

Questionnaire for the

REPORT OF **PORTUGAL** ON THE IMPLEMENTATION OF THE PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT TO 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 PROTOCOL

In this part, please describe the legal, administrative and other measures taken in your country to implement the provisions of the Protocol. This part should describe the framework for your country's implementation, and not experience in the application of the Protocol.

Article 2 - Definitions:

1. Is the definition of plans and programmes for the purpose of the Protocol the same in your legislation as in article 2, paragraph 5? Please specify.

- a) Yes ☐
- b) Yes, with some differences: x
- c) No (please provide the definition):
- d) There are no definitions of plans and programmes in the legislation ☐

Your comments: Decree-Law n. ° 232/2007 of 15 June, amended by Decree-Law n. ° 58/2011, of 4 May, mention in ii) of b) of article 2, the National Defence and Civil Protection plans or programmes, financial or budgetary nature plans or programmes as exceptions, as well as those funded under Council Regulations (EC) n. 1989/2006, 21 December and 1257/99.

2. Is the definition of “environmental, including health effect” in your legislation the same as in article 2, paragraph 7? Please specify.

- a) Yes ☐
- b) Yes, with some differences:
- c) No (please provide the definition):
- d) There is no definition of “environmental, including health effect” in the legislation ☒

Your comments:

3. Is the definition of “the public” according to article 2, paragraph 8, in your legislation the same as in the Protocol? Please specify.

- a) Yes ☐
- b) Yes, with some differences:
- c) No (please provide the definition):
- d) There is no definition of the public in the legislation ☒

Your comments:

4. Are there any conditions for non-governmental organizations to be able to take part in the assessment procedure? Please specify.

- a) Yes (please provide the conditions): x
- b) No ☐

Your comments: NGOs are commonly consulted. The Portuguese Environment Agency maintains the national register of NGOs whose contacts are available for public participation purposes.

Article 3 – General provisions:

5. Provide legislative, regulatory and other measures you have adopted in your country to implement the Protocol (art. 3, para. 1) (you can choose more than one option).

- a) Law on SEA (please indicate number/year/name): Decree-Law n. ° 232/2007 of 15 June, amended by Decree-Law n. ° 58/2011 of 4 May.
- b) SEA provisions are transposed into another law(s) (please specify):
- c) Regulation (please indicate number/year/name):
- d) Administrative (please indicate number/year/name):
- e) Other (please specify):

Your comments:

6. Indicate the specific legislation in your country, if any, that assures that the requirements of article 3, paragraphs 6 and 7, are met, and that these rights of the public are observed (you can choose more than one option).

- a) Constitution ☒
- b) Law on public participation (please indicate number/year/name):
- c) Law on SEA ☒
- d) Legislation which transposes the Protocol on SEA (please indicate number/year/name):
- e) Legislation which transposes the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (please indicate number/year/name): Law n.° 19/2006, 12 june
- f) Other (please, specify):

Your comments:

Article 4 – Field of application

7. List the types of plans and programmes that require SEA in your legislation (art. 4, para. 2).

Plans and programmes for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use as well as any plan or programme that sets the framework for future development consent of projects listed in Annexes I and II of the Protocol or any other project likely to have significant environmental effects. SEA is also mandatory for plans and programs that require assessment under the Habitats on legislation.

8. Explain how you define whether a plan or programme “set the framework for future development consent” (art. 4, para. 2).

Decree-Law n. ° 232/2007 of 15 June does not establish a specific definition for "setting the framework for future development consent of projects". A case-by-case analysis is carried out and a full SEA is required every time a plan or programme may establish rules or lay down guidelines for the subsequent approval of projects likely to have significant environmental.

9. Explain how the terms “plans and programmes . . . which determine the use of small areas at local level” (art. 4, para. 4) are interpreted in your legislation.

The national legislation does not establish a specific definition for "small areas at local level". A case-by-case approach is carried out following the objectives and criteria of Annex III of the Protocol.

However, the methodological approach laid down in the SEA Guides published by the Portuguese Environment Agency (Agência Portuguesa do Ambiente – APA) helps to better understand the extension of these concepts under.

10. Explain how you identify in your legislation a “minor modification” to a plan or programme (art. 4, para. 4).

The national legislation does not establish a specific definition for “minor modifications to plans and programmes”. A case-by-case approach is carried out following the objectives and criteria of Annex III of the Protocol.

However, the methodological approach laid down in the SEA Guides published by the Portuguese Environment Agency (Agência Portuguesa do Ambiente – APA) helps to better understand the extension of these concepts.

