

CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSES AND INTERNATIONAL LAKES

IMPLEMENTATION COMMITTEE

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Ms. Ana Catarina Miranda, GEOTA
Project Manager
Project “Reconnecting Iberian Rivers”

22 July 2024

Subject: Information gathering WAT/IC/INFO/2 (Albufeira Convention) – Conclusions

Dear Ms. Miranda,

On behalf of the Implementation Committee under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), I would like to thank GEOTA, Wetlands International-EA, WWF Spain, CEDOUA and ANP-WWF for their participation in the exchange of views session with the Implementation Committee held online on 7 March 2024. The Committee greatly appreciates the information and the additional clarifications provided by your organizations during the session. The Committee also acknowledges the information provided by your organizations in writing on 12 April 2024 which supplemented the communication addressed to the Committee on 7 March 2024.

I am pleased to inform you that – based on the mentioned exchange of views sessions held with your organizations (7 March 2024), the delegation of Portugal (8 March 2024) and the delegation of Spain (20 May 2024) – the Implementation Committee has completed the information-gathering process in the matter in point and formulated the following conclusions:

- (a) The Implementation Committee appreciates the successful cooperation between Portugal and Spain in the implementation of the 1998 Albufeira Convention, underpinned by strong technical work, as manifested, *inter alia*, through: regular meetings of the Commission for the Application and Development of the Convention (CADC); the adoption of the 2008 Review Protocol; activities of the thematic working groups; regular exchange of information between the two countries, including through the monthly (since 2022) meetings of bilateral operational teams to monitor compliance with the flow regime; coordinated planning in implementation of the EU directives; and the recent adoption of the Protocol on exchange of information on hydrometeorological data, establishing a real-time information exchange mechanism during flood events.
- (b) The Implementation Committee appreciates the firm commitment of Portugal and Spain to foster their coordination and cooperation, including through the planned introduction of a real-time information exchange for prolonged droughts and through improving cooperation in basin management planning, by

piloting the preparation of a joint basin management plan and considering synchronization of hydrological planning cycles.

- (c) The Implementation Committee shares the concern about increased water scarcity and extreme weather events observed in the transboundary basins shared by Portugal and Spain, which are getting exacerbated in the context of climate change. The Committee appreciates the ongoing efforts by Portugal and Spain to address these issues and encourages further steps to expand cooperation beyond water quantity and allocation, towards addressing water quality, ecological flows, conservation and restoration of ecosystems, and joint planning in the context of climate change. The *Model Provisions on Transboundary Floods Management* (2006), the *Guidance on Water and Adaptation to Climate Change* (2009) and the *Words into Action Guidelines: Implementation Guide for Addressing Water-Related Disasters and Transboundary Cooperation* (2018), along with other materials developed by the Task Force on Water and Climate under the Water Convention, may be useful in this respect.
- (d) While cooperation between Portugal and Spain under the Albufeira Convention involves many technical aspects, it is of high public interest. It is important that the efforts of the two countries in that direction are well communicated to and understood by the public. Furthermore, the technical nature of cooperation activities should not be regarded as an obstacle for public involvement and participation. The Implementation Committee encourages Portugal and Spain to make relevant stakeholders part of the Albufeira Convention process.
- (e) In this regard, the Implementation Committee invites Portugal and Spain to consider establishing clear and transparent mechanisms, based on objective criteria, for participation of stakeholders in transboundary cooperation within the framework of the Albufeira Convention, beyond the opportunities already provided through the EU directives and respective national legislation on environmental impact assessment, strategic environmental assessment, basin management planning and flood risk planning. Such mechanisms, open to civil society organizations and other stakeholders, including water using sectors, would increase transparency and accountability, help stakeholders to better understand the work of the two countries in the field and allow them to be meaningfully engaged in transboundary cooperation activities, as well as to support communication and awareness raising efforts of the two governments. Such mechanisms would also enable Portugal and Spain to benefit from local knowledge in their transboundary cooperation and would increase the effectiveness of activities and measures implemented.
- (f) The Implementation Committee is of the opinion that the absence of explicit references to public participation mechanisms in the Albufeira Convention does not constitute a legal impediment to the introduction of such mechanisms. According to the customary rules of treaty interpretation, as codified in the Vienna Convention on the Law of Treaties, the Albufeira Convention should be interpreted taking into account the “relevant rules of international law applicable in the relations between the parties” (Art. 31(3)(c)). Such rules include the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, in particular its article 16, and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), in force for Portugal and Spain. Furthermore, the introduction of public participation mechanisms would be largely complementary to the provisions on access to information (Art. 6) of the Albufeira Convention.
- (g) In drawing up suitable mechanisms for participation of stakeholders in transboundary cooperation in the framework of the Albufeira Convention, Portugal and Spain could explore the good practices highlighted in the guidance document *Water management: Guidance on public participation and compliance with agreements* (2000) developed under the Water Convention (see extract enclosed), such as the provision of an observer status for NGOs, participation of NGOs and other members of the public in the meetings of joint bodies, participation of NGOs as members or experts in working groups or participation of NGOs in monitoring compliance with the transboundary water agreement. The experience of other bilateral basin commissions can be studied in this respect, e.g. the observer status for stakeholders in the International Commission for the Protection of the Elbe (Czech Republic and Germany), the inclusion of NGOs and scientific institutions in the national delegations to the Dniester Commission (Republic of Moldova and Ukraine) and in its working groups, or the inclusion of non-government scientific experts in Great Lakes Science Advisory Board under the International Joint Commission (Canada and the United States of America).

