

Questionnaire for the report of PORTUGAL on the implementation of the Protocol on Strategic Environmental Assessment in the period 2016–2018

Information on the focal point for the Protocol

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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 3 General provisions

I.1. Please provide the main legislative, regulatory and other measures you have adopted in your country to implement the Protocol (art. 3, para. 1) (more than one option may apply):

- (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): For land use planning instruments, the existing procedures for preparation and adoption of plans and programmes have been adapted and improved in order to integrate the SEA procedures (Decree-Law n.° 80/2015, of 14 May).
- (c) Regulation (please indicate number/year/name):
- (d) Administrative rule (please indicate number/year/name):
- (e) Other (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.

In 2012, 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. Both guides are available at the APA website (the original documents in Portuguese as well as its English translations).

Your comments:

Article 4

Field of application concerning plans and programmes

I.2. List the types of plans and programmes that require SEA in your legislation:

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.

I.3. 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.

I.4. 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.

I.5. 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

I.6. How do you determine which other plans and programmes should be subject to a SEA as set out in article 4, paragraphs 3 and 4, in accordance with article 5, paragraph 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:

I.7. 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)?

No

Yes (please specify (more than one option may apply)):

- (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) By sending written comments to the consultants/SEA experts or persons preparing the plans and programmes
- (f) Other (please specify):

Your comments:

Article 6 Scoping

I.8. How do you determine what is the relevant information to be included in the environmental report, in accordance with article 7, paragraph 2 (art. 6, para. 1)?

The national legislation does not specify the need for a scoping report. However, the methodological approach foreseen in the SEA Guides 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

I.9. 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):
- (c) By using a combination of (a) and (b)

(d) Other (please specify):

Your comments:

Decree-Law n. ° 232/2007 of 15 June does not establish a specific definition for "reasonable alternatives". However, some general guidelines have been set in the Guides published by the Portuguese Environment Agency, and a case-by-case approach is carried out.

The zero alternative is usually included in the alternatives assessed. Other types of alternatives assessed vary a lot since they depend on the moment the SEA procedure is initiated. When SEA follows the planning procedure since an early stage, the alternatives are presented in the form of planning scenarios.

I.10. 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 checklists

(c) There are no specific procedures or mechanisms

(d) Other (please specify):

Your comments:

Article 8

Public participation

I.11. How do you ensure the “timely public availability” of draft plans and programmes and the environmental report (art. 8, para. 2)? Please specify (more than one option may apply):

(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

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. It has been recently launched a web based platform (<http://www.participa.pt/>) which assembles all public participation procedures within environmental and land planning areas. The public can also submit comments through this platform.

I.12. How do you identify the public concerned (art. 8, para. 3)? Please specify (more than one option may apply):

- (a) Based on the geographical location of the plans and programmes
- (b) Based on the environmental effects (significance, extent, accumulation, etc.) of the plans and programmes
- (c) By making the information available to all members of the public and letting them identify themselves as the public concerned
- (d) By other means (please specify):

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.

I.13. How can the public concerned express its opinion on the draft plans and programmes and the environmental report (art. 8, para. 4)? Please specify (more than one option may apply):

- (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:

I.14. Do you have a definition in your legislation of the term “within a reasonable time frame” (art. 8, para. 4)? Please specify:

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

Your comments:

Article 9

Consultation with environmental and health authorities

I.15. How are the environmental and health authorities identified (art. 9, para. 1):

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

Your comments:

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)¹. 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.

I.16. How are the arrangements for informing and consulting the environmental and health authorities determined (art. 9, para. 4):

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

Your comments:

I.17. Does your national legislation call for consultations with environmental and health authorities?

- (a) Yes
- (b) No

I.18. How can the environmental and health authorities express their opinion (art. 5, para. 2, art. 6, para. 2, and art. 9, para. 3):

- (a) By sending comments
- (b) By providing answers to a questionnaire
- (c) In a meeting
- (d) By other means (please specify)

Your comments:

Article 10

Transboundary consultations

I.19. 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:

I.20. 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:

I.21. 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) No

(b) Yes (please indicate how long):

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

I.22. If the affected Party has indicated that it wishes to enter into consultations, how do the Parties agree on detailed arrangements to ensure that the public concerned and the authorities in the affected Party are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within a reasonable time frame (art. 10, paras. 3 and 4)?

(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

I.23. When a plan or programme is adopted, explain how your country ensures, in accordance with article 11, paragraph 1, that due account is taken of:

(a) The conclusions of the environmental report

(b) Mitigation measures

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

Your comments: Article 9 of the Decree-Law n. ° 232/2007 of 15 June, specifically establishes that the environmental report (which includes mitigation measures when relevant) and the results of the consultations carried out (including public participation, consultation

with environmental and health authorities and transboundary consultations) must be taken in to due account while preparing the final version of the plan or programme.

