

Questionnaire for the report of Portugal on the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context in the period 2016–2018

Information on the focal point for the Convention

1. Name and contact information:

Maria do Carmo Figueira
Portuguese Environment Agency (APA - Agência Portuguesa do Ambiente)
Rua da Murgueira, 9/9A – Zambujal
Ap.7585 | 2610-124 Amadora | Portugal
Telephone: (+351) 21 472 82 00 | Fax: (+351) 21 471 90 74
carmo.figueira@apambiente.pt

Information on the point of contact for the Convention

2. Name and contact information (if different from above):

Information on the person responsible for preparing the report

3. Country: Portugal
4. Surname: Sacadura Cabral
5. Forename: Sara
6. Institution: Portuguese Environment Agency
7. Postal address: Rua da Murgueira, 9/9A, Bairro do Zambujal; Ap. 7585
2611-865 Amadora - Portugal
8. E-mail address: sara.cabral@apambiente.pt
9. Telephone number: (351) 21 472 82 00
10. Fax number: (351) 21 471 90 74
11. Date on which report was completed: **26th March 2019**

Part one

Current legal and administrative framework for the implementation of the Convention

In this part, please provide the information requested, 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 describe the framework for your country's implementation, and not experience in the application of the Convention.

Please do not reproduce the text of the legislation itself but summarize and explicitly refer to the relevant provisions transposing the Convention text (e.g., EIA Law of the Republic of ..., art. 5, para. 3, of Government Resolution No. ..., para. ... item...)

Article 1 Definitions

I.1. Is the definition of impact for the purpose of the Convention the same in your legislation as in article 1?:

- (a) Yes
- (b) Yes, with some differences (please provide details):
- (c) No (please provide the definition):

“Environmental impact – positive and negative changes in the environment resulting from a project, during a given period of time and within a certain area, compared with the baseline environmental situation that would happen in that same period of time and in that same area if the project was not executed.” (article 2, paragraph k) of Decree-Law n.º 151-B/2013, of 31 October, amended and republished by Decree-Law n.º 152-B/2017, of 11 December).

- (d) There are no definitions of impact in the legislation

Your comments: The environmental factors that may be affected by the project, as established in the definition of impact, are listed in the annex V of Decree-Law n.º 151-B/2013, of 31 October, amended and republished by Decree-Law n.º 152-B/2017, of 11 December.

I.2. Is the definition of transboundary impact for the purpose of the Convention the same in your legislation as in article 1? Please specify each below.

- (a) Yes
- (b) Yes, with some differences (please provide details):
- (c) No (please provide the definition):
- (d) There are no definitions of transboundary impact in the legislation

Your comments: No specific definition is provided in the national law. However specific provisions are set for consultation in case of projects likely to have significant effects on the environment of another state.

I.3. Please specify how major change is defined in your national legislation:

Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December, does not provide a definition for "major change". However, it sets screening criteria for changes and extensions of projects listed in annexes I and II of the EIA national act (article 1, paragraph 4).

I.4. How do you identify the public concerned? Please specify (more than one option may apply):

- (a) Based on the geographical location of the proposed project
- (b) By making the information available to all members of the public and letting them identify themselves as the public concerned
- (c) By other means (please specify):

Your comments: Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December, provides for the following definition of public concerned: *“the holders of subjective rights or legally protected interests under the environmental decision-making process and the ones affected or likely to be affected by this decision, namely, non-governmental organizations promoting environmental protection.”* (article 2, paragraph r)).

Article 2 General provisions

I.5. Provide legislative, regulatory, administrative and other measures taken in your country to implement the provisions of the Convention (art. 2, para. 2):

- (a) Law on EIA: Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December.
- (b) EIA provisions are transposed into another law(s) (please specify): Decree-Law n. ° 75/2015, of 11 May, rectified by the rectification declaration n.° 30/2015, of 18 June, approving the Single Environmental Licencing that simplifies the procedures included in the environmental licencing laws.
- (c) Regulation (please indicate number/year/name): Order n.° 395/2015, of 4 November, establishing the formal technical requirements to be complied with some procedures considered in the national EIA Law; Order n.° 398/2015 and order 399/2015, of 5 November, both establishing the information that must instruct the environmental procedures, where the EIA procedure is included.
- (d) Administrative (please indicate number/year/name): Cooperation protocol signed in February 2008 between the Government of the Kingdom of Spain and the Government of the Republic of Portugal, regarding the environmental assessment of plans, programmes and projects likely to have significant transboundary effects (applies to plans, programs and projects of any of the two countries that might have significant transboundary environmental effects in the other country).
- (e) Other (please specify):

Your comments:

I.6. Please describe any differences between the list of activities in your national legislation and appendix I to the Convention, if any:

- (a) There is no difference, all activities are transposed in the national legislation as is
- (b) It differs slightly (please specify):

Your comments: The EIA national legislation lists the types of projects subject to EIA according to the European EIA Directive, which includes all the activities listed in the Appendix of the second amendment to the Convention.

The EIA national Law does not use the terms “large” and “major”. These have been replaced by thresholds above which EIA is mandatory (Annex I and II of the Decree-Law n.º 151-B/2013, of 31 October, amended and republished by Decree-Law n.º 152-B/2017, of 11 December). Below such thresholds, projects may still be subject to EIA if considered, through a case-by-case examination, likely to have significant effects on the environment.

