by the exchange of written communications? How does your country indicate if there is no need for consultations?*

The level for consultation depends on the scope and characteristics of the project. Consultations are normally made by exchange of written communications, through the Ministry of Foreign Affairs.

## Article 6

### *Final decision*

#### QUESTIONS TO PARTY OF ORIGIN

34. *For each type of activity listed in appendix I, identify what is regarded as the “final decision” to authorize or undertake a proposed activity (art. 6 in conjunction with art. 2.3); also provide the term used in the national legislation in the original language. Do all projects listed in appendix I require such a decision?*

The EIA final decision corresponds to the Environmental Impact Statement to be issued by the Ministry responsible for the environmental matters, based on the proposal submitted by the EIA authority. All the projects listed in Annexes I and II of the Law Decree 197/2005 require such decision. As mentioned above the projects included in Annex I correspond to the projects listed in Appendix I to the Convention.

35. *How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity (art. 6.1)?*

The final EIA decision is binding and in case it is unfavourable the project can not be developed. In case of a favourable statement, conditions for the project implementation may be set out (project conditionally approved) or not (project approved without restrains).

36. *Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and the public in your country (art. 6.1)?*

Yes

37. *How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (art. 6.2)*

As soon as the EIA procedure has ended, the competent services of the Ministry of Foreign Affairs shall forward the Environmental Impact Statement as well as the final licensing decision, to the competent authorities of the affected State. The EI Statement contains all the reasons and considerations, which have based the decision.

38. *If additional information becomes available according to article 6, paragraph 3, before the activity commences, how does your country consult with the affected Party? If need be, can the decision be revised? (art. 6.3)*

Yes

## Article 7

### *Post-Project Analysis*

39. *How does your country determine whether it should request a post-project analysis to be carried out (art. 7.1)?*

When the EIA occurs in a phase of prior study or ante-project, a post assessment procedure must take place before the project implementation. This procedure consists basically in verifying if the implementation of the project complies with the conditions established by the Environmental Impact Statement.

As occurs in the EIA procedure also the post assessment begins with the submission, by the proponent, of a report regarding the environmental conformity of the final design project.

The Assessment Committee appointed has a 40 days period to issued its opinion to the EIA authority. In this stage of the process the concerned public can also comment the project and the results of such participation will be taken into account in the final decision, issued by the EIA authority, no more than 5 days after the Assessment Committee has forward its opinion.

After the development of the project, a post-project analysis may be carried out including auditing and monitoring activities. This occurs during the construction, operation and deactivation phases of the projects.

40. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how does your country inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to article 7, paragraph 2?*

This consultation process will be carried out in the same terms as the consultation made within the scope of the EIA procedure.

## **Article 8**

### ***Bilateral and multilateral agreements***

41. *Does your country have any bilateral or multilateral agreements based on the Convention (art. 8, appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

The 1998 Albufeira Convention between Portugal and Spain regarding the the Protection and Sustainable Use of the Waters of the Portuguese-Spanish Hydrographical Catchments which came into force in January 2000.

This Convention aims at:

- searching a balance between protecting the environment and the use of the water resources necessary for the sustainable development of both countries;
- coordinating efforts for a better management of the water resources in Spanish-Portuguese river basins;
- establishing direct links and efficient procedures for dealing with extreme events, such as floods and droughts.

On 19<sup>th</sup> February 2008 a protocol of collaboration was signed between Portugal and Spain, regarding environmental assessment plans, programmes and projects likely to have significant transboundary effects.

42. *Has your country established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

As a result of the Albufeira Convention, a better coordination between Portugal and Spain was achieved and is actively in place, being regulated by the two peer bodies created by the agreement: the Conference of the Parties, at a ministerial level, and the Commission for the Implementation and Development of the Agreement, at a technical level.

## **Article 9**

### ***Research programmes***

43. *Are you aware of any specific research in relation to the items mentioned in article 9 in your country? If so, describe it briefly.*



No information on any specific research within the items mentioned in article 9 of the Convention.