Article 5 – Screening

11. How do you determine which other plans and programmes should be subject to a SEA according to article 4, paragraphs 3 and 4 (art. 5, para. 1)? Please specify.

- a) On a case-by-case basis ☐
- b) By specifying types of plans and programmes ☐
- c) By using a combination of (a) and (b) ☒
- d) Other (please specify):

Your comments:

12. Describe the procedures required in your legislation for consulting the environmental and health authorities (art. 5, para. 2, art. 6, para. 2, and art. 9, para. 1). If different in screening, scoping and on the draft plans and programmes and the environmental report, please specify.

Article 3 (3) of Decree-Law 232/2007 of 15 June identifies the main competent authorities with environmental responsibilities (Portuguese Environment Agency (APA), Institute for Nature Conservation and Forestry (ICNF), Portuguese Environmental Agency (as National Water Authority and River Basin Authority), Regional Coordination and Development Commissions, Health Authorities and Municipalities) . Other authorities may be considered relevant pursuant to the scope and object of the plan or programme. Such authorities are identified on a case-by-case basis.

Screening and scoping: the Plan or Programme promotor may consult those authorities which have 20 working days to issue their technical opinion.

The draft plans and programmes and Environmental report: the authorities consulted have 30 working days to issue their technical opinion.

13. Do you provide opportunities for the public concerned to participate in screening and/or scoping of plans and programmes in your legislation (art. 5, para. 3, and art. 6, para. 3)? If yes, please specify (you can choose more than one option).

- a) By sending written comments to the competent authority ☒
- b) By sending written comments to the local municipality ☒
- c) By providing answers to a questionnaire ☐
- d) By taking part in a public hearing ☐
- e) There are no opportunities for public participation in screening and/or scoping ☐
- f) Other (please specify):

Your comments:

14. At what stage of the procedure for a plan or programme does your legislation require you to make the screening decision publicly available? What information do you provide in the screening decision (art. 5, para. 4)?

The national legal framework seeks to promote the beginning of the SEA process as soon as the objectives of the plan or programme are set, in order to ensure an environmental strategic approach at an early stage of the planning process. So, the screening decision is publicly available before the procedure for a plan or programme. Only the decision to not proceed with the SEA process is made available to the public, by the promotor of the plan or programme at its internet page.

Article 6 – Scoping

15. How do you determine what is relevant information to be included in the environmental report in accordance with article 7, paragraph 2 (art. 6, para. 1)? Please specify (you can choose more than one option).

- a) By using annex IV ☐
- b) By using the comments from the concerned authorities ☒
- c) By using the comments from the public concerned, if it has been consulted ☐
- d) As determined by the competent authority based on its own expertise ☒
- e) By using other means (please specify):

Your comments: The national legislation does not specify the need for a scoping report. However, the methodological approach foreseen in the SEA Guidelines published by the Portuguese Environment Agency is structured into three fundamental phases:

- 1) SEA Critical Factors for Decision-Making and Context,
- 2) Analysis and Assessment, and
- 3) Follow-up

In the first phase (scoping) the entity responsible for the preparation of the plan or programme shall submit to the authorities with specific environmental responsibilities a report on Critical Factors for Decision-Making (scoping report). The authorities consulted have 20 working days to issue their technical opinion on this report. The results of this consultation shall then be considered on the development of the plan or programme as well as in the environmental report.

Although no specific content is established for the report on Critical Factors for Decision-Making the Guides lay down recommendations for the preparation of this document, including a suggestion for its template.

Article 7 – Environmental report

16. How do you determine “reasonable alternatives” in the context of the environmental report (art. 7, para. 2)? Please specify.

- a) On a case-by-case basis ☒
- b) As defined in the national legislation (please specify):

Your comments:

17. How do you ensure sufficient quality of the reports? Please specify.

- a) The competent authority checks the information provided and ensures it includes all information required under annex IV as a minimum before making it available for comments ☒
- b) By using quality check lists ☐

c) There are no specific procedures or mechanisms ☐

d) Other (please specify):

Your comments:

Article 8 – Public participation

18. How do you ensure the “timely public availability” of draft plans and programmes and the environmental report (art. 8, para. 2)? Please specify (you can choose more than one option).

a) Through public notices ☒

b) Through electronic media ☒

c) Through other means (please specify): Documents available in public services for consulting; Mailing for several entities

d)

Your comments:

The public consultation under the national legislation follows the requirements of the SEA Directive. The period for public consultation shall be of at least 30 days and advertisements shall be published in national and regional journals. The plan or programme along with the environmental report shall be available to the public by electronic means (namely in the website of the entity responsible for the preparation of the plan or programme) at City Halls and Regional Coordination and Development Commissions.