I.7. Identify the competent authority/authorities responsible for carrying out the EIA procedure in your country (please specify):

- (a) There are different authorities at national, regional, local levels
- (b) They are different for domestic and transboundary procedures
- (c) Please name the responsible authority/authorities:

EIA authority: responsible for coordinating the EIA procedure, for appointing the Assessment Commission, for promoting and ensuring the public consultation and for analysing the opinion submitted by the Assessment Commission. Also issues the Environmental Impact Statement, deciding if it is unfavourable, favourable or subject to conditions. Depending on the type of project, the EIA authority may be the Portuguese Environment Agency (APA - Agência Portuguesa do Ambiente) or the Regional Coordination and Development Commissions (CCDR – Comissões de Coordenação e Desenvolvimento Regional).

Assessment Commission: responsible for the technical analysis throughout the several EIA stages.

(Articles 6 to 10 of Decree-Law n.º 151-B/2013, of 31 October, amended and republished by Decree-Law n.º 152-B/2017, of 11 December).

- (d) There is no single authority responsible for the entire EIA procedure:

Your comments:

I.8. Is there an authority in your country that collects information on all the transboundary EIA cases? If so, please name it:

- (a) No
- (b) Yes (please specify): Although there is not a specific authority for transboundary EIA cases, the Portuguese Environment Agency, as the national EIA authority, is responsible for the transboundary consultation formalities as well as for collecting information regarding all the EIA procedures and making it available to public.

Your comments:

I.9. How does your country, As a Party of origin and as an affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to the Party of origin's public, as required in article 2, paragraph 6 (please explain):

Every time the Portuguese authorities are assessing a project likely to have significant transboundary impacts, the EIA authority, through the Portuguese Environment Agency, notifies the affected Party, as soon as the Portuguese public is informed.

The affected Party has a 30 days period to declare its intention to participate in the EIA procedure. If the affected Party wishes to participate, the final deadlines for the EIA procedure may not apply if needed.

Prior to 1st January 2018 this period was of 15 days, enlarged to a maximum of 30 days within the framework of the 2008 protocol of collaboration between Portugal and Spain.

The affected Party shall promote public consultation according to its domestic EIA legal framework.

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

(The procedures for transboundary consultations are addressed in articles 33 to 35 of the Decree-Law n.º 151-B/2013, of 31 October, amended and republished by Decree-Law n.º 152-B/2017, of 11 December).

Article 3 Notification

I.10. As a Party of origin, when do you notify the affected Party (art. 3, para. 1)? Please specify:

- (a) During scoping
- (b) When the EIA report has been prepared and the domestic procedure started
- (c) After finishing the domestic procedure
- (d) At other times (please specify):

Your comments: Every time the Portuguese authorities are assessing a project likely to have significant transboundary impacts, the EIA authority, through the Portuguese Environment Agency, notifies the affected Party, as soon as the Portuguese public is informed.

(Article 33 of the Decree-Law n.º 151-B/2013, of 31 October, amended and republished by Decree-Law n.º 152-B/2017, of 11 December).

I.11. Please define the format of notification:

- (a) It is the format as decided by the first meeting of the Parties in its decision I/4 (ECE/MP.EIA/2, annex IV, appendix)
- (b) The country has its own format (please attach a copy)
- (c) No official format used

Your comments:

There is no official format. However, the article 33, paragraph 1 of the Decree-Law n.º 151-B/2013, of 31 October, amended and republished by Decree-Law n.º 152-B/2017, of 11 December, provides that the notification shall include the following elements:

1. A description of the project, along with the available information on the possible transboundary impacts;
2. Information on the decision to be taken by the authorities.

According to the article 34, paragraph 1 of the Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December, further information is provided if the affected Party declares its intention to participate in the EIA procedure.

I.12. As a Party of origin, what information do you include in the notification (art. 3, para. 2)? Please specify (more than one options may apply):

- (a) The information required by article 3, paragraph 2
- (b) The information required by article 3, paragraph 5
- (c) Additional information (please specify):

Your comments: The notification includes the information required by article 3, paragraph 2, with the exception of the information related to the indication of a time for the response, once all the procedures and related deadlines are defined in the cooperation protocol signed in February 2008 between the Government of the Kingdom of Spain and the Government of the Republic of Portugal, regarding the environmental assessment of plans, programmes and projects likely to have significant transboundary effects.

If no other indications are given in the notification, this acting Protocol establishes a 30 days period for the affected Party to declare whether it wishes to participate in the EIA procedure or not.

I.13. As a Party of origin, does your national legislation contain any provision on receiving a response to the notification from the affected Party in a reasonable time frame (art. 3, para. 3, “within the time specified in the notification”)? Please specify:

- (a) National legislation does not cover the time frame
- (b) Yes, it is indicated in the national legislation (please indicate the time frame): 15 days after the notification is sent to the affected Party.
- (c) It is determined and agreed with each affected Party case by case in the beginning of the transboundary consultations (please indicate the average length in weeks):

Your comments: The time frame for receiving a response to the notification from the affected Party is defined in the article 33, paragraph 2 of the Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December (30 days). Prior to 1st January 2018 this period was of 15 days, enlarged to a maximum of 30 days within the framework of the 2008 protocol of collaboration between Portugal and Spain.

