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**TRANSPARENCY AND CONSULTATION ON TRADE AND ENVIRONMENT IN SPAIN
NATIONAL CASE STUDIES**

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TRANSPARENCY AND CONSULTATION ON TRADE AND ENVIRONMENT IN SPAIN

1. Introduction

1. This report is based on exchanges with officials of the Spanish Ministries of the Environment; Economy; Agriculture, Fisheries and Food and Foreign Affairs; the Chairs of the Environmental Commissions of the Congress and the Senate, as well as representatives of civil society groups, including business and agriculture associations, trade unions, users associations, development and environmental NGOs and research institutions¹. Officials from the autonomous regions of Galicia, Catalonia and Castilla y León provided input in writing.

2. Background

2. Spain is a constitutional monarchy. At national level, the Council of Ministers has the executive powers. The government is responsible for basic legislation of national character, incorporation of EU law into national law and the implementation of international obligations². Other important powers lie with the 17 so called “autonomous regions”, those powers being either exclusive or shared with the central government in a number of fields. In general, autonomous regions have a high degree of powers, both executive and legislative, in environmental issues. In addition, regions and municipalities also have certain powers in the field of environment. Since Spain’s accession to the EC, in 1985, regulatory powers in the fields of environment and trade have to a large extent been devolved to the Commission.

3. The 1978 Constitution ascribes to public authorities, at all levels, a duty to ensure the rational use of natural resources, to protect and improve the quality of life and to defend and restore the environment. The Ministry of the Environment is in charge of a broad range of matters relating to the environment in which the Spanish State has exclusive or shared competence, ranging from water management to protection of natural resources, meteorology, environmental education and the negotiation of multilateral environmental agreements.

¹ Business and agriculture associations: Confederación Española de Organizaciones Empresariales, Federación Española de Industrias de la Alimentación y Bebidas, Tecniberia-Asociación Española de Empresas de Ingeniería y Consultoría de los Recursos Naturales y del Medio Ambiente, Federación Española de Organizaciones Pesqueras, Asociación Agraria-Jovenes Agricultores, Confederación de Co-operativas Agrarias de España, Union de Pequeños Agricultores y Ganaderos; trade unions: Confederación Sindical de Comisiones Obreras, Unión General de Trabajadores; users associations: Unión de Consumidores de España, Comunidad General de Riegos del Alto Aragón, Federación Española de Comunidades de Regantes de España, Asociación Española de Abastecimientos y Saneamientos; development NGOs: Intermón/Oxfam; environmental NGOs; WWF/Adena, Terra, Amigos de la Tierra, Ecologistas en Acción; Sociedad Española de Ornitología, Greenpeace; research institutions: Centro de Estudios Hidrográficos, Consejo Superior de Investigaciones Científicas. The federation of municipalities (Federación Española de Municipios y Provincias) and the Council of Chambers of Commerce (Consejo Superior de Cámaras de Comercio) were also consulted.

² From: Environmental Performance Reviews, Spain, OECD 1997.

4. International and intra-community trade policy, foreign investments and foreign transactions as well as tourism policy are the competence of the Secretariat for Foreign Trade and Tourism of the Ministry of Economy. Fisheries - an important economic sector in the country - are under the responsibility of the General Secretariat for Maritime Fisheries of the Ministry of Agriculture, Fisheries and Food.

3. Legislative process

5. By law, all matters affecting various ministries must be brought before the Government Commissions created to that effect. All subjects that are brought before the Council of Ministers must previously be examined by a Commission composed of Secretaries and sub-Secretaries of State. Any draft legal Act must be accompanied by a report indicating what kind of consultations, studies etc, were carried out in its preparation, and all document related thereto must be kept and put at the disposal of the Parliament if requested.

6. In accordance with the law, where a piece of legislation affecting the legitimate rights and interests of the citizens is prepared, the latter must be heard, either directly or through the organisations or associations recognised by the law which represent them and whose objectives have a direct relationship with the draft Act. In addition, where justified by the nature of the draft Act or measure to be adopted, the draft can be submitted to the public (e.g., by publication in an official bulletin). The consultation period is normally 15 days, but can be shortened to 7 days for reasons that must be justified.

