

THE AGREEMENT BETWEEN SPAIN AND PORTUGAL FOR THE SUSTAINABLE DEVELOPMENT OF THE SHARED RIVER BASINS

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Abstract:

It describes the instrument of cooperation that Spain and Portugal have given themselves for the management of the shared river basins within the frame of the European Water Policy defined by the Directive 2000/60/CE. It shows the history of the relationships between both countries in the water field, which have been the objectives they had to make a new agreement and, finally, it describes the main aspects of the new Agreement itself.

1 HISTORICAL BACKGROUND

Spain and Portugal share the territory of the Iberian peninsular, whose geomorphological characteristics are such that most of the territory drains towards the Atlantic Coast. In fact, both countries have several river basins in common such as the Miño/Minho, Limia, Douro, Tagus and Guadiana, whose main characteristics and relative importance as regards surface area covered and mean annual flow within the boundaries of the two countries can be seen in Table 1.

Table 1. CHARACTERISTICS OF THE PENINSULAR BASINS

BASIN	AREA (Km ²)			MEAN ANNUAL FLOW (hm ³ /year)		
	Spain *	Portugal **	Total	Spain *	Portugal **	Total
North II and North III	23.050	0	23.050	19.218	0	19.218
<i>Galicia Coast</i>	13.130	0	13.130	12.250	0	12.250
Miño/Minho	16.347	818	17.165	11.877	1.059	12.936
Limia/Lima, Cávado, Ave, Leça	1.253	4.960	6.213	812	5.060	5.872
Duero/Douro	78.972	18.854	97.826	13.660	9.192	22.852
Vouga, Mondego, Lis, Ribeiras do Oeste	0	13.988	13.988	0	5.898	5.898
Tagus	55.769	25.161	80.930	10.883	6.164	17.047
Sado, Mira and Ribeiras do Algarve	0	13.899	13.899	0	1.516	1.516
Guadiana	55.597	11.601	67.198	4.726	1.887	6.613
Tinto, Odiel and Piedras	4.613	0	4.613	749	0	749
Guadalquivir	63.240	0	63.240	8.601	0	8.601
South, Segura and Júcar	79.970	0	79.970	6.586	0	6.586
Ebro	85.560	0	85.560	17.967	0	17.967
Internal Basins of Catalonia	16.490	0	16.490	2.787	0	2.787
TOTAL	493.991	89.281	583.272	110.116	30.776	140.892
TOTAL shared basins	205.521	61.394	266.915	41.646	23.362	65.008

* Source: Water in Spain White Paper, 2000

**Source: National Water Plan of Portugal, 2001

The history of Spanish-Portuguese relations where the subject of water is concerned, dates from the *Treaty of Limits of 29th September 1864* and of the Supplement to it incorporated by means of an *Exchange of Notes in September 1912*, subsequently the *Agreement to regulate the hydroelectric use of the International stretch of the River Douro, dating back to 11th August 1927* and, more recently, the *Agreement of 16th July 1964 to regulate the hydroelectric use of the international stretches of the river Douro and its tributaries* and the *Agreement of 29th May 1968 to regulate the hydraulic use of the international stretches of the rivers Miño/Minho, Limia, Tagus, Guadiana and Chanza and their tributaries*.

All these Agreements have gone no further than a framework to promote mere industrial or, more precisely, hydroelectric development just along the frontier stretches between both countries, establishing a principle of allocating 50% of the hydropower generation capacity to each country by earmarking particular sub-stretches and height difference for hydropower use.

2 THE NEED FOR A NEW CO-OPERATION FRAMEWORK

There were three kinds of reasons that led the parties to consider the need for a new agreement at the beginning of the 90's: objective, basic and the current situation.

Objectively these agreements have allowed for great development of hydroelectric use along all the frontier stretches, leading to a very positive balance for the two countries, as nearly all the actions foreseen in them have been carried out.

