

Agreement on Cooperation for the Protection and Sustainable Use of the Waters of the Spanish-Portuguese Hydrographic Basins

[Albufeira, 30 November 1998]

Preamble

The Kingdom of Spain and the Republic of Portugal, inspired by the traditional spirit of friendship and cooperation between the two nations, desiring to extend further the close relations between the two States, strengthened in particular by European solidarity,

Aware of the mutual benefits of the implementation of the agreements in force and resolved to improve the legal regime relating the Spanish-Portuguese hydrographic basins by establishing more intensive cooperation,

Within the framework of international and Community law on the environment and on the sustainable use of water and the Treaty of friendship and cooperation between Spain and Portugal of 22 November 1977,

Seeking a balance between the protection of the environment and the use of the water resources necessary for the sustainable development of both countries,

Intending to work together to guard against the risks that might affect the waters or be caused by them in the Spanish-Portuguese hydrographic basins,

Determined to protect the aquatic and terrestrial ecosystems under their authority,

Aware of the need to coordinate their respective efforts towards improved knowledge of and management of the waters of the Spanish-Portuguese hydrographic basins,

Have agreed as follows:

Part I - General provisions

Article 1 - Definitions

1. For the purposes of this Agreement, the Parties have adopted the following definitions:

(a) "Agreement" means the Agreement on cooperation for the protection and sustainable use of the waters of the Spanish-Portuguese hydrographic basins;

(b) "Hydrographic basin" means the land area from which all the surface runoff flows through a series of streams, rivers and, in some cases, lakes towards the sea, entering it through a single river mouth, an estuary or a delta, and also associated groundwater;

(c) "Transborder waters" means all the surface waters and groundwater that mark, cross or are situated on the border between the two States; should they flow directly into the sea, the boundary in respect of such waters shall be that established by an agreement between the Parties;

(d) "Transborder impact" means any significant adverse effect on the environment resulting from an alteration of the condition of the transborder waters in an area under the jurisdiction of one of the Parties as a result of human activity the physical origin of which is situated totally or partially in an area under the jurisdiction of the other Party. Effects on the environment include any that affect human health and safety or flora, fauna, ground, air, water, climate, landscape, historic monuments or other physical structures or the interaction between such factors; they also include any effects on the cultural heritage or on socio-economic conditions resulting from the alteration of such factors;

(e) "Sustainable use" means use that allows the needs of the present generation to be satisfied without compromising the capacity of future generations to satisfy their needs;

(f) "Conference" and "Commission" mean the joint organs for cooperation between the Parties established by article 20;

...

2. Any other definition or element that is relevant to this Agreement and that is contained in the international law in force between the Parties or in Community law, shall be understood in accordance with such law.

Article 2 - Object

1. The object of this Agreement is to define the framework for cooperation between the Parties for the protection of the surface waters and groundwater and the aquatic and terrestrial ecosystems that directly depend on them and for the sustainable use of the water resources of the hydrographic basins referred to in article 3, paragraph 1.

2. In undertaking this cooperation, the Parties shall observe the provisions of this Agreement and the principles and provisions of the applicable international and Community law.

Article 3 - Sphere of application

1. The Agreement shall apply to the hydrographic basins of the rivers Miño, Limia, Douro, Tagus and Guadiana.

2. The Agreement shall apply to activities designed to promote and protect the satisfactory condition of the waters of these hydrographic basins and current or projected activities for the use of water resources, particularly those that have or might have a transborder impact.

Article 4 - Cooperation goals and mechanism

1. The Parties shall coordinate actions to promote and protect the satisfactory condition of the surface waters and groundwater of the Spanish-Portuguese hydraulic basins, those relating to the sustainable use of such waters and those that contribute to mitigating the effects of floods and situations of drought or scarcity.

2. In order to attain the goals defined in paragraph 1, the Parties shall establish a cooperation mechanism with the following characteristics:

(a) Regular and systematic exchange of information on the matters covered by the Agreement and also related international initiatives;

(b) Consultations and activities within the bodies established by the Agreement;

(c) Individual or joint adoption of the technical, legal, administrative or other measures necessary for the application and implementation of this Agreement.

Part II - Cooperation between the Parties

Article 5 - Exchange of information

1. Through the Commission, the Parties shall proceed to exchange available information regularly and systematically on the matters covered by this Agreement and data and records relating to it, in particular on:

(a) Management of the waters of the hydrographic basins defined in article 3, paragraph 1;

(b) Activities that may have a transborder impact on them.