For special programmes, such as River Basin Management Plans, a period of 6 months has been set for public participation. Several public meetings were held during that period.

19. How do you identify the public concerned (art. 8, para. 3)? Please specify (you can choose more than one option).

a) Based on the geographical location of the plans and programmes ☒

b) By making the information available to all public and letting them identify themselves as public concerned ☒

c) By other means (please specify):

d) Your comments:

The SEA national legal framework follows in accordance with the Aarhus Convention. The public concerned (citizens, companies, non-governmental environmental organizations (NGOs)) is defined on a case by case approach. It is however mandatory to consult municipalities in case of a local or regional plan or program as well as the Regional Coordination and Development Commissions in case of a national plans or program.

NGOs are commonly consulted. The Portuguese Environment Agency maintains the national register of NGOs whose contacts are available for public participation purposes.

20. How can the public concerned express its opinion on the draft plans and programmes and the environmental report (art. 8, para. 4)? Please specify (you can choose more than one option).

a) By sending comments to the relevant authority/focal point ☒

b) By providing answers to a questionnaire ☐

c) Orally ☐

d) By taking part in a public hearing ☐

e) Other (please specify):

Your comments:

21. Do you have a definition in your legislation of the term “within a reasonable time frame” (art. 8, para. 4)? Please specify.

- a) Yes (please provide the definition):
- b) No, the time frame is given by a number of days for each commenting period ☒
- c) No, it is defined case by case ☐
- d) Other (please, specify):

Your comments:

Article 10 – Transboundary consultations

22. As a Party of origin, when do you notify the affected Party (art. 10, para. 1)? Please specify.

- a) During scoping ☐
- b) When the draft plan or programme and the environmental report have been prepared ☒
- c) At other times (please specify):

Your comments:

23. As a Party of origin, what information, do you include in the notification (art. 10, para. 2)? Please specify.

- a) The information required by article 10, paragraph 2 ☒
- b) The information required by article 10, paragraph 2, plus additional information (please specify):

Your comments:

24. As a Party of origin, does your legislation indicate a reasonable time frame for the transmission of comments from the affected Party (art. 10, para. 2)? Please specify.

- a) Yes (please, indicate how long):
- b) No ☒

Your comments:

A bilateral Protocol has been signed in 2008 between Portugal and Spain (the only EU Member State with which Portugal has inland borders) concerning mutual consultation in cases of plans, programmes and projects with transboundary effects.

The reasonable time frame for the transmission of comments is determined on a case-by-case basis by mutual agreement.

25. If the affected Party has indicated that it wishes to enter into consultations, how are the detailed arrangements, including the time frame for consultations, agreed (art. 10, paras. 3 and 4)? Please specify.

- a) Following those of the Party of origin ☒
- b) Following those of the affected Party ☐
- c) Other (please specify):

Your comments: the detailed arrangements, including the time frame for consultations, is in agreement with the bilateral Protocol between Portugal and Spain (the only EU Member State with which Portugal has inland borders)

Article 11 – Decision

26. When a plan or programme is adopted, explain how your country ensures that due account is taken of the (art. 11, para. 1).

- a) Conclusions of the environmental report ☒
- b) Mitigation measures ☒

c) Comments received in accordance with articles 8 to 10 ☒

Your comments:

27. How and when do you inform your own public and authorities (art. 11, para. 2)?

After the adoption of the plan or programme, the entity responsible for its development should forward to the Portuguese Environment Agency all the documents concerning the assessment carried out, namely:

- The adopted plan or programme, if it is not published in the Official Gazette;
- An environmental statement, which includes:
- A summary on how environmental considerations and the environmental report have been integrated in the plan or programme;
- The opinions expressed by the authorities with specific environmental responsibilities and an explanation on how they have been taken into account
- The results of the consultation to other member states
- The reasons for choosing the plan or programme as adopted, in light of the other reasonable alternatives discussed during its development;
- The measures decided concerning monitoring.

These documents should be made publicly available by the entity responsible for the preparation of the plan or programme, through the respective website as well as through that of the Portuguese Environment Agency.

28. How do you inform the public and authorities of the affected Party (art. 11, para. 2)?

Please specify.

- a) By informing the point of contact ☒
- b) By informing the contact person of the ministry responsible for SEA, who then follows the national procedure and informs his/her own authorities and public ☒
- c) By informing all the authorities involved in the assessment and letting them inform their own public ☒
- d) Other (please, specify):

Your comments:

Article 12 – Monitoring

29. Describe the legal requirements for monitoring the significant environmental, including health, effects of the implementation of the plans and programmes adopted under article 11 (art. 12, paras. 1 and 2).

