**AVOSETTA QUESTIONNAIRE: THE SEA DIRECTIVE**
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**Questionnaire on Spain**

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## 1.- National legislative context

*Identify and summarise the relevant national legislation transposing Directive 2001/42/EC…*

The SEA directive was first transposed in Spain by means of a piece of national legislation: Act 9/2006, of 28 April, on the evaluation of the effects of certain plans and programs on the environment. This statute regulated the SEA separately from the long-standing legislation on EIA for projects. However, in 2013 the national parliament approved the Act 21/2013, of 9 December, on environmental assessment (*ley de evaluación ambiental*) hereinafter "EAAct". Contrary to the 2006 approach, this statute regulates in the same legal rule both EIA and SEA, establishing many common legal features for both instruments. In our view, this is not a good legislative approach, in view of the differences among both techniques. This act has been amended several times, the last one by Royal Decree-Law 36/2020, of 30 December, on urgent measures to cope with the pandemic: the deadlines of the different steps of the SEA procedure have been shortened, in order to speed it up.

On the other hand, Spain is a very decentralised country and both the State (or national/central authorities) and the (17) regions (Comunidades Autónomas) have legislative powers in the domain of environmental protection. Consequently, all of them could potentially approve their own laws and regulations on SEA, although not all of them have done so (for instance, Madrid). Among the regional statutes stand (i.a.):

- the Act 7/2007, of 14 June 2007, on integrated management of environmental quality (Andalucía). It has a specific chapter on SEA.
- The Act 11/2014, of 4 December 2014, on environmental prevention and protection of Aragon (arts. 11-22)
- The Ac 12/2016, of 17 August 2016, on environmental assessment of the Balearic Islands (arts. 9 and ff).
- Law 3/1998, of 27 February, and Decree 211/2012, of 16 October, on SEA for plans/programs (Basque Country)

*Last but not least,* the regions have extensive (or even exclusive) legislative powers for regulating the different plans that are subject to a SEA (for instance, urban development and spatial planning). There are 17 different laws on urban development and spatial planning in Spain, which are the only legal rules that regulate in detail how the SEA for such plans is conducted.

In view of the large number of legal instruments governing SEA in one way or another, the replies below are mostly restricted to the national legislation and practice.

## 2.- EU infringement proceedings

Have EU infringement proceedings been brought against your Member State for alleged failure to comply with the SEA Directive? NO

## 3.- Objectives (Art. 1)

Is the Objective of the Directive reflected in your Member State's national legislation?

YES. For example, see the Supreme Court Judgment ( hereinafter "SCJ") Nr. 1144/2017, of 29 June 2017)

Has the Objective been used by your national courts to assist them in the interpretation….YES

## 4.- "Plans and Programmes" subject to SEA

**.(i)** *- Art. 2 (a) (Definition of "plans and programmes"):*

The 2013 EAAct tries to produce a "substantive" definition of plans and programs (absent in the Directive) that is based on three cumulative prongs:

- First, the Act defines a plan or programs as: "*a set of strategies, guidelines and proposals aimed at satisfying social needs, which are not directly executable and must be implemented through their development by means of one or more projects"* (art 5.2b);
- Second, the Acts follows the Directive in identifying the fields or areas where the plans are possible (agriculture, etc. but introduces further areas, see below);
- Third, the Act adds up another legal feature. These plans (a) are approved by "a public Administration" (that is, a governmental agency) and (b) their approval is required by an Act or an Administrative Regulation (at State or regional level) or by a resolution of the central or regional government. This means that purely "private" plans, that do not need a governmental approval, are not covered by the legislation.

*.- Case C-567/10. How was it received in your country?:*

No relevant impact, albeit it has been mentioned in some judgments (e.g., SCJ 952/2017, of 30 May 2017)

**.(ii)** *Art. 3 (Scope): How has this provision been transposed into national legislation, and, in particular, has your country added any additional categories of "plans and programmes"...*

YES, as noticed *supra,* Spain has included in the national legislation additional plans or programs, namely in the following fields: cattle raising, aquaculture, mining, occupation of the coastal public domain, and the use of the marine environment. Furthermore, the regions may include additional plans/programs in their laws and regulations (see, above). The Supreme Court has adopted a broad perspective of the SEA instrument (e.g., SCJ of 8 October 2015, appeal 1930/2013).