7. The Parliament has two Chambers, the Congress and the Senate. The legislative process generally starts with a proposal from the government, and bills go through a first revision in the Congress, which can propose amendments, and then to the Senate, which also has the capacity to vote amendments. Both chambers can request any necessary background information; address questions to the governments (either orally or through written procedure) and consult with whomever they deem appropriate. Acts are formally adopted by the Government and signed by the King.

4. Interagency consultation

8. Co-ordination in matters of shared competence of the central government and the autonomous regions is ensured through sectoral conferences, which include representatives of both government levels. Relevant examples are the sectoral conferences on environment, tourism, fisheries, etc. There are no cross-sectoral conferences to deal with horizontal issues, such as trade and environment, but the composition of the conference may vary for a particular meeting depending on the areas to be covered.

9. In environmental matters, the Network of Environmental Authorities was established to ensure the involvement of environmental authorities in the planning and implementation of policies under the European Structural Funds. EU environmental policy requires the integration of environmental considerations in the development and implementation of all EU policies and actions, which requires co-ordination between all environmental authorities and those managing the structural funds. In Spain, this implies involving the environmental authorities of the autonomous regions, alongside the various Ministries in charge of structural funds³.

10. A number of commissions have been set up do deal with different sectoral issues. The National Commission for the Protection of Nature co-ordinates the activities of the central and the regional

³ Ministry of the Environment, Ministry of Finance, Ministry of Agriculture, Fisheries and Food, Ministry of Labour and Social Affairs.

authorities in this field. It has various committees covering various areas, such as wetlands, protected sites, wildlife, etc. These committees can create working groups in which government experts, scientists, NGOs, etc. take part. The National Commission on Climate has as its main objective to develop, supervise and review the “*Spanish Strategy to face Climate Change*”. It is chaired by the Minister of the Environment and includes representatives of all ministries related directly or indirectly to climate change. In its working groups, various representatives of the industry sector are represented. The National Commission on Biosecurity, dealing with genetically modified organisms includes representatives of all relevant ministries (Environment; Health and Consumption; Agriculture, Fisheries and Food; Science and Technology; Education; Culture and Sports; Economy; Interior) as well as scientists specialised in the area. With regard to the Convention on Biodiversity and the Convention to Combat Desertification, various ministries (Ministry of the Environment; Science and Technology; Foreign Affairs) are involved in the preparation of meetings of the Conference of the Parties and the various working groups.

11. Within the Ministry of Economy, various bodies have been set up to co-ordinate national policies and international negotiations. Spain’s position in the EU 133 Committee is discussed within the Department for Foreign Trade of the Ministry of Economy, with the participation of other Ministries, where relevant. In order to ensure co-ordination between various ministries in preparation of negotiations at the WTO, an Inter-ministerial Commission for Negotiation in the WTO (CIOMC) was created in 1995. It also does follow-up work on compliance with WTO Agreements. In the area of trade and environment, the CIOMC has dealt with issues such as environmental services, GMOs, etc.

12. There is no standing mechanism to ensure co-ordination of general trade and environment issues, but a number of bodies deal with specific trade-economy-environment related areas. The Ministries of the Environment and of Economy co-operate through a joint body in matters related to energy, and, in particular, in the recent development of a Plan for the Promotion of Renewable Energies. A further example of co-ordination is the implementation of CITES. The Ministry of Economy is the main administrative authority in Spain for the implementation of CITES, the scientific authority is Ministry of the Environment. Another example is work related to the management of the Global Environment Fund (GEF). Both Ministries also co-operate in the Plan on Sustainable Tourism, started in 1997 and involving the private sector as a third partner. Finally, the Ministry of the Environment receives all relevant information on trade issues of relevance, e.g., information related to the WTO Committee on Trade and Environment, in order to participate in the preparation of the Spanish contribution to the EU position.

13. The Ministry for Foreign Affairs is involved in the co-ordination of the Spanish position in negotiations of international agreements including co-ordination between the Ministry of Economy and of the Environment on economic aspects of MEAS (e.g., Climate Change Convention, Biosafety Protocol). Recently, an Ambassador on Special Mission for Environmental Matters has been designated to follow matters related to the environment dealt with within the UN system. Two recent international development programmes, co-ordinated by the Ministry of Foreign Affairs, involve the participation of the Ministries of the Environment and of Economy. One is the so-called “Araucaria” programme, grouping various initiatives for the conservation of biodiversity in developing countries. In the establishment of the programme, environmental NGOs were also actively involved. Currently, a programme for the conservation of biodiversity in the Mediterranean area is under preparation, involving various ministries and regional authorities, environmental NGOs and business representatives.

