



GOBIERNO
DE ESPAÑA

MINISTERIO
DE MEDIO AMBIENTE
Y MEDIO RURAL Y MARINO

Environmental Impact Assessment in Spain

Experiences in the application of Espoo Convention Spain

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Tunis, 20 April 2010

Environmental Impact Assessment (projects)

- European Directive 85/337/EEC, as amended.
- EIA Law: RDL 1/2008 (State, Basic legislation)
- EIA Regulation: RD 1131/1988 (State)
- Regional legislation (Additional legislation)

Strategic Environmental Assessment (plans and programs)

- European Directive 2001/42/EC
- SEA Law (Law 9/2006) State, Basic legislation)
- Regional legislation

Environmental Competencies

- **State:**
 - o Basic legislation on environmental protection
 - o Exclusive competencies on river basin management and coastal public domain protection
- **Autonomous Regions:**
 - o Environmental management
 - o Additional provisions on environment protection
 - o Others: land use planning, etc.
- **Local Authorities:**
 - o Licence of activity, etc.

Responsibilities in EIA

- The Administration responsible for the approval of the project (development consent) is responsible for its environmental assessment.
- For infrastructure projects developed by the Central State Administration:
 - Ministry of Public Works: Developer
 - Ministry of Public Works: Competent Authority for the project approval.
 - Ministry of Environment: Intervention in some phases of the EIA process
 - Regional Environmental Authorities: Responsible for environmental management (biodiversity protection, waste management, air quality, ... and cultural heritage protection)

EIA Process

- Initiative (Developer)
- Screening (EIA Law annexes, Ministry of Environment)
- Scoping (Ministry of Environment)
- Environmental Impact Report (Developer)
- Information to the public (Competent Authority)
- Environmental Review (Ministry of Environment)
- Project Approval (Competent Authority)
- Monitoring (Competent Authority)

Screening Process

1. Annexes in EIA Directive and national legislation:
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2. Case by case screening is made by the Ministry of Environment with consultation to Regional Environmental Authorities, other Institutions or Authorities concerned and NGOs.

Scoping

- The developer drafts the Environmental Impact Report taking into consideration the requirements of the EIA directive and the results of the scoping phase.
- Scoping is made by the Ministry of Environment with consultation to Regional Environmental Authorities, other Institutions or Authorities concerned and NGOs.

Public information

- The project and the environmental impact report is made available to the public before the approval.
- The public is allowed to comment on the environmental issues of the project.

Decision making

1. Before the project approval, the Ministry of Environment makes an Environmental Review on the results of the EIA process and the significant impacts on the environment.
2. The Ministry of Public Works approves the project taking into consideration the opinions given in the public information of the project and the Environmental Review.

Monitoring

1. Monitoring and follow up of the project is made by the Ministry of Public Works.
2. In some cases other Authorities (ie Ministry of Environment, Regional and Local Authorities) participate in the monitoring.

Evaluation with transboundary effects, legal system applicable

- Environmental Impact Assessment in Spain:
 - Article 11 of the Royal Decree Law 1 / 2008 of January 11th
 - Article 7 of the Directive 85/337/EEC, as amended
 - Espoo Convention on Environmental Impact Assessment in a Transboundary Context (BOE n ° 261, 31/10/1997)

Other related regulations

- Article 4.3 of Barcelona Convention for the protection of the marine and coastal zone of the Mediterranean (Entry into force of amendments in BOE No 173 of 19.7.2004). Just regarding effects on the Mediterranean marine environment
- Action Protocol between the Spanish Government and the Government of the Portuguese Republic for the application in environmental assessment of plans, programs and projects with transboundary effects (made in Madrid on 19th January 2008)
- Convention on Cooperation for the Protection and Sustainable Use of Water of the Hydrographic Watershed Hispano-Portuguese (BOE n ° 37, 12/02/2000). Albufeira Convention

General obligations on environmental impact assessment of transboundary effects (I)

- Article 3.1. Espoo Convention:
 - “For a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.”(*see next slide of this Presentation)

General obligations on environmental impact assessment of transboundary effects (II)

- Article 7.1. Directive 85/337/EEC:
 - “Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, *inter alia*:.....”