**.(iii)** *"likely to have significant environmental effects" – is this concept elaborated on in national legislation?*

National legislation mostly follows the directive on this aspect. The agency that proposes the plan/project is the one that decides firstly whether a particular plan or programme is "likely to have significant environmental effects". In any case, the usual approach is to see whether the precise plan or program is included in the relevant listing of national or regional legislation. The Supreme Court has not accepted exceptions to SEA based upon superficial review of potential effects (e.g., SCJ of 7 April 2015, appeal 1542/2013).

**.(iv)** *Is there screening?...:*

There is indeed screening, but the screening procedure is (strangely) identified in the law as "simplified SEA". In reality, there is no "SEA" at all here, since the procedure will end up in a special document called "Strategic Environmental Report" (*Informe ambiental estratégico*). This document is approved by the environmental agency and it can only include one of the two following determination: that a full or genuine SEA ("regular SEA") is needed for the envisaged plan; or that no SEA is needed (art. 31 of the EAAct). In reaching this determination, the environmental agency must follow the guidelines and criteria laid down in Annex V of the EAAct.

Thus, the Spanish legislation on SEA regulates two types of SEA: the "regular SEA" (which is the genuine or true SEA) and the "simplified SEA", which is reality is no SEA at all, but the screening procedure and the screening decision. This systematic approach is confusing and possibly misleading at terminology level.

The screening determination is made available to the public by two means: first, it must be published in the national or regional Official Gazette (*Boletín Oficial*); second, it is uploaded it in the website of the environmental agency.

**.(v)** *" ... which set the framework for future development consent of projects" specified in the EIA Directive. Has national legislation / official guidance and / or jurisprudence further elaborated on the meaning of this concept?*

Yes, see above (plus, the jurisprudence of the administrative courts)

**.(vi)** *"Plans and programmes" that "determine the use of small areas at local level" – how has this provision been transposed and how it is applied in practice?*

Those plans and programs are subject to a "simplified SEA" (evaluación estratégica simplificada)

**.(vii)** *Does your national legislation and practice reflect the CJEU's conclusion that it is the "content" rather than the "form" of the planning or programming act that is decisive?*

Since the legal definition of plan or program is so abstract and general (see, above), the formal denomination of an instrument is the decisive factor, and the one that can convey legal certainty. In any case, outside the spheres of urban development and spatial planning, the SEA has had little impact or attention in Spain. In those domains, it is clearly stated what is a "plan". However, in order to know what precise "plans" are subject to SEA, we must look into the regional legislation on urban planning. Consequently, the situation is not uniform across the country

**5.- General obligations (Art. 4):** How has this provision been transposed?:

As indicated *supra* (question 1) the national legislation does not regulate this precise point, it is therefore necessary to have recourse to all the different laws and regulations that govern the several types of plans/programs that are subject to SEA. However, in some cases that legislation may be older than the SEA statute, which raises an important operational problem, in the sense that the "sectoral" legislation has not been adapted to the "environmental-

SEA" legislation. This applicative problems is sometimes solved by means of governmental interpretation or administrative circulars.

*In particular, has the obligation to carry out the assessment "during the preparation of" the plan or programme been respected?*

YES, at least for what concerns the plans in urban development and regional spatial planning

## 6.- Environmental Report (Art. 5, together with Art. 2 (b) and Annex I)

**.(i)** - *Is there national jurisprudence and / or practical examples demonstrating significant problems with the range of data included in the Environmental Report and the evaluation presented*? NO

**.(ii)** *Who makes the scoping determination?*

The environmental agency, either at national or regional level

.**(iii) .-** *Is the scoping determination available to the public?* YES, the scoping document must be made available to the public in the website of the environmental agency (art. 19.3, EAAct)

## 7.- Consultations (Art. 6 together with Art. 2 (d)):

*- How has this provision been transposed:*

In the same way as in the Directive, but the different regional laws and regulations may introduce specificities, for instance in the duration of the consultation, or on the identification of the administrative agencies to be consulted

**-** is there national jurisprudence and / or practical examples demonstrating significant problems here? NO

## 8.- Transboundary consultations (Art. 7):

- Has this provision come into play in your country? NO
- Who decides about initiating transboundary consultations?:

the central government (thought the Ministry of foreign affairs)

- Is there any significant national jurisprudence and / or practical examples: NO

- Does the UN ECE SEA Protocol play a role here?

NO, it´s largely unknown, although Spain ratified it on 21 May 2003 and ratified it on 24 September 2009.