As a basic reason, during the last third of the 20th century Spain and Portugal have undergone far-reaching changes from political, economic and social perspectives. This situation has involved an increase in water use, with the consequent modifications to the river regimen. As well as an increase in inter-sector, and even inter-territorial competition with regard to the use and availability of water and a progressive deterioration of its quality. These trends, typical of societies with a mature water economy, are reinforced by the change in attitude to water resources that is taking place on an international and even a world scale. Water is no longer considered to be just one more economic factor in industry, energy, agriculture or supply but also a resource of major importance from a health and hygiene viewpoint. It is now accepted that it is a scarce and precious natural resource that needs protection, bearing in mind the important role that water plays in the environment in general, so the resource must be managed within a framework of sustainable development. Furthermore, Spain and Portugal joined the European Community (now Union) on 1st January 1986. This meant a new standards framework in the environmental field and, in particular, with respect to water, not only regarding the fulfillment of regulations but also to the necessary co-ordination between both countries.

However, without any doubt, the political situation in Spain and Portugal was what finally created the moment for the beginning of negotiations, as well as their development and final outcome. Ever since the Water Act 29/1985 dated 29th August came into force, the hydrological planning process required by the law was initiated in Spain as one of the main bases for the new water control policy. In this process, in April 1993, the Spanish Government presented a proposal for a National Water Plan. This was received in a very negative light by Portuguese public opinion, very sensitive to water-related topics with Spain, as a policy of *fait accompli* that ignored Portugal, since the policies of Spanish water planning, basically in the expectations of new irrigation areas that were foreseen in the water plans for the Douro, Tagus and Guadiana basins and the plans for new schemes to transfer water from the Douro and Tagus towards the south-west, because Portuguese opinion believed that this could lead to a blocking of that country's water policy. The situation was further complicated because the effects of the serious drought that had been affecting Spain for several years were being felt in Portugal at the same time.

3 NEGOTIATION PROCESS

Since the summit meeting between the Portuguese and Spanish governments that took place in Palma de Majorca in the autumn of 1993, the formal negotiation process began to widen the scope of the agreements then in force, with a view to regulating the sustainable use and the protection of water resources of the shared river basins. The Declaration of Porto of 19th November 1994 gave a new emphasis to the negotiations on the basis of:

- Creating the appropriate conditions for the optimum use of the shared river basins within the framework of environmental protection and water quality.
- Co-operation between the two countries in defense of their respective interests by means of a systematic exchange of information.
- Prior evaluation of the effects in Spain and Portugal of any significant actions in the other country.
- Co-ordinating the planning and management of water resources in the shared basins from the point of view of their sustainable use by both countries.
- Finishing in the shortest possible time an agreement between Spain and Portugal on water resources based on:
 - The principles of international and European Community law.
 - The recognition of an equal and reasonable right of both countries to the water resources of the shared basins.
 - A co-operation mechanism that ensures the regular and systematic exchange of information.
 - A bilateral institutional model that allows the evaluation of water situations of mutual interest.

Both countries recognised the new environmental awareness that had taken root in their societies and transferred it to their mutual water policy, for which they decided to leave a purely technical/economic framework for the use of the frontier rivers to pass definitively to a much wider framework that covered all the area of the shared basins rather than just the parts of the rivers forming the frontier between both countries. They agreed to pay special attention to the balance between environmental protection and the use of water resources necessary for sustainable development in both countries, to prevent the risks that could affect the water or be caused by them and to protect the aquatic and land ecosystems that depend on these.

The start of the formulation in 1995 of the new Water Framework Directive in the heart of the European Commission affected the pace of the negotiations and made the new Spanish Portuguese agreement, the majority of whose negotiations took place in 1997 and 1998, have an interactive composition with the above-mentioned directive to incorporate its general philosophy, as differences in the text between the bilateral agreement and the European Community framework, to which both countries were soon going to be subject, were not acceptable. The agreement was signed during the Spanish Portuguese summit in Albufeira on 30th November 1998 and came into force on 17th January 2000.

