

**REPORT OF SPAIN FOR 2003-2005
ON THE IMPLEMENTATION OF THE ESPOO
CONVENTION ON ENVIRONMENTAL IMPACT
ASSESSMENT IN A TRANSBOUNDARY CONTEXT**
for the period mid-2003 to end of 2005

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PART I – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

Please provide the information requested below in Part I, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should not be used to describe your experience of applying the Convention, i.e. just the framework for its implementation.

Article 2

General Provisions

DOMESTIC IMPLEMENTATION OF THE CONVENTION

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (Art. 2.2).*

EIA is regulated in Spain by:

- European Directive 85/337/EEC, amended by Directives 97/11/EC and 2003/35/EC.
- Espoo Convention
- EIA Law: RDL 1302/1986 modified (Basic legislation), and EIA Regulation: RD 1131/1988
- Regional legislation (Additional legislation for each Region)

No other measures are needed to implement the Convention

TRANSBOUNDARY EIA PROCEDURE

2. *Describe your national and transboundary EIA procedures and authorities (Art. 2.2):*
 - a. *Describe your EIA procedure and indicate which steps of the EIA procedure include public participation.*
 - Screening
 - Scoping
 - Environmental impact report
 - Public hearing
 - Environmental review
 - Project approval
 - Monitoring

The screening and scoping phases include consultations to environmental NGOs.

The public is allowed to comment on the project and the environmental report during the Public hearing phase.

- b. *Describe how the different steps of the transboundary EIA procedure mentioned in the Convention fit into your national EIA procedure.*

Notification (art. 3.1) is normally made during the "scoping" phase, giving the affected Party the possibility to give information and suggest the significant aspects to be covered in the report (art. 3.6).

Submission of the environmental report and consultations to the affected Party (art. 4.2 and 4.3) are made during the "public hearing" phase.

When the project is approved, the final decision is provided to the affected Party (art. 6.2)

c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure. Also list the authorities responsible for the domestic EIA procedure, if they are different.*

- Initiative (Developer)
- Screening (Environmental body for the EIA procedure / EIA Law thresholds)
- Scoping (Environmental body for the EIA procedure)
- Environmental Impact Report (Developer)
- Public hearing (Competent authority for the approval)
- Environmental Review (Environmental body for the EIA procedure)
- Project Approval (Competent authority)
- Monitoring (Competent authority)

The Ministry of Environment is the Environmental body for projects approved by the Central State Administration.

The Ministry of Foreign Affairs is responsible for communications with the other Party in transboundary issues.

d. *Is there one authority in your country that collects information on all the transboundary EIA cases under the Convention? If so, name it. If not, do you intend to establish such an authority?*

The Ministry of Foreign Affairs participates in all the transboundary EIA cases.

3. *Do you have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

No.

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING EIA UNDER THE CONVENTION

4. *Is your country's list of activities subject to the transboundary EIA procedure equivalent to that in Appendix I to the Convention?*

Yes.

5. *Please describe:*

a. *The procedures and, where appropriate, the legislation you would apply to determine that an "activity", or a change to an activity, falls within the scope of Appendix I (Art. 2.3), or that an activity not listed should be treated as if it were (Art. 2.5);*

During the "screening" and "scoping" phases the Environmental body for the EIA procedure can consider that the activity is likely to have significant effects on other Party and communicates this to the Ministry of Foreign Affairs.

The applicable provision in this case is article 7.1 of the European Directive 85/337/EEC.

- b. *How a change to an activity is considered as a “major” change;*
- c. *How such an activity, or such a change to an activity, is considered likely to have a “significant” adverse transboundary impact (Art. 2.5, Guidelines in Appendix III); and*

The screening is made taking into account criteria defined in Annex III of the European Directive 85/337/EEC

- d. *How you would decide whether it is “likely” to have such an impact. (Art. 2.3)*

PUBLIC PARTICIPATION

- 6. *Do you have your own definition of “the public” in your national legislation, compared to Article 1(x)? How do you, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your own public as required in Article 2, paragraph 6?*

There is no definition of "the public", but the EIA legislation is being amended in this way.

