Subregional Workshop under the Convention on Environmental Impact Assessment in a Transboundary Context

Tunes, 20th – 21st May 2010

Practical application of the Espoo Convention in the Mediterranean Sea area

THE PORTUGUESE EIA SYSTEM

Cristina Russo[1] & Sara Sacadura Cabral[2]

Portuguese Environment Agency (APA - Agência Portuguesa do Ambiente)

1. The Portuguese EIA Legal Framework

The Portuguese legal regime on EIA has been initially established by Law Decree n. º 186/90 of 6 June, which transposed into national law the European Directive n. º 85/337/EEC, of 27 June, on the assessment of the effects of certain public and private projects on the environment. In 1997, the European Union (EU) became a Party to the Espoo Convention. In order to include the provisions of the Convention into Community law, the European Council approved Directive n.º 97/11/EC amending Directive n.º 85/337/EEC. Later on, also Portugal, as a sovereign state, has approved, into national law, the Espoo Convention through Decree n. º 59/99 of 17 December.

In this sense, and aiming to adjust its national EIA regime to the new legal framework, Portugal approved, in 2000, a new legal act, Law Decree n.º 69/2000 of 3 June. This legal act, which repealed the previous Law Decree n. º 186/90, establishes specific provisions concerning EIA in a transboundary context, setting the obligation to notify and consult any Party that may be affected by any project likely to have a significant adverse environmental impact across borders.

In 2005, Law Decree n. º 69/2000 was amended and republished by Law Decree n. º 197/2005 of 8 November, partially transposing Directive n.º 2003/35/EC, of 26 May, which amends Directive n. º 85/337/EEC and Directive n.º 97/11/EC. The Portuguese EIA legal regime also includes Order n.º 1257/2005, of 2 December, establishing the applicable fees to the EIA procedures and Order n.º 330/2001, of 2 April, setting technical guidelines for the documentation submitted in the scoping, EIA and post assessment phases.

By establishing this legal framework, Portugal has guaranteed the implementation of the Espoo Convention provisions, to which the country has directly committed itself, by approving the Convention into national law, and indirectly while transposing the European Community law.

[1] e-mail address: cristina.russo@apambiente.pt
[2] e-mail address: sara.cabral@apambiente.pt