**9.- "Taken into account" (Art. 8):** How is this provision understood? Is there any significant national jurisprudence? Are there any specific mechanisms in place to monitor compliance with this particular obligation?

Here again, the Spanish legislation is a bit confusing, at least if one takes into consideration the terminology of the law and the English and Spanish versions of the directive (see, addendum). To begin with, the "Environmental Report" (covered by art. 5 of the Directive) has been transposed as the "Strategic Environmental Study" (*Estudio ambiental estratégico*) and must be performed by the promoter; while the final statement where all the results of the SEA procedure are taken into consideration (art. 8 and 9,1,b od the Directive) is called *Declaración Ambiental Estratégica* ("Strategic Environmental Declaration"), which is the most important document and decision of the whole process, and must be issued by the environmental agency.

Once said that, we must analyse whether the *Declaración Ambiental Estratégica* (the final statement by the environmental agency) is "binding" or not on the agency that must approve the plan. Although the *Declaración Ambiental Estratégica* is issued by an administrative agency (the environmental agency) and is considered for all purposes as a genuine administrative decision, a long-standing case-law of the Administrative Chamber of the Supreme Court has declared that that decision is not considered to be a final administrative decision on its own, but only a "preparatory" administrative act, in form of a report (*un informe*) that is included in the broader administrative procedure leading to the approval of the plan (art. 25.1 EAAct). The problem, though, is that the law is unclear, as it does not say that the declaration is either binding or non-binding, but uses a *tertium genus* instead: the declaration is mandatory and "determinant", a terminology that is not regulated in the General Administrative Procedure Act. The general interpretation is that the Declaration is, in practice, binding, because if the agency that must approve the plan disagrees with the determinations or conditions included in the Declaration issued by the environmental agency, it must trigger a sort of conflict (*discrepancia*) that must be solved by the Council of ministers (at State level) or by the regional government (at regional level). That is, the agency that must approve the plan cannot *per se* disregard or refuse to introduce the determinations of the Declaration (art. 12, EAAct).

**10.- Monitoring the significant environmental effects of implementation of plans / programmes (Art. 10)**

*Is monitoring a legal requirement in your country? If so, how it is organised and who is responsible for monitoring? Is it effective in practice? Are there any specific mechanisms to address the results of monitoring?*

Yes, monitoring is a legal requirement. This duty is performed by the governmental agency having the competence to approve the plan (art. 26.3, EAAct). In agreement with the REFIT examination, this is in general poorly executed in Spain. Please, take into account that for many plans, the agency that approves the plan may be the same that proposes the plan… No comprehensive examination of this duty has been carried out in Spain.

**11. -Access to justice**

Main ideas on this topic:

First.- Access to justice in connection with SEA process does not raise significant problems, due to the extensive interpretation of *locus standi* provided in the 1998 Act on judicial control of administrative action, plus the liberal case-law of the Administrative Chamber of the Supreme court that has interpreted it and the Aarhus acquis (there is a specific act on this: Act 27/2006).

Second.- However, full judicial control is not complete because the EAAct does not allow to bring a legal challenge against the final environmental "Declaration" issued by Environmental Agency (*Declaración Ambiental Estratégica*, see precedent reply). The reason is rather formalistic: the Declaration is just a "report", not a full or "final" administrative decision. Consequently, the "Declaration" (the very final environmental assessment) cannot be challenged in courts independently; the plaintiff must wait until the final approval decision for the plan is granted, and, at this stage, challenge the Declaration. This is very difficult to make and may be too late. Moreover, the *Declaración Ambiental Estratégica* is considered to embody a high degree of scientific-technical discretion, and the paradigm of the "expert agency" hinders in most cases the possibility of a review on the merits by the administrative court.

Third.- it is important not to forget how SEA works in practice: all the plans and programs targeted by the directive are public ones, that is, plans that are approved by the government (either at national, regional or local level). This means that some plans are "proposed" and "approved" by Ministry "A" and they must be assessed by Ministry "B" of the same government[1]. In other cases, a plan is proposed by Directorate "A" and must be assessed by Directorate "B", but both are directorates of the same Ministry of the Environment[2]. This means that, in practice, the possibility of a "negative" environmental "Declaration" or assessment is very limited. On the contrary, when the plan that must be assessed is an urban development plan, it is proposed by a municipality but it must be assessed by the region. In this scenario, it has frequently been remarked that the SEA may be used by the regional government as an instrument to influence or to determine the planning choices made by the municipalities. Here, the possibility of a "negative" environmental "Declaration" or a "Declaration" that diverges very much from the municipality´s urban strategic policies is certainly a possibility, and the problem is that the concerned municipality cannot challenge in isolation the environmental "Declaration" or assessment.

