



**MINISTRY
FOR THE ECOLOGICAL TRANSITION
AND THE DEMOGRAPHIC CHALLENGE**

**SECRETARY OF STATE
FOR THE ENVIRONMENT**

**DIRECTORATE GENERAL FOR
ENVIRONMENTAL QUALITY AND ASSESSMENT**

**PROTOCOL IN CASE OF INCIDENT IN THE
CONTEXT OF THE ENVIRONMENTAL LIABILITY
LEGISLATION AND ADMINISTRATIVE PROCEDURE
FOR THE REQUIREMENT OF ENVIRONMENTAL
LIABILITY**

**TECHNICAL COMMISSION FOR THE PREVENTION AND REMEDIATION OF
ENVIRONMENTAL DAMAGES**

This document is a summary in English of the original version of the document published on the section on Environmental Liability of the website of the Ministry for the Ecological Transition and the Demographic Challenge.

Table of contents

1	INTRODUCTION AND OBJECTIVE.....	3
2	GENERAL CONSIDERATIONS	3
	2.1 Legal aspects	3
	2.2 Scope of application	4
	2.3 Identification of the competent authority based on the natural resources affected.....	4
	2.4 Obligations of the operators on the prevention, avoidance and remediation of damages	5
	2.4.1 Obligations in the prevention and avoidance of new damages.....	5
	2.4.2 Obligation to communicate to the competent authority the existence of environmental damage or imminent threat of damage	5
	2.4.3 Obligations in remedial of damages	5
	2.5 Administrative Powers in the prevention, avoidance and remediation of environmental damages	6
	2.5.1 Before the opening of the administrative procedure for the requirement of environmental liability.....	7
	2.5.2 During the administrative procedure of environmental liability.....	8
3	GENERAL PROTOCOL IN CASE OF INCIDENT IN THE CONTEXT OF THE ENVIRONMENTAL LIABILITY LEGISLATION	9
	3.1. Introduction.....	9
	3.2. Prevention phase.....	11
	3.3. Avoidance phase of new damages	12
	3.4. Infringement and sanction regime	13
4.	CATALOGUE OF PREVENTIVE AND AVOIDANCE MEASURES	13
5.	ADMINISTRATIVE PROCEDURE OF ENVIRONMENTAL LIABILITY.....	14
	5.1.1. Admission/non-admission phase.....	16
	5.1.2. Opening phase	16
	5.1.3. Investigation phase.....	16
	5.1.4. Ending phase.....	17
	5.1.5. Procedure of evaluation and conformity of the remedial measures.....	18
6.	TRANSBOUNDARY IMMINENT THREAT OF ENVIRONMENTAL DAMAGE OR DAMAGE	19

1 INTRODUCTION AND OBJECTIVE

The objective of this guidance document is on the one hand establishing a protocol of action to follow in the context of the environmental liability legislation, in case an incident that causes an environmental damage, or an imminent threat occurs, regardless of whether it may provoke an emergency situation.

On the other hand, it establishes an administrative procedure for the requirement of environmental liability, providing criteria that must be taken into account to ensure it meets the requirements established in the environmental liability legislation and in Law 39/2015, of 1 October, on the common administrative procedure of the public administrations.

Therefore this guidance document has two main sections:

The first section includes a **protocol of action** that provides the guidelines to follow, both to operators and the competent authorities, in case an environmental damage or threat of environmental damage occurs in the context of the environmental liability legislation. It also includes a catalogue with prevention and avoidance measures that may be useful in case an incident occurs. This catalogue, that is not exhaustive, proposes a series of measures that could be implemented for every type of accident, depending on the agent causing it and the natural resource potentially affected.

The second section of the document develops an **administrative procedure for the requirement of environmental liability** that includes the different phases (admission/dismissal, initiation, instruction and closure) in which the competent authority as well as operators and third parties participate. It includes some minimum criteria that ensure a homogeneous approach among the different competent authorities in case an environmental damage or imminent threat occurs.

2 GENERAL CONSIDERATIONS

2.1 Legal aspects

Law 26/2007 establishes a series of obligations when an environmental damage or imminent threat occurs:

- First, in case of imminent threat of environmental damage, it establishes it is mandatory for all operators **to adopt all the measures needed to prevent it.**
- Second, it establishes it is mandatory for all operators **to notify immediately to the competent authority** the existence of an environmental damage or imminent threat.
- Thirdly, when an environmental damage occurs, it establishes it is mandatory for all operators **to adopt all the measures needed to avoid further damages.**
- Finally, it established it is mandatory for annex III operators of Law 26/2007, and when there is intent, fault or negligence for non-annex III operators, **to adopt all the remedial measures to restore** the natural resources that had a significant damage to their baseline condition.