2. National EIA Procedure

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

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

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

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

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

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

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

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

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

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

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

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

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

3. EIA Procedure on a Transboundary Context

3.1. Portugal as Party of Origin

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

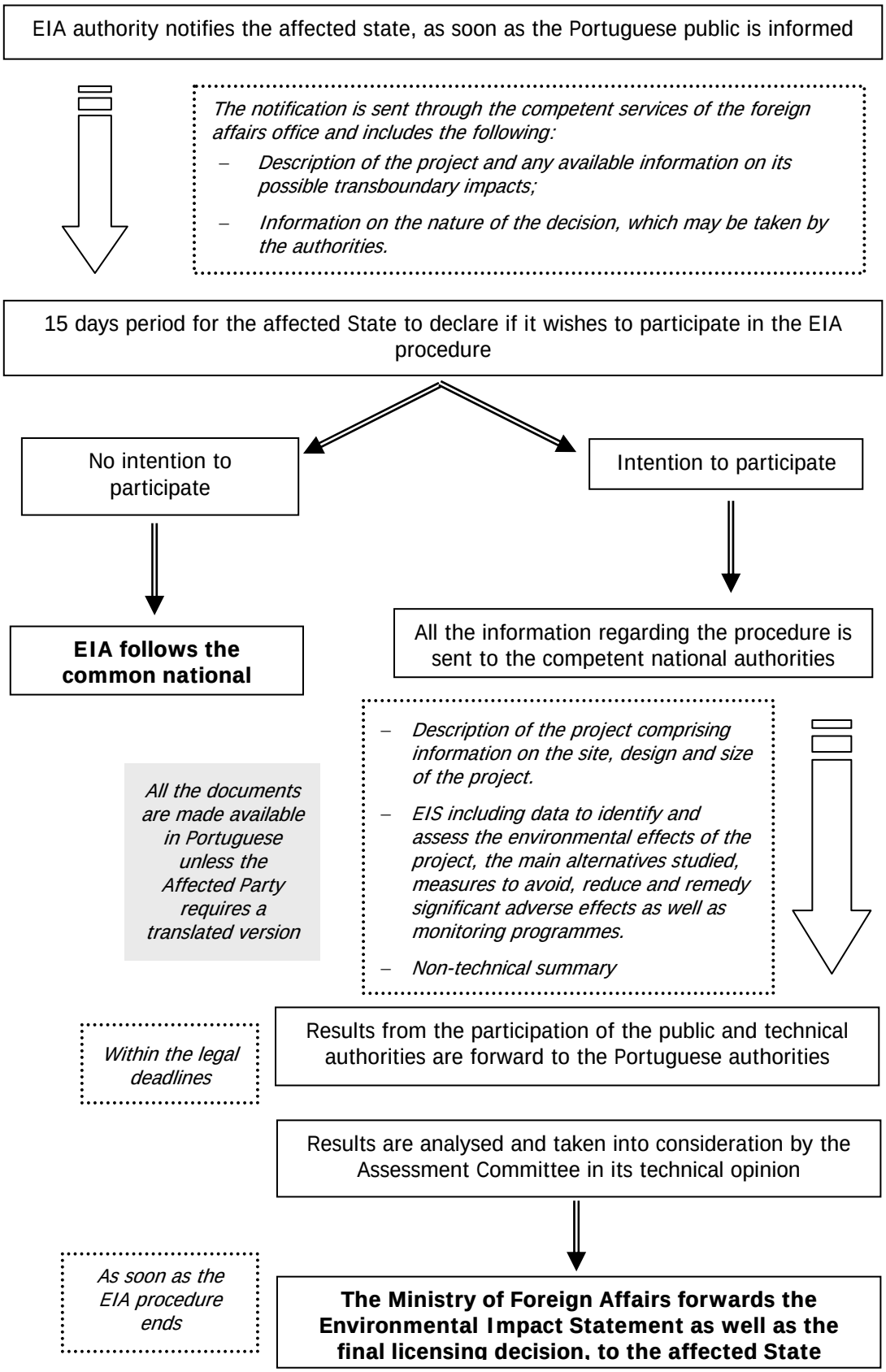
1) A description of the project, together with any available information on its possible transboundary impacts;
2) Information on the nature of the decision, which may be taken by the authorities.