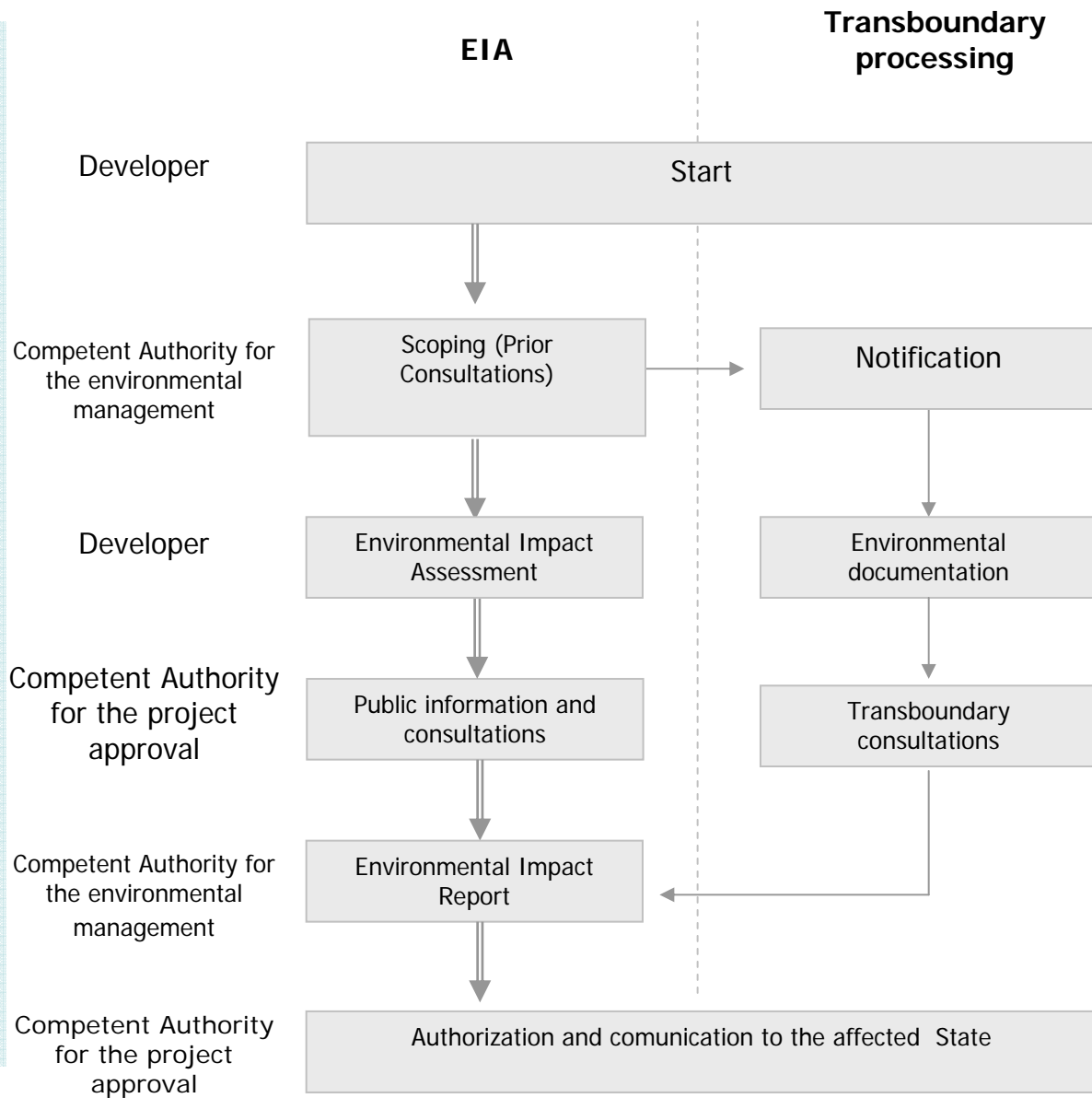
General obligations on environmental impact assessment of transboundary effects (III)

- Article 11.1. RDL 1/2008:
 - “When considered that the implementation of a project complied with environmental impact assessment may have significant effects on the environment in another Member State of the European Union, or where a Member State likely to be significantly affected so requests, the Competent Authority for making the environmental impact statement, when performing the consultations referred to in Article 8, will notify the State, through the Ministry of Foreign Affairs and Cooperation, the possibility of opening a bilateral consultation period (...)

(* General obligations on environmental impact assessment of transboundary effects

- Espoo Convention provides under Articles 2 and 3 several provisions to solve conflicts in case of discrepancies between the parties on:
 - the activities to be affected (Appendix I)
 - whether there may be significant transboundary impacts and, therefore, if the Convention applies
- However, the European Directive on environmental impact assessment, aswell as the Spanish regulations, overpass these articles as they establish that:
 - transboundary consultations are part of the procedure of environmental impact assessment (apply, if appropriate, to all projects subject of evaluation)
 - transboundary consultations are mandatory if the affected State requests
- **Nevertheless, the Espoo Convention is clearer, and delves deeper into the obligations that the EIA procedure where there may be transboundary impacts.**

Transboundary processing Spain



Practice in the transboundary procedure. Spanish Projects (1 / 6)

NOTIFICATION TO THE AFFECTED STATE

- The Competent Authority for the environmental management must communicate the possibility of participation to the affected State, through the Ministry of Foreign Affairs and Cooperation.
- The notification must contain the following information:
 - Information on the proposed activity and its possible transboundary impacts
 - Indication of time to respond if you want to participate in the process of Environmental Impact Assessment.
 - Procedure to be followed in the Environmental Impact Assessment and approval of the project.
- If the answer is no, the matter ends here.