According to Article 7 of the f the European Directive 85/337/EEC, the Affected Party shall ensure its public is given the opportunity of participate.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

- 7. *Describe how you determine when to send the notification to the affected Party, which is to occur “as early as possible and no later than when informing its own public”? At what stage in the EIA procedure do you usually notify the affected Party? (Art. 3.1)*

Notification (art. 3.1) is normally sent during the "scoping" phase.

- 8. *Describe how you determine the content of the notification? (Art. 3.2)*

The same documentation used in the National scoping consultations and information on the EIA procedure.

- 9. *Describe the criteria you use to determine the time frame for the response to the notification from the affected Party (Art 3.3, “within the time specified in the notification”)? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

The use of the same time frame than in the National procedure, but with some flexibility.

- 10. *Describe when you provide relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in Article 3, paragraph 5. Already with the notification or later in the procedure?*

In the scoping phase.

11. *How do you determine whether you should request information from the affected Party (Art. 3.6)? When do you normally request information from the affected Party? What kind of information do you normally request? How do you determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (Art. 3.6)?*

In the "scoping" phase, the affected Party is given the possibility to give information and suggest the significant aspects to be covered in the report (art. 3.6). The developer can ask for more information if it is needed for the preparation of the report.

12. *How do you consult with the authorities of the affected Party on public participation (Art. 3.8)? How do you identify, in cooperation with the affected Party, the “public” in the affected area? How is the public in the affected Party notified (what kinds of media, etc are usually used)? What is normally the content of the public notification? Does the notification to the public of the affected Party have the same content as the notification to your own public? If not, describe why not. At what stage in the EIA procedure do you normally notify the public of the affected Party?*

According to Article 7 of the European Directive 85/337/EEC, the Affected Party shall ensure its public is given the opportunity of participate.

13. *Do you make use of contact points for the purposes of notification as decided at the first meeting of Parties (ECE/MP.EIA/2, decision I/3), and listed on the Convention website at http://www.unece.org/env/eia/points_of_contact.htm?*

No. Notification is normally sent through the Ministry of Foreign Affairs.

14. *Do you provide any information to supplement that required by Article 3, paragraph 2? Do you, furthermore, follow the proposed guidelines in the report of the first meeting of the Parties (ECE /MP/2, decision I/4)? If not, in what format do you normally present the notification?*

QUESTIONS TO AFFECTED PARTY

15. *Describe the process of how you decide whether or not you want to participate in the EIA procedure (Art. 3.3)? Who participates in the decision-making, for example: central authorities, local competent authorities, the public and environmental authorities? Describe the criteria or reasons you use to decide?*

After invitation from the Party of origin. In some cases we have asked for information from the other Party without previous notification.

16. *When the Party of origin requests you to provide information relating potentially affected environment: (a) how do you determine what is “reasonably obtainable” information to include in your response; and (b) describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “promptly” in the context of responding to a request for information? (Art. 3.6)*

Article 4

Preparation of the EIA documentation

QUESTIONS TO PARTY OF ORIGIN

17. *What is the legal requirement for the content of the EIA documentation (Art. 4.1)?*

- Description of the project

- Alternatives
- Environmental aspects and likely significant effects
- Mitigation measures
- Monitoring programme
- Non technical summary

18. *Describe your country's procedures for determining the content of the EIA documentation (Art. 4.1).*

"Scoping" is made by the Environmental body for the EIA procedure through consultations to Environmental Authorities, other Institutions concerned and NGOs

19. *How do you identify "reasonable alternatives" in accordance with Appendix II, alinea (b)?*

See above

20. *How do you identify "the environment that is likely to be affected by the proposed activity and its alternatives" in accordance to Appendix II, alinea (c), and the definition of "impact" in Article 1(vii)?*

See above

21. *Do you give the affected Party all of the EIA documentation (Art. 4.2)? If not, which parts of the documentation do you provide?*

In general, the EIA report is given to the affected Party

22. *How is the transfer and reception of the comments from the affected Party organized? How does the competent authority in your country (as the Party of origin) deal with the comments? (Art. 4.2)*

Comments are taken into consideration by the developer before sending the project and the EIA report to the Environmental body for the review.