5. Transparency

14. Spain has signed the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; it is envisaged that ratification will take place in the first half of 2001.

15. Two Acts serve as the legal basis to access to environmental information. The Act on Freedom of Access to Information on Environmental Matters of 1995, amended in 1999⁴ and the Act on the Juridical Regime of Public Administrations and the Common Administrative Procedure of 1992, amended in 1999 as well (hereafter, "Public Administrations Act"), which applies to matters not covered by the former. Further, a Royal Decree of 1996 regulates the services for the provision of information and guidance to citizens⁵.

16. The Act on Freedom of Access to Information on Environmental Matters⁶ implements the 1990 EC Directive on Freedom of Access to Environmental Information. It provides that every natural or legal person has the right of access to environmental information held by the competent public authorities, without a need to prove a particular interest⁷. The Act defines the type of information covered, which includes information on the state of water, air, soil, fauna, flora, natural sites, as well as the interaction among them, and any activities and measures that have affected or are likely to affect the environment, plans or programmes related to environmental management and environmental protection measures. The Act further establishes that the authorities are to regularly publish information on the state of the environment.

17. The Act includes a list of cases in which provision of information can be denied, including on acts not subject to administrative law, where the information is related to a crime and its disclosure could affect the rights and liberties of third persons or affect criminal investigations; material protected by intellectual, commercial or industrial property or related to confidential personal data; information relating to the national defence or State security, etc. It further allows the authorities to refuse to provide information where the request refers to internal administrative communications, or where it is clearly abusive or so general that its object cannot be determined.

18. The authorities must reply within a period of two months, and in case of refusal, explain the reasons. A price, which the 1999 amendment to the Law specifies must be reasonable, can be charged for the information⁸. The Act provides for an appeals procedure in case of total or partial refusal or lack of reply.

19. The Public Administrations Act, which applies to the provision of administrative information in general, requires that the person requesting any information held by the government (for example, in the framework of an administrative procedure) proves a particular interest in or legitimacy with regard to that information.

⁴ The amendment was made after the European Court of Justice determined that the 1990 EC Directive on Freedom of Access to Environmental Information [Directive 90/313/EEC of 7 June 1990] was not correctly implemented.

⁵ Real Decreto por el que se regulan los servicios de información y atención al ciudadano. Royal Decrees are adopted by the Government without previous discussion in the Parliament. The 1996 Royal Decree refers mainly to information concerning the functioning of the government (structure, competences, procedures, etc.).

⁶ The Advisory Council for the Environment (CAMA) was involved in the preparation of this Act.

⁷ The Act applies to persons who are nationals of, or domiciled in one of the countries integrating the European Economic Area, or in a country granting rights to Spanish citizens similar to those provided by the Act.

⁸ Price lists for information provided to the public are regularly published by some institutions, such as the Institute of Meteorology, under the Ministry of the Environment.

20. Several autonomous regions have issued their own regulation on the provision of environmental information to the public. A recent example is the regulation issued in 1998 by the autonomous region of Castilla y León, which is intended to assist its administrative staff on how to comply with the provision of the 1995 Act on Freedom of Access to Information on Environmental Matters. Catalonia is currently preparing legislation on the right of access to environmental information.

21. An environmental NGO recently issued a booklet on “*Good practices in access to environmental information*”, to provide guidance to officials⁹. WWF/ADENA, as part of its campaign “*Endangered Seas*”, is focusing on improving transparency and participation regarding aid and subsidies to the fisheries sector, and recently released a study on the subject¹⁰.

22. In the last few years, information services have been established by authorities, both at national and sub-national level (autonomous regions, municipalities). These offices are responsible for either responding to the requests for information from the public or re-directing the request to the competent body. Information is generally provided in the support requested. All information offices are required to have a registry where citizens can write down their complaints about the service provided.

23. Much information is provided through the Internet, and both the Ministry of the Environment and the Ministry of Economy have their own webpages¹¹, in addition to offices for information to the public. The webpages contain information of general interest to the public, and many publications of the Ministries are also proposed online. The page of the Ministry of Economy contains a section on trade and environment with links to relevant parts of the WTO trade and environment pages. The autonomous regions have also set up webpages, and efforts are currently being made to connect the environmental information systems (e.g. database) of the different administrations (central and regional) to ease the access to such information.