2.2 Scope of application

The scope of application of Law 26/2007 is established in article 3, and it takes into account three elements: the economic activity of the operator, the measures the operator must adopt, and the kind responsibility the operator can have.

The natural resources under the scope of Law 26/2007 are those included in article 2.1 as environmental damage:

- Water damage, including marine waters.
- Land or soil damage.
- Damage to the seashore and the riverside.
- Damage to protected species and natural habitats temporary or permanently present in Spain.

It is very important to highlight that not all the damages caused to these natural resources are under the environmental liability legislation. **Only significant damages to the natural resources under the scope of Law 26/2007 are subject to the environmental liability legislation.**

More information on this issue can be found on the Guidance document “*Assessment of the significance of the environmental damage in the context of law 26/2007, of October 23, on environmental liability*”.

2.3 Identification of the competent authority based on the natural resources affected

Article 7.1 of Law 26/2007 establishes that in general the competent authorities to develop and apply are the autonomous communities, notwithstanding the competences the General State Administration has to protect state-owned public natural resources.

In any case, Law 26/2007 promotes the cooperation among the different public administrations and obliges to request reports to those administrations whose competences or interest can be affected by others in the enforcement of this law.

Therefore, the administration that receives a communication asking the initiation of an environmental liability procedure, first of all shall establish the competent authority, and in case it is not competent, forward all the information on the procedure to the corresponding administrative body responsible.

In any case, the operator must report the existence due to a damage or imminent threat of damage to the different competent authorities with competences in the protection of the natural resources potentially damaged.

In addition the operator responsible shall, if necessary, report to the emergency service, with the view to ensuring the coordination with the competent authority in environmental liability and an effective implementation of the prevention and avoidance of further damages during the emergency phase of the incident.

2.4 Obligations of the operators on the prevention, avoidance and remediation of damages

Article 9 of Law 26/2007 establishes the main obligations of the operators:

- Adopt and implement the prevention and avoidance measures of further damages without delay and without being notified by the administration, and bear their costs when they are liable for them.
- Report immediately to the competent authority the existence of the environmental damage or imminent threat that have been caused or may be caused in the future.
- Cooperate in the drafting of the remedial measures needed and in implementing those adopted by the competent authority.

2.4.1 Obligations in the prevention and avoidance of new damages

The obligations of the operator regarding prevention and avoidance of new environmental damages are developed in article 17 of Law 26/2007.

Firstly, in case of imminent threat of environmental damage, the operator has to adopt the appropriate preventive measures, and if the environmental damage occurs, it has to adopt all the measures needed to avoid new environmental damages. To this purpose, the catalogue of prevention and avoidance measures included in this document can be useful.

2.4.2 Obligation to communicate to the competent authority the existence of environmental damage or imminent threat of damage

It is proposed that all operators within the scope of Law 26/2007, apart from other obligations to communicate as for the civil protection normative:

- Communicate by the fastest communication channel available to the competent authority in environmental liability, taking into account the resource/s damaged or that can be damaged.
- Send a notification using the “model nº C1 of communication of imminent threat of damages and/or damages, and of prevention and avoidance measures adopted, and request to open the administrative procedure of environmental liability of the operator”.

2.4.3 Obligations in remedial of damages

In relation to the remedial measures, in case of environmental damage the operator must adopt immediately and without prior requirement, those provisional remedial measures needed to restore the damages or to make easier to restore the, having to inform the competent authority about the measures adopted.

In addition, the operator will have to draft a proposal of remedial measures and submit it for the approval of the competent authority. The competent authority has the competence to approve them and establish the order in which they will be carried out.