4 PRINCIPLES LYING BEHIND THE AGREEMENT

As mentioned above, the principles lying behind the agreement were fixed, in the Declaration of Porto and can be summarised as follows:

4.1 Widening of the reference framework of previous agreements.

This widening comprises several points: on the one hand, the purely geographical and hydrological aspects, covering all the area of the shared river basins in accordance with current tendencies that consider this to be the reference unit for studying hydrological material. It therefore covers surface water, groundwater and ecosystems related to the water environment. This also amounts to a widening in material terms, as all activities related to the use of water resources, including those that concern the safeguarding of water quality, must be dealt with, which went further than the merely sectorial approach of the previous agreements.

4.2 Co-operation between the parties

The management of water resources in each country, taking the word “management” in its most all-encompassing sense, can only be fully carried out by co-operating taking into account the transboundary character of these resources.

This co-operation revolves around three fundamental elements:

- Exchanging information on a regular and systematic basis.
- The enquiries and joint activities to be developed internally by the bodies created as a result of the agreement, but which, logically, are not confined to this area.
- Taking measures to guarantee the effectiveness of the agreement, including those that allow for the homologation of the administrative and legal systems of both countries, which must have a preferential position.

4.3 Co-ordination of the planning and management of the water resources in the river basins.

It is a topic of singular relevance. The solution adopted is compatible with the concept of the indivisibility of a river basin and follows the guidelines of what is established in the Water Framework Directive. The aim is that the environmental goals to be reached are co-ordinated, there being national independence to establish and carry out measures, infrastructures operation included, that facilitate the achieving of these targets. Obviously, this way of acting does not mean that specific actions can be jointly undertaken when these are desirable and feasible.

With the subject planted in this way, it appears that co-ordination could be seen as an unambitious measure. Currently, to aim for a shared and global management system is not possible. On the one hand, because both countries have, in administrative terms, relatively different management methods, which would result in malfunctions, at least in the short term and it is not foreseeable for this harmonisation to take place and become effective immediately. Secondly, it must not be overlooked that for the resources of the rivers to become usable, both in Spain and Portugal, it has been necessary to regulate them with a great number of large dams, which have been undertaken from different and strictly national interest, viewpoint and finance perspectives. To propose joint management would require an in-depth debate to be initiated concerning the purpose of the regulation, both now and in the future, on the ways of financing its structure, how it is to be repaid and how it operates, as well as its decision-making machinery. This debate involves not only the Administrations, but the users and society in

general. In a distant future this may be necessary, but it will be of greater benefit if it is developed at the same time as the institutions envisaged in the agreement are established, and preferably with these operating.

4.4 Respect for and compatibility with existing situations arising from previous agreements.

A set of requirements in international law and in particular, European Community Law must be borne in mind and adapted to the specific hydrological and social conditions of the Spanish-Portuguese river basins.

Experience has shown the International Rivers Commission to be an effective instrument for agreements and it is therefore necessary to maintain the essence of its functional principles, adapting them to the new responsibilities that the Agreement has designed, in particular, separating questions of a political nature, which are to be dealt with by a new body, the Conference of the Parties, from those of a technical legal and organisational nature that are the responsibility of an updated Commission that, in contrast to other existing cases in an international context, stresses its bilateral nature.

Finally, it is necessary to review the current situation arising from the agreements of 1964 and 1968. In this sense, what has to be defined are: the situation of envisaged but incomplete actions, the points of preferential interest for both countries, the water transfers schemes that have already been carried out or those situations arising from an imprecise interpretation of the earlier agreements, yet completely compatible with the framework that the agreements established.

5 CONTENTS OF THE AGREEMENT

The contents of the agreement are not going to be analysed point by point as it would take too long to do so. On the contrary, we shall consider those topics that comprise its backbone and which, for obvious reasons, constituted the subject matter of most of the discussions during the negotiations.

The formal layout of the Agreement comprises an introduction, six functional parts with a total of 35 articles, two annexes and an additional protocol with its annex.

Two sentences are worth highlighting from the introduction that summarizes the political intentions of the document, because they capture its essence and synthesize the basis of the agreement:

- Search for a balance between protecting the environment and the use of the water resources necessary for the sustainable development of both countries.
- The need to co-ordinate respective efforts for a better understanding of the management of the Spanish-Portuguese river basins.

