

**No. 19298**

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**SPAIN  
and  
PORTUGAL**

**Agreement regulating the use and development of the water resources of the international reaches of the rivers Miño, Limia, Tajo, Guadiana and Chanza and of their tributaries (with additional protocol). Signed at Madrid on 29 May 1968**

**Second Additional Protocol to the above-mentioned Agreement. Signed at Guarda, Portugal, on 12 February 1976**

*Authentic texts: Spanish and Portuguese.*

*Registered by Spain on 25 November 1980.*

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**ESPAGNE  
et  
PORTUGAL**

**Accord visant à réglementer l'utilisation et l'aménagement hydrauliques des tronçons internationaux des rivières Minho, Limia, Tage, Guadiana et Chança ainsi que de leurs affluents. Signé à Madrid le 29 mai 1968**

**Deuxième Protocole additionnel à l'Accord susmentionné. Signé à Guarda (Portugal) le 12 février 1976**

*Textes authentiques : espagnol et portugais.*

*Enregistrés par l'Espagne le 25 novembre 1980.*

## [TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> BETWEEN SPAIN AND PORTUGAL REGULATING THE USE AND DEVELOPMENT OF THE WATER RESOURCES OF THE INTERNATIONAL REACHES OF THE RIVERS MIÑO, LIMIA, TAJO, GUADIANA AND CHANZA AND OF THEIR TRIBUTARIES

The Governments of Spain and Portugal, inspired by the fullest spirit of co-operation and desiring to regulate by agreement the use and development of the water resources of the international rivers in their border areas, have decided to conclude the following Agreement:

*Article I.* The water resources of the international reaches of the Rivers Miño, Limia, Tajo, Guadiana and Chanza, and of their tributaries, shall be developed for the benefit of the two nations, in accordance with the provisions of this Agreement; efforts shall be made to harmonize such development with all other forms of development that are practical in those reaches. All other rights of the neighbouring States over the aforementioned international reaches, as specified in previous Agreements, shall subsist in so far as they do not impede the application of the provisions of this Agreement.

*Article II.* The upper 27 metres of the declivity of the international reach of the River Miño, beginning at the confluence with the River Troncoso (“Troncoso” in Portuguese), shall be used for a single hydroelectric facility; Spain and Portugal shall receive 79.5 per cent and 20.5 per cent respectively of the energy produced.

The construction and operation of this facility may be carried out jointly by the two States, directly or through a concessionaire, with Spanish and Portuguese financing in the proportion indicated above.

The construction and operation of the facility may also be entrusted to either State, which shall be obliged to supply to the other State the amount of electrical energy to which it is entitled, in the proportion indicated above.

Either State may, on its own initiative, sponsor the construction of the facility, in which case it shall submit its proposal, for information, to the International Commission referred to in article XVII of this Agreement.

The Commission shall be responsible for laying down the terms of any concession to a Spanish-Portuguese enterprise, the conditions for the supply of energy to the non-participating State if the facility is not to be constructed jointly, and the time-limit and other conditions governing the exercise by either State of the right to assist in financing the installations, in establishing the concessionaire enterprise and in operating the facility, should the latter be sponsored by the other State.

<sup>1</sup> Came into force on 7 April 1969, the date of the last of the notifications (effected on 17 January and 7 April 1969) by which the Contracting Parties informed each other, through the diplomatic channel, of the fulfilment of their respective constitutional requirements, in accordance with article XXVI.

*Article III.* The water resources of the following areas of the international reaches of the other rivers referred to in article I shall be developed by Spain and Portugal in the following manner:

- (A) Portugal shall enjoy exclusive use of the entire international reach of the River Limia and of the corresponding declivities of the River Castro Laboreiro and the other tributaries along the reach;
- (B) In order to supplement the planned hydroelectric facility in Portuguese territory, which will affect the international reach referred to in the preceding subparagraph, Portugal shall be granted the right to use, in Spanish territory, the declivity of the River Limia between the beginning of the international reach and the discharge area of the Conchas plant, together with the corresponding declivity of its tributaries along that reach;
- (C) Spain shall enjoy exclusive use of the entire international reach of the River Tajo and of the corresponding declivities of the Rivers Erjas and Sever and the other tributaries along the reach;
- (D) In the interest of unified hydroelectric development of the international reach of the River Tajo and the Spanish reach of the same river, between the confluence with the River Erjas and the discharge area of the Alcántara plant, Spain shall be granted the right to use the corresponding declivities of the Rivers Aravil and Pónsul and the other Portuguese tributaries along the aforementioned international reach, together with those of the Rivers Erjas and Sever;
- (E) Portugal shall enjoy exclusive use of the entire reach of the River Guadiana between the points at which it meets the Rivers Caya and Cuncos, including the corresponding declivities of the tributaries along the reach;
- (F) Spain shall enjoy exclusive use of the international reach of the River Chanza between the point at which it meets the Perna Seca or Barranco de Raia stream and the part at which it meets the River Guadiana, including the corresponding declivities of the tributaries along the reach.