## **Ratification of the amendments to the Convention and of the Protocol on Strategic Environmental Assessment**

44. *If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Preparatory work is almost completed so we intend to ratify the first amendment to the Convention very soon.

45. *If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Preparatory work is almost completed so we intend to ratify the second amendment to the Convention very soon.

46. *If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?*

The ratification process is still under consultation with stakeholders.

## **PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2006–2009**

*Please report on your country's practical experiences of applying the Convention (not your country's procedures described in part one), whether as Party of origin or affected Party. The focus here is on identifying good practices as well as difficulties Parties have encountered in applying the Convention in practice; the goal is to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve its application.*

### **CASES DURING THE PERIOD 2006–2009**

47. *Does your country's national administration have information on the transboundary EIA procedures that were under way during the period? If so, please list these procedures, clearly identifying for each whether your country was the Party of origin or the affected Party. If your country does not have any experience of applying the Convention, why not?*

Projects in which Portugal is the affected Party:

- High speed train connection between Madrid – Lisbon - Porto. Corridor between Elvas and Badajoz
- High speed train connection between Madrid – Lisbon - Porto. Corridor between Almeida and Salamanca
- 400kV power line Puebla de Guzmán (Huelva)-Portuguese border.
- Construction of an oil refinery in Balboa, Extremadura (Badajoz).
- Wind farm in the Municipal District of Valverde del Fresno (Cáceres).

Projects in which Portugal is the Party of origin:

- Hydroelectric use of Bemposta, in the International Douro River – reinforcement of Power.
- High speed train connection between between Madrid – Lisbon - Porto. Corridor between Elvas and Badajoz - section Elvas/Caia.
- Tavira Substation Project and associated RNT Lines, including new link with the Spanish Electricity Supply System.

48. *Does your country object to the above list of transboundary EIA procedures being included in a compilation of such procedures to be made available on the website of the Convention? (Indicate “yes” if you object.)*

No, we do not object.

49. *Are there projects other than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.*

No

50. *Provide information on the average duration of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

No information available.

#### EXPERIENCE OF THE TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE IN 2006–2009

51. *If your country has had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

In Portugal, EIA has proved to be a preventive and decisive tool in the pursuit of a sustainable development policy, contributing effectively to improve the quality of life.

In this sense, the Convention has definitely provided for a stronger and closer cooperation between the countries, supporting the prevention, reduction or control of possible significant transboundary environmental impacts

During the last years cooperation between Portugal and Spain on transboundary EIA procedures has improved significantly with very well succeeded cases such as the high speed train connection between Elvas and Badajoz and the Hydroelectric use of Bemposta, in the International Douro River.

52. *How has your country interpreted in practice the various terms used in the Convention, and what criteria has your country used to do this? Key terms include the following: “major change” (art. 1 (v)), “a reasonable time” (art. 3.2(c), art. 4.2), “promptly” (art. 3.6) and “a reasonable time frame” (art. 5). (Do not provide references to answers to earlier questions 6 (b), 11, 13, 25 and 31.) If your country experiences substantial difficulties interpreting particular terms, does your country work together with other Parties to find solutions? If not, how does your country overcome the problem?*

No substantial difficulties have been experienced.

53. *Please share with other Parties your country’s experience of using the Convention in practice. In response to each of the questions below, either provide one or two practical examples or describe your country’s general experience. You might also include examples of “lessons learned” in order to help others.*

a. *How in practice has your country identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?;*

This is made through a case-by-case analysis and it depends on the scope and characteristics of the project and of the affected area.

- b. *Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How does your country determine how much information to include in the EIA documentation?;*

The 2008 Protocol of cooperation has established that a separate chapter has to be submitted by the developer, containing the information on the transboundary effects, translated into the language of the affected Party.

