

Questionnaire for the

REPORT OF **SPAIN** 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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Date on which report was completed: [3105/2013](#)

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: This definition is included in the "scope" of the National law.

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 X

Your comments: While there is no definition of "environmental, including health effect" in the National law, this description of effects is included in various articles of the law, in order to assess them in the plans and programs.

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 X
- 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: Their main purpose has to be environmental protection and they have to have at least two years of activity.

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): X
- b) SEA provisions are transposed into another law(s) (please specify): X
- c) Regulation (please indicate number/year/name):
- d) Administrative (please indicate number/year/name):
- e) Other (please specify):

Your comments:

- Direct application of the SEA Protocol (<http://www.boe.es/boe/dias/2010/07/05/pdfs/BOE-A-2010-10601.pdf>).

- Law 9/2006, on the assessment of the effects of certain plans and programmes on the environment (<http://www.boe.es/boe/dias/2010/07/05/pdfs/BOE-A-2010-10601.pdf>).

- Regional law on SEA.

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 X
- b) Law on public participation (please indicate number/year/name): X
Law 27/2006, on access to information, public participation and access to justice in environmental matters (<http://www.boe.es/boe/dias/2006/07/19/pdfs/A27109-27123.pdf>)
- c) Law on SEA X
- d) Legislation which transposes the Protocol on SEA (please indicate number/year/name): X
Direct application of the SEA Protocol
(<http://www.boe.es/boe/dias/2010/07/05/pdfs/BOE-A-2010-10601.pdf>).
Law 9/2006, on the assessment of the effects of certain plans and programmes on the environment (<http://www.boe.es/boe/dias/2010/07/05/pdfs/BOE-A-2010-10601.pdf>).
- 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): X
Direct application of the Aarhus convention
(<http://www.boe.es/boe/dias/2005/02/16/pdfs/A05535-05547.pdf>)
- f) Other (please, specify):

Your comments:

Article 4 – Field of application

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

SEA are required for plans and programs which are prepared for agriculture, forestry, fisheries, aquiculture, energy, industry, transport, waste management, water management, maritime-terrestrial public use, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or which have been determined to require an assessment pursuant to the Habitats Directive.

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

There is no specific definition in the National law (Law 9/2006, on the assessment of the effects of certain plans and programmes on the environment). Nevertheless, some guidance are used such as the EC Guidance on the application of the SEA Directive (http://ec.europa.eu/environment/eia/pdf/030923_sea_guidance_es.pdf), as well as the Ministerial Guidance on the application of the National law (http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/evaluacion-ambiental/Gu%C3%ADa_aplicaci%C3%B3n_Ley_EAE_9-2006_tcm7-218030.pdf).

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 law defines them as the areas in which the protection of the environment is assured either by the application of SEA or by the application of EIA of the projects included in the plan or program.

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

The National law defines them as the changes in the characteristics of the already approved plans and programs that are not essential but that could produce some differences in the characteristics of the environmental effects.

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.

There is the obligation to consult the environmental and health authorities in the three stages. The minimum deadline for consulting about the draft plan and program and the environmental report is 45 days.

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: [At National level and in some Regions it is possible to participate by electronic means.](#)

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)?

[It is mandatory to motivate the decision taken.](#)

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

Your comments:

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 [X](#)
- b) As defined in the national legislation (please specify):

Your comments: [The reasonable alternatives are determined by the developer regarding the specific type of plan or program.](#)

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): [X](#)

Your comments: [The developer is obliged to ensure the quality of the environmental report. In National plans and programs, the developer and the environmental body \(authority responsible for the assessment\) elaborate a statement before the approval of the plan and program, in which they have to give their opinion on different matters, one of them is the quality of the environmental report.](#)

[In Regional and Local plans and programs, a statement with the same objectives is required, but the responsible authority for its elaboration can change.](#)

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):

Your comments: The modalities of public consultation are defined on a case by case basis, taking into account the different type of plan or programme and the procedure for its approval.

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):

Your comments: The public concerned is identified on a case by case basis taking into account different criteria, such as representativity, specialization or location. The NGOs could apply to be considered public concern for a specific plan or programme.

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: The minimum deadline is 45 days.

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: It depends on the type of plan or program, but notification is normally made during the scoping phase, in which the Spanish public is informed for the first time on the SEA of the plan or program.

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: It depends on the type of plan or program, but when the notification is made during the scoping phase, the draft of plan or program and the environmental report are not still elaborated, so this information is delivered in a later stage.

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: In the plans and programs 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.