5.1 Institutional regimen

The Agreement sets up two peer bodies on which the co-operation process is based: the *Conference of the Parties* on a high political level and the *Commission for the Application and Development of the Agreement*, hereinafter referred to as the Commission. Both bodies, especially the second one, comprise the framework for monitoring and controlling the process, as well as being privileged bodies for resolving conflicts that may arise in the bilateral relationship.

No specific organizational formula for the Commission is specified, except its peer nature. In as far as reference is made to the Commission, from the itemizing of some of the purposes that it has, it can be deduced that it has a marked technical-legal function. However, without detracting from this function, it is primarily a decision-making body on a large number of topics. There are, on the other hand, in the Agreement itself, mechanisms that allow for a more in-depth treatment of topics of a more specifically technical or legal nature or of any other kind, through the creation of sub-commissions or working groups in which specialists on the topic can take part.

5.2 Information exchange

It should not be forgotten that, above all, the Agreement is an instrument for co-operation between two countries, for which reason the availability of sound information on the material that it regulates is a pre-requisite for this co-operation to be effective.

Three different levels should be considered in the information exchange concept:

- a) The level that involves meeting the objective obligations arising from the Agreement, especially those that refer to the flow regimes.
- b) The one dealing with the legislation, organizational structures and administrative practices, in such a way that these aspects are performed in a harmonious way.
- c) That which covers international initiatives concerning matters associated with the Agreement, in such a way that if the ideal of presenting mutual initiatives in international fora is not achieved, at least a certain prior enquiry regime is established for these initiatives.

The Agreement institutionalizes the rights of access to information of each country's citizens, along the lines envisaged in Directive 90/313/EEC on the freedom of access to information concerning environmental matters in the Aarhus¹ agreement signed on 24th June 1998 on citizens' access to information participation in environmental matters.

The Commission must not only receive from the Parties all the information necessary to fulfill its functions, but it must also have powers to require from the Parties whatever it considers necessary, in particular that referring to the manner in which each country carries out the actions envisaged in the agreement, which entails control over its fulfillment, by means of a programme of measures concerning the mutual objectives that have already been agreed upon.

Those elements for which information must be exchanged are contained in Annex I to the Agreement:

- a) Management monitoring over cross-frontier water; rights of use (licenses, authorizations, etc.), hydrological, infrastructure data, etc.
- b) Activities liable to have transboundary impact; discharges, water allocated for future human consumption, sensitive areas, vulnerable areas, activities leading to erosion etc.
- c) Methodology, studies and data on the ecological conditions of the water and better environmental practices.

¹ Signed by Spain in 1998. Parliament approved its ratification in May 2001.

The information must be homogenous and compatible, which requires an effort to be made in the short term to ensure that the networks of both countries are adequate.

Annex I itself lists pollutant materials that must be the subject of special surveillance and which is similar to that appearing in Annex VIII of directive 2000/60/EEC, which established a European Community action framework in the area of water policy (Water Framework Directive).

5.3 Transboundary impacts

It is a particularly sensitive aspect, in which the solution found is based on the European directives relating to environmental impact and international legislation subscribed to by both countries, in particular the Espoo² Agreement on environmental impact evaluation in a transboundary context, of 25th February 1991.

If mechanism is to function correctly, it must be based on the principle of good will, i.e. trying not to cause significant damage and to act diligently to prevent its effects when they arise, as well as not using the enquiry mechanisms to obstruct any action taken by the other party.

The system envisaged does not cause any imbalance in the relations between both countries, precisely due to its bilateral nature. In the first place, because it defines the river basin as the unit in which transboundary impact may arise as a result of a project or activity, although this is qualified in Annex II by the consideration of the distance from the frontier to the action being considered.

Secondly, because the evaluation procedures must be expressly fixed by the applicable European legislation. Finally, because the consultations, i.e. whether or not a project or activity is defined as being potentially likely to cause a transboundary impact, is carried out in the heart of the Commission, which is responsible for determining, *a priori*, projects or activities that must be submitted to environmental impact evaluation.