Fourth.- On the other hand, the question arises of the consequences of not performing a SEA, when this is obligatory for a given plan or program. Here, the law has been silent for a long time, but the administrative courts (on the basis of the general administrative law on governmental procedures) declared that the decision approving the plan was null and void. This case-law was inspired by the already established case-law declaring the nullity of the decision ("development consent") authorising a project, under the EIA legislation.

As example of cases where the Supreme Court has annulled a plan owing to the lack of SEA, see the SCJ 2686/2016 of 20 December 2016; SCJ of 29 October 2015, appeal 1860/2014; SCJ of 24 February 2015, appeal 526/2013 regarding a "minor modification" affecting 150 ha not subjected to SEA.

Currently, the EAAct has accepted this case-law and proclaims that the decision which approves or authorises a plan or a program will not be valid if the SEA was omitted (art. 9.1) The law also clarifies that it is not possible to understand that a Declaration has been made in a tacit manner.

**12.- Direct effect:** Are there any decisions of the national courts in your country where, because of alleged non-transposition, the direct effect of the Directive has been invoked:

It is difficult to know how frequently such a direct effect has been invoked in legal proceedings, considering the high number of plans concerned and the multiple judicial fora. In any case, the Supreme Ct has upheld on a number of cases the direct effects of the SEA Directive (e.g., SCJ of 8 October 2013, appeal 2786/2010; SCJ 2686/2016 of 20 October 2016).

**13.- SEA for proposed policies and legislation:** Have there been any developments in your country as regards SEA requirements for proposed policies and legislation that are likely to have significant effects on the environment, including health? (UN ECE SEA Protocol, Art. 13). NO

**14. - National studies:** Have any significant official (or unofficial) studies of the implementation of the Directive and its impact in your country been published? NO

[1] For instance, the II National Plan on Renewables (2011-2020) was approved by the Government. It was proposed by the Ministry of Industry and Energy and it was assessed by the Ministry of the Environment

[2] For instance, in 2016 the Ministry of the Environment approved a national strategy on adaptation of the coastline to climate change. This strategy was proposed by the Directorate of Coastal Management and was assessed by the Directorate on environmental quality, and both are subordinated to the Ministry of the environment.

**15.- National databases:**
- Is there any national database….

NO in both cases. The strategic assessments ("Declarations") are published in the corresponding official gazette (either the national one "BOE" or the regional ones), and so are the final decisions approving the program/plan (this decision must specify in which way the conclusions of the SEA have been taken into account). However, these decisions are not collected in any "central" database.

**16.- Impact of SEA in practice:**
Four basic considerations:
.- Strategic assessment is usually regarded just as another bureaucratic step in the procedure for approving a plan.
.- The area of urban development planning is the only one where it is possible to see a substantive impact of the SEA on the proposed plans (e.g., annulment of municipal urban rules providing the framework for the carrying out of subsequent projects, SCJ 2054/2016 of 23 September 2016). As presented *supra,* local master plans are proposed by municipalities but must be finally approved by the region. The regional government has "discovered" a powerful mechanism to play a role in local spatial planning and this arrangement makes possible for the regional government to make a perverse use of the SEA assessment, which is fuelled by situations of political confrontation between the local and the regional level.
.- The strategic "Declarations", "Reports" and "statements" that are published use a terminology that is so sophisticated and technical that the regular citizen does not really care about and cannot even comprehend its technical implications.
- There are no expert judges in the High Courts or the Supreme Court able to review in detail the content of the environmental assessment. Faced with contradictory opinions, they tend to sustain the conclusions reached by the public authorities unless gross failures are found.

**17.- Any other significant issues?** Are there any other significant issues concerning the implementation of provisions of the Directive in your country which you consider are worth mentioning here?.

Yes:
1º.- Most attention has been given to "plans", little or no attention is given to "programs", this term has received little attention or implementation. Among the plans, the most important ones have been the local urban development master plans (proposed by municipalities but ultimately approved by the regions) and the regional spatial planning instruments (proposed and approved by the regions).