2. The Parties shall exchange information on legislation, organizational structures and administrative practices in order to increase the effectiveness of the Agreement.

3. Should one of the Parties request the other to provide information that it does not have, the requested Party shall endeavour to comply with the request.

4. The data and records indicated in the preceding paragraphs include those referred to in Annex I and shall be periodically reviewed and updated.

Article 6 - Information for the public

1. In accordance with Community law, the Parties shall create the conditions to make available to anyone who submits a reasonable application the requested information on matters covered by this Agreement.

2. The preceding provision shall not affect the right of the Parties to reject such application on the basis of the provisions of national law, Community law or international law, when the information requested might affect:

- (a) National security;
- (b) The confidentiality of procedures carried out by public authorities;
- (c) The international relations of the State;
- (d) The general security of the population;
- (e) The confidentiality of legal proceedings;
- (f) Commercial or industrial confidentiality;
- (g) Protection of the environment, in view of the risk of misuse of such information.

3. The information received by the Parties under the preceding article may be transmitted to the public in accordance with the preceding paragraphs of this article.

Article 7 - Information to the Commission

1. The Parties shall provide the Commission with all the information it needs to fulfill its terms of reference and responsibilities, particularly with regard to:

- (a) The identification of entities to participate in cooperation activities in the matters covered by the Agreement;
- (b) How the activities provided for in the Agreement are implemented nationally;
- (c) The activities provided for in article 3, paragraph 2.

2. The Parties shall prepare an annual report on developments in the situation with regard to the matters covered by the Agreement and the status of national implementation of the actions provided for by the Agreement, to be transmitted to the Commission.

Article 8 - Consultations on transborder impacts

1. Whenever a Party considers that any of the projects or activities provided for in article 3, paragraph 2, of this Agreement to be implemented in its territory has or may have a transborder impact, it shall duly notify the other Party immediately, transmitting the pertinent information.

2. If a Party considers that a project or activity established in article 3, paragraph 2 has or may have a transborder impact and it has not been duly notified, it may request the information it considers necessary from the other Party, providing supporting evidence.

3. The Parties shall proceed to hold consultations, upon notification as provided for in the preceding paragraphs, once it has been established that there are sufficient indications that any of the projects or activities referred to in article 3, paragraph 2, has or may have a transborder impact.

4. These consultations shall be held within the Commission within a period of six months, which may be extended for a similar period by mutual agreement, with a view to finding a solution that ensures the prevention, elimination, mitigation or control of the impact. Where appropriate, the manner of reparation for liability shall be established in accordance with the provisions of applicable international and Community law. In such circumstances, the period specified above may be extended twice.

5. Should the Parties not reach agreement within the Commission within the period provided for in the preceding paragraph, the provisions of article 26 of this Agreement shall apply.

6. When, during the consultation procedure referred to in the preceding paragraphs, the Parties establish the existence of a transborder impact, they shall suspend the implementation of the project, totally or partially, during a period to be mutually decided, unless agreement is reached to the contrary within a period of two months; similarly, in the case of activities that are under way, the Parties shall abstain from implementing any measures that might aggravate the situation.

7. If the suspension of the project or abstention from implementing measures referred to in the preceding paragraph might irreparably endanger the protection of public health or safety, or any other relevant public interest, the interested Party may proceed to implement the project or to continue the activity without prejudice to possible liabilities.

Article 9 - Assessment of transborder impacts

1. The Parties shall adopt the necessary provisions to ensure that projects and activities covered by this Agreement which, owing to their nature, size and location, must be subjected to transborder impact assessment are so assessed before they are approved. They shall also adopt adequate measures to apply the assessment principles to plans and programmes that affect the activities provided for in article 3, paragraph 2, of this Agreement.

2. Within the Commission, the Parties shall identify the projects and activities which, owing to their nature, size and location, must be subjected to transborder impact assessment and also the procedures for conducting such assessment.

3. Until such time as the agreement referred to in the preceding paragraph is adopted, the projects or activities that must be submitted to transborder impact assessment and the procedures to be followed shall be those set forth in Annex II to this Agreement.

4. Within the Commission, the Parties shall determine those projects and activities whose effects must be continually monitored, owing to the possibility that they may produce a transborder impact because of their nature, size or location, and shall also determine the conditions and scope of such monitoring.