2.5 Administrative Powers in the prevention, avoidance and remediation of environmental damages

Regardless of the obligations for operators established in Law 26/2007, the competent authority has a series of powers in the prevention and avoidance of new damages, as established in article 18 of Law 26/2007 that says:

“The competent authority, when it considers there is an imminent threat of environmental damage, may adopt at any time and by issuing an administrative resolution any of the following decisions:

- a) *Request the operator to provide information about all imminent threat of environmental damage when there are signs or evidence they are going to occur.*
- b) *Request the operator to adopt immediately the measures needed to prevent and avoid the damages, and request they are fulfilled.*
- c) *Give the operator mandatory instructions regarding the prevention or avoidance measures of new damages it may have to adopt, or revoke them if needed.*
- d) *Apply directly the prevention and avoidance measures in certain circumstances, at the expense of the operator.*

On the other hand, article 21 of Law 26/2007, establishes the **administrative powers regarding remedial measures** of the competent authority:

“The competent authority, when it considers there is an imminent threat of environmental damage, may adopt at any time and by issuing an administrative resolution any of the following decisions:

- a) *Request the operator to provide information about all the environmental damages occurred.*
- b) *Take, request the operator to take or give the operator instructions regarding all the possible measures to adopt urgently to, immediately control, contain, remove or face the contaminants and any other factors to limit or avoid further environmental damages and adverse affects for human health or further damages to the services provided by the natural resources affected.*
- c) *Request the operator to adopt the remedial measures needed according with annex II of Law 26/2007.*
- d) *Give the operator mandatory instructions regarding the remedial measures it may have to adopt, or revoke them if needed.*
- e) *Apply directly the remedial measures in certain circumstances, at the expense of the operator.*

Therefore, the competent authority has the power to evaluate the effectiveness of the prevention, avoidance and remedial measures taken by the operator, and if needed, request the operator the take new measures or apply them directly at the expense of the operator.

These powers of the competent authority can be exercised in two different moments: before the issuing of the environmental liability administrative procedure, or during it.

Section 3 o this document develops and describes in detail the general protocol in case of incident in the context of the environmental liability legislation, where it is described the relationship between the obligations of operators and the powers of the competent authority,

both before and during the issuing of the administrative procedure for the requirement of environmental liability.

The urgency to take the necessary actions to solve the incident causing the imminent threat or the damage, will determine to which degree the protocol in case of incident and the administrative procedure occurs in parallel.

2.5.1 Before the opening of the administrative procedure for the requirement of environmental liability.

Prevention phase during the emergency

When an imminent threat of environmental damage occurs, the competent authority will have to assess first of all the significativity of the damage it might cause. This assessment that will be urgent, will be carried out with the information available, and in any case applying the “precautionary principle”.

When the imminent threat of environmental damage is deemed to cause a non significant damage, the competent authority may use the sectoral legislation to face the imminent threat.

The direct intervention of the competent authority in the context of the environmental liability legislation will be only possible in case the imminent threat of environmental damage could cause a significant damage. In this case, and in an emergency situation, the competent authority may directly apply the prevention measures needed to avoid the environmental damage, assessing their effectiveness, and the possibility to apply new measures if needed.

The success of the prevention measures applied in this phase, and therefore the absence of environmental damage, would allow finishing the emergency situation. Afterwards it would be necessary to open the corresponding administrative procedure of environmental liability, and issue an administrative decision with the costs of the measures applied, and identifying the operator/s obliged to pay them.

If the prevention measures cannot be applied because they are not technically or economically feasible or if they have been applied but the environmental damage has occurred anyway, the avoidance phase will start.

Avoidance phase during the emergency

Once the environmental damage has occurred, the avoidance phase of the protocol in an emergency situation will continue, assessing if the damage is significant, applying again the “precautionary principle”. In case the environmental damage is assessed as non significant, the competent authority may use the sectoral legislation to manage and restore the damage. If the damage is assessed as significant, the competent authority may apply directly the measures needed to avoid new damages.

In this phase, it is also possible to apply simultaneously prevention measures.

Once the avoidance measures have been applied, assessed their effectiveness, and the possibility to apply new measures if needed, the avoidance phase will finish. As in the prevention phase, it is possible that not all avoidance measures can be applied for not being technically or economically feasible.

If the emergency phase is finished, the management of the incident will take place from this moment on, according to the general protocol described in section 3.

After the avoidance phase, the protocol in case of emergency will continue with the remedial phase.

Remedial phase during the emergency

The remedial phase of the protocol during an emergency situation, follows the same scheme of the previous prevention and avoidance phases, evaluating the significativity of the damages.

In case the environmental damage is assessed as non significant, the competent authority may use the sectoral legislation to restore the damage.

If the damage is assessed as significant, the competent authority may apply directly the primary measures needed to restore the damage, and if needed the complementary or compensatory remedial measures.

In this phase, it may be also necessary to apply simultaneously avoidance or even prevention measures.