*Article IV.* It shall be the responsibility of the International Commission referred to in article XVII of this Agreement to evaluate the advisability of additional regulation in order that the operation of the facility referred to in article III, subparagraph (D), and the development of the contiguous Portuguese reach of the River Tajo may be better co-ordinated, to authorize any super-elevations necessary for that purpose, both on the Portuguese side above the strict declivity of that reach and on the Spanish side above the strict declivity of the reaches defined in article III, subparagraphs (C) and (D), and to lay down the relevant conditions.

*Article V.* The right to use those parts of the reaches of the rivers referred to in article I which have not been allocated in article III may be granted to either State; the International Commission shall be competent to lay down the conditions for the respective facilities and to decide what compensations are necessary to ensure an equitable apportionment of the water resources of the border rivers.

*Article VI.* Along the reaches referred to in article II and in article III, subparagraphs (A) and (D), no water may be diverted from the waters used under this Agreement, without the prior consent of both Governments. The International

Commission shall determine the maximum amount that may be diverted in each case, and any necessary compensation.

In implementing official irrigation or community water supply plants, each State shall have the right to divert water flowing through the reaches to which it has been granted development rights in article III, subparagraphs (E) and (F).

The development of any reach covered by this Agreement shall be effected without prejudice to the natural minimum low-water flows or to the flows necessary for common uses.

On reaches of rivers covered by this Agreement which are not international in character, the protection, conservation and development of fishery resources shall be governed by the specific laws of each country. In the case of international reaches, special agreements concluded for the purpose or, in the absence of such agreements, established usages and customs shall apply.

*Article VII.* The reservation, acknowledgement or granting of rights under this Agreement to either High Contracting Party shall be understood as having been made exclusively for the purposes of the facilities to which such rights relate; in no case shall such reservation, acknowledgement or granting of rights, or any installations constructed on the basis thereof, affect the delimitation of frontiers between the two countries or matters falling within the competence of the Spanish-Portuguese International Border Commission or any other matter not related to the facilities covered by this Agreement.

The limits to the jurisdiction of the respective States along the international reaches shall be those laid down in the Treaty of 29 September 1864,<sup>1</sup> corresponding to the natural conditions prior to the construction of the installations.

*Article VIII.* Each State shall itself, or through concessions granted in accordance with its own laws, develop the areas reserved to it under this Agreement.

Should the installations be constructed under the concession system, the concessionaire enterprise or enterprises for each area shall be constituted in accordance with the domestic laws of the granting State and may transfer its or their rights only to another enterprise of the same kind.

The Chairman and a majority of the members of the Board of Directors of each such enterprise must be nationals of the State granting the concession.

The Boards of Directors shall have their seats and hold their meetings in the territory of the State to whose jurisdiction the enterprise in question is subject.

Should the Government of Portugal decide to grant the concession for the hydroelectric facility referred to in article III, subparagraph (B), to the present concessionaire for the Portuguese facility on the River Limia, it may, if it deems it desirable, exempt that concessionaire from the rules laid down in this article.

*Article IX.* Offtakes, channels, structures and, in general, all the plant and installations necessary for the use of each area shall be situated in the territory of the State responsible for the facility, with the exception of dams and those discharge structures and accessories which must be constructed on the bed or bank of the river belonging to the other State.

<sup>1</sup> Registered with the Secretariat of the United Nations on 21 September 1982 under No. II-906.

By way of exception and when circumstances so require, offtakes, power stations and their discharge structures may extend beyond the centre line of a river, without necessarily creating thereby a permanent easement of passage through the territory of the other State, outside the zones referred to in article XVI.

The power station and other accessory installation necessary for the development of the international reach of the River Miño shall be located at the site considered most appropriate from the technical and economic standpoints.

*Article X.* Each High Contracting Party undertakes to create on a private basis on State-owned land, for the benefit of the facilities of the other Party, easements in respect of reservoirs, dam abutments, discharge structures or any other easements which are essential for the construction and operation of the aforementioned facilities.

They also undertake, on a basis of reciprocity and as necessary in each case, to create easements over any lands owned by the State, by corporations or by individuals which it may be necessary to occupy in the territory of one State, in connection with installations situated in the hydroelectric development areas of the other State, and to order the expropriation thereof or such periods of temporary occupation as may be necessary to obtain building materials or to install the services and auxiliary resources required for construction of the installations.