Article 10 - Other measures of cooperation between the Parties

1. For the purposes of the provisions of Part I, the Parties shall adopt, individually or jointly, the technical, legal, administrative and other measures that are necessary to:

- (a) Achieve the satisfactory condition of the waters;
- (b) Prevent the degradation of the waters and control pollution;
- (c) Prevent, eliminate, mitigate or control transborder impacts;

- (d) Ensure that the use of the water resources of the Spanish-Portuguese hydrographic basins is sustainable;
- (e) Promote rationality and economy of use through common objectives and the co-ordination of plans and programmes of action;
- (f) Prevent, eliminate, mitigate or control the effects of exceptional situations of drought and flooding;
- (g) Prevent, eliminate, mitigate or control effects arising from incidents involving accidental pollution;
- (h) Promote the security of infrastructures;
- (i) Establish systems of control and assessment that allow the condition of the waters to be monitored using equivalent and comparable methods and procedures;
- (j) Promote joint technological research and development activities with regard to the matters covered by the Agreement;
- (l) [sic] Promote actions to verify compliance with the Agreement;
- (m) Promote actions to enhance the effectiveness of the Agreement.

2. For each hydrographic basin, the Parties shall proceed to coordinate the management plans and the programmes of special or general measures, to be drawn up according to the provisions of Community law.

3. The actions or measures for the implementation of this Agreement may not result in a lower level of protection than the current conditions of transborder waters, except in situations and under the conditions provided for by Community law.

4. Any information on matters relating to this Agreement submitted to the European Commission or to another international organization by one of the Parties shall be notified simultaneously to the other Party.

Article 11 - Communication, early warning and emergency systems

1. The Parties shall establish or improve joint or coordinated communication systems to transmit early warning or emergency information, to prevent or correct the situation in question and to take pertinent decisions.

2. The information on early warning and emergency situations shall take into consideration conditions inherent in or arising from human activity that produce or may involve particular danger for persons, social, cultural or economic property, or the environment.

3. Within the framework of the Commission, the Parties shall provide information on the respective entities and, procedures for transmitting information on early warning and emergency situations and also on plans of action for such situations.

[Omitted: Article 12 - Infrastructure security]

Part III - Protection and sustainable use

Article 13 - Water quality

1. Within the Commission, the Parties shall proceed with regard to each hydrographic basin:

(a) To inventory, assess and classify transborder waters and any others that are likely to be altered by either Party, in terms of their quality, current and potential uses and interests from the perspective of nature conservation and also to define quality targets or standards for such waters in accordance with the applicable Community directives;

(b) To attribute special protection status, when appropriate, and to define the objectives of special protection for these waters.

2. In order to attain the objectives referred to in paragraph 1, the Parties shall, when necessary and by coordinating management plans and programmes of action, adopt adequate measures to:

(a) Prevent the degradation of surface waters and improve their quality in order to attain a satisfactory condition or, in the case of waters with hydrological regimes that have been modified by human or artificial actions, a satisfactory ecological potential;

(b) Prevent the degradation of groundwater and improve its quality in order to attain a satisfactory condition;

(c) Ensure compliance with all the quality targets and standards of waters classified under Community law as sources for the production of water for human consumption, areas for the protection of aquatic species of significant economic interest, vulnerable areas, at-risk areas, areas having a protected status and recreational areas, including bathing areas.

3. The objectives laid down in this article shall be achieved in accordance with the terms and time limits established in Community law.

Article 14 - Prevention and control of pollution

1. The Parties shall coordinate procedures for the prevention and control of pollution produced by limited or extensive emissions and shall adopt in their territory all measures deemed necessary to protect the transborder waters in accordance with Community law, in particular by establishing ceilings for emissions and quality targets for the surrounding environment.

2. Where relevant, the Parties shall coordinate the measures necessary to prevent, eliminate, mitigate and control the pollution from terrestrial sources of estuaries and adjacent territorial and marine waters in accordance with the jurisdictional competence of each State.

Article 15 - Water uses

1. The Parties recognize each other's right to the sustainable use of the water resources of the Spanish-Portuguese hydrographic basins and their obligation to protect them and to implement, in their respective territories, measures to prevent, eliminate, mitigate and control transborder impacts.

2. The use of the water resources of the Spanish-Portuguese hydrographic basins referred to in the preceding paragraph shall be carried out in a manner consistent with their unity, with the exceptions laid down in this Agreement.