Once all measures needed have been applied, the competent authority will conduct the corresponding administrative procedure of environmental liability, and issue an administrative decision with the costs of the measures applied, and identifying the operator/s obliged to pay them.

2.5.2 During the administrative procedure of environmental liability

When the imminent threat or the environmental damage has been considered as significant, the operator has to inform the competent authority of the occurrence of the imminent threat and/or environmental damage.

The compulsory communication from the operator to the competent authority implies he asks for the opening of the administrative procedure of environmental liability. On the other hand, if this communication does not occur, in addition to the corresponding administrative fine, the competent authority can open directly the administrative procedure of environmental liability.

During the administrative procedure, the competent authority has the following powers in relation to the prevention and avoidance phases:

- Ask the operator to provide information, to adopt measures or to give him instructions
- Act directly and apply the measures needed
- Ask or apply directly provisional measures
- Levy of execution

3 GENERAL PROTOCOL IN CASE OF INCIDENT IN THE CONTEXT OF THE ENVIRONMENTAL LIABILITY LEGISLATION

3.1. Introduction

This general protocol in case of incident also shows its relationship with the administrative procedure for the requirement of environmental liability described in this document.

Figure 1 shows with a diagram flow the general protocol in case of incident in the context of the environmental liability legislation. This diagram shows the line of action that has to be followed in case of imminent threat of damage and/or a damage, the actions needed and who (operator or the competent authority) have to apply them.

The protocol can be divided in two phases:

1. Prevention phase

This phase starts when the incident has provoked an imminent threat of environmental damage, and it is necessary to apply prevention measures.

2. Avoidance phase

This phase starts once the environmental damage has occurred. This can happen because the incident provoked that the agent causing the damage was put in contact directly with the natural resources, or because the prevention measures were not applied or were not effective.

In this phase it is necessary to apply measures to contain the damage and avoid it spread. Containing the agent causing the damage, and therefore avoiding new environmental damages will conclude the management of the incident.

In this phase it is also possible necessary to apply the provisional remediation measures foreseen in article 20.1 a) of Law 26/2007.

It is important to highlight that the prevention and avoidance phases in which this protocol is divided, can be carried out with respect to the opening of the administrative procedure of environmental liability:

- Before the opening of the administrative procedure of environmental liability, if the urgency provoked by the incident, makes it necessary to postpone the opening to the administrative procedure after the management of the situation of urgency.
- After opening the administrative procedure, and therefore within it.

A detailed description of each of these phases of the general protocol in case of an incident in the context of the environmental liability legislation is given below:

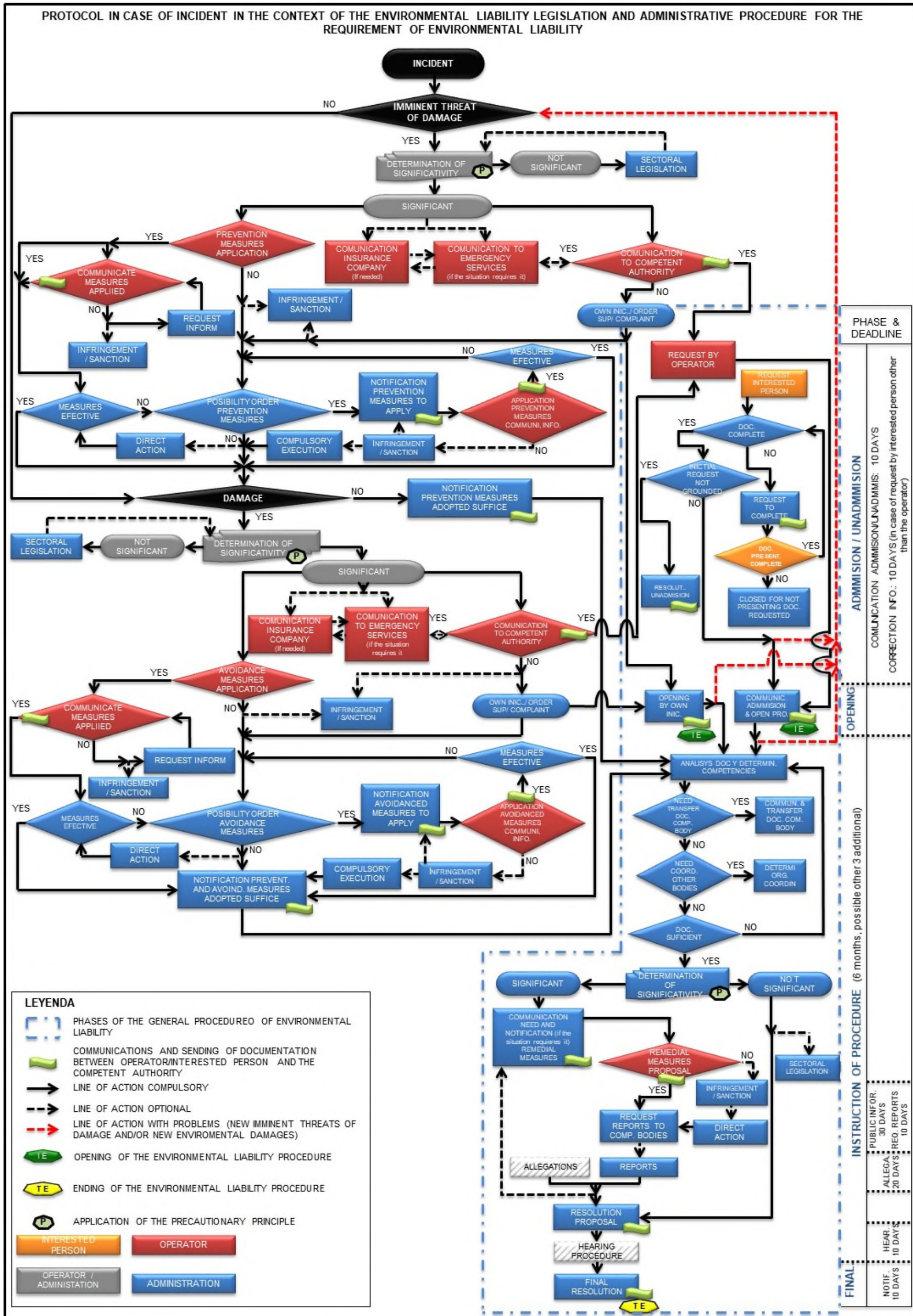


Figure 1. General protocol of in case of incident in the context of the environmental liability legislation and administrative procedure of environmental liability. Source: Prepared by the authors.

3.2. Prevention phase

It is necessary to highlight that the environmental liability legislation can only be applied in case of significant environmental damage or imminent threat of environmental damage. In case the damage or imminent threat is not significant, the incident cannot be managed with Law 26/2007, and will have to be managed using the corresponding sectoral legislation.

In case the threat of environmental damage is considered significant, the incident can be managed using the environmental liability legislation.

Article 9 of Law 26/2007, establishes that the operators have the duty to apply prevention measures, among others, when they are responsible, and communicate immediately to the competent authority the existence of an imminent threat. This way, the first actions to be applied rely on the operator.

This protocol includes also, among the actions to be carried out by the operator, the communication to two actors having a relevant role in the successful application of the prevention measures:

- Communication to the emergency services
- Communication to the insurance company

The success of the prevention measures applied, by the operator or by the competent authority directly, will avoid the environmental damage, and therefore the management of the incident will conclude here.

In parallel to these preventive actions, the administrative procedure of environmental liability can be opened.

On the one hand, the obligation to communicate by the operator to the competent authority the existence of an imminent threat of significant damage, implies directly the request by the operator to open the environmental liability administrative procedure.

The absence of communication, in addition to the possible sanctions that may be imposed, allows the competent authority to open the proceedings of the environmental liability administrative procedure.

This way it is possible to open the environmental liability administrative procedure, even in parallel to the prevention phase.

Once the environmental liability administrative procedure has been opened, the notification that the prevention measures have been successful and adequate, will be included to the administrative procedure, as part needed in its resolution.

3.3. Avoidance phase of new damages

The objective of this phase is to avoid that the damage, once occurred do not extend, therefore limiting the effects of the agent causing the damage on the natural resources affected.

The procedure in the avoidance phase follows the same scheme as the one described above for the prevention phase.

As in the prevention phase, the operator has to apply the avoidance measures needed, without the need of a request from the competent authority. Not applying the avoidance measures needed, or the fact they are not effective, allows the competent authority to ask the operator to apply these avoidance measures.

In case the operator does not apply them, in addition to the possible sanctions, allows the competent authority to apply the levy of execution.

The levy of execution can comprise a fine or the subsidiary application of the measures by the competent authority. In case of subsidiary application, the competent authority will invoke article 48 of Law 26/2007 to recover the cost of the measures applied.