Please specify the consequence if a notified affected Party does not comply with the time frame, and the possibility of extending a deadline: If the notified affected Party does not answer the notification, the EIA will go on within the usual domestic procedure. However, there is some flexibility if the affected Party requests an extension of this period, since the final deadlines for the EIA procedure may not be applied if needed, according to the article 33, paragraph 3 of the Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December.

I.14. How do you inform the public and authorities of the affected Party (art. 3, para. 8)? Please specify:

(a) By informing the point of contact to the Convention listed on the Convention website¹

(b) Other (please specify): The exchange of information is also made through the Ministry of the Foreign Affairs of both Parties.

Your comments: According to the national legal framework, procedures are established in order to ensure the formal consultation of the affected Party, considering that the authorities of that Party are the main responsible for promoting public consultation in its national territory and according to its domestic EIA legal regime.

For the majority of the activities listed under the Appendix I, the only affected Party is the Kingdom of Spain. In this case, the procedures for informing that Party will be developed according to the procedures and through the points of contact established by the 2008 cooperation protocol between the Government of the Kingdom of Spain and the Government of the Republic of Portugal, regarding the environmental assessment of plans, programmes and projects likely to have significant transboundary effects.

I.15. On what basis is the decision made to participate (or not) in the transboundary EIA procedure as an affected Party (art. 3, para. 3)? Please specify:

(a) Notified ministry/authority of the affected Party responsible for EIA decides on its own based on the documentation provided by Party of origin

(b) Based on the opinions of the competent authorities of the affected Party

(c) Based on the opinions of the competent authorities and that of public of the affected Party

(d) Other (please specify):

Your comments: Having analysed the documents submitted by the Party of origin and considering the characteristics of the project and its environmental impacts in national territory, EIA authority decides whether or not to participate in the EIA procedure. The EIA authority may also contact other competent authorities concerned.

The criteria used for this decision consists mainly in the significance of the impacts foreseen in national territory.

(Article 35 of the Decree-Law n.º 151-B/2013, of 31 October, amended and republished by Decree-Law n.º 152-B/2017, of 11 December).

I.16. If the affected Party has indicated that it intends to participate in the EIA procedure, how are the details for such participation agreed, including the time frame for consultations and the deadline for commenting (art. 5)? Please specify:

(a) Following the rules and procedures of the Party of origin

(b) Following the rules and procedures of the affected Party

(c) Other (please specify):

According to the institutional arrangements set by the cooperation protocol signed by the Government of the Kingdom of Spain and the Government of the Republic of

¹ List available from http://www.unece.org/env/eia/points_of_contact.htm.

Portugal, the competent authorities of the affected Party consult the entities and the interested public about the potential transboundary effects and the measures envisaged to reduce or eliminate such effects.

Within a maximum of three months, the competent authority of the affected Party sends its position about the project, so that it may be considered in the final decision.

There is also some flexibility if the affected Party requests an extension of this deadline.

Your comments:

Articles 3.8 and 4.2

Public participation

I.17. How can the public express its opinion on the EIA documentation of the proposed project (art. 5)? Please specify (more than one option may apply):

As a Party of origin

- (a) By sending comments to the competent authority/focal point
- (b) By taking part in a public hearing
- (c) Other (please specify):

As an affected Party

- (d) By sending comments to the competent authority/focal point
- (e) By taking part in a public hearing
- (f) Other (please specify):

Your comments: According to the 2008 cooperation protocol between the Government of the Kingdom of Spain and the Government of the Republic of Portugal, the affected Party is the main responsible for promoting public consultation in its national territory and according to its domestic EIA legal regime.

All the EIA procedures, domestic or in a transboundary context, include a 30 days period for consultation of the concerned authorities and public participation (prior to 16th May 2017 public participation within the EIA procedure was subject to the following timeframes: 20 days or 15 days in the case of projects submitted to industrial licencing).

Depending on the project's nature and complexity, as on its potential to originate significant environmental impacts, the EIA authority (as a part of origin or as affected party) decides the adequate procedures to assure an effective public consultation in its country (article 29, paragraph 3 of the Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n. ° 152-B/2017, of 11 December).

Those procedures may include public hearings, meetings with interested parties or between the competent authorities in both countries. An online platform is available for gathering comments/opinions from the public concerned.

I.18. Please indicate whether your national EIA legislation requires the organization of a public hearing on the territory of the affected Party in cases where your country is the country of origin:

- (a) Yes

- (b) No

Your comments: The national EIA legislation does not specifically require the organization of a public hearing on the territory of the affected Party. However, as mentioned above, the EIA authority of the Affected Party decides the adequate procedures to assure an effective public consultation, which may include public hearings and meetings with the different stakeholders in both countries. The Portuguese authorities may be involved if requested by the Affected Party.

I.19. Please indicate whether your national EIA legislation requires the organization of public hearings in cases where your country is the affected Party:

- (a) Yes

- (b) No

Your comments: The national EIA legislation does not require specifically the organization of a public hearing if our country is the affected party. However, as mentioned above, the EIA national authority decides the adequate procedures to assure an effective public consultation, which may include public hearings and meetings with the different stakeholders in both countries.