2º.- Due to its broad scope and generic wording, it is possible to say that the directive has produced a sort of "double" or "two-step" transposition process: first, the Directive was incorporated by a specific *transposing* legislation (first, Act 9/2006, and later Act 21/2013). However, those laws are also general and do not regulate in detail the most important aspect of SEA: how this assessment is integrated into the procedure for drafting and approving the corresponding plan or program. This derives from art. 4.2 of the SEA Directive
For this reason, one must look at the different pieces of sectoral legislation that regulate the several plans that are subject to a SEA, the most important being (see supra) the local urban development plans and the (regional) spatial planning instruments. Only by studying and applying such laws and regulations can someone understand how the SEAssessment works in practice.

3º.- The fact that the national legislation excludes the SE Assessment or "Declaration" from an independent or separate judicial review (see, *supra*) explains that, in practice, the assessments as such are usually not disputed or challenged in courts. Unlike the EIA Directive (Article 9a) the SEA lacks a provision according to which, *"Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive"*
The only aspect that has produced a relevant or interesting litigation is the situation of total absence of the assessment before the plan was approved. Usually, this is the typical claim that e-NGOs produce in courts in order to seek the annulment of the urban or territorial plan, and indeed several spatial plans have been annulled by the courts for not producing a strategic assessment.

4º.- At least in the Spanish approach, the SEA is not a very credible instrument. The reason is very simple: as explained *supra*, all the plans and programs targeted by the directive are public ones, that is, plans that are approved by the government (either at national, regional or local level). On the other hand, the body that performs the SEA is also a governmental agency (the national or regional environmental agency or Ministry), which belongs to the same governmental level/structure that must approve the plan (in some cases, the assessment is even performed by the same agency that must approve the plan). Consequently, there is no impartiality neither in the organic nor functional meaning.

5º.- Compared to environmental impact assessment for projects, SEA for plans has
triggered less attention.

6º.- In the light of the response given to answer Nr 1 above, the regulatory framework for SEA is extremely fragmented, both at territorial and sectoral level. Finding the right legal rule to apply for the SEA of a specific plan maybe sometimes challenging, or a real mess.

7º.- There is a certain potential overlapping among the SEA and EIA Directive: at least in Spain, some urban development "projects" (for instance, entertainment parks) are approved on the basis of a spatial planning instrument. On the one hand, this is a project included in the Directive, but on the other hand, this is also a "plan". It may be of a reduced geographical scale but imagine a big residential development occupying many hectares and located in the natural space

**18.- General assessment and / or any recommendations:**

2 Recommendations:

- it should be clarified which are the legal consequences of approving a plan or
program without a SEA: is that a problem/ground of nullity? And, more precisely, absolute or relative nullity? Can this problem be rectified "ex post"? etc. On this later question, there is some case law from the ECJ concerning EIA, but a legal clarification would be useful, although this is unlikely due to the principle of institutional autonomy of the member States.

- It is weird that a SEA Directive on plans and programs does not define what is a plan or a program (and: what is the difference among them? It they are the same, why using two terms?) This is clearly an invitation to unnecessary litigation and passing over the ECJ the performance of legislative choices.

## ADDENDUM

**Supplementary questions on institutional and operational features of SEA**

**In the light of your national (or more relevant) scheme for SEA, please describe briefly:**

**1.- Who has the overall responsibility for the SEA procedure: planning authority (i.e. authority responsible for the preparation of the plan/ programme) or environmental authority?**

In principle, and under the national legal scheme for SEA (EAAct, see questionnaire), the responsibilities for the SEA procedure are shared among three institutional actors: (a) the "promoter" (the organization that wants to have the plan approved); (b) the planning authority or "sectoral agency" ("*órgano sustantivo*) which is the governmental agency having the responsibility for approving the plan, and (c) the "environmental agency". The environmental agency is the Ministry for the Environment (when the plan/program must be approved at national level) or the regional Environmental Department (when the plan/program must be authorized or approved by the regional executive).

However, in most SEA procedures the roles of "a" and "b" converge into the "sectoral agency"; when the plan/program targeted by the SEA is a governmental one (roads, or airport multi-annual plans, for instance).