In relation to the temporal context of the avoidance measures application, and in its case of the provisional remedial measures, with respect to the opening of the administrative procedure of environmental liability, its opening can be carried out in parallel to the application of the avoidance measures.

In any case, the obligation to communicate the incident by the operator to the competent authority will imply the opening of the administrative procedure of environmental liability.

In case this communication does not occur, in addition to the possible fines, the competent authority will open the administrative procedure.

3.4. Infringement and sanction regime

Very serious infringement

- Do not adopt the preventive or avoidance measures asked by the competent authority and as a result the environmental damage occurs.
- Do not stick to the instructions given by the competent authority in the application of the prevention or avoidance measures, and as a result the environmental damage occurs.
- Do not inform the competent authority of the existence of an environmental damage or imminent threat that the operator is aware of, or inform with unjustified delay, and as a result its effects worsen.

Serious infringement

- Do not adopt the preventive or avoidance measures asked by the competent authority when the infringement is not very serious.
- Do not stick to the instructions given by the competent authority in the application of the prevention or avoidance measures, and as a result the environmental damage occurs, when the infringement is not very serious.
- Do not inform the competent authority of the existence of an environmental damage or imminent threat that the operator is aware of, or inform with unjustified delay, when the infringement is not very serious
- Do not provide the information requested by the competent authority or doing it with delay.
- Do not provide the collaboration requested by the competent authority to apply the remedial, preventive or avoidance measures.
- The omission, resistance or obstruction on mandatory actions according to Law 26/2007.

Article 38 of Law 26/2007, establishes the following sanctions to the corresponding infringements:

In case of very serious infringement

- 1.º Fine from 50.001 to 2.000.000 de euros.
- 2º. Loss of the permit or its suspension for a minimum period of one year and maximum of two years.

In case of serious infringement

- 1.º Fine from 10.001 to 50.000 de euros.
- 2º. Loss of the permit or its suspension for a maximum period of one year.

4. CATALOGUE OF PREVENTIVE AND AVOIDANCE MEASURES

With the purpose to help both operators and the competent authorities in the selection of the prevention and/or avoidance measures needed in case of incident, a catalogue of the main measures available has been developed.

This catalogue is not exhaustive and other measures can be applied if they are considered as needed.

5. ADMINISTRATIVE PROCEDURE OF ENVIRONMENTAL LIABILITY

Law 26/2007 establishes certain provisions in chapter VI, articles 41 to 49 regarding the administrative procedure of environmental liability, that are complemented with Law 39/2015 on the Common Administrative Procedure of the Public Administrations.

More specifically, article 41 of Law 26/2007 establishes that the administrative procedure of environmental liability can be opened with two possibilities:

- a) Ex-officio by the competent authority, by own initiative, as a consequence of the order of a superior, or by a claim that according to the competent body are enough to open the procedure.
- b) By request of the operator or any other interested person.

When the request comes from an interested person that is not the operator, if the request does not include all the information required, the competent authority may ask the petitioner to provide all the information needed within 10 working days.

In any case, Law 26/2007 established that the competent authority can reject those requests that are groundless or abusive within 10 working days from the reception of the request.

In relation to the administrative competences, the administration that receive the request to open the administrative procedure of environmental liability, will have to establish firstly the competent authority in the case, so that it can forward the request to the corresponding administrative body.

Likewise, when several administrations are competent, article 3 or Royal Decree 2090/2008 allows the Technical Commission on Prevention and Remediation of Environmental Damages to propose the competent authority to process the administrative procedure, ensuring in any case the coordination among the administrative body directing the procedure and the other administrative bodies with competences in the case.

The competent authority will issue an administrative resolution, including the grounds on which it is based, according to article 45 of Law 26/2007, either requesting the operator the adoption of the prevention, avoidance and/or remediation measures if it is deemed liable, or declaring it is not liable.

The minimum content of this administrative resolution are:

- a) Description of the imminent threat or environmental damage.
- b) Assessment of the imminent threat or environmental damage.
- c) When applicable, definition of the prevention or avoidance measures that must be adopted, and the instructions for its correct application if necessary.
- d) When applicable, definition of the remediation measures that must be adopted, and the instructions for its correct application if necessary, according to Annex II of Law 26/2007 or the additional criteria the autonomous communities may establish, taking into account the operator's proposal.
- e) Identification of the subject that must apply the measures
- f) Deadline for their application
- g) Cost and duty to pay for the measures the competent authority might have adopted.
- h) Identification of the actions that, if needed, must carry out the competent authority.