They further undertake to order the expropriation of any other facilities now in use or in operation which would hamper or impede the full use of the facilities allocated to each State under this Agreement.

*Article XI.* For the purposes of the preceding article, both Contracting States designate as public utilities all installations to be constructed by either of them or any of their concessionaires for the development of the reaches covered by this Agreement and declare the necessary expropriations to be a matter of urgency.

*Article XII.* The procedures for any easements, expropriations or periods of temporary occupation to be created or ordered in the territory of one State for the construction of installations related to the facilities of the other State shall be subject to the following provisions:

- (A) The International Commission referred to in article XVII of this Agreement shall be competent:
  - (1) To determine the location and extent of the properties which, in whole or in part, have to be expropriated or occupied in any other way in execution of the approved plans;
  - (2) To make a definitive valuation of the properties or determine the amount of compensation; and
  - (3) To determine, if necessary, the amount of security to be given as a pre-condition for temporary occupation of a property;
- (B) The Commission shall in all cases hear the interested parties before taking a decision;
- (C) To render the Commission's decisions enforceable against landowners and concessionaires, it shall be necessary for the competent national authority to order compliance therewith.

In its review, that authority shall not consider the merits of the decisions but shall confine itself to establishing whether the formalities prescribed by this Agreement have been observed.

If, within 15 days of the submission to the competent authority, that authority has not given notice of its disapproval by reason of defects of form which are to be corrected, the Commission's decision shall stand.

Implementation of the Commission's decisions shall in every case be reserved to the competent national authority, in the manner prescribed by its own laws.

*Article XIII.* The Governments of Spain and Portugal shall afford each other all necessary facilities for field operations required in connection with the formulation of final plans for installations in the areas assigned to them and, to that end, shall communicate appropriate instructions to the civil and military authorities of the border areas along the international reaches.

*Article XIV.* The processing and approval of final plans and of any changes made therein during construction shall be the responsibility of the Government of the State in whose hydroelectric development areas the installations are situated.

The two Governments shall communicate such plans to each other before they are approved, in order to obviate any possibility that the installations constructed in the respective areas may cause damage to the facilities and interests of the other State.

Should the facility referred to in article II be constructed jointly, both Governments shall have the competence referred to in this article.

*Article XV.* The energy from the reaches covered by this Agreement shall be used freely by the producer country, regard being paid in the case of the River Miño to the relevant provisions of article II.

The Governments of Spain and Portugal shall afford each other the necessary facilities for any export of energy from one country to the other or to third countries.

*Article XVI.* Each High Contracting Party undertakes, on a basis of reciprocity, to take the necessary steps—applying, where appropriate, the procedures referred to in article XII—to establish in its territory such easement zones immediately adjacent to the perimeter of the site of dams and related installations constructed by the other State as may be necessary for the protection and preservation of such installations or for the operation of the facility in question. Such zones, the delimitation of which shall be determined by agreement between the International Commission referred to in article XVII and the Spanish-Portuguese Border Commission, shall cover the minimum area necessary in the light of the technical conditions of each facility and local topographical conditions.

Border monitoring posts shall be set up at points along the delimitation lines of such easement zones.

*Article XVII.* For the purposes of this Agreement, there shall be established a Spanish-Portuguese International Commission, to be known as the "Spanish-Portuguese Commission to Regulate the Use and Harnessing of the

International Rivers in the Border Areas'', with the functions specified in the Agreement.

The Commission shall be composed of members designated in equal numbers by the Spanish Government and the Portuguese Government, which shall appoint such assistants as they deem necessary. The number of members of the Commission shall be determined by agreement between the two Governments, on the basis of experience.

The Commission's meetings shall be held alternately in Spain and in Portugal. A member of the Commission belonging to the State in which the meeting is held shall preside.

The two States shall bear equally the operational costs of the Commission and of any arbitral tribunals that may be established pursuant to the Agreement. Each Government shall make it mandatory, in the respective concessions, for concessionaires to meet these common costs in the proportion to be determined by the Commission.

The operations of the Commission shall be governed by a statute approved by both Governments, which may be revised at the request of either of them.

*Article XVIII.* The International Commission established by this Agreement shall assume the functions assigned by the Agreement of 16 July 1964<sup>1</sup> to the Spanish-Portuguese International Commission to Regulate the Hydroelectric Development of the International Reaches of the River Duero and of its Tributaries.