24. The Ministry of the Environment issues several regular publications. Some of them are distributed for free (e.g., a monthly bulletin on general environmental information), others are for sale, such as the annual “*Environment in Spain*”, a volume providing detailed information and data on all environment related issues¹². It has also issued publications on several topics related to the environment (education, toxic wastes, environmental law, etc.). Particular services for the provision of information are those of the National Center for Environmental Education (CENEAM) and the office of National Parks. The CENEAM provides monthly information on environment and environmental education to its subscribers, distributes general information on environmental training and responds to individual requests for information, either by phone, in writing or electronically. The office of National Parks has public information services related to each of the parks in Spain, most of which is distributed for free.

25. Occasionally, seminars are organised to provide information and allow exchanges on environmental matters. A recent example is a seminar with NGOs prior to the 6th COP to the Climate Change Convention in November 2000.

⁹ The study was done by Terra, environmental policy centre (www.terracentro.org); it was co-financed by the Ministry of Environment.

¹⁰ “Case study: fisheries, transparency and participation”, prepared for WWF/ADENA by Terra.

¹¹ Ministry of Environment: www.mma.es ; General Secretariat for Foreign Trade and Tourism (Ministry of Economy): www.mcx.es

¹² The titles of these publications are “*Información de Medio Ambiente*”; “*Revista de Medio Ambiente*”; “*Medio Ambiente en España*”.

26. Within the Ministry of Economy, the General Secretariat for Foreign Trade is responsible for keeping the public informed on the development of trade issues, including trade and environment, in various international forums, such as the EU, the WTO and the OECD. This is done through information bulletins, individual meetings and seminars.

27. The Ministry of Economy publishes various weekly and monthly magazines and monographs on trade issues¹³. It has also brought out a brochure, in co-operation with WWF/ADENA, with practical information concerning the implementation of CITES, which was widely distributed. Under the so-called “*Open line project for the identification of Spanish enterprises in the Single European Market*”, non-tariff barriers to trade in the EU are examined, and results of enquiries made publicly available. This project was created at the initiative of the Spanish Confederation of Business Associations (CEOE), and is carried out jointly by the latter, the Secretariat for Trade and Tourism and the Institute for Foreign Trade. Among the measures that have been examined are eco-labels, eco-taxes, packaging and recycling regulation.

6. Consultation

6.1 Formal standing mechanisms

28. The Constitution provides that the public authorities must facilitate the participation of citizens in all areas of economic and social life. The Economic and Social Council (CES)¹⁴ was established in 1991 to implement this constitutional requirement. The CES is a governmental advisory body on socio-economic and labour matters. It takes the form of a public law body with full legal personality and is vested with the necessary capacity and structure to discharge its functions. Its objectives are to provide a formal channel for participation by the social and economic partners in the process of law-making and socio-economic and labour matters, to promote government decisions on such matters, and to provide a permanent institution for dialogue and debate between social partners. It provides opinions which can be consultative or binding on matters submitted by the Government, and can issue studies at its own initiative on all matters for which it is competent. The CES is endowed with resources to remunerate civil society participants and experts. Its membership is determined by law, and it includes trade unions, business associations, consumer and users associations, representatives of the agricultural sector, etc. Environmental NGOS, which are currently not part of the CES are trying to obtain the necessary legal changes in order to be included among the recognised members.

29. Both the Ministry of the Environment and the Ministry of Economy hold consultations with different groups of civil society representatives. A few such groups, e.g. trade unions, are occasionally involved in consultations with both ministries.

30. In the Ministry of the Environment, the main standing mechanism, dealing with horizontal issues and involving multi-stakeholder participation, is the Advisory Council for the Environment¹⁵ (CAMA), established in 1995. Its membership includes representatives of all areas of civil society: environmental NGOs, trade unions, consumers, scientists, etc. Its total membership comprises around 90 people. The CAMA is chaired by the Minister of the Environment and the agenda is drawn up by the latter. Though formally still in existence, the CAMA has not convened since 1998. The reasons given for this vary. Environmental NGOs said they ceased to attend the meetings of the CAMA, because of increasing serious

¹³ Examples of these publications are the “*Revista de Economía*” and the “*Boletín Económico del ICE*”.