Article 46 of Law 26/2007 establishes the rules for the agreed settlement of the administrative procedure, that can be agreed at any moment between the competent authority and the operator/s responsible. Law 26/2007 foresees the use of this instrument as a way to define the final content of the administrative procedure resolution, but not as an alternative to it.

Article 45.3 of Law 26/2007 establishes that the competent authority must issue the administrative procedure resolution within 6 months. In those cases that are considered complex from the scientific or technical point of view, it is possible to extend this deadline 3 additional months.

The administrative procedure of environmental liability can be processed in parallel to the management of the emergency situation the incident might have caused, depending on when and how the competent authority is informed of the incident.

The administrative procedure of environmental liability spans from a phase of admission/non-admission, in which the competent authority, once received the existence of an imminent threat or environmental damage, will assess if it is necessary to open the procedure, until the phase in which the resolution of the procedure is sent to the operator/s.

More specifically, the administrative procedure includes these phases:

1. Admission/non-admission phase
2. Opening of the procedure phase
3. Investigation phase
4. Ending phase

In addition to this administrative procedure of environmental liability, an additional procedure has been drafted including the steps that have to be followed to give conformity to the remedial measures applied by the operator. In this sense, the environmental liability exists until the competent authority gives conformity to these measures applied by the operator.

5.1.1. Admission/non-admission phase

The administrative procedure of environmental liability can be opened with two possibilities:

- a) Ex-officio by the competent authority, by own initiative, as a consequence of the order of a superior, or by a claim that according to the competent body are enough to open the procedure.
- b) By request of the operator or any other interested person.

The competent authority can reject those requests that are groundless or abusive within 10 working days from the reception of the request.

According to article 41.3 of Law 26/2007, the competent authority may reject the request in those cases in which they are not grounded or they have already been rejected before in other requests.

5.1.2. Opening phase

The competent authority will send an official communication to the operator following the model proposed.

If the competent authority has requested the operator responsible to adopt provisional prevention and/or avoidance measures before the opening of the administrative procedure, the competent authority has to open the procedure within 15 days. Otherwise the provisional measures requested will no longer be compulsory.

The communication of the administrative procedure opening must include an specific pronouncement on these provisional measures, and they must be confirmed, modified or cancelled. If there is not an explicit pronouncement, these provisional measures will have no longer be compulsory.

From the communication of the administrative procedure opening, the investigation phase starts, and the 6 months period to issue the resolution starts.

5.1.3. Investigation phase

5.1.3.1. Analysis of the information and determination of the competences

In this phase, the information provided in analysed and the determination of the competences of the different administrative bodies identified.

5.1.3.2. Coordination with other competent authorities

If more several competent authorities have competences on the case, coordination among them has to be ensured.

5.1.3.3. Determination of the significativity

The application of Law 26/2007, depends on the significativity of the imminent threat of the environmental damage or of the environmental damage, as explained in previous sections.

To establish its significativity, annex I of Law 26/2007 gives a series of criteria for the environmental damages to habitats and species. In addition, articles 16 to 18 of Royal Decree 2090/2008 establish criteria for the evaluation of the significativity in all the natural resources within the scope of Law 26/2007.

The evaluation of the significativity can be carried out before the opening of the administrative procedure of environmental liability as well as during it, depending on when the competent authority is aware of the incident, its characteristics and its evolution.

In any case, given the technical complexity the evaluation of the significativity may require, the **precautionary principle** must be applied to ensure a high level of protection for the environment.

5.1.3.4. Imminent threat of environmental damage. Prevention and avoidance measures

In those cases where the administrative procedure has been opened in parallel to the management of the incident causing the imminent threat of environmental damage, and the preventive measures have been successful, having stopped the imminent threat, the competent authority will issue the resolution of the administrative procedure in these terms.

If the competent authority considers the prevention measures adopted are not enough or not effective, it will inform the operator about the obligation to apply new prevention measures.

In this case, if there is an environmental damage, avoidance measures must be applied. As in the case of prevention measures, the competent authority will control that the operator applies the avoidance measures and its effectiveness, having the possibility to ask the operator to apply new measures if needed.

Once avoidance measures have been applied and, in its case have been effective, if the competent authority estimates it is not feasible to apply more avoidance measures, it will continue with the processing of the administrative procedure.