**2.- What is the role of the planning authority in screening, scoping, public participation, consultation with other authorities, taking into account the results of SEA and in monitoring etc.).**

We should distinguish two possibilities: (a) the planning authority is also the promoter of the plan; and (b) the planning authority and the promoter are different organisations or bodies. In the first case, the planning authority mainly appears at the end or, technically speaking, "after" the SEA process, by approving or not the proposed plan and including or not in the final version of the plan the recommendations and conclusions identified by the environmental agency in its "Strategic Declaration" (if not, see reply Nr. 9, below) .

In the second scenario, the planning authority plays the role of the "promoter" and consequently it must elaborate the environmental report regulated at art. 5 of the SEA Directive, know in Spain as "Estudio Ambiental Estratégico" (*or Strategic Environmental Study*). In addition, it is supposed to adopt the initial or preliminary version of the plan.

The terminology is a bit confusing, indeed. One of the main weaknesses of the Spanish legislation is that it does not include separate procedures for the two scenarios described above, but only one, mainstream procedure.

**3.- What is the role of the authorities having "specific environmental responsibilities" in screening, scoping, public participation, consultation with other authorities, in taking into account the results of SEA in the plan/ programme, and in monitoring?**

The role of the authority having "specific environmental responsibilities" is very important in Spain. This may be due to the fact that the transposing legislation of the SEA Directive was drafted by the Ministry of the Environment. Accordingly, that Agency plays the key, central role in the whole process. While those authorities seem to have a secondary or advisory role in the SEA Directive (see: art. 6.3), in Spain it is the reverse: the Environmental Agency (national or regional ministry or department) is the key institutional actor and takes the most important decisions. Consequently, that Agency is the one that performs the screening (art. 31, EAAct) and the scoping (art. 17.1, EAAct), in a final or decisive way.

As explained in the questionnaire *supra,* that Agency is responsible for adopting the final statement where all the results of the SEA procedure (environmental report, public participation, consultation of other agencies, etc.) are taken into consideration (art. 8 and 9,1,b od the Directive). This document is called *Declaración Ambiental Estratégica* (Strategic Environmental Declaration) which is the most important document and decision of the whole process (see below).

**4.- Are there any other bodies (independent commissions etc.) having a role in screening, scoping, public participation, consultation with other authorities, in taking into account the results of SEA in the plan/ programme, and in monitoring?**

In the Spanish model, there are no independent commissions or agencies playing a role in the SEA process, at least at national level. However, the regions could implement that option in their respective pieces of legislation on SEA, but this is very uncommon.

**5.- Is there only one or more authorities having "specific environmental responsibilities" involved in SEA procedure? If only one - which agency or body performs usually the role of the "environmental authority"?**

There is only one, genuine authority having "specific environmental responsibilities". As noted *supra,* this authority is the Ministry for the Environment (when the plan/program must be approved at national level) or the regional Environmental Department (when the plan/program must be authorized or approved by the regional executive). Apart from this agency, which plays the central role in the SEA process, other environmental agencies (such as the Water Boards) may take part in the process (for instance, in the scoping process or in the screening process) by issuing reports or opinions when they are consulted.

**6.- Which authority is responsible for the preparation of the "environmental report" provided for at art. 5 of the SEA Directive? What is the name given in your legislation to that "report" (original version and in English, if possible)?**

The "environmental report" regulated at art. 5 of the SEA Directive has been implemented in the Spanish legislation under the name of "Strategic Environmental Study" (*Estudio ambiental estratégico*). It must be performed by the "promoter" (*el promotor*). However, as noted supra, when the plan/program is a governmental one, the role of the promoter is played by the "sectoral agency", that is, the planning authority (the authority having the

power to approve the plan). For instance, let us suppose that the Ministry for Infrastructures wants to approve a national plan for the development of railways in Spain for the period 2020-2030. In that case, this agency is the promoter, but at the same time it is also the "planning authority" because in the law it has the competence to approve such plan.

**7.- What is the legal form (binding or non-binding) of consultations with authorities having "specific environmental responsibilities" in screening (art.3.6), in scoping (art. 5.4) and in expressing "their opinion on the draft plan or programme and the accompanying environmental report" (art.6.2)?**

In order to better understand the replies to this question, it is important to explain what is the role of the authority having "specific environmental responsibilities" in Spain. As noted supra (question Nr. 3), while those authorities seem to have a secondary or advisory role in the SEA Directive (see: art. 6.3), in Spain it is the reverse: the Environmental Agency (national or regional ministry or department) plays the central role within the whole SEA process. Consequently, as screening is concerned, that Agency is the one that performs the screening (art. 31, EAAct) and the scoping (art. 17.1, EAAct), in a final or decisive way.