The distinction that the Agreement makes between projects and activities is particularly interesting, as the possible application of a suspension clause would only occur in the former case. However the ambiguity of the definition means that care should be taken in applying it to particular cases.

The system envisaged in the Agreement is completed with safeguard clauses for reasons of public interest, as well as the repair of responsibilities in accordance with the applicable international law and which, logically, acts in both directions.

Annex II provisionally defines the types of projects as well as the conditions to be applied in these for their transboundary environmental impact to be evaluated, an evaluation that must, in any event be made in accordance with European directives.

5.4 Water quality and flow regimes

As far as water protection is concerned, the Parties undertake to inventory, evaluate and classify transboundary waters, on the basis of its quality and current and potential uses and to define objectives or standards of quality in the terms of the applicable European directives, even considering the possibility of applying a special protection statute in cases where this is applicable. The Parties also undertake to co-ordinate the pollution prevention and control procedures in accordance with European Community Law.

² Ratified by Spain 1st September 1992

The flow regime established in the Agreement must be understood from the perspective that it has been intended to guarantee the existence of certain flow rates in such a way that hydrological and environmental functions of the rivers can be achieved and, at the same time, for it to be possible to lay a firm foundation for both the current and future use of water resources in the two countries.

Infrastructure management must be carried out in such a way as to guarantee that these minimum flow rates are met, this demand preferably being satisfied by the upstream country, although consecutively, it can freely carry out the allocation of resources that it wishes and considers to be most appropriate as long as the flow rates established in the Agreement are not jeopardised. This condition means that new actions in both countries are undoubtedly going to be subjected to installation and working restrictions, which will limit some of these or impose restrictions on them. Future actions, which may also include temporary resource transfers, must, in applicable cases, be subject to the environmental impact assessment procedure. The upstream country must accept the guaranteed flow rates as a datum for its future planning, whose possible transboundary projects or activities will also be conditioned by their potential transboundary impact. On the other hand, the downstream country must condition its development by the guaranteed flow.

In any event, it must be borne in mind that the flow regime is not an isolated element but that it is one that takes into account the fact that a system exists in both countries whereby in both countries one uses water through licensing and therefore, with established and consolidated legal obligations, a system of which the regime arising from the 1964 and 1968 agreements forms a very special part. It is therefore logical to suppose that the flow rates in the frontier stretches are not going to vary greatly over the year from those at present, although they can be re-examined in order to satisfy the assigned hydrological and environmental functions.

It cannot be overlooked that the hydrological regime of Spanish-Portuguese rivers is very irregular, increasing from North to South in such a way that there are years in which the guaranteed flows are not reached, either naturally or even with the support of the regulation system established. Therefore, faced with these natural scarcity situations, it is absolutely necessary to establish exceptions to the general flow regime.

To define these situations objectively, indicators based on a standard rainfall for each basin have been established, calculated on the basis of the measured rainfall occurring in two or three selected gauging stations. (Table 2). The intended purpose is to have a simple, easily accessible indicator for the interested parties and one that makes it possible to clearly define these situations. In the case of the Guadiana, due to its greater irregularity and the gauging station network that it has been equipped with, the criterion has been completed with the situation in several reservoirs.

The thresholds, both those that refer to the declaration of a period of exception as well as when this situation no longer exists, were determined in such a way that the periods of exception will affect a limited number of years and be compatible with the real situation. In all cases, supply to the population and for social uses as well as maintaining environmental conditions in the river must be attended to, although of course, bearing in mind the natural regime that will have arisen from the hydrometeorological situation (Tables 3 and 4).