Article 4

Preparation of the environmental impact assessment documentation

I.20. How do you ensure sufficient quality of the EIA documentation As a Party of origin? Please specify:

- (a) The competent authority checks the information provided and ensures it includes all information required under appendix II 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: The content of the appendix II is included in the annex V of the EIA National Law (Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n. ° 152-B/2017, of 11 December), defined as minimum content for the Environmental Impact Report.

I.21. How do you determine the relevant information to be included in the EIA documentation in accordance with article 4, paragraph 1? Please specify (more than one option may apply):

- (a) By using appendix II
- (b) By using the comments received from the authorities concerned during the scoping phase, if applicable
- (c) By using the comments from members of the public during the scoping phase, if applicable
- (d) As determined by the developer based on its own expertise
- (e) By using other means (please specify):

Your comments: The relevant information to be included in the EIA documentation is based on the requirements of annex V of Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n. ° 152-B/2017, of 11 December.

The Assessment Commission while analysing the EIA report submitted by the developer may also request for additional information, considering the activity and the location.

The scoping stage is an optional procedure in the Portuguese EIA national Law. If it takes place, the main conclusions are also considered to determine the relevant information to be included in the EIA documentation.

(Article 13, paragraph 1 and 2; article 14, paragraph 8 and 9 of Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n. ° 152-B/2017, of 11 December).

I.22. How do you determine “reasonable alternatives” in accordance with appendix II, paragraph (b)?

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

Your comments: This is decided through a case-by-case analysis and it depends on the technical characteristics of the project, its location and dimension, as well as the environmental, social and economic characteristics of the area concerned.

Article 5

Consultations on the basis of the environmental impact assessment documentation

I.23. Does your national EIA legislation have any provision on the organization of transboundary consultations between the authorities of the concerned Parties? Please specify:

- (a) Yes, it is obligatory
- (b) No, it does not have any provision on that
- (c) It is optional (please specify):

Your comments: The specific details for organizing transboundary consultations depend on the scope and characteristics of the project and are determined on a case by case basis.

According to the 2008 cooperation protocol between the Government of the Kingdom of Spain and the Government of the Republic of Portugal, meetings between the competent authorities from both Parties can be planned if necessary.

Article 6

Final decision

I.24. Please indicate all points below that are covered in a final decision related to the implementation of the planned activity (art. 6, para. 1):

- (a) Conclusions of the EIA documentation
- (b) Comments received in accordance with article 3, paragraph 8, and article 4, paragraph 2
- (c) Outcome of the consultations as referred to in article 5
- (d) Outcomes of the transboundary consultations

- (e) Comments received from the affected Party
- (f) Mitigation measures
- (g) Other (please specify):

(Article 18, paragraphs 3, 4 and 5 of the Decree-Law n.° 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December: Content of the final decision; Article 34, paragraph 2 and 3 of the Decree-Law n.° 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December: inclusion of the public consultation results in the final decision as Party of origin; Article 35, paragraph 2 of the Decree-Law n.° 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December: inclusion of the public consultation results in the final decision as affected Party).

I.25. 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 the public in your country (art. 6, para. 1)?:

- (a) Yes
- (b) No

Your comments: The outcomes of such consultations are taken into account by the Assessment Commission while preparing its technical report. Consequently it will reflect on the final EIA decision (article 34, paragraph 2 and 3 of the Decree-Law n.° 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December). The same approach is adopted for the results of the national consultations.

I.26. Is there any regulation in the national legislation of your country that ensures the implementation of the provisions of article 6, paragraph 3?:

- (a) No
- (b) Yes (please specify):

Your comments: No specific provision is established. However this is a general principle not only for projects with transboundary impacts but for all projects subject to EIA. If any additional information on the significant impacts of the project (transboundary or domestic) becomes available, provisions are established in order to allow the EIA authority to revise the EIA decision and add any necessary conditions to avoid or reduce such impacts.

I.27. Do all activities listed in appendix I (items 1-22) require a final decision to authorize or undertake such an activity?:

- (a) Yes
- (b) No (please specify those that do not):

Your comments: Projects listed in Appendix I of the Convention are included in Annex I of Decree-Law 151-B/2013, of 31 October, amended and republished by Decree-Law n.° 152-B/2017, of 11 December, and all of them require a final decision to authorize or undertake the activity.

I.28. For each type of activity listed in appendix I that does require a final decision, please indicate the legal requirements in your country that identify what is regarded as the “final decision” to authorize or undertake such an activity (art. 6 in conjunction with art. 2, para. 3), and the term used in the national legislation to indicate the final decision in the original language:

Your comments: The final EIA decision is binding and may be favourable, favourable with conditions or unfavourable. However, the “final decision” that gives the developer the right to undertake the project is the licensing decision or authorization issued by the competent authority for such economic activity. This decision has to take into account and comply with the requirements set by the EIA decision.

Article 7

Post-project analysis

I.29. Is there any provision regarding post-project analysis in your national EIA legislation (art. 7, para. 1)?:

- (a) No
- (b) Yes (please specify the main steps to be taken and how the results of it are communicated): After the EIA final decision, a post-project analysis is carried out for the subsequent stages of the project (construction and operational and deactivation phases). The post-project analysis included visits to the project location, auditing (legislation provides for 4 mandatory audits, one during the construction phase and one three years after the beginning of the operational phase) and monitoring arrangements.

