

Avocetta Meeting Helsinki 2013
National Report -Spain

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1. Coasts Law. The Spanish Parliament has approved an amendment to Coasts Law 29/1988. The protection of coasts has always been a contentious field due to the important amount of constructions carried out during the last decades gravely damaging them; the existence of activities, e.g., industrial installations; and also the complexity of transitional rules set out in the original Law. Logically, these changes have generated intense debates. ONGs have argued that the amendment will serve to legalise many already unlawful constructions whilst the Spanish government has claimed that it will help to define the legal framework.
 - (a) As regards the definition of the public domain (*dominio public maritime-terrestre*), the amendment requires that technical criteria be established to determine its scope particularly regarding the notion of “areas affected by the largest storms known”. Ancillary regulations are to specify the criteria for determining the abovementioned concept.
 - (b) The Law also incorporates definitions of the main components of the public domain such as dunes and marshes.
 - (c) The amendment excludes certain populations, inhabited before 1988, from the maritime public domain.
 - (d) The 1988 Law created an area of 100 metres from the demarcation line (*deslinde*) to inland. This line separates the maritime public domain from private ownership. Whilst the width of the protection zone is still 100 metres (in this area buildings are banned) the Law allows for a flexible application of the 100 metres rule in the case of certain municipalities by reducing it to 20 metres.
 - (e) The Law includes an obligation to draw up a strategy for the adaptation of coasts to the effects of climate change to mitigate them. Projects affecting the public domain will have to include an assessment on the possible effects of climate change.
 - (f) The new Law extends the franchises (*concesiones*) enjoyed by private owners of dwellings located on the maritime public domain before 1988 up to a maximum of 75 years. Franchises may be transferred *mortis causa* and *intervivos*. In this latter case, the transfer must previously be authorised. In addition, the amendment extends the existing franchises (due to expire in 2018) to 75 years to make them coincide with the new general rule. The preamble to the Law, somewhat naively, indicates that it is not an indiscriminate extension because the new provision requires a report from the regional environmental agency if installations under IPPC are involved. However, ancillary regulations may specify different time lapses (not greater than 75 years) depending on the type of utilisation of the public domain. Authorisations required by the Law are also extended from 1 year to a maximum of 4 years.
 - (g) The new Law excludes from the terrestrial maritime public domain a total of 12 municipalities.
 - (h) The new Law contemplates the possibility of events of general interest with tourism impact on some beaches.
 - (i) The island of Formentera receives particular attention due to its geomorphological features.

2. IPPC. The Spanish Parliament is about to approve an amendment to Law 16/2002 (IPPC). The modification basically transposes, in many occasions literally, the wording of Directive 75/2010.
3. EIA. The Spanish Government has recently approved a draft bill amending existing EIA rules.¹ According to the Government, the bill aims to simplify procedures and guarantee a high level of protection. Its main objective is to reduce the time limits for taking a decision on a project subject to EIA. According to the Government, the procedure lasts on average 3,4 years. The new law would reduce the assessment of projects to 4-6 months. The bill would also simplify the types of assessment to two categories: Ordinary EIA and Simplified EIA. However, it should be observed that that could not curtail the powers of the Autonomous Communities to create their own categories. The bill would also tackle some further matters, e.g., assessment of permanent activities, the expiration of assessments if a project is not executed in due time, and the modification of previous assessments.
4. Constitutional Court
 - (a) Judgment 87/2013. The Court reiterated that the powers of the Autonomous Communities for the protection of natural spaces could only apply to the territorial sea if required by the continuity and unity of the physical space and provided that the exercise of those powers could be articulated with other State powers on the same area. In any case, regional powers are limited by State powers on sea fishing
 - (b) Judgment 80/2013. The Constitutional Court has reaffirmed that it is for the central government to carry out environmental assessments of projects to be authorised by the said government. This includes the issuance of certificates declaring that a project may not affect Natura 2000 sites.
 - (c) Judgment 84/2013. The subject-matter of the case was a provision in the Forests Law 43/2003 as amended in 2006, prohibiting the change of use of burned forests for at least thirty years. According to the preamble to the Law, the ban allowed regeneration of forest vegetation and, by extension, prevent future redevelopment expectations. The prohibition under review was not intended to regulate the uses or prohibitions of all forest lands and did not invade the regional powers on urban and regional planning.
 - (d) Judgment 69/2013. The case involved the provisions of Law 42/2007, on natural patrimony and biodiversity. The Court upheld State powers for the protection of the the environment under which the Law had been adopted.
 - (e) Judgment 60/2013. Law 16/2005 of Castile-La Mancha, approved a tax on certain activities affecting the environment, including the storage of radioactive waste. The Court came to the conclusion that the provisions defining the essential elements of the tax showed that it did not address a polluting activity but the mere exercise of an economic activity consisting in the production of electricity through nuclear power plants. Therefore the taxable event was not different from the carrying out of economic activities (already subject to taxation).
 - (f) Judgment 5/2013. The Court declared that some provisions of Law 16/2002, on protection against noise in Catalonia, were not applicable to State infrastructures.

¹ Access to the bill has not been possible.