¹⁴ Consejo Económico y Social (CES). Further information, in English and Spanish can be found on the CES’ webpage, www.ces.es

¹⁵ Consejo Asesor para el Medio Ambiente.

failures which, in their eyes, rendered the CAMA ineffective (one example mentioned was the Ministry's failure to transmit to the Government the report of the Committee on a specific piece of draft legislation). A further reason brought forward was lack of agreement on the role this body should play, some considering that it should go beyond a mere advisory function. Several proposals have been made (e.g. by trade unions and environmental NGOs) on how the CAMA could be re-launched and rendered more efficient, but for the moment no meetings of this body are planned.

31. A number of sectoral commissions also include civil society representatives among their members. This is the case of the National Parks Supervisory Authorities, established to ensure that the rules concerning the management and use of the different parks are respected. They include representatives of the various administrations concerned, as well as scientific institutions, private owners of grounds within the boundaries of the parks and organisations related to the parks. The National Water Council, the highest advisory body on water issues at national level, includes, in its Plenary Commission, representatives from civil society (users associations, environmental NGOs, agriculture associations, business associations, scholars, etc.). Environmental NGOs are, however, not represented in the Permanent Commission, which takes decisions on a variety of issues¹⁶. Bodies dealing with water management in water basin areas, the "Drainage Basins Authorities", include among their members the users of water resources, such as irrigation associations.

32. The Ministry of Economy also has a number of consultation mechanisms. The Advisory Council for Trade and Foreign Investment was set up to deal with horizontal issues; this body has, however, been inactive for some time. Most bodies deal with sectoral economic issues, covering the textile sector, agro-industry, tourism, etc. Representatives of civil society in these groups are mainly economic agents involved in the various sectors, such as business associations and trade unions. A body with larger stakeholder involvement is the Tourism Observatory which also includes business, trade unions, users, consumers, scholars, etc.

33. Similarly, the General Secretariat for Maritime Fisheries, under the Ministry for Agriculture, Fisheries and Food has a whole range of standing arrangements to liaise and consult with other sectors of the government, as well as with the fisheries industry and trade unions. The latter participate actively in different programmes and initiatives. An example is the preparation of the White Book on Fish Farming and the Annual Programmes for the Control of Fisheries Activities, which involved broad consultation with the fisheries sector. The General Secretariat for Maritime Fisheries does not have any standing mechanisms to consult with NGOs, but it is kept informed of positions and papers produced in non-governmental forums by virtue of an arrangement with the European Bureau for Conservation and Development.

34. Several autonomous regions have also set up consultative bodies involving a range of civil society representatives. For example, the autonomous region of Galicia recently set up an advisory Environmental Council, which includes, alongside members of the regional government, members of environmental NGOs, trade unions, consumer associations, university departments specialised in environment and the scientific community. The decree establishing this body provides that it meets every four months, or at the request of a third of its members. The autonomous region of Catalonia has established an Advisory Council on Sustainable Development to implement the measures contained in the regional Agenda 21 and advise the regional government on measures and policies with a potential impact on environment and sustainable development. Its membership includes a broad range of civil society representatives which are experts in the area.

¹⁶ A recent example is the adoption of the National Hydrological Plan for submission to the Parliament. In this particular case, the representative of an environmental NGOs was allowed to take part in the deliberations, though without the right to vote.

35. Finally, municipalities also have information and consultation mechanisms, and are developing instruments to encourage the public to participate in local environmental policies. Larger municipalities have their own webpages with information on environmental matters, and some, e.g., that of Madrid, are currently developing their own Agenda 21 programmes.

6.2. *Ad hoc mechanisms*

36. A number of ad hoc consultations have taken place in the last year in the framework of the development of environmental policies and legislation. The Spanish Strategy for the Conservation and Sustainable Use of Biodiversity was developed in a multi-stakeholder process. In addition to central, regional and local authorities, environmental NGOs, scholars, trade unions, consumers organisations, business associations, agriculture organisations, hunting and fishing federations, etc. were invited to participate in the working group that drafted the strategy. In addition, anybody who had not been invited and wished to participate could do so. The draft Strategy was approved by consensus of all the participants and adopted by the Sectoral Conference for Environment with minor amendments.