23. *Describe the procedures and, where appropriate the legislation you would apply to determine the time frame for comments provided for in the words "within a reasonable time before the final decision" (Art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

The general criterion is the use of the same time frame than in the National procedure, but with some flexibility.

24. *What material do you provide, together with the affected Party, to the public of the affected Party?*

25. *Do you initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?*

When the EIA report is finished the Competent Authority for the approval initiates the public hearing.

QUESTIONS TO AFFECTED PARTY

26. *Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of the words “within a reasonable time before the final decision”, this being the time frame for comments (Art. 4.2)?*
27. *Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the affected Party, or with the legislation of the Party of origin, or with ad hoc procedures, or with bilateral or multilateral agreements?*

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

28. *At which step of the EIA procedure does the consultation in accordance with Article 5 generally take place? Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “undue delay”, with regard to the timing of entry into consultation? Do you normally set the duration for consultations beforehand? If there seems to be no need for consultation, how do you determine not to carry out consultations?*

In the public hearing phase, after the preparation of the EIA report

29. *On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, exchange of written communications?*

Consultations are normally made by exchange of written communications, through the Ministry of Foreign Affairs.

QUESTIONS TO AFFECTED PARTY

30. *On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means do you usually communicate in consultations, for example by meeting or by the exchange of written communications? How do you indicate if there is no need for consultations?*

Consultations are normally made by exchange of written communications, through the Ministry of Foreign Affairs.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

31. *Describe what is regarded as the “final decision” to authorize or undertake a proposed activity (Art. 2.3). Do all projects listed in Appendix I require such a decision?*

Yes

32. *How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity? (Art. 6.1)*

EIA legislation provides that the approval of the project must take into consideration the EIA process (Art. 8 European Directive 85/337/EEC)

33. *Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and public in your country (Art. 6.1)?*

Yes

34. *How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (Art. 6.2)*

35. *If additional information comes available according to paragraph 3 before the activity commences, how do you consult with the affected Party? If need be, can the decision be revised? (Art. 6.3)*

Article 7

Post-Project Analysis

36. *How do you determine whether you should request a post-project analysis to be carried out (Art. 7.1)?*

The need for a post project analysis can be determined along the EIA process: in the "scoping", the EIA report or the review phases.

37. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how do you inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to Article 7, paragraph 2?*

Article 8

Bilateral and multilateral agreements

38. *Do you have any bilateral or multilateral agreements based on the EIA Convention (Art. 8, Appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on Appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

The 1998 Albufeira Convention between Spain and Portugal for the Protection and Sustainable Use of the Waters of the Spanish-Portuguese Hydrographical Catchments.

This Convention has provisions for the environmental assessment of activities likely to cause impacts on the transboundary waters.

39. *Have you established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

There is a Commission for the implementation of the Albufeira Convention.

Article 9

Research programmes

40. Are you aware of any specific research in relation to the items mentioned in Article 9 in your country? If so, describe it briefly.

Ratification of the amendments to the Convention and of the Protocol on SEA

41. If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?

42. If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?

43. If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?

PART II – PRACTICAL APPLICATION DURING THE PERIOD 2003-2005

Please report on your practical experiences of applying the Convention (not your procedures described in Part I), whether as Party of origin or affected Party. The focus here is on identifying the best practice as well as difficulties Parties encountered in applying the Convention in practice to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve application of the Convention.

