

The National Recovery and Resilience Plans must respect rule of law

- New IIDMA report points to shortcomings in compliance with environmental law in the National Recovery and Resilience Plans process

Madrid, 1 March 2021.- The Recovery, Transformation and Resilience Plan (PRTR) must respect environmental law in order for the economic reconstruction after the Covid-19 pandemic to be carried out in strict compliance with the rule of law, which means complying with the entire Spanish environmental legal system, which also includes the international environmental treaties and conventions ratified by Spain.

The [International Institute for Law and the Environment \(IIDMA\)](#) has presented its reports "[Environmental Rule of Law and National Recovery and Resilience Plans: Transparency and Public Participation](#)", and the Spanish edition "[The Recovery, Transformation and Resilience Plan and the Rule of Law: Environmental Implications](#)". The first paper focuses on the European process, which involves the elaboration of these plans in the EU Member States, and the second is for the Spanish plan process.

More specifically analyses the obligations in terms of transparency and public participation under European law with a view to the legally compliant implementation of National Recovery and Resilience Plans.

This paper highlights that Member States' Recovery and Resilience Plans are not being implemented in accordance with the requirements of public participation and Strategic Environmental Assessment, despite the fact that this is required by EU law.

"Transparency and public participation are two fundamental elements of democracy, and without them citizens will not have a sense of ownership towards the National Recovery and Resilience Plan. The economic response to the Covid-19 pandemic cannot be carried out at the expense of the rule of law in environmental matters and even more so when this Plan has to contribute to achieving the objectives of the EU Green Pact," says IIDMA Director Ana Barreira.

Meanwhile, the review of the Spanish Plan highlights that the drafting process is not being transparent, nor are there any channels for public participation in its preparation, which violates the requirements of the Aarhus Convention, which specifies that the fact that the projects to be implemented under the Spanish Plan have an impact on the environment requires public consultation, which is not taking place.

The Spanish National Plan also falls within the scope of application of the Environmental Assessment Law, as well as the European Directive on the matter, which is why it must be subject to Strategic Environmental Assessment, something that is not being done either, despite the requirements not only of the Law but also of the Strategic Environmental Assessment Directive.

This report also analyses aspects of the Royal Decree Law for the implementation of the PRTR, such as the modification that facilitates the exclusion of a category of projects financed with

European funds from the environmental impact assessment (EIA) process by establishing "exceptional circumstances" for not submitting them to this procedure.

For IIDMA, the measure contravenes EU law, which allows exceptionality on a case-by-case basis, but does not allow the exclusion of a block of projects, even if they are "mere modernizations or improvements to existing facilities".

Furthermore, under the argument of providing greater legal certainty, this Royal Decree-Law makes amendments to the Environmental Assessment Law, reducing the deadlines for some of the procedures of the Environmental Impact Assessment and Strategic Environmental Assessment procedures, including deadlines for the public consultations produced in the framework of these procedures. It is noted that these deadlines do not correspond to those given, for example, by the Aarhus Committee for the review of cases within this procedure, which opens the door to future problems.

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