*Article XIX.* The International Commission must be heard by the Governments before decisions are taken on the following:

- (A) The matters referred to in articles II, V and VI;
- (B) Approval of construction plans for hydroelectric installations and of changes in the location or design of dams, offtakes and discharge structures;
- (C) Construction permits for public utility or private installations affecting hydroelectric facilities or situated less than 500 metres, measured horizontally, from their structures and dams;
- (D) Permission to transfer or amend concessions;
- (E) Abolition of the Commission or changes in its structure, functions or operations.

In addition to the mandatory cases enumerated above, the Commission shall also report to the two Governments on any matter within its competence on which they consult it jointly or separately.

*Article XX.* The Commission shall be competent to take decisions on the following matters:

- (A) The additional regulation referred to in article IV;
- (B) Ways of respecting the joint facilities and making them compatible with those constructed pursuant to this Agreement;

<sup>1</sup> Registered with the Secretariat of the United Nations on 21 September 1982 under No. I-21245.

- (C) Any incidents resulting from the use and harnessing of the rivers in other ways which are incompatible with the rights accorded by the two States to each other in this Agreement;
- (D) Easements, expropriations or periods of temporary occupation and restoration of communications, and the establishment of easement zones, as referred to in article XVI, which affect simultaneously the facilities belonging to one State and the territory of the other; in such cases, the proceedings and powers of the International Commission shall be subject to the conditions provided for in article XII;
- (E) Determination of water flows and of any necessary compensation for the exceptional uses referred to in article VI;
- (F) Any incidents arising between the concessionaires for the hydroelectric development areas in connection with the construction of the installation in so far as they affect the rights accorded to each State;
- (G) Any disputes between the aforementioned concessionaires which may jeopardize the organic and technical unity of the exploitation projects along the reaches or impede the better utilization thereof;
- (H) Marking of the points at which the reaches assigned to each State begin and end.

*Article XXI.* The Commission shall also be empowered:

- (A) To police the waters and the bed along the international reaches, in accordance with the laws in force in each country;
- (B) To inspect, during construction of the installations, those installations that affect the territories of both States and those being constructed by one State in the territory of the other, with due regard to the terms of each concession and to the approved plans;
- (C) To perform, during the operational phase, similar functions with respect to the same installations and the hydraulic régime of the facilities.

During both phases, other structures and installations shall be subject only to such monitoring and inspection as are provided for by each State in its laws.

*Article XXII.* Decisions of the International Commission shall be final when adopted unanimously. When adopted by a majority vote, they shall enter into effect only with the consent of the Governments, which shall be deemed to have been granted if, within 30 days of the date of the appropriate communication to the competent authority, the Governments have not given notice of their disapproval except in the case referred to in article XII.

The International Commission shall request the co-operation of the competent authority in implementing its decisions.

The Commission's decisions shall in all cases be communicated to the two Governments.

*Article XXIII.* Should the International Commission fail to reach agreement on any matter submitted to it for consideration, the matter shall again be put to the vote at the following meeting; if the Commission still fails to reach agreement, it shall refer the dispute to the two Governments.

Should direct negotiations between the Governments fail to produce agreement, the matter shall be submitted for final decision to an arbitral tribunal composed of the members of the International Commission itself and presided over by an umpire. The umpire shall be designated by agreement between the two Governments.

If the two Parties are unable to reach agreement within three months on the designation of the umpire and believe that the disagreement is of a technical nature, they shall request the Polytechnic Institute, Zurich, to designate an engineer to serve as umpire. In all other cases, they shall approach the President of the International Court of Justice with a view to his appointing the umpire.

*Article XXIV.* Any dispute arising between the two States in connection with the application of this Agreement or the interpretation of its provisions shall be submitted to an arbitral tribunal composed of three members, two of whom shall be appointed by the Government of Spain and the Government of Portugal respectively and the third, who shall be Chairman, shall be appointed by agreement between the two Governments or, failing such agreement, by the President of the International Court of Justice. The decisions of the arbitral tribunal shall be adopted by a majority vote and shall be final.

*Article XXV.* The International Commission shall draw up its own rules of procedure and supplementary rules and the necessary regulations for the application of this Agreement.

*Article XXVI.* This Agreement shall enter into force when the High Contracting Parties have notified each other, through the diplomatic channel, that their respective constitutional requirements have been fulfilled.

DONE at Madrid on 29 May 1968, in duplicate in the Spanish and Portuguese languages, both texts being equally authentic.