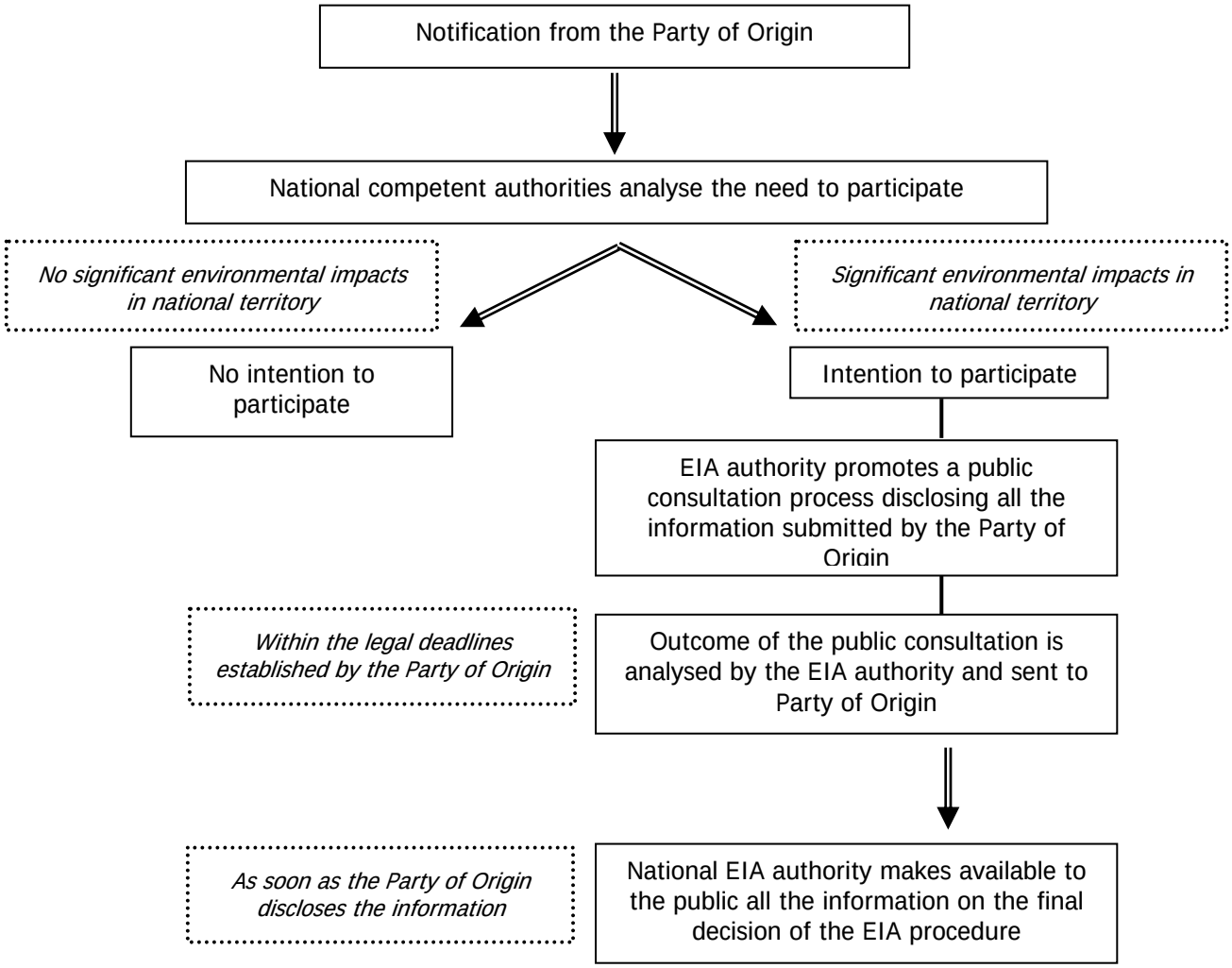
After this notification, the affected State has a 15 days period to declare whether it wishes to participate in the EIA procedure or not.

In case it intends to participate, Portugal sends to the competent national authorities all the information regarding the said procedure, namely:

1) A description of the project comprising information on the site, design and size of the project
2) The environmental impact study which includes:
   - the data required to identify and assess the main effects which the project is likely to have on the environment;
   - an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects;
   - a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
   - monitoring programmes.
3) A non-technical summary of the information mentioned in the previous indents.

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


EIA authority notifies the affected state, as soon as the Portuguese public is informed
The notification is sent through the competent services of the foreign affairs office and includes the following:
– Description of the project and any available information on its possible transboundary impacts;
– Information on the nature of the decision, which may be taken by the authorities.
15 days period for the affected State to declare if it wishes to participate in the EIA procedure
No intention to participate
Intention to participate
EIA follows the common national
All the information regarding the procedure is sent to the competent national authorities
All the documents are made available in Portuguese unless the Affected Party requires a translated version
– Description of the project comprising information on the site, design and size of the project.
– EIS including data to identify and assess the environmental effects of the project, the main alternatives studied, measures to avoid, reduce and remedy significant adverse effects as well as monitoring programmes.
– Non-technical summary
Within the legal deadlines
Results from the participation of the public and technical authorities are forward to the Portuguese authorities
Results are analysed and taken into consideration by the Assessment Committee in its technical opinion
As soon as the EIA procedure ends
The Ministry of Foreign Affairs forwards the Environmental Impact Statement as well as the final licensing decision, to the affected State

3.2. Portugal as Affected Party

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