Decree-Law 232/2007 of June 15th establishes that the entities responsible for preparing plans and programmes assess and monitor the significant environmental effects, verifying the adoption of measures foreseen in the environmental declaration, in order to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action.

The monitoring results are made public by those entities through electronic means and brought up to date at least once a year. The results are also communicated to the Portuguese Environment Agency.

Article 13 – Policies and legislation

30. Do you have national legislation on the application of principles and elements of the Protocol as regards policies and legislation (art. 13, paras. 1–3)? Please specify.

- a) Yes (please specify which articles of the Protocol apply):
- b) No ☒

PART TWO – PRACTICAL APPLICATION DURING THE PERIOD 2010 -2012

In this part, please report on your country's practical experiences in applying the Protocol (and not your country's procedures, which were described in part one). The focus of this section should be on identifying good practices as well as difficulties encountered in applying the Protocol in practice. The goal is to enable Parties to share solutions. Please therefore provide appropriate examples highlighting application of the Protocol in your country and innovative approaches to improve its application.

31. Does your country object to the information on SEA procedures provided in this section being compiled and made available on the website of the Protocol? Please specify (indicate "yes" if you object).

- a) Yes ☐
- b) No ☒

DOMESTIC AND TRANSBOUNDARY IMPLEMENTATION IN THE PERIOD 2010–2012

32. Which competent authority/authorities are responsible for carrying out the SEA procedure in your country? Please specify.

- a) If they are different for different types of plans and programmes ☒
- b) If they are different at different levels (national, regional, local) ☐
- c) If they are different for domestic and transboundary procedures ☐
- d) Please name the responsible authority/authorities:

33. Does your SEA documentation always include a specific (sub)chapter on information on potential transboundary effects? Please specify.

- a) Yes ☐
- b) No, only when potential transboundary effects are identified ☒

CASES DURING THE PERIOD 2010-2012

34. If possible, provide the (approximate) number of domestic and transboundary SEA procedures initiated during the given period and list them by referring to the sectors in article 4, paragraph 2.

Approximately 30 domestic SEA: one Operational Programme, one concerning the Nitrates Directive and the remaining are all included in town and country planning or land use. Three transboundary River Basin Management Plans.

EXPERIENCE WITH THE STRATEGIC IMPACT ASSESSMENT PROCEDURE IN 2010-2012

35. If your country has had practical experience in implementing the Protocol, has this supported the integration of environmental, including health, concerns into the development of plans and programmes? Have the conclusions included in the environmental report influenced the drafting and resulted in altering of a plan or programme? Please, provide examples, if you have this information.

Portugal only has inland borders with Spain and both countries signed a bilateral protocol in 2008 concerning mutual consultation in cases of plans, programmes and projects with transboundary effects. This bilateral Protocol has covered the requirements of the Kiev Protocol in that context.

However, generally, SEA has proven to be an important tool in addressing environmental issues at an early stage and the conclusions of the environmental report often influence the content of the plan or programme.

36. If your country has experienced substantial difficulties interpreting particular terms (or particular articles) in the Protocol, please indicate them. Does your country work together with other Parties to find solutions? If not, how does your country overcome the(se) problem(s)? Please, provide examples, if available.

The main difficulties during transboundary consultation arise from the official formalities of the administrative procedures between the two countries which tend to lengthen the process and delay the adoption of the plan or programme. Another problem is the translation as only a summary of the SEA report has to be presented in both languages. This has proved to be an obstacle for the full understanding of the plan or programme as well as its environmental impacts. Comments are also made in the other country's language which makes its full comprehension difficult.

A bilateral protocol has been signed between Portugal and Spain in 2008 in order to simplify formalities, allowing documents and data to be sent directly to the national competent authorities, in parallel with the formal communications made through the competent services of the Ministries of Foreign Affairs. As for the translation of documents, the bilateral protocol with Spain foresees that, in addition to the relevant documents, a separate document must be available translated into the language of the affected Member State, including information on cross-border effects.

37. Please share with other Parties your country's experience of applying the Protocol in practice, if such information is available. 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. Please detail:

a) Your country's experience with domestic procedures:

- i. Has your country carried out monitoring according to article 12 and, if so, for what kinds of plans or programmes?

No relevant experience to report.

- ii. Please provide examples of good practice cases, whether complete cases or good practice elements (e.g., consultation or public participation) within cases. Would your country like to present a case to be published on the website of the Convention and its Protocol as a "case study fact sheet"?