- c. *What methodology does your country use in impact assessment in the (transboundary) EIA procedure (e.g. impact prediction methods and methods to compare alternatives)?;*

There is no record on the use of specific methodologies for transboundary EIA.

- d. *Translation is not addressed in the Convention. How has your country addressed the question of translation? What does your country usually translate? What difficulties has your country experienced relating to translation and interpretation, and what solutions has your country applied?;*

The 2008 Protocol of cooperation has established that a separate chapter has to be submitted by the developer, containing the information on the transboundary effects, translated into the language of the affected Party.

- e. *How has your country organized transboundary public participation in practice? As Party of origin, has your country organized public participation in affected Parties and, if so, how? What has been your country's experience of the effectiveness of public participation? Has your country experienced difficulties with the participation of its public or the public of another Party? (e.g. have there been complaints from the public about the procedure?);*

According to the 2008 Protocol of Cooperation between Portugal and Spain, the affected Party is the main responsible for promoting public participation in its national territory and according to its domestic EIA legal regime.

There is no knowledge of any difficulties.

- f. *Describe any difficulties that your country has encountered during consultations, for example over timing, language and the need for additional information. As an affected Party, have consultations under article 5 supported the prevention, reduction or control of possible significant transboundary environmental impacts?;*

There is no knowledge of any difficulties.

- g. *Describe examples of the form, content and language of the final decision, when it is issued and how it is communicated to the affected Party and its public;*

The final decision is communicated to the affected Party through the respective Ministries of Foreign Affairs.

- h. *Has your country carried out post-project analyses and, if so, on what kinds of project?;*

More recently in the EIA procedure of the Hydroelectric use of Bemposta in the International Douro River.

- i. *Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your country's experiences describing, for example, means of cooperation (e.g. contact points, joint bodies, bilateral agreements), institutional arrangements, and how*

*practical matters are dealt with (e.g. translation, interpretation, transmission of documents, etc.);*

There is no information available on any transboundary EIA procedure for joint projects.

- j. Name examples of good practice cases, whether complete cases or good practice elements (e.g. notification, consultation or public participation) within cases. Would your country like to introduce a case in the form of a Convention's "case study fact sheet"?*

The Hydroelectric use of Bemposta, in the International Douro River.

We would be interested in introducing a "case study fact sheet".

- k. Identify the most common means of applying the Convention (e.g. through focal points, joint bodies, multilateral agreements).*

Through the 2008 Protocol of Cooperation between Portugal and Spain.

#### CO-OPERATION BETWEEN PARTIES IN 2006–2009

- 54. Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries?*

Although no significant difficulties have been experienced, the 2008 Protocol of Cooperation between Portugal and Spain has overcome these problems.

#### EXPERIENCE IN USING THE GUIDANCE IN 2006–2009

- 55. Has your country used in practice the following guidance, adopted by the Meeting of the Parties and available online? Describe your country's experience with using these guidance documents and how they might be improved or supplemented:*

- a. Guidance on public participation in EIA in a transboundary context;*
- b. Guidance on subregional cooperation;*
- c. Guidelines on good practice and on bilateral and multilateral agreements.*

#### CLARITY OF THE CONVENTION

- 56. Has your country had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in part one above or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which your country encounters when applying the Convention.*

No difficulties have been experienced.

## AWARENESS OF THE CONVENTION

57. *Has your country undertaken activities to promote awareness of the Convention among stakeholders (e.g. the public, local authorities, consultants and experts, academics, investors)? If so, describe them.*

This is indirectly made through the awareness promotion activities developed under the EIA national legal regime.

58. *Does your country see a need to improve the application of the Convention in your country and, if so, how does it intend to do so? What relevant legal or administrative developments are proposed or ongoing?*

The application of the Convention in Portugal has been improved by the 2008 Protocol of Cooperation between Portugal and Spain.

## SUGGESTED IMPROVEMENTS TO THE REPORT

59. *Please provide suggestions for how this report may be improved.*

\* \* \* \* \*