The post-project analysis is carried out by the EIA competent authority with the participation of the entities who hold relevant technical knowledge, including the licensing authority and external specialists if needed.

The 2008 cooperation protocol between the Government of the Kingdom of Spain and the Government of the Republic of Portugal also includes a specific provision on post-project analysis. The competent authorities of both Parties may establish monitoring arrangements for assessing the transboundary effects of the plan, programme or project. Specific forms for communicating the results of such arrangements may also be established

Your comments: (Article 26 of the Decree-Law n. ° 151-B/2013, of 31 October, amended and republished by Decree-Law n. ° 152-B/2017, of 11 December, and article 17 of the cooperation protocol).

Article 8

Bilateral and multilateral cooperation

(a) Agreements

I.30. Does your country have any bilateral or multilateral agreements based on the Convention (art. 8, appendix VI)?:

- (a) No
- (b) Yes Please specify with which countries:

If publicly available, please also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.

Convention on Cooperation for the Protection and Sustainable Use of the Waters of the Spanish-Portuguese Basins (Albufeira Convention), signed between the two countries and that came into force in January 2000.

This Convention aims at:

- searching a balance between protecting the environment and the use of the water resources necessary for the sustainable development of both countries;
- coordinating efforts for a better management of the water resources in Spanish-Portuguese river basins;
- establishing direct links and efficient procedures for dealing with extreme events, such as floods and droughts.

Full text in Portuguese available at:

http://www.cadc-albufeira.eu/imagenes/pt/PT1_14_tcm43-335441.pdf

Cooperation protocol between the Government of the Kingdom of Spain and the Government of the Republic of Portugal, regarding the environmental assessment of plans, programmes and projects likely to have significant transboundary effects..

Full text in Portuguese available at:

http://www.apambiente.pt/_zdata/AAE/Responsabilidades/ProtocoloPT_ES_AIAA_AE_20080219.pdf

I.31. What issues do these bilateral agreements cover (appendix VI)? (More than one option may apply):

- (a) Specific conditions of the subregion concerned
- (b) Institutional, administrative and other arrangements
- (c) Harmonization of the Parties' policies and measures
- (d) Developing, improving, and/or harmonizing methods for the identification, measurement, prediction and assessment of impacts, and for post-project analysis
- (e) Developing and/or improving methods and programmes for the collection, analysis, storage and timely dissemination of comparable data regarding environmental quality in order to provide input into the EIA
- (f) Establishment of threshold levels and more specified criteria for defining the significance of transboundary impacts related to the location, nature or size of proposed activities
- (g) Undertaking joint EIA, development of joint monitoring programmes, intercalibration of monitoring devices and harmonization of methodologies
- (h) Other, please specify:

Your comments:

(b) Procedural steps required by national legislation

I.32. Please describe how the steps required for a transboundary EIA procedure under your national legislation correlate to domestic EIA in the lead-up to the final decision. If there are differences in the procedures for screening/scoping or for preparation of the environmental impact assessment and consultation, please specify.

Alternatively, this question can be answered or supported by providing a schematic flowchart showing these steps.

Your comments: The transboundary EIA is always a part of a domestic EIA procedure.

Every time the Portuguese authorities are assessing a project likely to have significant transboundary impacts, the EIA authority notifies the affected Party as soon as the Portuguese public is informed. The notification is sent through the competent services of Office for Foreign Affairs and shall include the following elements:

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

After this notification, the affected Party has a 30 days period to declare whether it wishes to participate in the EIA procedure or not (Prior to 1st January 2018 this period was of 15 days, enlarged to a maximum of 30 days within the framework of the 2008 protocol of collaboration between Portugal and Spain).

If the affected Party intends to participate, Portugal sends to the competent national authorities all the information regarding the EIA procedure, namely:

1. A description of the project including information on the site, design and size of the project
2. The environmental impact report 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 to avoid, minimize or otherwise compensate significant adverse effects and the monitoring arrangements.

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 Commission 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.

Whenever the Portuguese State is notified by another Party of a project likely to have significant environmental impacts in national territory, the EIA authority promotes the public consultation disclosing all the information submitted by the Party 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 Party of origin regarding the final decision of the EIA procedure.

I.33. Does your country have special provisions or informal arrangements concerning transboundary EIA procedures for joint cross-border projects (e.g., roads, pipelines)?

- (a) No
- (b) Yes (please specify):
 - (i) Special provisions:
 - (ii) Informal arrangements:

Your comments:

I.34. Does your country have special provisions or informal arrangements concerning transboundary EIA procedures for nuclear power plants (NPPs)?

- (a) No
- (b) Yes (please specify):
 - (i) Special provisions:
 - (ii) Informal arrangements:

Your comments:

Part two

Practical application during the period 2016–2018

Please report on your country's practical experiences in applying the Convention (not your country's procedures described in part one), whether As a Party of origin or affected Party. The focus here is on identifying good practices as well as difficulties Parties have encountered in applying the Convention in practice. The goal is to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve its application.