37. A further example is the draft National Hydrological Plan¹⁷, a programme for the re-distribution of water resources among regions. The elaboration of the Plan included an open process of consultation with the general public, via the Internet. The draft Plan was posted on the webpage of the Ministry of the Environment, and the public was invited to suggest amendments. According to the Ministry, around 100 000 proposals for amendments were submitted, and around 55% incorporated in the draft.

38. The development of a Plan for Environmental Education also involved consultations with civil society, including through meetings with various stakeholders (trade unions, business representatives, NGOs, consultancy and services firms dealing with environmental education, representatives of the media, etc.). The draft was also posted on the website of the Ministry of the Environment and the public invited to send comments and suggestions. A consultative group, the Spanish Office for Climate Change, intended to involve all sectors affected by climate change policies, is being constituted and should start working in the coming months.

39. Environmental NGOs are involved in the management of obligations under CITES. Both the Ministries of Economy and of the Environment participated in a workshop organised by WWF/ADENA on the application of the Convention. Furthermore, both ministries are involved in the organisation of regular training courses concerning management, conservation and control of species subject to international trade.

40. The Ministry of Economy's contacts with non-governmental organisations other than the business sector, trade unions and consumers are on an ad hoc basis. For example, in the framework of the WTO Ministerial meeting in Seattle, the Ministry of Economy organised a series of information and consultation sessions, both before and after the meeting, with a broad range of civil society representatives, including trade unions, consumers, business representatives, environmental and development NGOs, etc. The Ministry further encourages the participation of civil society representatives in international debates, such as the dialogue organised by the EU Commission's DG Trade. To this end, it has, for example, recently distributed the paper by DG Trade on sustainable trade and requested comments. Recently, consultations were held with various civil society groups, including development NGOs, to prepare the Spanish input to the "*Everything but Arms*" process.

41. Similarly, in the area of fisheries, consultations are mainly with representatives of the labour and industrial sectors in the area, although there are also frequent contacts with environmental NGOs in

¹⁷ Plan Hidrológico Nacional.

seminars and conferences. The General Secretariat for Maritime Fisheries has also worked in co-operation with NGOs in the elaboration of reports¹⁸, and plans to involve environmental NGOs in the implementation of the national action plan to implement the FAO programme on illegal fisheries.

42. The Chair of the Environmental Commission of the Congress recently took the initiative of organising “field trips” of the entire 45-member Commission to the different autonomous regions, to get an idea “*in situ*” of the environmental problems and concerns in that area. The first trip was to the Canary Islands, and it involved meetings with municipalities and individuals wishing to bring their environmental concerns to the attention of the Congress. The Commission then informed the government on the findings and conclusions of the trip. The costs of this initiative were entirely borne by voluntary contributions from the business sector and others. Further such visits are planned for the near future.

43. As a general policy, Spanish delegations at negotiations of international agreements, whether in the trade or environment area, do not include civil society representatives, in spite of requests by the latter. At the WTO Ministerial meeting in Seattle, 17 Spanish civil society organisations were officially accredited. They met regularly with a representative of the Spanish delegation and there was a fluent flow of information between both groups. In addition, various Spanish NGOs took part in the alternative NGO forum, organised at the margins of the Ministerial meeting.

7. Assessment

7.1 General comments

44. Both the Ministry of Economy and the Ministry of the Environment have consultation mechanisms in place to consult with civil society. However, such consultations are not held systematically with all stakeholders and frequently tend to be on an ad hoc basis. Broad issues at the interface of trade and environment are generally not the object of consultation between the relevant ministries and civil society groups. Consultations generally focus on specific issues with potential implications for both trade and environment, such as fisheries issues, the use of EU structural funds, biotechnology and agriculture.

45. One particular difficulty with regard to transparency and consultation, often mentioned by civil society representatives, is linked to decentralisation and shared powers in environmental matters between the central, regional and local governments. Information is spread, and it is sometimes difficult to know which are the authorities responsible or competent to provide the relevant information, or to whom observations and comments should be sent.

46. Representatives of both the government and civil society considered that effective transparency and public participation involved a learning process, and that improvements were still to be made. Some consider that Spanish society still needs to learn how to best use its right to be informed and consulted, and that it often lacks both the interest and the dynamism to use the instruments that were available to it. On the other hand, it was said that there is not enough willingness on the part of the authorities to effectively inform and consult with the public.