- (h) The Implementation Committee appreciates the information communicated by both countries that the Albufeira Convention website has recently been migrated to a server of the Spanish Ministry for the Ecological Transition and the Demographic Challenge and that the two countries are working on an updated content for the website. The Committee sees the updated website as a fundamental tool for dissemination of information to stakeholders that would also allow them to be involved in the work under the Albufeira Convention. The Committee urges Portugal and Spain to make the updated website publicly available without delay and ensure the availability of information on the website in the languages of the Parties.
- (i) The Implementation Committee appreciates the information whereby, following the 2022 decision of the CADC, Portugal and Spain are taking steps to establish a joint technical secretariat in line with the commitment expressed by the Conference of the Parties to the Albufeira Convention in 2008. The Implementation Committee is of the opinion that adequate financial and human resources should be ensured for the future joint secretariat to enable it to carry out its work effectively, in particular to work closely with relevant stakeholders of both countries and strengthen communication activities.

Please, be informed that the above conclusions were communicated by the Committee to Portugal and Spain on 25 June 2024 with an invitation to discuss them at the next meeting of the CADC. The Committee has also invited Portugal and Spain to inform the Committee of steps taken on the matters addressed in the above conclusions by 30 June 2025.

The Committee wishes to reiterate its appreciation to the organizations cooperating in the project “Reconnecting Iberian Rivers” for the information provided to it on 12 December 2022 and effective contribution to the subsequent information-gathering process.

Should you have any questions, please, do not hesitate to contact me.

Yours sincerely,



Attila Tanzi
Chair, Implementation Committee
Convention on the Protection and Use of
Transboundary Watercourses
and International Lakes

Enclosed:

Extract from UNECE, UNEP. 2000. Water management: Guidance on public participation and compliance with agreements

Extract

UNECE, UNEP. 2000. Water management: Guidance on public participation and compliance with agreements

If not specifically stated, the following recommendations are addressed to riparian States bordering the same transboundary waters.

Access to information

Where the public interest is served by the disclosure of information contained in working documents (documents in the course of completion) and comments thereon, riparian States and joint bodies should consider granting the public access to these documents.

Riparian States and joint bodies are encouraged to publish specific information or documents on transboundary waters. The following information should be actively disseminated:

- (a) Treaties, protocols, and rules of procedure;
- (b) Plans and programmes.

[...]

Riparian States and joint bodies should grant access to the following information covering a wide spectrum:

- (a) Conditions of the transboundary waters and results of monitoring thereof, including floods and ice drifts, as well as transboundary impact;
- (b) Measures taken to prevent, control or reduce transboundary impact, including water saving measures, and assessment of the effectiveness of these measures;
- (c) Ecological restoration projects;
- (d) Measures taken in the field of water-quantity management, including flood management, and the effectiveness of those measures;
- (e) Water-quality objectives, and results of checking compliance with the water quality objectives;
- (f) Permits issued and the conditions to be met;
- (g) Results of water effluent sampling;
- (h) Results of checking compliance with permit conditions;
- (i) Drafts of plans and programmes, including comments by NGOs;
- (j) Lay-persons' guides to these documents.