Practice in the transboundary procedure. Spanish Projects (2 / 6)

- If the answer is yes:
 - The Ministry of Foreign Affairs and Cooperation will negotiate with the affected State the timetable for the consultations, in order to ensure the participation of environmental authorities and **interested persons** of that State
 - According to the Espoo Convention into force, the affected State, at the request of the origin State, shall inform about the potential effects on their land for the project implementation. Although not yet into force the amended text of the Convention, this amendment allows the affected State to participate in defining the content of the environmental documentation. To avoid unnecessary paperwork this request can be done with the notification.
- For practical purposes, this phase should be performed at the same time that prior consultations, in the process of Environmental Impact Assessment.

Practice in the transboundary procedure. Spanish Projects (3/ 6)

PREPARATION OF DOCUMENTATION OF ENVIRONMENTAL IMPACT

- The documentation provided from the developer will have the same content as the Environmental Impact Assessment (Annex IV of the directive ≈ Appendix II of the Espoo Convention: project description, alternatives, environmental issues that may be affected, significant impacts, preventive and remedial measures, non-technical summary, difficulties), but obviously referring to transboundary impacts. The extent of it could have been set previously with the affected State.
- The environmental documentation relating to the transboundary effects should be translated into the language of the affected State to facilitate transboundary consultations to be held later.

Practice in the transboundary procedure. Spanish Projects (4/ 6)

TRANSBOUNDARY CONSULTATIONS

- The Competent Authority for the project approval will provide the affected State, through the Ministry of Foreign Affairs and Cooperation, the environmental impact documentation.
- In the way it has been determined previously, the environmental authorities and interested members of the affected State may submit comments, within a reasonable time before making a decision about the activity.
- Transboundary consultations will address impacts in the affected State and measures to reduce or eliminate these impacts, including possible alternatives including not to build, mutual assistance to reduce significant impacts, control of the measures effects made by the origin state, etc.
- Transboundary consultations will be made after the environmental documentation is prepared, that is, at the same time that public information and consultations for the project and environmental impact study are made, and before the formulation of Environmental Impact Report.

Practice in the transboundary procedure. Spanish Projects (5 / 6)

FINAL DECISION

- The Competent Authority for the project approval provide the affected State, through the Ministry of Foreign Affairs and Cooperation, the final decision of approval or authorization of the project, together with the reasons and considerations on which it is based
- Both the Espoo Convention and the EIA Directive establish the obligation to take into account the opinion of the affected State in the final decision and informing this decision to the affected State. However, this does not mean that the State of origin is required to take 100% of all proposals from the affected State, but they must be taken into account and inform the decision finally taken

Practice in the transboundary procedure. Spanish Projects (6/ 6)

MONITORING

- The two States, response to the request of one of them, will determine whether it is necessary to carry out a post-project analysis or not. If it is, this analysis will have the following objectives:
 - Monitoring the conditions of the authorization of the activity and effectiveness of mitigation measures
 - Real consideration of an uncertain impact
 - Verification of the predictions to gain experience for future similar activities