47. One representative of a civil society group considered that Spanish society tended more to take part in campaigns on specific issues rather than following long-term projects or policies¹⁹. The need for

¹⁸ For example, an analysis of the Fisheries Agreement between Argentina and the European Union, in collaboration with WWF/ADENA.

¹⁹ The high involvement of youth groups in a campaign to promote the allocation of 0,7% of GDP to development aid was mentioned as an example.

educating the public and rendering citizens aware of the importance of being informed of environmental problems, of proposed solutions and of participating in consultation processes was emphasised. It was also said that to engage in a meaningful dialogue with the government, mature, well developed and founded positions were necessary, and that civil society had to strive towards reaching such a level. Similarly, it was said, maturity and readiness to enter in a dialogue with society must also be further developed by the relevant authorities.

7.2. *Transparency*

48. The authorities consulted were of the opinion that enormous progress had been made in providing information to the public, in particular by posting information on the Internet, and putting in place information services to the public.

49. Representatives of the economic sector were generally very satisfied with the level of information obtained from the authorities. A particularly positive assessment was provided by those involved in the water sector (irrigation associations, water supply and sanitation sector, etc.), who considered that any information relevant to water use is easily accessible. Members of the scientific institutions consulted agreed on this point. They pointed out, however, that the level of information that can be obtained in other sectors, such as air and soil pollution or waste, is far less satisfactory.

50. Environmental NGOs were in general quite critical with regard to the level of transparency provided by the authorities. While they acknowledged that information is increasingly available through the Internet, they also said that it is often difficult to obtain specific information from the relevant authorities. They considered that this is mainly a problem of habit and lack of instructions and training on the type of information that should be made available to the public. Some civil society representatives said that the access to information was random, and the more politically sensitive, the more difficult it was to obtain. An example mentioned in this regard was information concerning GMOs. One of the conclusions of WWF/ADENA study on "*Fisheries, transparency and participation*"²⁰ is that the systems in place for access to information are not working correctly, and that more efforts need to be made to fulfil the obligations set out in the legislation regulating access to environmental information.

51. One particular difficulty mentioned is that certain information is considered by the relevant authorities not to be environmental information and therefore, does not fall under the Act on Freedom of Access to Environmental Information. Examples of this cited by environmental NGOs is information related to fisheries, which they said the General Secretariat for Maritime Fisheries has on certain occasions refused to provide, on the grounds, i.a. that it was not environmental information. The General Secretariat for Maritime Fisheries on the other hand considered that it was open and co-operative towards environmental NGOs, as proved by recent exchanges of correspondence with them on various issues related to fisheries policies.

52. Examples were also mentioned of requests of information rejected by the Ministry for Environment, such as a recent request brought by an environmental NGO asking for access to scientific reports related to the National Hydrological Plan. The Ministry of the Environment explained that this refusal was due to the fact that the necessary authorisation from the authors of the report for its distribution was still pending. Some civil society representatives said that often requests are not rejected but simply ignored, which is contrary to the Act on Freedom of Access to Environmental Information. In those cases, and in those of insufficient consultation (e.g. in the framework of environmental impact assessments), no

²⁰ See paragraph 21 above.

other recourse is generally available than suing the authorities. Often, it takes years to obtain a decision, which renders the outcome hardly satisfactory even when the case is won by the complainants.

53. The Ministry of the Environment acknowledged that while much effort is made to respond to the largest possible number of requests, some of them remain unanswered. The reasons are mainly lack of resources to cope with certain requests (e.g. when the request is excessively general) and the fear that such information could be commercially exploited (the case was mentioned of consultancy firms selling at a high price CD ROMS containing reports and other information obtained for free from the Ministry).

54. Environmental NGOs said that civil servants have no clear instructions or mandate “from above” on which kind of information can be provided and which one withheld, and that the tendency, in sensitive cases, is to refuse providing information to avoid any problems. The opinion was expressed that it is not sufficient to issue legislation on access to information, but that it had to be accompanied with clear instructions and appropriate training on information disclosure.

55. It was also mentioned that, occasionally, price has been a barrier to obtain information. An example mentioned was that of a regional NGO which was charged an “astronomical amount” for information received from the authorities. The amendment of the Act on Freedom of Access of Information on Environmental Matters, which now establishes that the price for information must be reasonable, was considered an improvement.

