

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

in the period 2010–2012

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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

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (art. 2, para. 2).*
 - Convention on Environmental Impact Assessment in a transboundary context, signed in Espoo, on 25 February 1991. (Directly applicable).
 - European Directive 2011/92/UE.
 - Legislative Royal Decree 1/2008, of 11 January, approving the codifying legislation on the Law on Environmental Impact Assessment of projects.
 - Regional legislation on EIA.

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

None planned.

3. *List the different authorities that are named responsible for the implementation of the EIA procedure in the transboundary context and domestically.*
 - Competent authority for the authorisation or approval (*órgano sustantivo*): responsible for public participation, approval of the project and monitoring.
 - Environmental body (*órgano ambiental*): responsible for screening, scoping and environmental impact declaration (*declaración de impacto ambiental*), previous the approval of the project.
 - Ministry of Foreign Affairs and Cooperation: transboundary consultations.

4. *Is there an authority in your country that collects information on all the transboundary EIA cases? If so, please name it.*

The Ministry of Foreign Affairs and Cooperation participates in all the EIA with transboundary impacts.

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

No.

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

6. *Is appendix I to the Convention transposed fully into your country's national legislation? Please describe any differences between the national list and appendix I to the Convention.*

Yes

7. *Does your country's legislation already cover fully the revised appendix I in the second amendment (ECE/MP.EIA/6, decision III/7)?*

Yes

PUBLIC PARTICIPATION

8. *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?*

In the projects in which Portugal is the affected Party (i.e. the majority) a Collaboration Protocol exists between both countries, establishing that the affected Party is responsible for consulting the public concerned in its Country. In all other cases, a decision is made on a case-by-case basis.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

9. *Describe how your country determines when to send the notification to the affected Party, which is to occur "as early as possible as and no later than when informing its own public".*

Notification is normally sent during the scoping phase, which is when the Spanish public is informed of the project for the first time.

10. *Indicate whether and how the following provisions are reflected in your national legislation:*

- a. *The stage in the EIA procedure when your country usually notifies the affected Party (art. 3.1);*

Notification is normally sent during the scoping phase, which is when the Spanish public is informed of the project for the first time.

- b. *The format for notification. Please indicate whether this is the format as decided by the first meeting of the Parties in its decision I/4 (ECE /MP.EIA/2, annex IV, appendix). If not, does your country use a format of its own (in which case, please attach a copy of it)?*

In general, this format is not used, but the information provided is similar.

- c. *The time frame for the response to the notification from the affected Party (cf. art. 3, para. 3, "within the time specified in the notification"), the consequence if an affected Party does not comply with the time frame, and the possibility of extending a deadline;*

In the projects in which Portugal is the affected Party (i.e. the majority) a Collaboration Protocol exists between both countries, providing for a response time limit of 30 days. In all other cases, normally the same time limit is also established, but it is not established in any rule.

In general, there is some flexibility if the affected Party does not comply with the time limit or seeks an extension thereto.

- d. *The request for information from the affected Party (art. 3 para. 6), necessary for the preparation of the EIA documentation;*

When the notification is made, the affected Party is given the opportunity to submit information and suggest the environmental aspects to be covered in the EIA documentation. The developer may also request further information, if so required to draw up the EIA documentation.

- e. How your country cooperates with the authorities of the affected Party on public participation (art. 3, para. 8);*

In the projects in which Portugal is the affected Party (i.e. the majority) the Collaboration Protocol between both countries establishes that the affected Party is responsible for consulting the public concerned in its country. In all other cases, a decision is made on a case-by-case basis.

- f. When and 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?*

The public of the affected Party is consulted when the EIA documentation is prepared. The means of public consultation depend on the affected party, in the projects in which Portugal is the affected Party. In all other cases, a decision is made on a case-by-case basis.

- g. When and how the public in the Party of origin is notified (what kinds of media, etc. are usually used). What is normally the content of the public notification?*

In Spain, the public is consulted always by official gazettes.

- h. 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.*

It depends of the affected Party. In the projects in which Portugal is the affected Party, the Collaboration Protocol between both countries establishes that a transboundary chapter of the EIA documentation is elaborated to facilitate public consultations in the affected Party.

11. *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, annex III, decision I/3), and as listed on the Convention website (http://www.unece.org/env/eia/points_of_contact.htm)?*

The notification is made through the respective Ministries of Foreign Affairs which are also contact points for the purposes of notification.