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 X
- b) Following those of the affected Party X
- c) Other (please specify):

Your comments: In the plans and programs 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.

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 X
- b) Mitigation measures X
- c) Comments received in accordance with articles 8 to 10 X

Your comments: Prior to the approval of the National plans and programs, the developer and the environmental body (authority responsible for the assessment) elaborate a statement in which they have to give their opinion on different matters, such as the likely negative effects of the plan or program. This is based on the environmental report and the results of the public consultation. This statement has to be taken into account in the approval of the plan or program.

In Regional and Local plans and programs, a statement with the same objectives is required, but the responsible authority for its elaboration can change.

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

Once the plan or program is approved, the public and the affected environment and health authorities are informed about the plan or program approved, how the environmental matters were taken into account in the plan or program and the monitoring measures foreseen.

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): X

Your comments: The affected Party is informed through the respective Ministries of Foreign Affairs.

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).

There is a legal obligation to monitor the implementation of the plan or program and its effects. Nevertheless, the specific means to perform the monitoring are determined on a case by case basis.

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 X

Your comments:

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 X

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: *The SEA is responsibility of the developer and the environmental body (Ministry of Agriculture, Food and Environment for National plans and programs). The responsible authorities can change in Regional and Local plans and programs.*

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 ☒

In the plan and programs in which Portugal is the affected Party (i.e. the majority), the Collaboration Protocol between both countries establishes that a transboundary chapter of the environmental report is elaborated. This chapter is translated into the language of the affected Party.

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.

National plans and programs:

<u>Sector</u>	<u>SEA</u>	<u>Transboundary</u>
<i>Silviculture</i>	<i>1</i>	
<i>Energy</i>	<i>2</i>	<i>1</i>
<i>Transport</i>	<i>18</i>	<i>1</i>
<i>Water management</i>	<i>4</i>	
<i>Town and country planning or land use</i>	<i>2</i>	

There is partial information about Regional and Local plans and programs. Some examples are:

Catalonia:

<u>Sector</u>	<u>SEA</u>	<u>Transboundary</u>
<i>Silviculture</i>	<i>2</i>	
<i>Energy</i>	<i>2</i>	
<i>Transport</i>	<i>25</i>	
<i>Town and country planning or land use</i>	<i>386</i>	

Extremadura:

<u>Sector</u>	<u>SEA</u>	<u>Transboundary</u>
<i>Silviculture</i>	2	
<i>Waste management</i>	1	
<i>Transport</i>	1	
<i>Water management</i>	3	
<i>Town and country planning or land use</i>	250	

Castilla-La Mancha:

<u>Sector</u>	<u>SEA</u>	<u>Transboundary</u>
<i>Agriculture and fisheries</i>	32	
<i>Silviculture</i>	1	
<i>Energy</i>	1	
<i>Industry and mining</i>	3	
<i>Transport</i>	2	
<i>Waste management</i>	1	
<i>Transport</i>	1	
<i>Water management</i>	1	
<i>Town and country planning or land use</i>	274	
<i>Other</i>	2	

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.

In general we have this experience, but we do not have concrete examples.

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.

No difficulties reported.

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?

Yes. There is a legal obligation to monitor the effects of all the plans and programs assessed.

- 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 information available.

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?

In the plan and programs in which Portugal is the affected Party (i.e. the majority), the Collaboration Protocol between both countries establishes that a transboundary chapter of the environmental report is elaborated and translated into the language of the affected Party. In other cases, normally the same applies, but it is not established in any rule.

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

A transboundary chapter of the environmental report is usually elaborated and translated into the language of the affected Party.

- 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?)

In the plans and programs in which Portugal is the affected Party, the Collaboration Protocol between both Countries establishes that the affected Party is responsible for organising the public participation in its country. In other cases, a decision is made on a case-by-case basis. No difficulties are reported.

- 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.

- 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 information available.

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

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 to environmental assessment of 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).

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.

In general, this manual is not directly taken into account, but it was used in the formulation of legislation and bilateral agreements.

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

There is a guidance for the application of the National law on SEA, which is addressed to authorities and the public. (http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/evaluacion-ambiental/Gu%C3%ADa_aplicaci%C3%B3n_Ley_EAE_9-2006_tcm7-218030.pdf)

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

No information.

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

No difficulties have been reported.

AWARENESS OF THE PROTOCOL

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 legal or administrative instruments are foreseen in this regard.

SUGGESTED IMPROVEMENTS TO THE REPORT

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

No suggestions.

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