3. The Parties shall adopt measures and actions to ensure rationality and economy in the use of the water resources and, through the Commission, shall coordinate the exchange of information about their respective experiences and projections.

4. Through the Commission, the Parties shall proceed to exchange information on forecasts for new uses of the waters of the Spanish-Portuguese hydrographic basins that might modify significantly their hydrological regime, on the basis of technical assessments and studies

prepared in the context of the respective planning processes, taking into consideration the coordination of activities relating to the sustainable use of those waters.

[Omitted: Article 16 - Flows]

Part IV - Exceptional situations

Article 17 - Accidental pollution incidents

The Parties shall adopt measures designed to prevent incidents of accidental pollution and to limit their consequences for persons and the environment, so as to ensure, coherently and effectively, high levels of protection in the Spanish-Portuguese hydrographic basins.

[Omitted: Article 18 - Flooding]

Article 19 - Droughts and scarcity of resources

1. The Parties shall coordinate their actions to prevent and control situations of drought and scarcity, shall establish exceptional mechanisms to mitigate the effects thereof and shall define the nature of the exceptions to the general regime established in this Agreement, in particular, with regard to the satisfactory condition of the waters, in accordance with the applicable Community law.

2. The exceptional measures referred to in the preceding paragraph shall include:

(a) Conditions in which exceptional measures may be applied, including the use of indicators that permit an objective classification of situations of drought and scarcity;

(b) Measures to provide incentives for controlling and economizing water consumption;

(c) Specific rules for the use of available water resources in order to ensure community water supply;

(d) Management of infrastructures, particularly those which have a significant water storage capacity;

(e) Measures to reduce consumption and for monitoring compliance with them;

(f) Rules for the disposal of residual waters, harnessed and diverted waters and water from reservoirs.

3. The declaration of an exceptional situation shall be communicated by the affected Party to the other Party once it has been confirmed that the conditions referred to in paragraph 2 (a) of this article have been fulfilled.

4. The exceptional measures adopted by each Party and also the incidents that occur while the exceptional situation lasts shall be communicated as soon as possible to the Commission, which may issue the pertinent reports.

5. Within the Commission, the Parties shall conduct joint studies on situations of drought and scarcity in order to define measures to mitigate the effects thereof and shall define the criteria and indicators for the exceptional regime and the measures to be adopted in such situations. These criteria, indicators and measures shall be defined within a period of two years, which may be extended by special agreement.

6. In the absence of the above-mentioned criteria, indicators and measures, those set forth in the Additional Protocol and its Annex shall be adopted.

Part V - Institutional Provisions

Article 20 - Cooperation bodies

For the purpose of the attainment of the objectives of this Agreement, the "Conference of the Parties" and the "Commission for the Application and Implementation of the Agreement" shall be established.

[Omitted: Article 21 - The Conference of the Parties, Article 22 - Structure, terms of reference and responsibilities of the Commission for the Application and Implementation of the Agreement, Article 23 - Operation and decisions of the Commission; Part VI - Final Provisions: Article 24 - Questions relating to rights that may be affected, Article 25 - Invitation to hold consultations, Article 26 - Settlement of disputes, Article 27 - Validity of the provisions of previous Spanish-Portuguese agreements, Article 28 - Uses not covered by the 1964 and 1968 Agreements, Article 29 - Dissolution of the International Rivers Commission, Article 30 - Annexes and Additional Protocol, Article 31 - Amendments, Article 32 - Validity, Article 33 - Denunciation, Article 34 - Authentic texts, Article 35 - Entry into force]

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Annex I - Exchange of information

1. In the case of each of the hydrographic basins referred to in article 3, paragraph 1, of the Agreement, the Parties shall exchange records and databases making it possible to monitor management of the transborder waters, in particular:

(a) Data on concessions, authorizations, licences or other rights of use of a private nature of both surface waters and groundwater, in accordance with the respective national legislation;

(b) Representative data on pluviometry, meteorology, hydrometry, piezometric and water quality levels, and also data on the status of reservoirs with a capacity in excess of 5 hm³;

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2. In the case of each of the hydrographic basins referred to in article 3, paragraph 1 of the Agreement, the Parties shall exchange records, databases and studies concerning activities liable to cause transborder impacts, which shall include, in particular:

(a) Identification and calculation of discharges of an isolated nature of urban, industrial, agricultural or any other type, particularly those involving any of the substances referred to in paragraph 8 of this Annex;

(b) Identification and calculation of direct on-site discharges of urban, industrial, agricultural or any other type which might produce widespread pollution, particularly those involving any of the substances referred to in paragraph 8 of this Annex;

(c) Identification of waters intended for the production of drinking water, sensitive areas (in accordance with Directive 91/271/EEC), vulnerable zones (in accordance with Directive 91/676/EEC), zones for the protection of aquatic species of economic interest, areas with special protection status under Community law and recreation zones, including bathing areas;

(d) Information on programmes of measures for the implementation of water quality directives;

(e) Summary of significant pressures and impacts of human activities on the status of surface waters and groundwater.

3. The Parties shall exchange available information on methodology, studies and data on the ecological conditions of the waters and best environmental practices.

4. The procedures established in the applicable Community directives shall be followed for the purpose of obtaining the information referred to in the preceding paragraphs.

5. It shall be understood that the information referred to in the preceding paragraphs extends to all the national territory of each hydrographic basin referred to in article 3, paragraph 1, of the Agreement, without prejudice to the Commission's right to restrict this geographical scope, taking into account the modes of acquiring and the importance of such information in relation to the management objectives for transborder waters.

6. The data referred to in the preceding paragraphs shall be reviewed and, when appropriate, updated.

7. The Parties shall take the appropriate measures to ensure that the information is homogeneous and comparable within a period of five years.

8. The list of polluting substances referred to in paragraph 2 of this Annex as subject to special monitoring is as follows:

(a) Organo-halogenic compounds and substances that can give rise to compounds of this type in an aquatic environment;

(b) Organo-phosphoric compounds;

(c) Organo-stannic compounds;

(d) Substances and preparations with demonstrated carcinogenic or mutagenic properties or properties that can demonstrably affect reproduction in or through an aquatic environment;

(e) Persistent hydrocarbons and persistent and bioaccumulative toxic organic substances;

(f) Cyanides;

(g) Metals and their compounds;

(h) Arsenic and its compounds;

(i) Biocides and phytosanitary products;

(j) Matter in suspension;

(l) [sic] Substances that contribute to eutrophication (particularly nitrates and phosphates);

(m) Substances that have a negative influence on the oxygen balance (measurable by parameters such as BOD, COD).

Annex II - Transborder impact

1. When assessing transborder impact, each Party shall take into consideration the provisions of Community directives relating to the assessment of environmental impact, in particular Directives 85/337/EEC and 97/11/EEC and the amendments thereto and the norms of international law in force between the Parties. The transborder impact assessment shall be conducted in accordance with national legislation on environmental impact assessment and shall be submitted to the competent authority of the Party where the project or activity that is causing or may cause an impact is located; the other Party shall be kept informed about the procedure on an ongoing basis.

2. Within the Commission, and at the start of the transborder impact assessment procedure, the Parties shall agree on a reasonable period of no less than two months in which it is to be conducted, provided that such period is not laid down in the applicable national legislation.

3. The projects or activities, including their respective extensions, specified in paragraph 4 of this Annex, shall be submitted to a transborder impact assessment when one of the following situations is confirmed:

(a) Their distance from the frontier section, either upstream or downstream, is less than 100 kilometres, measured on the hydrographical network, unless there is a specific indication to the contrary;

(b) Alone or in combination with other existing projects or activities, they result in a significant change in the flow regime;

(c) They result in discharges that contain any of the substances referred to in Annex I, paragraph 8.

4. The following are the projects and activities referred to in paragraph 3 of this Annex:

(a) Installations for industrial use, the production of energy or mining liable to have an environmental impact on transborder waters;

(b) Pipelines for transporting petroleum or chemical products, depending on their capacity and the risk of dispersion to the border;

(c) Installations for the storage of hazardous or radioactive products or for the elimination of waste, depending on their capacity and the risk of dispersion to the border;

...

(g) Large-scale abstractions of groundwater, whatsoever its use and destination, inside or outside the basin, which are carried out either for individual projects or for well-fields with a unit exploitation, starting at 10 hm³/year;

(h) Artificial groundwater recharge schemes when the total recharge volume per aquifer exceeds 10 hm³/year;

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(m) Deforestation work that affects a surface area of 500 ha or more.

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[Omitted: Additional Protocol - Flow regime]