CASES DURING THE PERIOD 2003-2005

44. *Do you have any practical experience of applying the Convention in this period (yes/no)? If you do not have any such experience, why not?*

Yes

45. *Does your national administration have information on the transboundary EIA procedures that were underway during the period? If so, please list these procedures, clearly identifying for each whether your country was the Party of origin or the affected Party. If you have not provided a list of transboundary EIA procedures in connection with previous reporting, also provide a list of those procedures. If possible, also indicate for each procedure why it was considered necessary to apply the Convention.*

- Atlantic High Speed Train (P.O. Spain. A.P. Portugal)
- Thermal Power Plant in "Moral de Sayago, Zamora" (Party of origin: Spain. Affected Party: Portugal)

46. *Are there other projects than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.*

Projects with no or negative answer from the affected Party:

- Thermal Power Plant in "Los Barrios, Cádiz" (Party of origin: Spain. Affected Party: UK)
- Incineration Plant in "Txingudi, Guipúzcoa" (Party of origin: Spain. Affected Party: France)

47. *Provide information on the average durations of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

EXPERIENCE OF THE TRANSBOUNDARY EIA PROCEDURE IN 2003-2005

48. *If you have had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

49. *How have you interpreted in practice the various terms used in the Convention, and what criteria have you used to do this? Key terms include the following: "promptly" (Art. 3.6), "a reasonable time" (Art. 3.2(c), Art. 4.2), "a reasonable time-frame" (Art. 5), and "major change" (Art. 1(v)). If you are experiencing substantial difficulties interpreting particular*

terms, do you work together with other Parties to find solutions? If not, how do you overcome the problem?

See part I.

50. Share with other Parties your experience of using the Convention. In response to each of the questions below, either provide one or two practical examples or describe your general experience. You might also include examples of 'lessons learned' in order to help others.

a. How in practice have you identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?

Projects included in appendix I of the Convention or in the EIA Directive.

b. Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How do you determine how much information to include in the EIA documentation?

c. What methodology do you use in impact assessment in the (transboundary) EIA procedure (for example, impact prediction methods and methods to compare alternatives)?

d. Translation is not addressed in the Convention. How have you addressed the question of translation? What do you usually translate? What difficulties have you experienced relating to translation and interpretation, and what solutions have you applied?

The language normally used in communications is Spanish.

e. How have you organized transboundary public participation in practice? As Party of origin, have you organized public participation in affected Parties and, if so, how? What has been your experience of the effectiveness of public participation? Have you experienced difficulties with the participation of your public or the public of another Party? (For example, have there been complaints from the public about the procedure?)

See part I.

f. Describe any difficulties that you have encountered during consultations, for example over timing, language and the need for additional information.

g. Describe examples of the form, content and language of the final decision, when it is issued and how it is communicated to the affected Party and its public.

h. Have you carried out post-project analyses and, if so, on what kinds of projects?

i. Do you have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your experiences describing, for example, any bilateral agreements, institutional arrangements, and

how practical matters are dealt with (contact points, translation, interpretation, transmission of documents, etc.).

- j. Name examples of good practice cases, whether complete cases or good practice elements (e.g. notification, consultation or public participation) within cases. Would you like to introduce your case in a form of Convention's fact sheet?*

CO-OPERATION BETWEEN PARTIES IN 2003-2005

- 51. Do you have any successful examples of how you have overcome difficulties arising from different legal systems in neighbouring countries?*

EXPERIENCE IN USING THE GUIDANCE IN 2003-2005

- 52. Have you used in practice the following guidance, recently adopted by the Meeting of the Parties and available on-line? Describe your experience of using these guidance documents and how they might be improved or supplemented.*
 - a. Guidance on public participation in EIA in a transboundary context;*
 - b. Guidance on subregional cooperation; and*
 - c. Guidelines on good practice and on bilateral and multilateral agreements.*

CLARITY OF THE CONVENTION

- 53. Have you had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in Part I or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which you encounter when actually applying the Convention.*

AWARENESS OF THE CONVENTION

- 54. Have you undertaken activities to promote awareness of the Convention among your stakeholders (e.g. the public, local authorities, consultants and experts, academics, investors)? If so, describe them.*
- 55. Do you see a need to improve the application of the Convention in your country and, if so, how do you intend to do so? What relevant legal or administrative developments are proposed or on-going?*

SUGGESTED IMPROVEMENTS TO THE REPORT

56. Please provide suggestions for how the report may be improved.