Example of Spanish project Balboa Refinery

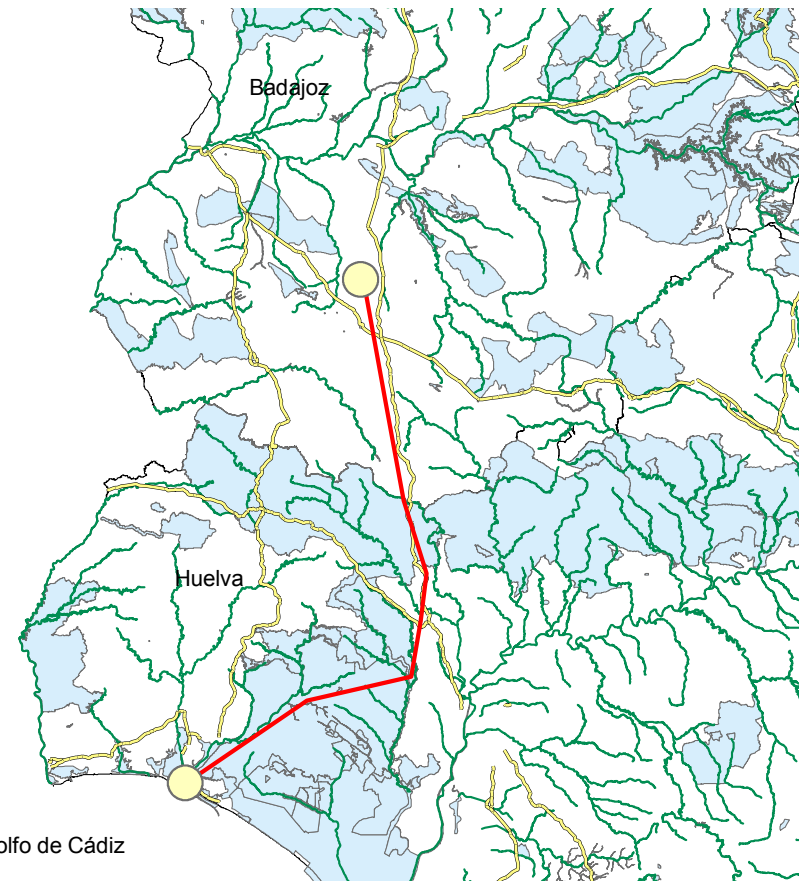
BALBOA REFINERY FACILITIES

- Storage park
- Hydrogen production plant
- Cogeneration
- Hybrid cooling towers

ASSOCIATED INFRASTRUCTURE

- Driving collection and release of water. There is a driving distance of 40 km from Alange dam, Matachel River. Driving discharge of 20 km to the Guadajira River
- Actions in Huelva Port. 10 km offshore. Storage park in the industrial port
- Crude oil pipeline. About 200 km
- Products Pipelines. To Huelva and Merida
- Pipeline for natural gas supply
- Power supply

Portugal



Golfo de Cádiz

Balboa Refinery. Transboundary process

1. Participation requested to Portugal
2. Sending report summary (in Spanish)
3. Response of Portugal with transboundary issues to be analyzed (including internal consultations)
4. Environmental documentation on transboundary impacts of the developer (in Spanish and Portuguese) and environmental impact assessment (in Spanish)
5. Response of Portugal (including internal consultation and public participation)
6. Environmental impact report (in writing)

Example of Portuguese project: high speed rail link between Madrid-Lisboa/Porto, Corridor 1 Elvas-Badajoz

- Through verbal note Portugal embassy consulted Spain in February 2008 on possible transboundary impacts.
- The Ministry of Environment and Rural and Marine Affairs of Spain through the Directorate-General of Environmental Assessment and Quality, consults the affected public administrations and public interests in Spain.
- As a result of the consultations, the regional habitat of interest were taken into account: "Forest Gallery of *Salix alba* and *Populous alba* and species *Otis tarda* and *Little Bustard*" are listed as sensitive in the regional catalog of endangered species in Extremadura.
- The location of a station on the border between Spain and Portugal should be examined with deeper environmental analysis, taking into account the evaluation of the Spanish project "Madrid-Lisboa/Oporto rail links. Corridor between Elvas and Badajoz"

Summary of most relevant aspects (1 / 2)

- The relationship with the other State shall go through the Ministry of Foreign Affairs and Cooperation
- Bringing the transboundary assessment into practice requires close contact between the responsible for its execution in both parties, always seeking the greatest efficiency and effectiveness of the process
- A key aspect is the prior knowledge of how environmental impact assessment is performed in each State, either the procedural aspects or the environmental documentation requirements
- Reach to clear agreements before the start of the proceedings, can avoid the processing type “trial and error” that often occurs
- This cooperation is required more in some cases in which both parties can be considered as a Party of origin and as an affected Party. In these transboundary projects the decision has to be taken on both sides of the frontier, so it will be necessary to comply with the requirements of environmental impact assessment of both countries, and the impact can also be on both sides of the frontier

Summary of most relevant aspects (2 / 2)

- Before commencing, it is important to clarify issues between the two countries :
 - Institutional aspects (responsibilities of each actors)
 - Deadlines (compliance with the laws of both countries)
 - Translations (what documents or what part thereof)
 - Financial matters (cost of studies, translations, public participation activities, etc.). Must prioritize the principle of "polluter pays"
 - Transboundary documentation requirements
- The resolution of these and other practical issues can be solved in advance through bilateral or multilateral agreements between countries (Article 8 and Appendix VI of the Espoo Convention)

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