Table 2. FLOW REGIME (Reference Rainfall)

BASIN	GAUGIN STATIONS	WEIGHTING
Miño / Minho	Lugo	30%
	Orense	47%
	Ponferrada	23%
Douro	Salamanca (Matacán)	33,30%
	León (Virgen del Camino)	33,30%
	Soria (Observatory)	33,30%
Tagus	Cáceres	50%
	Madrid (Retiro Park)	50%
Guadiana	Talavera la Real (Air Base)	80%
	Ciudad Real	20%

The mean values are understood to be calculated in accordance with the registers of the period 1945/46 to 1996/97 and will be updated every 5 years

Table 3. FLOW REGIME (Minimum flow)

GAUGING STATION	Minimum flow (hm ³ /year)	START of exception period	END of exception period
Miño/Minho			
Frieira dam	3.700	P ^(R) up to 1st July < 70 % P ^(M)	following month to December if P ^(R) > P ^(M)
Douro/Douro			
Miranda dam	3.500	P ^(R) up to 1st June < 65 % P ^(M)	following month to December if P ^(R) > P ^(M)
Saucelle dam+Águeda G.S.	3.800		
Crestuma dam	5.000		
Tagus			
Cedillo dam	2.700	P ^(R) up to 1st April < 60% P ^(M) , or P ^(R) up to 1st April < 70% P ^(M) and P ^(R) previous year < 80 % P ^(M)	following month to December if P ^(R) > P ^(M)
Ponte de Muge G.S.	4.000		
Guadiana			
Badajoz dam	600-300	According to rainfall and state of reference reservoirs	following month to Dec. if volume in ref. reservoirs > 3.150 hm ³
Pomarao G.S.	2 m ³ /s daily		

P^(R) is the accumulated reference rainfall in the basin from the beginning of the hydrological year to the date indicated.

P^(M) is the mean accumulated rainfall in the basin in the same period.

5.5 Exceptional situations

The flood alarm situation is not only activated automatically at the request of one of the parties, but either of the parties can take action if it understands that a situation has arisen that could lead to flooding.

During flood alarms, it is very important to have reliable information. In such cases information must be passed on in real time or as closely as possible to this and be transferred as directly as possible between the person who generates the information and the one who must use it. This means having these points of reference identified beforehand, together with the type of information required and the operational measures that can be taken as an alternative. Experience in recent years as regards the modus operandi in Spanish reservoirs, which has

helped to facilitate flood management in Portugal, is a good starting point in how these topics should be approached. It must be completed with joint studies on floods and management rules of reservoirs in these situations.

As far as droughts are concerned, the obligation of the parties to adopt measures begins as soon as the exceptional situation is confirmed. These measures are aimed at a more rigorous management of available water resources and include, among other things, infrastructure management, water savings and consumption reductions. Furthermore, it will be necessary to carry out stricter control of discharges of wastewater in order to be able to maintain acceptable quality levels despite the states of water stress in the environment and prevent, to the extent that this is possible, cases of accidental pollution.

Table 4. FLOW REGIME (Detail of minimum flow in the GUADIANA)

a) Total annual flow in Badajoz dam (hm³/year)

Volume in reference reservoirs (hm ³)	% Accumulated rainfall above the mean as at 1st March	
	> 65 %	< 65 %
> 4.000	600	400
<i>between 3.150 and 4.000</i>	500	300
<i>between 2.650 y 3.150</i>	400	Exception
< 2.650	Exception	Exception

b) Mean daily flow in Badajoz dam and in Pomarao

2 m³/sec in all cases

* This regime will not be applied until the Alqueva reservoir begins to be filled

- The REFERENCE RESERVOIRS of the Guadiana basin are:

La Serena:	3.219 hm³	García Sola:	554 hm³
Zújar:	309 hm³	Orellana:	808 hm³
Cíjara:	1.505 hm³	Alange:	852 hm³

5.6 The guarantee regime

The main guarantees for the correct functioning of the co-operation regulated by the Agreement are the bodies created by it, the Conference of the Parties and the Commission already described in Chapter 5.1.

The guarantee regime is completed with a conflict resolution system for disputes that it has not been possible to solve specifically by negotiation between the parties or in the heart of the Commission or the Conference of the Parties. The procedural norms are based on those established in the Espoo Agreement with no interference from other international organisations except the International Court of Justice, as was the case with the 1964 and 1968 agreements.

The Agreement is in force for seven years, which are automatically extendable for further periods of three years unless this right is expressly waived by one of the parties no later than ten months before the each period has elapsed. Amendments may be made by mutual agreement at any time.

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