5.1.3.5. Damage.

Once the environmental damage occurs, or the prevention measures have been applied without success, the competent authority has to evaluate if the operator is liable to remedy the environmental damage caused.

To adopt these measures, the operator has to draft a remediation project with at least the content established in article 25 of Royal Decree 2090/2008, which must be approved by the competent authority.

The selection of the remedial measures and the way they must be applied must be carried out according to annex II of Law 26/0007.

5.1.3.6. Request of reports to other administrative bodies

In this phase reports are requested to other administrative bodies in order to gather all the information and opinions in relation with the provisional measures applied and the remedial measures proposed.

5.1.3.7. Proposal of resolution.

Once the request of reports to the corresponding administrative bodies have been carried out, with the information of the allegations received, the proposal of resolution is drafted.

5.1.4. Ending phase.

With the allegations received in the previous phase and the proposal of resolution, the competent authority will revise all the information and evaluate the allegations received to assess the need to incorporate changes that may have influence in the resolution of the administrative procedure.

The procedure ends with the notification to the operator and the rest of interested parties about the content of the resolution, and its communication to the administrative bodies that have participated during the administrative procedure.

5.1.5. Procedure of evaluation and conformity of the remedial measures

The procedure comprises three phases:

1. Opening phase
2. Instruction phase
3. Ending phase

5.1.5.1. Opening phase.

The procedure starts with the start of the remedial measures execution by the operator, according to the priority and deadlines of application established in the resolution of the administrative procedure.

5.1.5.2. Instruction phase.

The operator will draft during the execution of the remedial measures periodical reports on the evolution of their execution.

The contents of these reports will include at least:

- Description of the remedial measures to apply.
- Degree of fulfilment of the conditionings included in the resolution.
- In case the remedial measures need to follow the environmental assessment procedure, a section verifying the conditions of the environmental assessment report are met
- Lack of consequences to neighbouring areas.
- Preventive measures applied during the execution of the remedial measures approved.
- Description, tracing and control of the basic status of the environment before and after the report is issued.
- Evaluation of a correct waste management.
- Degree of achievement of the remedial objectives.

As a general rule on the periodicity of these reports, the following scheme is proposed:

TIME FORESEEN TO EXECUTE THE REMEDIAL MEASURE	MINIMUM PERIODICITY PROPOSED FOR THE EVALUATION REPORTS
More than 1 year	Every 6 months
Between 6 months and 1 year	Monthly
Between 3 and 6 months	Every 15 days
Less than 3 months	Weekly

Once the execution of the remedial measures has ended, the operator will send a final report to the competent authority.

Once received this final report, the competent authority has 3 months to express its conformity or nonconformity.

6. TRANSBOUNDARY IMMINENT THREAT OF ENVIRONMENTAL DAMAGE OR DAMAGE

Law 26/2007 foresees in article 8 two scenarios for imminent threats or environmental damages in the European Union, taking into account where they have its origin:

- A. Spain and it affects other Member State of the European Union
- B. One Member State of the European Union and it affects Spain

In the first scenario, the competent authority will have to inform immediately to the Ministry for the Ecological Transition and the Demographic Challenge. This Ministry, with the collaboration of the competent authority and through the Ministry of Foreign Affairs, will adopt the measures needed of coordination and information with Member States affected, as well as all that are needed so that the operator/s liable bear the costs.

In the second scenario, the Spanish competent authority that identifies the imminent threat or the damage in its territory, caused by an economic activity carried out in other Member State, will inform the European Commission through the Ministry of Foreign Affairs. The Spanish competent authority could also send the Member State in which the activity is located recommendations for the adoption of prevention measures, and start the procedure to recover the costs of the provisional preventive or remedial measures that it has to carry out.

On the other hand, according to the additional provision 13 of Law 26/2007, the operators of other countries outside the European Union, are obliged to prevent, avoid and repair the environmental damages applying the agreements, principles and objectives of the international legislation that Spain had in this field.



GOBIERNO
DE ESPAÑA

MINISTERIO
PARA LA TRANSICIÓN ECOLÓGICA
Y EL RETO DEMOGRÁFICO

SECRETARY OF STATE
FOR THE ENVIRONMENT

DIRECTORATE GENERAL FOR ENVIRONMENTAL
QUALITY AND ASSESSMENT

TECHNICAL COMMISSION OF PREVENTION AND REMEDIATION OF ENVIRONMENTAL DAMAGES