II.1. Does your country object to the information on transboundary EIA procedures that you provide in this section being compiled and made available on the website of the Convention? Please specify (indicate "yes" if you object):

(a) Yes

(b) No

Your comments:

1. Experience in the transboundary environmental impact assessment procedure during the period 2016–2018

Cases during the period 2016–2018

II.2. If your country's national administration has a record of transboundary EIA procedures that were under way during the reporting period, in which your country was a Party of origin or affected Party, please list them in the tables II.2 (a) and II.2 (b) below (adding additional rows as needed).

Table II.2 (a)

Transboundary EIA procedures: As a Party of origin

| Project name | Starting date (date notification sent) | Affected Party/ Parties | Timing of the notification (screening, scoping or preparation of the EIA documentation) | Length of the main steps in months | | | Final decision (date of issuing, if information is available) |
|--|--|-------------------------|---|---|--|--|---|
| | | | | Submission of the environmental report | Transboundary consultations (expert), if any | Public participation, including public hearing, if any | |
| Gasoduto Celorico - 11 Vale de Frades, Interligação Transfronteira | 2016-07- | Spain | EIA documentation | Spanish authorities replied, on March the 1 st 2017, stating that the project had no significant transboundary impacts so no further proceedings were necessary. | | | 2018-02-05 |
| Nova ligação ferroviária entre | 2017-11-24 | Spain | EIA documentation | Spanish authorities did not reply to the notification. So on the 2 nd of march 2018, environmental impact assessment decision was issued. | | | 2018-03-02 |

| Project name | Starting date (date notification sent) | Affected Party/ Parties | Timing of the notification (screening, scoping or preparation of the EIA documentation) | Length of the main steps in months | | | |
|--|--|-------------------------|---|--|--|--|---|
| | | | | Submission of the environmental report | Transboundary consultations (expert), if any | Public participation, including public hearing, if any | Final decision (date of issuing, if information is available) |
| Évora Norte e Elvas /Caia - Corredor Internacional Sul | | | | | | | |
| IP5 - Vilar Formoso / Fronteira | 2018-04-05 | Spain | EIA documentation | <p>The project consisted on a highway connecting both countries and included a section on the Portuguese side (section between Vilar Formoso and Fronteira) and a section on the Spanish side (Fuentes Oñoro and Vilar Formoso). Its layout was initially studied between both Parties in 2002 and submitted to separated EIA procedures following the national requirements of each country.</p> <p>In Spain, the EIA decision was published in January, 10th, 2006 and the project is now under constructions For the project on the Portuguese side, the EIA decision was issued on the 27th May 2010. Although the decision was favourable with conditions it expired in 2014 and therefore another EIA procedure was carried out in 2018. On august the 1st a new notification was sent to the Spanish authorities that replied stating that the project had no significant transboundary impacts, except those related to the extension of the highway into Spanish territory which had already been formerly assessed. So no further proceedings were necessary.</p> | | | 2018-08- |

Transboundary EIA procedures: As an affected party

| Project name | Starting date (date notification sent) | Affected Party/ Parties | Timing of the notification (screening, scoping or preparation of the EIA documentation) | Length of the main steps in months | | | |
|---|--|-------------------------|---|--|--|--|---|
| | | | | Submission of the environmental report | Transboundary consultations (expert), if any | Public participation, including public hearing, if any | Final decision (date of issuing, if information is available) |
| Projeto de Exploração Mineira rio Manzanas n.º 1.916 - Zamora | 30.06.2009 | Spain | Scoping or preparation of the EIA documentation | <p>The EIA report was made available to the Portuguese authorities on the 13th December 2016. A period of 20 working days was set for public participation in Portugal (from the 2nd of February to the 1st of March 2017) and a Technical Assessment Commission was set, gathering several Portuguese relevant authorities to analyse and issue its opinion on the potential transboundary impacts of the project. The report of this Commission along with report on the public participation were sent to the Spanish authorities on the 17th April 2017.</p> | | | |

| Project name | Starting date (date notification sent) | Affected Party/ Parties Party of Origin | Timing of the notification (screening, scoping or preparation of the EIA documentation) | Length of the main steps in months | | |
|---|---|---|--|--|--|--|
| | | | | Submission of the environmental report | Transboundary consultations (expert), if any | Public participation, including public hearing, if any |
| <i>Explotación del yacimiento Alameda, situado en la Reserva Definitiva del Estado "Salamanca 28" (Salamanca)</i> | 17.08.2015 | Spain | Scoping or preparation of the EIA documentation | <p><i>On the 17th August 2015, the Spanish authorities informed the Portuguese authorities of the project and attached a document in Spanish explaining its main characteristics. On the 21st September 2015, the Portuguese authorities expressed their interest in participating in the EIA procedure.</i></p> <p><i>On the 22nd June 2016, the Spanish authorities sent the scoping decision which made reference to the need to assess the transboundary impacts. On the 10th October 2016 the Portuguese authorities took good note of the reference made and express to the Spanish authorities that Portugal would therefore await for the EIA documentation in accordance with the 2008 cooperation protocol.</i></p> <p><i>As no further information was made available by the Spanish authorities after the scoping stage, on the 20th February 2018 the Portuguese authorities requested for an update on the status of the project. The Spanish authorities replied on the 3rd May 2018 informing that the developer had not yet submitted the EIA report in order to proceed with the assessment.</i></p> | | |
| <i>Exploração de Volfrâmio e Estanho em Zamora</i> | 19-07-2018 | Spain | Scoping or preparation of the EIA documentation | <p><i>On the 9th August 2018, the Portuguese authorities expressed their interest in participating in the EIA procedure.</i></p> <p><i>No further information was made available by the Spanish authorities after notification.</i></p> | | |