No relevant experience to report.

b) Your country's experience with transboundary procedures:

- i. Translation is not addressed in the Protocol. How has your country addressed the question of translation? What difficulties has your country experienced in relation to translation and interpretation, and what solutions has your country applied?

The main difficulty with translation is that only a summary of the SEA report has to be presented in both languages. This has proved to be an obstacle for the full understanding of the plan or programme as well as its environmental impacts. Comments are also made in the other country's language which makes its full comprehension difficult. In order to overcome these difficulties the bilateral protocol with Spain foresees that, in addition to the relevant documents, a separate document must be available translated into the language of the affected Member State, including information on cross-border effects.

- ii. What does your country usually translate as a Party of origin?

A summary of the SEA report and a separate document must be available translated into the language of the affected Member State, including information on cross-border effects

- iii. Has your country carried out transboundary public participation according to article 10, paragraph 4? If so, how? Was your country the Party of origin or the affected Party? 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?)

The Portuguese legislation provides the minimum procedures for carrying out of transboundary consultations in the case of plans or programmes developed in national territory that are likely to have significant environmental effects into another country. The results of the consultations held in the affected Party must be transmitted to the national authorities responsible for preparing plans and programmes. In the case of plans and programmes developed by other Party, with likely significant effects on the environment on the Portuguese territory, there is the possibility to participate in the Strategic Environmental Assessment process. The Portuguese Environment Agency is responsible for carrying out the consultations on these non-national plans and programmes in Portugal and the results are then transmitted to the Spanish authorities. In both cases, the consultations take place on the Environmental Report and corresponding version of the plan or programme.

Although public participation has, in some cases, been less significant, in others it has given an important contribution to safeguard, at an early stage, relevant concerns for the environmental assessment of plans and programs.

- iv. Does your country have examples of organizing transboundary SEA procedures for joint cross-border plans and programmes? If yes, describe such examples, if possible.

No relevant experience to report.

- v. Please provide examples of good practice cases, whether complete cases or good practice elements (e.g., consultation or public participation) within cases. Would your country like to present a case within a "case study fact sheet" to be published on the website of the Convention and its Protocol?

No relevant experience to report.

COOPERATION BETWEEN PARTIES IN 2010–2012

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

Yes, through a bilateral protocol signed between Portugal and Spain in 2008. This protocol not only simplifies formalities but also establishes common timeframes for notification and public consultation in both countries. As for the translation of documents, it foresees that, in addition to the relevant documents, a separate document must be available translated into the language of the affected Party, including information on cross-border effects.

EXPERIENCE REGARDING GUIDANCE IN 2010–2012

39. Are you aware of any use in your country of the Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment available online¹? If yes, please describe any experience with using this guidance document and how it might be improved or supplemented.

Yes. This manual was considered and reflected into the guidance document published last year by the Portuguese Environment Agency ('Strategic Environmental Assessment Better Practice Guide – Methodological guidance for strategic thinking in SEA').

40. Do you provide any assistance and guidance to the public? If yes, please specify.

Following the adoption of the national legislation in 2007, the Portuguese Environment Agency, published a guidance document on good practices in the assessment of plans and programmes: 'Strategic Environmental Assessment Good Practices Guide - Methodological Guidance'. The guide intended to support the institutions in meeting the requirements of strategic environmental assessment, in compliance with both European and national legislation. It recommends the adoption of a strategic basic methodology to facilitate the plan preparation phase, the implementation and the review of the plan in order to influence the formulation and discussion of strategic decisions and to support the decision on major development options while they are still open at an early phase of planning.

Last year, considering the experience gathered during the first years of the implementation of the national legal framework, the guide was reviewed and updated: 'Strategic Environmental Assessment Better Practice Guide – Methodological guidance for strategic thinking in SEA', improving the methodology, clarifying concepts and presenting the most frequently used techniques. It also includes good examples on how SEA can be an instrument of strategic nature and ensure compliance with the European and Portuguese legislation.

41. Do you support associations, organizations or other groups that promote the Protocol? If yes, please specify which and how.

No.

42. Has your country had difficulties implementing the procedure defined in the Protocol?

No relevant difficulties other than the above mentioned.

AWARENESS OF THE PROTOCOL

¹ http://www.unece.org/env/eia/pubs/sea_manual.html

43. Does your country see a need to improve the application of the Protocol in your country and, if so, how does it intend to do so?

No

SUGGESTED IMPROVEMENTS TO THE REPORT

44. Please provide suggestions for how this report may be improved.

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