7.3 *Consultation*

56. The law provides that citizens must be heard, either directly or through organisations recognised by the law. A number of organisations, such as trade unions, consumer organisations, business associations etc., are recognised by the law, which allows them to be consulted on a broad range of issues, e.g. in the framework of the CES. Environment or development NGOs do not have this status. According to the latter, this constitutes a barrier for them to be included in consultations on legislation in their area of interest, except where specific mechanisms are put in place, such as the Advisory Council for the Environment (CAMA). Environmental NGOs said that they had to fight to be included in certain consultative bodies (e.g., in the recent discussions of the National Hydrological Plan within the Permanent Commission of the National Water Council). A further example mentioned by environmental NGOs was the refusal by the authorities in charge of administering EU structural funds to include them in meetings such as those of monitoring committees, alongside other social and economic partners. The authorities argued that environmental considerations were already taken into account through the participation of the Network of Environmental Authorities, and that “massive” presence of environmental groups would hardly be operational.

57. Several officials recognised the value of public consultations and said that it increased ownership in the process and facilitated implementation of policies. It was further mentioned that the demand on civil society groups to provide input and comments, often by far exceeded the resources such groups had to respond to such demand. One official considered that, based on his experience, consultations carried out following a specific request from civil society were more efficient than those held systematically.

58. It was recognised that some of the standing mechanisms work well and allow for adequate and systematic consultations (e.g. sectoral consultations in the area of foreign trade). With regard to other mechanisms, the main complaint, coming from both environmental NGOs and other groups of society was that consultations were random, and depended on individuals and their willingness to carry out such consultations. While they acknowledged having good personal contacts within ministries, several civil

society representatives considered that neither transparency nor consultation mechanisms should be left to the will of a few individuals, but be institutionalised, and organised in an efficient manner.

59. The lack of resources to support civil society groups was considered to be a serious problem for effective participation in consultations. Some considered the model of the CES the most valuable one, and pointed out that the fact that it had resources to pay those who were consulted was very important. One civil society representative on the other hand considered that civil society groups should organise and ensure funding in a manner that allowed them to take part in consultations independently, without counting on government resources.

60. A comment shared by practically all civil society groups was that deadlines for consultation are often too short and thus render consultations ineffective. They considered that often, it is obvious that comments are requested only to comply with the law but that no real input is sought. A further recurrent comment was that, often, drafts were submitted for comments without any context or background information, nor any reference to a contact person from whom to request clarification. It was suggested that requests for input should come with meaningful information, an executive summary of the draft, and the name of a contact person. Government officials recognised that this complaint was founded, and explained that lack of resources often did not allow them to submit drafts for consultation other than in a “raw” state. Furthermore, those in charge of transmitting the information to civil society often receive it at a late stage themselves. It was mentioned that this was often the case with information received from the European Commission.

61. A member of a research institution considered that where the public is to be informed or consulted, adequate means have to be applied to do this efficiently: it is not enough to publish information in official bulletins which only a few citizens read. Better means have to be sought to bring the information to the public in a meaningful way. Further, while use of Internet was increasing at a fast pace in the country, consideration should be given to those who do not have access to the web. Information should be made available also through other means. Civil society representatives acknowledged that lack of resources were also a problem for the government, and that to implement efficient transparency and consultation mechanisms, the necessary means and financial resources had to be allocated.

62. Environmental NGOs criticised that bodies of the importance of the Network of Environmental Authorities operate without any involvement of civil society groups, in particular, of environmental groups. They considered that the Advisory Council for the Environment (CAMA) had been for some time a good mechanism for consultation, and regretted that it was not in operation anymore, in spite of their repeated requests and suggestions for improvement. To render it operational, it was considered that the number of participants should be reduced to no more than 30 (as compared to the original 90), that consultation should be compulsory on relevant matters, and that the outcomes of its deliberations had to be effectively transmitted to the decision-making bodies. Further, it should be given sufficient resources so as to be able to request advice from experts, when necessary.

63. The initiative by the Ministry of Economy to hold meetings with stakeholders in relation with the WTO Ministerial meeting in Seattle was praised by various civil society groups, in particular, those which had hardly had any previous contacts with that Ministry. They considered that the meetings were instructive and enriching for both sides, and that such initiatives should be pursued.

64. Various civil society groups considered that official delegations in international negotiations or processes need to be opened to civil society. This was considered important as part of a learning process, and useful to foster transparency and to help render civil society’s input meaningful and effective.