QUESTIONS TO AFFECTED PARTY

12. *Indicate whether and how the following provisions are reflected in your national legislation:*

- a. How your country decides whether or not to participate in the EIA procedure (art. 3, para. 3)?*

The Ministry of Agriculture, Food and Environment decides whether it wishes to participate, having analysed the documentation submitted on the characteristics of the project and the potential impacts. In some cases, further information may be requested from the Party of origin. It may also be possible to consult any Spanish affected Authority.

The decision is sent to the Party of origin by a letter, through the respective Ministries of Foreign Affairs.

- b. The request from the Party of origin for information (art. 3, para. 6), necessary for the preparation of the EIA documentation;*

The request is assessed in each case. There is usually no problem in submitting the information to the Party of origin if this information is held by the related affected Authority.

c. How your country cooperates with the authorities of the Party of origin on public participation (art. 3, para. 8);

In the projects in which Portugal is the affected Party, the Collaboration Protocol establishes that the affected Party is responsible for consulting the public concerned in its Country. In all other cases, normally the same criterion is used.

d. When and how the public is notified (e.g., what kinds of media, etc., are usually used).

The public of the affected Party is consulted when the EIA documentation is received from the Party of origin.

Article 4

Preparation of the environmental impact assessment documentation

QUESTIONS TO PARTY OF ORIGIN

13. *Indicate the legal requirements in your country, if any, related to:*

a. The content of the EIA documentation (art. 4, para. 1; appendix II);

- Description of the project
- Alternatives
- Assessment of likely environmental impacts
- Mitigation measures
- Monitoring programme
- Non technical summary

b. The procedures for determining the content of the EIA documentation on a case-by-case basis (scoping procedure) (art. 4, para. 1);

The case-by-case determination of the content of the EIA documentation is implemented by the environmental body, after consulting the affected environmental Authorities. The consultation may be extended to other institutions and NGOs.

c. The identification of “reasonable alternatives” in accordance with appendix II, paragraph (b);

In general, the developer presents its alternatives. Other alternatives may be suggested in the process to determine the content of the EIA documentation.

d. The procedures and format for providing the EIA documentation domestically;

The developer elaborates the EIA documentation according to the domestic legislation and the result of the scoping phase.

e. The procedures and format for providing the EIA documentation to the affected Party. If there is a difference between the procedures and format domestically and for the affected Party, please explain;

In general, the EIA documentation, in which the transboundary effects have also been taken into account, is provided to the affected Party.

In the projects in which Portugal is the affected party, the Collaboration Protocol between both Countries establishes that a transboundary chapter of the EIA documentation is elaborated. This chapter is translated into the language of the affected Party.

- f. The procedures for the examination of, and the deadlines for comments on, the EIA documentation domestically, and how the comments submitted domestically are addressed;*

The EIA documentation is subject to public consultation. Comments are also requested from the affected environmental Authorities and public concerned. 30 days are given for comments. Both the developer and the competent Authority responsible for the approval of the project must take into account the comments received.

- g. The procedures for the examination of, and the deadlines for comments on, the EIA documentation from the affected Party, and how the comments submitted by the affected Party are addressed;*

In the projects in which Portugal is the affected Party, a Collaboration Protocol exists between both countries, providing for a response time limit of 3 months. In all other cases, a similar time limit is also established, but it is not established in any rule.

Both the developer and the competent Authority responsible for the approval of the project must take into account the comments received.

- h. The procedures for public hearings domestically;*

The environmental impact assessment procedure includes a public participation stage, after the EIA documentation has been drawn up and before the decision is issued.

- i. The procedures for public hearings held on the territory of the affected Party.*

In the projects in which Portugal is the affected Party, a Collaboration Protocol exists between both countries, establishing that the affected Party's authorities are responsible for consulting the affected Authorities and public concerned. In all other cases, a decision is made on a case-by-case basis.

QUESTIONS TO AFFECTED PARTY

14. *Indicate the legal requirements in your country, if any, related to:*

- a. The procedures and deadlines for comments on the EIA documentation to be submitted to the Party of origin;*

In the projects in which Portugal is the Party of origin, a Collaboration Protocol exists between both countries, providing for a response time limit of 3 months. In all other cases, normally a similar time limit is also established, but it is not established in any rule.

- b. The procedures for public participation in the review of the EIA documentation domestically, and the authority responsible for the execution of the aforementioned procedures;*

In the projects in which Portugal is the Party of origin, the Collaboration Protocol between both countries establishes that the affected Party is responsible for consulting the affected Authorities and public concerned. In all other cases, the affected Party generally also organizes the public participation, in accordance with domestic legislation.

In these cases, the Ministry of Agriculture, Food and Environment is the Spanish authority responsible for consulting the affected Authorities and public concerned.