[...]

Riparian States and joint bodies should consider granting access to meeting documents, including:

- (a) Agendas of meetings of the joint body and its subsidiary organs, if any;
- (b) Minutes of such meetings;
- (c) Drafts of treaties, protocols, rules of procedure - including comments from NGOs – relevant for the area of application of the UNECE Water Convention or for specific transboundary waters;
- (d) Other documents to be discussed.

Wherever practicable, the information should be available and effectively accessible for inspection free of charge. This could be done among others through the establishment of documentation centres, libraries, databases and Web-sites of, for example, the secretariat of the joint body.

As one of the means to inform the public, electronic forms of communication should be used. This is a valuable tool, especially in an international content, to make information accessible.

[...]

Public participation

States and joint bodies should promote public participation in decision making on environmental matters at all levels of decision making, including the level of transboundary catchment areas. Therefore, riparian States should develop - through joint bodies – ways and means to enhance public participation at the transboundary level. This should include public participation in environmental impact assessment procedures in a transboundary context following the principles and approaches of the Espoo Convention.

Riparian States and joint bodies should provide for the participation of NGOs as non-voting participants in meetings of joint bodies. They should also consider NGO participation in meetings of subsidiary organs of joint bodies. They should encourage NGOs to organize themselves for effective participation in such meetings. Conditions for inviting NGOs to participate as observers in meetings of a joint body and its subsidiary organs must be based on transparent and reasonable criteria, which should be clear to the public.

Riparian States and joint bodies should establish procedures so that the public can have an oversight role in the conduct of transboundary cooperation to protect and use transboundary waters and their catchment areas including the fulfilment of obligations arising from bilateral and multilateral agreements.

The development of international documents, plans and programmes for specific catchment areas should be open to public participation, including programmes for monitoring the conditions of transboundary waters.

Riparian States are encouraged to provide for public participation, including NGOs, in the preparation and development of international water agreements. NGOs could be invited to participate in intergovernmental negotiation meetings. They could be requested to comment on draft texts. Due account could be taken of such comments.

[...]

Joint bodies should open up their work for the public, including NGOs, so that the public and the joint bodies can work as partners in decision making and implementation.

Therefore, the joint bodies should have the opportunity to receive and consider information from the public. To this end, the secretariat of a joint body should play a crucial role in receiving and handling information and transmitting it to the plenary or an appropriate subsidiary organ of the joint body. In addition, the public should be given the opportunity to submit inquiries in writing to the joint body, in order to oversee the work of the joint body and to establish an open dialogue.

Joint bodies - or riparian States jointly - should develop a public communication strategy and establish a focal point for liaison with non-governmental entities regarding specific transboundary catchment areas. Such a communication strategy should include the access to information systems, allow to compare data from different riparian countries, and pay attention to multimedia use.

Riparian States should jointly provide for public participation in the preparation and implementation of decisions on the protection and use of their transboundary waters particularly on such issues as:

- (a) Development of harmonized policies, programmes and strategies covering the relevant catchment areas;
- (b) Measures to prevent, control and reduce transboundary impact, including water saving measures;
- (c) Ecological rehabilitation projects;
- (d) Water-quantity management;
- (e) Flood protection;
- (f) Policies to reduce inputs of nutrients and hazardous substances from industrial and municipal sources;
- (g) Policies to reduce inputs of nutrients and hazardous substances from nonpoint sources, including those in agriculture;
- (h) Emission standards for discharges from point sources into surface waters;
- (i) Developing water-quality objectives;
- (j) Environmental impact assessment and other means of assessment;
- (k) Specific measures to prevent the pollution of groundwaters;
- (l) Licensing of waste-water discharges, and monitoring and control of authorized discharges;

(m) Contingency planning.

Riparian States and joint bodies should consider the role which the public should have in the process of monitoring compliance with obligations under international water agreements.