Your comments: Beside the projects listed above, during the years of reference of the present questionnaire there were two other projects that, although not having followed a notification procedure as set by the Espoo Convention, have nonetheless constituted transboundary consultations procedures

- Construction of a temporary spent fuel storage facility at the Almaraz nuclear power plant

Acknowledging that the Spanish authorities were promoting an EIA procedure this activity/project at the domestic level, Portugal informed Spain, by letter of 29 September 2016, of its will to participate in such procedure. Not having received an answer to the first letter, Portugal sent a second letter on 19 October 2016, reinforcing the need for Portugal to be notified as foreseen in the international legal instruments above mentioned. The Spanish authorities answer to both letters on the 11th november 2017, informing that Spain did not consider the planning activity/project as being likely to have significant adverse transboundary environmental impacts and therefore no notification to Portugal was needed. In the letter it was also stated that the EIA decision had already been issued on the 7th November 2016 and the EIA procedure was concluded.

In this context, the Portuguese Republic submitted a reasoned opinion to the European Commission in accordance with the second subparagraph of Article 4 (3) of the Treaty on European Union and for the purposes of the second paragraph of Article 259 of the Treaty on the Functioning European Union.

On the basis of this, a set of steps were taken at the level of the Office of the President of the European Commission, which culminated in the signature, in February 2017, of an Amicable Settlement concerning the Almaraz case, having as parties Portugal, Spain and the European Commission. This Agreement was intended to promote a constructive dialogue and consultation process with the view to reach a solution to the litigation process, in order to take into account Portugal's legitimate concerns regarding the planned activity/ project and to agree on appropriate measures to respond to these concerns on a proportional basis.

For the purposes of the operationalization of the Amicable Settlement the Portuguese Government decided to create a Technical Working Group, composed of members of the administration and external experts, with a mandate to review all technical information on the environment and nuclear safety, provided by the Spanish Government in accordance with the Agreement.

Under the Amicable Settlement, the Spanish authorities organized a visit to the site of the temporary spent fuel storage facility and to the Almaraz NPP, which took place on the 27th February 2017.

All documentation sent by the Spanish authorities about the project and considered by them as being of a public nature was made available by the Portuguese authorities to its public from 20 March to 7 April 2017.

Based on the documentation provided by Spain at the request of Portugal and in the light of the analysis, the working group issued, on the 17th April 2017, a report which includes 19 conclusions on the EIA procedure, on the place of deployment and the project, on the storage option, on the impact assessment, and the interaction between the storage facility and the Almaraz NPP. In order to safeguard the concerns of Portugal expressed in the assessment developed by the Working Group, the report also includes a set of 13 recommendations. Amongst others, the recommendations included the need for Portugal to be engaged in the further assessments to be carried out by the Spanish authorities during the following stages of authorization and operation of the temporary spent fuel storage facility. The report was sent to the Spanish authorities by the end of April 2017.

- Uranium mines in Retortillo-Santidad (Salamanca)

The Portuguese authorities were made aware of this project through the documents sent by the Spanish authorities concerning the project “*Explotación del yacimiento Alameda*” (mentioned above). Therefore on the 19th February 2016 the Portuguese authorities requested for specific information on the project and on the likelihood of causing significant transboundary impacts. On the 7th April 2016, the Spanish authorities informed that the EIA procedure for this project was already finished and that both the EIA decision and the development consent had already been issued. The Spanish authorities also stated that due to the distance of the project to the border (40 km), it was considered, by the time of the EIA procedure, that no significant transboundary impacts were likely to happen. After analyzing the information made available by the Spanish authorities, the Portuguese authorities did not agree with this conclusion and therefore notified the Spanish authorities, on the 30th May 2016, that in their opinion the project was likely to cause significant transboundary impacts mainly through to the hydrographic network.

From that point on several communications between both Parties have followed as well as bilateral meetings in which an agreement was reached with the compromise of the Spanish authorities to ensure the participation of the Portuguese authorities in the subsequent stages of development of the project.

Please share with other Parties your country's experience of using the Convention in practice. 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.

II.3. The Convention does not mention the translation of EIA documentation as an important prerequisite for the participation of potentially affected Parties in a transboundary EIA procedure. Please explain:

(a) How has your country addressed the issue of the translation of EIA documentation?

According to the 2008 protocol of collaboration between Portugal and Spain, regarding environmental assessment plans, programmes and projects likely to have significant transboundary effects, all the information concerning transboundary effects must be translated, by the Party of origin, into the language of the affected party and sent in a separate document.

(b) What difficulties has your country experienced with regard to translation and interpretation, both as a Party of origin and as an affected Party, and what solutions has it found?

As already expressed, the bilateral protocol only foresees the translation of the document concerning transboundary effects, which is a limited document within the all package of information that constitutes the EIA report. In some cases it could be justified to have the EIA report also translated in order to better support the consultation of the authorities and the public in the affected Party. This however entails an additional burden for the developers.

(c) Which Party covers the cost of translation of EIA documentation?