- c. The procedures for the examination of the EIA documentation domestically.*

The Ministry of Agriculture, Food and Environment does the examination of the EIA documentation, after having consulted to the affected Authorities and public concerned.

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

15. *Indicate the legal requirements in your country, if any, related to the following provisions:*

a. *The procedures for cooperation with the affected Party related to consultations;*

The consultations are made through the Ministry of Foreign Affairs and Cooperation in written communications. *Ad hoc* meetings are also held, when necessary, or other mechanisms like the Albufeira Convention. While the objective of the Albufeira Convention is not the application of the Espoo Convention, there are some provisions in it that can be applicable to.

b. *The stages, procedures and deadlines for consultations with the affected Party;*

The consultation to the affected Party takes place during the public participation stage, once the EIA documentation is prepared.

In the projects in which Portugal is the affected Party, the Collaboration Protocol between both Countries provides for a response time limit of 3 months. In all other cases, a similar time limit is also established, but it is not established in any rule.

c. *The stages, procedures and deadlines for consultations domestically, and who participates in the consultations.*

The public participation and consultation to the affected Authorities and public concerned in Spain take place during the public participation stage, once the EIA documentation is prepared.

The domestic legislation provides 30 days for public participation and for consulting the affected Authorities and public concerned. The public participation is advertised in the official gazette. Consultation to the affected Authorities and public concerned is made in a written procedure.

QUESTIONS TO AFFECTED PARTY

16. *Indicate the legal requirements in your country, if any, related to the following provisions:*

a. *The procedures for interaction with the Party of origin related to consultations;*

The responses to the consultations are made through the Ministry of Foreign Affairs and Cooperation in written communications. *Ad hoc* meetings are also held, when necessary, or other mechanisms like the Albufeira Convention. While the objective of this convention is not the application of the Espoo convention, there are some provisions in it that can be applicable to.

b. *The stages, procedures and deadlines for consultations domestically, and who participates in the consultations.*

In the projects in which Portugal is the Party of origin, the protocol between both Countries provides for a response time limit of 3 months. In all other cases, normally a similar time limit is also established, but it is not established in any rule.

The domestic legislation provides 30 days for public participation and for consulting the affected Authorities and public concerned. The public participation is advertised in the official

gazette. Consultations to the affected Authorities and public concerned are made in a written procedure.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

17. Indicate the legal requirements in your country, if any, related to the following provisions:

- a. *The definition of "final decision" related to the implementation of the planned activity; the content of decisions; and procedures for their adoption;*

The final decision to approve the project and to start the works depends on the sector legislation. The content of the decision include the environmental aspects.

- b. *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, para. 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 final decision in each project depends on the sectoral regulations applying thereto, and may fall under the jurisdiction of the State Government, the Regional Government or the Local Government. In the domestic regulations on environmental impact assessment (Legislative Royal Decree 1/2008) the term used is "decision sobre la autorización o aprobación del proyecto".

All the projects listed in appendix I require such decision.

- c. *The procedures for informing of the "final decision" domestically and for the affected Party;*

The domestic regulations require the publication of the final decision in the official gazettes and its submission to the affected Party, including the reasons and considerations on which it is based.

- d. *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, para. 1)?*

The domestic regulations require that the EIA should be taken into account in the final decision on the project. The comments of all the Authorities and the public are taken into consideration in the same way.

- e. *The opportunity to review the decision if, before the activity is implemented, additional information becomes available according to article 6, paragraph 3.*

It is possible to review the decision taken.

Article 7

Post-Project Analysis

18. Indicate the legal requirements in your country, if any, related to:

- a. *Post-project analysis (art. 7, para. 1);*

In the projects subject to EIA in Spain, there is always an obligation to monitor the project. The affected Party's participation can be decided at any stage of the EIA procedure.

b. Procedures for informing of the results of post-project analysis.

The procedures for informing of the results of post project-analysis are decided during the EIA process.

Article 8

Bilateral and multilateral agreements

19. 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 Spain and Portugal for the Protection and Sustainable Use of the Waters of the Spanish-Portuguese Hydrographical Catchments (http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2000-2882). The main purpose is not the implementation of the Espoo Convention, but it has some provisions related thereto (e.g. criteria defining whether certain projects are likely to have significant transboundary effects).

On 19 February 2008 a Collaboration Protocol was signed between the Government of the Kingdom of Spain and the Government of the Republic of Portugal, applying environmental assessment plans, programmes and projects likely to have significant transboundary effects (http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/evaluacion-ambiental/2.Protocolo_de_Actuacion_Espa%C3%B1a_Portugal_tcm7-219903.pdf).

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

A bilateral commission exists for the implementation of the Albufeira Convention.