For Spain:

[Signed]

FERNANDO M<sup>A</sup> CASTIELLA  
Minister for Foreign  
Affairs

For Portugal:

[Signed]

LUIS PINTO COELHO  
Ambassador of Portugal  
to Spain

#### ADDITIONAL PROTOCOL TO THE AGREEMENT

*Sole article.* For the purposes of article II of the Agreement, the Governments of Spain and Portugal have this day given their approval to the following agreement:

Should the Spanish Government approve and submit to the International Commission a sound new management plan for the international reach of the River Agueda, in accordance with the provisions of article II of the Agreement between Spain and Portugal governing the hydroelectric development of the international reaches of the River Duero and of its tributaries

of 16 July 1964, before the two Governments approve the construction of the facility on the River Miño referred to in article II of the present Agreement, compensation to Portugal for flow modification on the international reach of the River Agueda, to which it is entitled under the aforementioned Agreement of 1964, shall be made through a change in the percentages specified in article II of the present Agreement for the apportionment between Spain and Portugal of energy from the international reach of the River Miño.

DONE at Madrid on 29 May 1968, in duplicate in the Spanish and Portuguese languages, both texts being equally authentic.

For Spain:

[Signed]

FERNANDO M<sup>A</sup> CASTIELLA  
Minister for Foreign  
Affairs

For Portugal:

[Signed]

LUIS PINTO COELHO  
Ambassador of Portugal  
to Spain

## [TRANSLATION — TRADUCTION]

SECOND ADDITIONAL PROTOCOL<sup>1</sup> TO THE AGREEMENT OF 29 MAY 1968 BETWEEN SPAIN AND PORTUGAL REGULATING THE USE AND DEVELOPMENT OF THE WATER RESOURCES OF THE INTERNATIONAL REACHES OF THE RIVERS MIÑO, LIMIA, TAJO, GUADIANA AND CHANZA AND OF THEIR TRIBUTARIES<sup>2</sup>

*Article 1.* For the construction and operation of the hydroelectric facility provided for in article II of the Agreement of 29 May 1968<sup>2</sup> between Spain and Portugal regulating the use and development of the water resources of the international reaches of the Rivers Miño, Limia, Tajo, Guadiana and Chanza and of their tributaries, both the Spanish and Portuguese Governments may grant concessions which the concessionaires must operate as a joint venture.

The International Commission provided for in article XVII of the said Agreement shall define the terms of the above-mentioned concessions.

*Article 2.* The joint venture to be established shall have no legal status and shall be governed by an agreement between the concessionaires that has been approved in advance by the International Commission.

*Article 3.* The concessionaires shall participate in the construction and operation of the facility in proportion to the amount of electrical energy allocated to the two States.

*Article 4.* The Governments of Spain and Portugal shall make suitable arrangements to facilitate the issue of licences and authorizations required for the circulation of capital, manpower, material and equipment needed for the construction and future operation of the hydroelectric facility governed by this Protocol.

*Article 5.* By reciprocal arrangement, the Governments of Spain and Portugal shall exempt from taxation the acquisition and occupation of land and the import of raw materials and equipment needed for the construction and subsequent operation of the facility governed by this Protocol.

*Article 6.* Any State, municipal and, if applicable, provincial taxes and charges to which the joint venture may be subject shall be collected from each of the concessionaires only by the authorities of their respective countries in an amount corresponding to their percentage of participation.

*Article 7.* The industries of the two countries shall as far as possible participate in the overall construction of the facility in the proportion referred to in article 8, with regard to the engineering services for the project, the civil engineering plant and the supply of mechanical and electrical equipment, while the joint concessionaires shall endeavour to obtain the best terms as far as prices,

<sup>1</sup> Came into force on 19 May 1977, the date of the last of the diplomatic communications by which the Contracting Parties informed each other, through the diplomatic channel, of the fulfilment of their respective constitutional requirements, in accordance with article 9.

<sup>2</sup> See p. 25 of this volume.

scheduling and quality are concerned and may, for that purpose, import mechanical and electrical equipment from third countries.

*Article 8.* The energy produced by the hydroelectric power station and shared by the two concessionaire enterprises in the proportion called for under the Agreement shall be integrated into their electrical network operations in accordance with the conditions and legal arrangements stipulated in the national concessions held respectively by those two companies.

*Article 9.* This Protocol shall enter into force when the High Contracting Parties have informed each other through the diplomatic channel that their respective constitutional requirements have been fulfilled.

DONE at Guarda on 12 February 1976, in duplicate in the Spanish and Portuguese languages, both texts being equally authentic.

For the Spanish State:

[Signed]

JOSÉ MARÍA DE AREILZA  
Minister for Foreign  
Affairs

For the Portuguese Republic:

[Signed]

ERNESTO A. DE MELO ANTUNES  
Minister for Foreign Affairs