(i) As a Party of origin: All the costs related to the translation of the necessary transboundary information are supported by the Party of origin, namely by the developers.

(ii) As an affected Party: All the costs are supported by the Party of origin.

(iii) Other, please specify:

(d) What parts of the EIA documentation does your country usually translate?

(i) As a Party of origin: All the information concerning transboundary effects.

(ii) As an affected Party: None, as the obligation of translation is ensured by the Party of origin.

(e) Please indicate whether and how the issue of translation is addressed in bilateral agreements between your country and other Parties.

According to the 2008 protocol of collaboration between Portugal and Spain, regarding environmental assessment plans, programmes and projects likely to have significant transboundary effects, all the information concerning transboundary effects must be translated, by the Party of origin, into the language of the affected Party and sent in a separate document.

(f) As a Party of origin, in which language do you usually provide EIA documentation to the affected Party?

(i) English

(ii) The affected Party's language

(iii) Other (please, specify)

(g) As an affected Party, from which language do you usually translate?

(i) English

(ii) Language of the Party of origin

(iii) Other (please, specify) As an affected Party, there is no obligation to translate the information received.

(h) Describe any difficulties that your country has encountered during public participation procedures and consultations under article 5, for example with regard to timing, language and the need for additional information.

Regarding consultations under article 5, Portugal has identified several difficulties, namely:

- Criteria for determining if a proposed activity is likely to cause a significant adverse transboundary impact;
- Common understanding the approach, procedures and timelines adopted in the different Parties;
- Information on the final decision on the proposed activity.
- Translation of the different documentation provided;

Recognising these difficulties and the lessons learnt recently, both Parties agreed also to reinforce cooperation under the Bilateral Protocol signed in February 2008 between the Government of the Kingdom of Spain and the Government of the Republic of Portugal, regarding the environmental assessment of plans, programs and projects likely to have significant transboundary effects. This enhanced cooperation between Parties focused in particular on the effective exchange of information and on building common ground for criteria and practices for transboundary consultation. It was therefore agreed to organize bilateral meetings twice a year. Since then two meetings have been organized, one in Madrid and one in Lisbon, with a view of discussing issues of common interest and exchanging information on a regular basis on projects under development in each country.

(i) As a Party of origin:

| |
|---|
| Experience with public participation |
| Experience with consultations under article 5 |

(ii) As an affected Party:

| |
|--------------------------------------|
| Experience with public participation |
|--------------------------------------|

| |
|---|
| Experience with consultations under article 5 |
|---|

- (i) Please describe how the costs of interpretation during the hearings are covered:
- (ii) By the Party of origin: No relevant data.
- (iii) By the affected Party: No relevant data.
- (iv) Shared by both Parties concerned:
- (v) Developer:
- (vi) Other, please specify

II.4. Describe any difficulties that your country has encountered during transboundary public participation (expert consultation, public hearing, etc.), including on issues of timing,

language and the need for additional information: The difficulties identified regarding public participation reflect the difficulties already expressed in question II.3. (h).

II.5. Does your country have successful examples of organizing transboundary EIA procedures for joint cross-border projects or that of an NPP?:

- (a) Yes
- (b) No

II.6. If you answered yes to question II.5, please provide information on your country's experiences describing, for example, means of cooperation (e.g., contact points, joint bodies, bilateral agreements, special and common provisions, etc.), institutional arrangements, and how practical matters are dealt with (e.g., translation, interpretation, transmission of documents, etc.):

- (a) For joint cross-border projects:
- (b) For NPPs:

II.7. Please provide examples from your experience during the reporting period (either complete cases or elements such as notification, consultation and public participation) that, in your view, constitute good practice:

No specific good practice examples regarding the transboundary EIA procedures during this time frame (2016-2018) were identified.

II.8. Would your country like to introduce a case in the form of a Convention "case study fact sheet"?

- (a) No
- (b) Yes (please indicate which cases):

II.9. Has your country carried out post-project analyses in the period 2016–2018:

- (a) No
- (b) Yes (please indicate which projects, along with the challenges in implementation and any lessons learned):

2. Experience in using the guidance in 2016–2018

II.10. Has your country used in practice the following guidance, adopted by the Meeting of the Parties and available online?

(a) Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7):

- No
- Yes (please provide details):

Your experience with using this guidance:

Your suggestions for improving or supplementing the guidance:

(b) Guidance on subregional cooperation (ECE/MP.EIA/6, annex V, appendix):

- No
- Yes (please provide details):

Your experience with using this guidance:

Your suggestions for improving or supplementing the guidance:

(c) Guidance on the Practical Application of the Espoo Convention (ECE/MP.EIA/8):

No

Yes (please provide details):

Your experience with using this guidance:

Your suggestions for improving or supplementing the guidance:

3. Clarity of the Convention

II.11. Has your country had difficulties implementing the procedures defined in the Convention, either as a Party of origin or as an affected Party, because of a lack of clarity of the provisions?

No

Yes (please indicate which provisions and how they are unclear):

Due to the latest experiences under the transboundary procedures, Portugal is reflecting on the best practices in order to ensure the full compliance with the spirit of the Convention.

4. Suggested improvements to the report

II.12 Please provide further suggestions (preferably specific drafting proposals) for how this report could be improved.