Article 9

Research programmes

21. 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 research is known.

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

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

Spain has ratified the first amendment to the Convention.

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

Spain has ratified the second amendment to the Convention.

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

Spain has ratified the Protocol on Strategic Environmental Assessment.

PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2010–2012

Please report on your country's practical experiences in 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; and 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 2010–2012

25. *If your country's national administration has a list of transboundary EIA procedures that were under way during the reporting period, in which your country was Party of origin or affected Party, please list it.*

Projects in which Spain is the Party of origin and Portugal the affected Party:

- Power line 400kV Puebla de Guzmán (Huelva)-Portuguese border.
- Oil refinery in Extremadura, Municipal Districts of Fuente del Maestre, Los Santos de Maimona and Villafranca de los Barros (Badajoz).
- Exploration of mineral resources "Rio Manzanas" Exp.19/16, Pozo de Pingano (Zamora).
- Combined cycle power plant in Ledesma (Salamanca).
- Wind farms close to the Spanish-Portuguese border (Malvana, La Malvana, Malvana I, Sierra de Malvana I, Sierra de Malvana II), in Valverde del Fresno (Cáceres).
- High speed train Porriño (Pontevedra)-Portuguese border.
- Electric substations Covelo and Beariz and associated power lines (Ourense and Pontevedra).

Projects in which Spain is the affected country and Portugal the country of origin:

- Ancoradouro-Almada de Ouro Golf and Country Club.
- Dredging of the River Guadiana between Ponte Internacional and O Pomarao.
- High speed train between Braga and Valença.

Projects in which Spain is the Party of origin and France the affected Party:

- High speed train between the Basque Country and France.
- Mining exploitation "Blanca". Section "C-Silice", Erro and Burguete (Navarra).

26. *Does your country object to the inclusion of the above list of transboundary EIA procedures in a compilation of such procedures to be made available on the website of the Convention? (Indicate "yes" if you object.)*

No

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

There is no availability of this information. It depends on the type and complexity of the project.

EXPERIENCE IN THE TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE DURING THE PERIOD 2010-2012

28. *If your country has had practical experience in the transboundary EIA procedure during the reporting period, has the implementation of the Convention supported the prevention,*

reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.

We consider that the EIA, including transboundary EIA, supports the prevention, reduction and control of significant impacts. For instance, in the case of the Spanish project for an Oil refinery in Extremadura, the opinion of Portugal as an affected Party was one of the elements relevant for the negative final decision on the project.

29. *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. 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?

In the projects in which Portugal is the affected Party, the Collaboration Protocol between both Countries establishes that a separate chapter has to be submitted containing the information with transboundary effects, translated into the language of the affected country. In all other cases, the same rule is normally applied, but this is not established in any rule.

b. 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?

In the projects in which Portugal is the affected Party, the Collaboration Protocol between both Countries establishes that a separate chapter has to be submitted containing the information with transboundary effects, translated into the language of the affected Country. In all other cases, the developer is normally asked to translate at least one separate chapter containing the information with transboundary effects.

c. 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? 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)?

In general, the affected Party's Authorities organize the public participation in its country. There is no knowledge of any complaints or difficulties.

d. 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.

e. 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.

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

Yes, one example is regarding the Portuguese project for the Reinforcement of Power in Bemposta. The EIA was finalised before 2010, but the collaboration between the two Countries in the application of the Espoo and Albufeira conventions allowed the change of the project and a post-project analysis during the works.

- g. *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.

- h. *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"?*

No information available.

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

Consultations within Parties are made by the Ministry of Foreign Affairs and Cooperation through formal letters. When necessary, *ad hoc* meetings, or other mechanisms like the Albufeira Convention are also held.

CO-OPERATION BETWEEN PARTIES IN 2010–2012

30. *Does your country have any successful examples of how it has overcome difficulties arising from different legal systems in neighbouring countries? If so please specify.*

No information available.

EXPERIENCE IN USING THE GUIDANCE IN 2010–2012

31. *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 (ECE/MP.EIA/7);*
b. *Guidance on subregional cooperation (ECE/MP.EIA/6, annex V, appendix);*
c. *Guidelines on good practice and on bilateral and multilateral agreements (ECE/MP.EIA/6, annex IV, appendix).*

In general, these guidelines are not taken into account directly but they were used in the formulation of legislation and bilateral agreements.

CLARITY OF THE CONVENTION

32. *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?*

No difficulties known.

AWARENESS OF THE CONVENTION

33. *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.*

No information available.

34. *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?*

There is no any legal or administrative proposal foreseen.

SUGGESTED IMPROVEMENTS TO THE REPORT

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

No suggestions.

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