As explained in the questionnaire *supra,* that Agency is responsible for adopting the final statement where all the results of the SEA procedure are taken into consideration (art. 8 and 9,1,b od the Directive). This document is called *Declaración Ambiental Estratégica* (Strategic Environmental Declaration) which is the most important document and decision of the whole process.

Once said that, we must analyse whether the *Declaración Ambiental Estratégica* (the final statement by the environmental agency) is "binding" or not on the agency that must approve the plan. Although the *Declaración Ambiental Estratégica* is issued by an administrative agency (the environmental agency) and is considered for all purposes as a genuine administrative decision, it is not considered as a "final" administrative decision on its own, but only a "preparatory" administrative act, in form of a report (*un informe*) that is included in the broader administrative procedure leading to the approval of the plan (art. 25.1 EAAct). The problem, though, is that the law is unclear, as it does not say whether the "Declaration! is either binding or non-binding, but uses a *tertium genus* instead: the declaration is mandatory and "determinant", a terminology that is not regulated in the General Administrative Procedure Act. The general interpretation is that the Declaration is, in practice, binding (see below, point 9).

Apart from this specific agency other authorities having other environmental responsibilities, (such as the Water Boards) may take part in the process (for instance, in the scoping process or in the screening process) by issuing reports or opinions. Under general administrative Law, when a governmental authority is consulted, that agency issues a report or opinion ("informe"), which is non-binding, unless the law says expressly that it is binding. In the context of SEA legislation, there is no provision on this matter, consequently all the reports or opinions issued by those authorities are non-binding.

**8.- Is there any specific document serving as the "conclusions" derived from the SEA process and documenting due account taken of the results of SEA (art. 8)? If yes – please give its name (original version and in English, if possible). Who prepares it? What is its legal status?**

As explained in the previous reply, there is, indeed, a specific document serving as the "conclusions" derived from the SEA process and documenting due account taken of the results of SEA (art. 8). This document is the is "Strategic Environmental Declaration" (*Declaración*

*ambiental estratégica*), and it is adopted by the Environmental Agency. On its legal status, see precedent reply, too.

**9.- If there is a separation of roles among the "planning" and the "environmental" agencies, what happens in case of a disagreement between them as to the conclusions (or conditions) derived from the SEA or about the way in which the proposed plan should be amended accordingly?**

As noted *supra,* the Spanish model is based on a sharp separation of institutional roles between the planning authority (the agency that promotes the plan and having the authority to approve it) and the environmental agency, which has the final word as to the environmental viability of the plan. It is important to note, too, that in general both agencies belong to the same governmental level (either the State level or the Regional level). There are no "regional" plans that must be assessed by the State, or vice-versa.

Consequently, the agency that must approve the plan (the "planning authority) may disagree with the determinations or conditions included in the "Environmental Declaration" issued by the environmental agency. In a extreme case, the Environmental Agency may issue a "negative" Declaration, stating that the plan is non-viable for exclusively environmental reasons.

In those cases, the planning authority must trigger a sort of conflict (*discrepancia*) that must be solved by the Council of ministers (at State level) or by the regional government (at regional level). Since the Council of Ministers is the highest administrative body within the State public administration, and is hierarchically superior to both agencies, it has the authority to settle the dispute (the same happens at regional level). That is, the agency that promotes the plan and must approve it cannot disregard *per se* or refuse to introduce the determinations of the Declaration (art. 12, EAAct). This is usually seen as an evidence that the "Strategic Declaration" is *de facto* binding on the planning authority.

**10.- Is it possible that the role of the "planning authority" and that of the "environmental authority" coincide in the same body or agency? Could you please provide a practical example thereof?**

Yes. In previous replies we have mentioned that the roles of the "promoter" and that of "planning authority" may coincide in the same governmental agency, but we add up that this convergence of institutional roles may be even more complex. Indeed, there are cases where the role of the "promoter", the role of "planning authority" and that of the "environmental authority" coincide in the same body or agency, namely in the Ministry of the Environment. For instance, in 2016 the Ministry of the Environment approved a national strategy on adaptation of the coastline to climate change. This strategy was proposed by the Directorate of Coastal Management and was assessed by the Directorate on Environmental Quality, but both DGs. are subordinated to the Ministry of the Environment. In that scenario, the whole SEA loses a certain degree of credibility.