I.24. 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.

I.25. How do you inform the public and authorities of the affected Party (art. 11, para.

- (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:

I.26. How do you ensure that, when a plan or programme is adopted, the public, the authorities and the Parties consulted are informed and that the information mentioned in article 11, paragraph 2, is made available to them?

- (a) Pursuant to national legislation (please refer to specific provisions and provide citations in order to clarify the procedure followed):
- (b) Other (please specify):

Your comments: Whenever a plan or programme has been subject to an SEA, its adoption includes, besides the all the documents that constitute the plan or programme itself, the documents concerning the environmental assessment carried out, namely, an environmental statement.

The majority of the decisions adopting plans and programmes are published in the Official Gazette. In every case, the information mentioned is published at the website of the entity responsible for the preparation of the plan or programme, as well as at the website of the Portuguese Environment Agency.

Article 12 Monitoring

I.27. 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.

Part two Practical application during the period 2016–2018

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.

II.1. 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

Your comments:

1. Consideration of health effects

II.2. Does your SEA documentation always include specific information on health effects? Please specify:

(a) Yes

(b) No, only when potential health effects are identified

2. Domestic and transboundary implementation in the period 2016–2018

II.3. Does your SEA documentation always include specific information on potential transboundary environmental, including health, effects? Please specify:

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

3. Cases during the period 2016–2018

II.4. Please provide the (approximate) number of transboundary SEA procedures initiated during the period 2016-2018? and list them, grouped by the sectors listed in article 4, paragraph 2:

During the period 2016-2018, Portugal initiated 1 SEA procedure, concerning one operational programme, in which Portugal is the management authority:

- Plano de Situação do Ordenamento do Espaço Marítimo Nacional (PSOEM)

In the same period, Portugal has been consulted about 1 programme from Spain:

- Plano Estratégico Plurianual de Infraestruturas da Extremadura 2016-2030

4. Experience with the strategic impact assessment procedure in 2016–2018

II.5. Has your country experienced substantial difficulties in interpreting particular terms (or particular articles) in the Protocol?

(a) No

(b) Yes (please indicate which ones): 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.

II.6. How does your country overcome the(se) problem(s), if any, for example by working with other Parties to find solutions? Please provide examples:

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.

II.7. With regard your country's experience with domestic procedures, 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) Has your country carried out monitoring according to article 12 and, if so, for what kinds of plans or programmes (cite good practice cases or good practice elements (e.g., consultation or public participation), if available)?

Decree-Law n. ° 232/2007, of 15 June 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 statement, 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.

(b) 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”?

(i) No

(ii) Yes (please indicate which ones):

II.8. With regard your country’s experience with transboundary procedures, 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) What difficulties has your country experienced and what solutions has it found?

(i) Translation and interpretation

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) Other issues

(b) 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

(c) As an affected Party, has your country ensured the participation of the public concerned and the authorities pursuant to article 10, paragraph 4?

(i) No

(ii) Yes (please indicate how):

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.

(d) What has been your country's experience of the effectiveness of public participation?

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.

(e) Does your country have examples of organizing transboundary SEA procedures for joint cross-border plans and programmes?

(i) No

(ii) Yes (please describe):

(f) As an affected Party, how do you ensure that the public concerned and the authorities are informed and given an opportunity to forward their opinion on the draft plan or programme and the environmental report within a reasonable time frame (art. 10, para. 4)?

Decree-Law 232/2007 of June 15th establishes that whenever Portugal is considered as an affected Party, the Portuguese Environment Agency is responsible for carrying out the necessary consultations. It also foresees that detailed arrangements on rules and schedule shall be agreed by mutual accord to ensure that the relevant authorities and the public are informed and given an opportunity to express opinions within a reasonable time-frame.

5. Experience regarding guidance in 2016–2018

II.9. Are you aware of any use in your country of the online *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment (ECE/MP.EIA/17)*?¹:

(a) No:

(b) Part of it (Please specify):

(c) Yes (please describe your experience): This manual was considered and reflected into the guidance document published by the Portuguese Environment Agency in 2012 ('Strategic Environmental Assessment Better Practice Guide – Methodological guidance for strategic thinking in SEA')

Your comments on how the Guidance might be improved or supplemented:

6. Awareness of the protocol

II.10. Does your country see a need to improve the application of the Protocol in your country?

(a) No:

(b) Yes Please describe how your country intends to improve application of the Protocol:

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

7. Suggested improvements to the report

II.11. Please provide suggestions for how this report may be improved:
