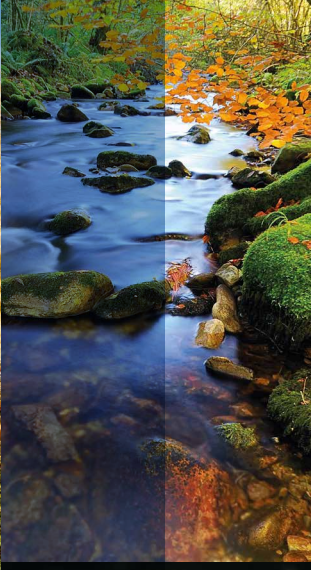

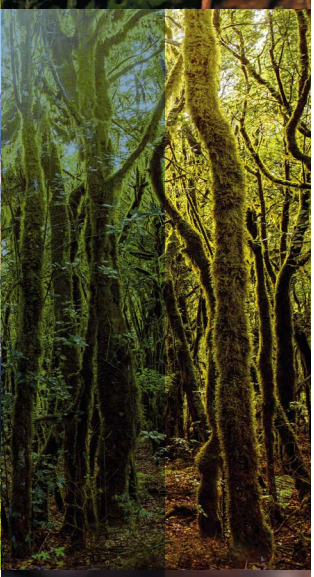

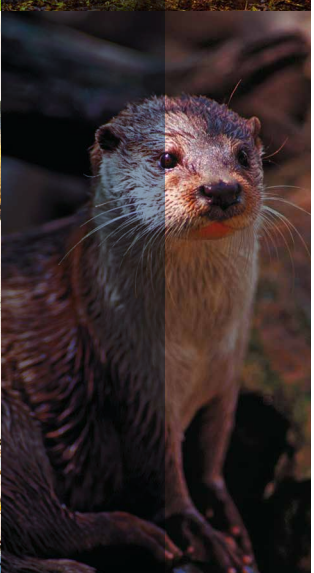

GUIDANCE DOCUMENT ON THE IMPLEMENTATION OF ENVIRONMENTAL LIABILITY REGULATIONS IN SPAIN

GOBIERNO DE ESPAÑA
MINISTERIO PARA LA TRANSICIÓN ECOLÓGICA Y EL RETO DEMOGRÁFICO

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GOBIERNO DE ESPAÑA
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Madrid, 2021

The Guidance Document on the Implementation of Environmental Liability Regulations in Spain summarises the core elements of the legislation.

It also presents all the work done to help in its implementation since 2008, by the Directorate-General for Environmental Quality and Assessment of the Ministry for the Ecological Transition and the Demographic Challenge, in its role as chair and secretariat of the Technical Commission for the Prevention and Remediation of Environmental Damages.

MINISTRY FOR THE ECOLOGICAL TRANSITION AND THE DEMOGRAPHIC CHALLENGE

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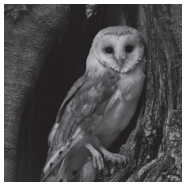
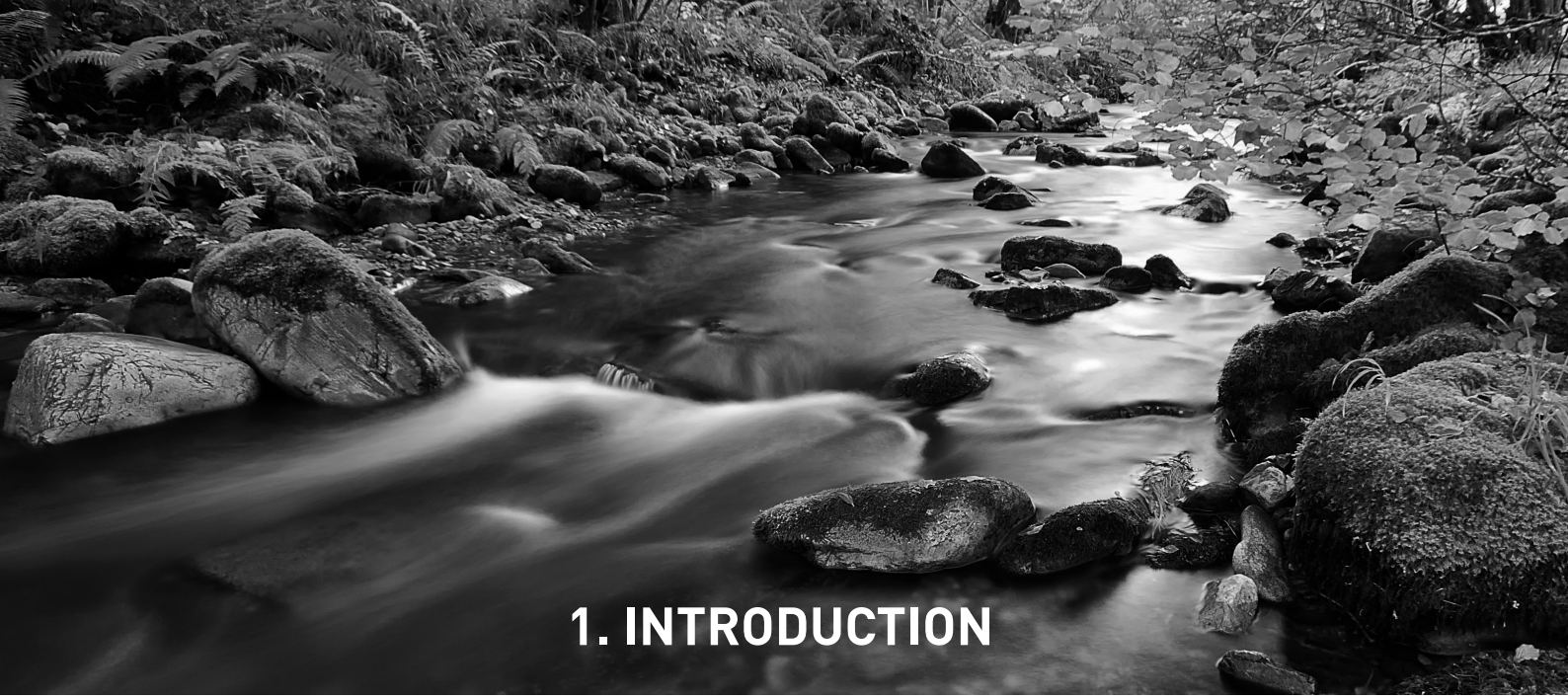




1. INTRODUCTION

This guidance document on the application of environmental liability regulations in Spain summarises the core elements of the environmental liability regulations, their scope, the main obligations established for operators, government powers, and the distribution of competencies in their application.

It also includes a summary of all the specific tools, such as individual and sector-specific environmental risk analyses, guidance documents and protocols drafted by the Directorate-General for Environmental Quality and Assessment in its role as chair and secretariat of the Technical Commission for the Prevention and Remediation of Environmental Damages.

All these documents are intended to help operators and the competent authorities to meet the obligations set forth in the environmental liability regulations, and foster their correct implementation in Spain.

In addition to this summary of all the existing tools and documents, links are provided to the environmental liability section on the website of the Ministry for the Ecological Transition and the Demographic Challenge, which provide access to the tools developed, and the documents produced by the Directorate-General for Environmental Quality and Assessment.

There is also a review of the activities on training, dissemination and access to information which have been carried out to foster awareness of the regulations and of the actions taken for their correct implementation by all the actors involved.

On the other hand, there is another section that summarises the information relating to environmental liability enforcement cases processed in Spain since 2007. This information is taken from the report sent by Spain to the European Commission according to Article 18.1 of Directive 2004/35/CE, and from the assessment report on the implementation of Law 26/2007, of 23 October, presented by the Ministry for the Ecological Transition to the Environmental Advisory Council (Consejo Asesor de Medio Ambiente) in July 2018.

This section includes links to these reports and to the register of environmental liability enforcement cases on the website of the Ministry for the Ecological Transition. and the Demogpraphic Challenge.

It also includes a section with an assessment of the implementation of environmental liability regulations in Spain, taking into account all the elements that enable an assessment of the application of the prevention principle and the "polluter pays" principle, on which both Directive 2004/35/CE, of the European

Parliament and the Council, of 21 April 2004, and the Environmental Liability Act, Law 26/2007, of 23 October, are based.

Annex I of this guidance document includes a section of frequently asked questions (FAQs) on environmental liability regulations, available on the website of the Ministry for the Ecological Transition and the Demographic Challenge.

2. LEGAL FRAMEWORK

Directive 2004/35/CE of the European Parliament and of the Council, of 21 April 2004, on environmental liability with regard to the prevention and remedying of environmental damage, established a common framework for the prevention and remedying of environmental damage in Member States, based on the "prevention" and "polluter pays" principles.

Environmental Liability Act, Law 26/2007, of 23 October, transposing Directive 2004/35/CE, established an administrative regime for the prevention, avoidance and remedying of environmental damage, by virtue of which operators who cause or threaten to cause damage are required to take the necessary measures to prevent damage, or if the damage has already occurred, to take appropriate measures to avoid further damage and to return the damaged natural resources falling within the scope of the law to their baseline condition (their status before the damage occurred).

Meanwhile, Law 26/2007 establishes the obligation for certain operators of the activities included in Annex III of the law to provide a financial security enabling them to meet the costs of the environmental liability inherent in their planned activity.

The Regulation of **Partial development of Law 26/2007**, approved by Royal Decree 2090/2008 of 22 December, define, among other aspects, the legal regime of mandatory financial security and the criteria for determining and remedying environmental damage.

The Fourth Final Provision of the Environmental Liability Act, Law 26/2007, of 23 October, establishes that the provision of the mandatory financial security, as set forth in its Article 24, will be required by a date determined by Ministerial Order

Thus, **Order ARM/1783/2011, of 22 June**, established the order of priority and calendar for approval of the Ministerial Orders marking the requirement for the mandatory financial security, according to the Fourth Final Provision of the Environmental Liability Act, Law 26/2007, of 23 October.

According to this calendar, **Order APM/1040/2017, of 23 October**, set the date from which the mandatory financial security must be provided for the activities in Annex III of Law 26/2007, of 23 October, classified as priority level 1 and priority level 2, according to the Annex to Order ARM/1783/2011, of 22 June: From 31 October 2018, priority level 1 activities, and from 31 October 2019, priority level 2 activities.

Order TEC/1023/2019, of 10 October, set this obligation from 16 October 2021 for activities classified as priority level 3, except for the activities of intensive poultry or pig farming, which must provide a financial security from 16 October 2022.

In short, the **goals of environmental liability regulations** are:

- Encouraging the adoption of risk management measures in order to reduce accidents that can cause environmental damage and to limit their consequences.
- Ensuring that measures to prevent, avoid and remedy any environmental damage are carried out.
- Guaranteeing that the costs of the necessary measures are borne by the liable operator.

The following table shows the applicable environmental liability regulations, which can be consulted in the environmental liability section of the Ministry for the Ecological Transition and the Demographic Challenge website (section on legal basis).

Environmental liability regulations
Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.
Environmental Liability Act, Law 26/2007, of 23 October. Amended by Law 11/2014, of 3 July.
Regulation of partial development of Law 26/2007, approved by Royal Decree 2090/2008, of 22 December. Amended by Royal Decree 183/2015 of 13 March.
Order ARM/1783/2011, of 22 June, establishing the order of priority and the calendar for approval of the Ministerial Orders marking the requirement for the mandatory financial security, according to the Fourth Final Provision of the Environmental Liability Act, Law 26/2007, of 23 October.
Order APM/1040/2017, of 23 October, establishing the date from which the provision of the mandatory financial security can be required for the activities in Annex III of the Environmental Liability Act, Law 26/2007, of 23 October, classified as priority level 1 and priority level 2, via Order ARM/1783/2011 of 22 June, and amending its Annex.
Order TEC/1023/2019, of 10 October, establishing the date from which the mandatory financial security can be required for the activities in Annex III of the Environmental Liability Act, Law 26/2007, of 23 October classified as priority level 3, via Order ARM/1783/2011, of 22 June.

Figure 1: Environmental liability regulations.
Source: *Ministry for the Ecological Transition and the Demographic Challenge*

Regarding **administrative powers**, Article 7.1 of Law 26/2007, of 23 October, establishes the general competence of the Autonomous Regions to implement and execute the law, with the exception of the powers attributed to the State Government by the legislation governing waters and coasts in order to protect state-owned assets.

Thus, according to Article 7.2 of the law, if as well as a regionally owned resource, the damage or threatened damage affects state-managed river basins or state-owned assets, the competent state body must issue a binding report on the preventive, avoidance or remedial measures which must be adopted in relation to these assets.

On the other hand, as established by Article 7.3 of the law, if the legislation on waters and coasts indicates that the State Government is responsible for protecting state-owned assets and determining the measures to prevent, avoid or remedy damage to them, the State Government shall apply the law within its areas of responsibility.

For this purpose, adequate coordination between the different competent authorities of the Autonomous Regions and the State Government in the application of the regulations is essential. A key role in this coordination is played by the **Technical Commission for the prevention and remediation of environmental damages**, a technical body for cooperation and collaboration between the State Government, the Autonomous Regions and local bodies to share information and advice on the prevention and remedying of environmental damages.

This Technical Commission was created by Article 3 of the Regulation of partial development of Law 26/2007, of 23 October, and is attached to the Ministry for the Ecological Transition and the Demographic Challenge through the Directorate-General for Environmental Quality and Assessment.

The section of this document on environmental liability enforcement cases provides a more exhaustive description of the provisions of the environmental liability regulations with respect to the powers of the Autonomous Regions and the State Government.

There are several key concepts in environmental liability regulations which appear throughout this document. The most relevant are:

Key concepts:

Economic or occupational activity: any activity carried out in the course of an economic activity, a businessor an undertaking, irrespectively of its private or public, profit or non-profit character.

Operator: any natural or legal, private or public person who operates an occupational or economic activity or who, in any capacity, controls the activity or has decisive economic power over the technical functioning of any such activity. In deciding whether someone is an operator, account will be taken of provisions in sector-specific, state and regional legislation governing holders of permits or authorisations, registrations and notifications to the Administration.

- **Environmental damage**:

  a) Damage to species and habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species.

  b) Water damage, understood to be any damage that significantly adversely affects:

     1º The ecological, chemical and quantitative status of surface water or groundwater bodies, and the ecological potential of artificial and highly modified water bodies.

     2º The environmental status of marine waters, as defined by Law 41/2010, of 29 December, on the Protection of the Marine Environment, insofar as various aspects of the condition of the marine environment are not already covered by the consolidated text of the Waters Act approved by Royal Legislative Decree 1/2001, of 20 July.

  c) Damage to the seashore and estuaries, understood to be any damage producing significant adverse effects to their physical integrity and proper conservation, and any other damage that makes it difficult or impossible to reach or maintain an acceptable level of quality of conservation.

  d) Land damage, which is any land contamination that creates a significant risk to human health or the environment being adversely affected as a result of the storage, discharge or direct or indirect introduction, in, on or under the land, of substances, preparations, organisms or microorganisms.

- **Imminent threat of damage:** a sufficient likelihood that environmental damage will occur in the near future.

- **Preventive measures or prevention measures:** any measures taken in response to an event, act or omission that has created an imminent threat of environmental damage, with a view to preventing or minimising that damage.

- **Measures to avoid new damage:** any measure which, after an environmental damage has taken place, is intended to limit or prevent further environmental damage, by controlling, containing or eliminating the factors which led to the damage, or dealing with them in some other way.

- **Remedial measures or remediation measures:** any action or combination of actions, including interim measures, to restore, rehabilitate or replace damaged natural resources and/or impaired services or to provide an equivalent alternative to those resources or services, as foreseen in Annex II. The regulations distinguish between primary, complementary and compensatory remediation.

- **Baseline condition:** the condition at the time of the damage of the natural resources and services that would have existed had the environmental damage not occurred, estimated on the basis of the best information available.

One of the most important concepts in the context of environmental liability regulations is that of **remedial measures**.

The requirements for how measures to remedy environmental damage must be carried out are shown in Annex II of Law 26/2007, of 23 October, and completed by the requirements established in Chapter II together with Annexes I and II of its Regulation of partial developmet. This establishes a methodological framework for determining the environmental damage that has occurred and, depending on its scope, establishing the necessary primary, compensatory and/or complementary remedial measures in each case.

Annex II of the law defines the different types ofremedial measures:

- "Primary remediation": any remedial measure which returns the damaged natural resources or impaired services to their baseline condition.
- "Complementary remediation": any remedial measure taken in relation to natural resources or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources or services.
- "Compensatory remediation": any action taken to compensate for interim losses of natural resources or services that occur from the date of damage occurring until primary remediation has achieved its full effect. It does not consist of financial compensation to members of the public.
- "Interim losses": losses which result from the fact that the damaged natural resources and/or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect.

The figure below illustrates the different types of remedial measures defined in the environmental liability regulations.

The traditional response to environmental damage has been primary remediation. It is the introduction to complementary and compensatory remedial measures, based on the application of Resource Equivalency Methods which determine the amount of compensatory and complementary remediation, representing a new approach to the remediation requirements of environmental liability regulations.

This methodology requires the use of criteria of equivalency between the damaged resources and services and those generated through remediation. These criteria are used to define the type and scope of the remedial measures needed to recover the natural resources and the services they provide.

Annex II of Law 26/2007 describes the cases in which each equivalency criterion must be applied (resource-to-resource, service-to-service, value-to-value, value-to-cost). Resource-to-resource and service-to-service criteria take priority, as they ensure that the resources and services obtained through remediation replace the damaged resources and services more completely. This approach is used to determine the amount of remediation in biophysical terms needed to compensate for the total losses incurred in environmental resources and services, finally leading to a remediation project with its associated total cost.

As this Guidance Document describes in more detail below, to facilitate the determination of primary, complementary and compensatory remedial measures, the Directorate-General for Environmental Quality and Assessment has developed a methodology and a computer application for calculating replacement costs, called

the **Environmental Liability Supply Model (MORA)**. This methodology and the computer application facilitate the choice of the best available techniques considered necessary to return natural resources and the services they provide to their original condition after environmental damage.

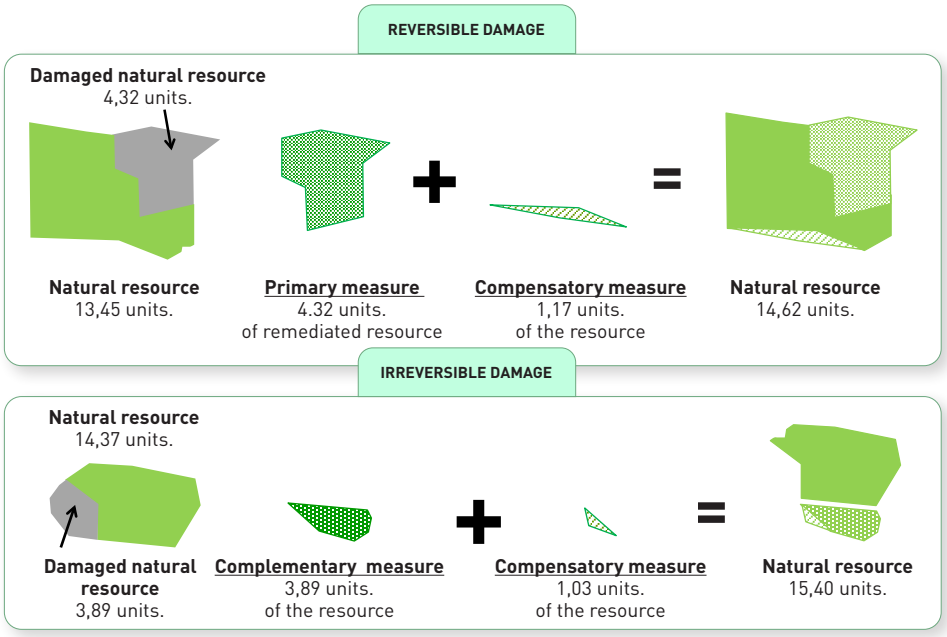


Figure 2: Types of remedial measures according to environmental liability regulations.
Source: *Ministry for the Ecological Transition and the Demographic Challenge*

3. NATURAL RESOURCES AND SIGNIFICANCE OF DAMAGE

The natural resources within the scope of application of the environmental liability regulations are defined in Article 2.1 of Law 26/2007, of 23 October, included in the concept of environmental damage:

- **Wild flora and fauna species** present permanently or seasonally in Spain, and the habitats of all wild native species.
- **Waters**, including **marine waters**.
- **Land**.
- **Seashore and estuaries**.

The scope of application of environmental liability regulations exclude:

- Damage to the air, although it includes environmental damage caused to natural resources by airborne elements.
- Damage to persons and their property, unless such property constitutes a natural resource within their scope of application.

Meanwhile, environmental liability regulations will only apply to environmental damage or the imminent threat of such damage, caused by pollution, of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators.

Significance of the damage

Not all damage to these natural resources will give rise to environmental liability. For the law to apply, there must be a threat of damage or actual damage causing "**significant adverse effects**" on a natural resource.

Law 26/2007, of 23 October, and its Regulation of partial development include a set of criteria for assessing the significance of the damage. This assessment must be made on a case-by-case basis, and may occasionally be quite complex, due to the uncertainty associated with predicting the effects which one or more harmful agents may have on the natural resources, especially in situations of imminent threats of damage.

In these cases, when there are technical difficulties in assessing the significance of the damage, in order to simplify the process and save time and money, both the operator and the competent authority may apply the "**precautionary principle**".

This principle is an essential element of European policy, the basis of which is developed in the Communication from the *Commission on the precautionary principle* (2000), which establishes that: "*Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a*

reason for postponing cost-effective measures to prevent environmental degradation."

Thus, in application of the "precautionary principle", if there is a lack or absence of precise data, scientific certainty that the potential damage will exceed the threshold of significance is not required, and reasonable grounds for concern shall be sufficient.

Similarly, the REFIT[1] Evaluation of Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability (SWD/2016/0121 final) considers that in application of the precautionary principle, scientific certainty that environmental damage will exceed the threshold of significance is not required; rather a reasonable belief that this is the case is sufficient (or reasonable doubt).

Given non-significant damage, or a threat of non-significant damage, the corresponding sector-specific legislation should be applied.

A distinction must be made between the concepts of "damage" and "environmental damage". Within the scope of application of the Environmental Liability Act, "environmental damage" refers to damage or imminent threats of damage which produce significant adverse effects **and only in these cases may the environmental liability regulations be applied.**

Also, if significant environmental damage should occur, Law 26/2007, of 23 October, permits the application of either environmental liability regulations or the corresponding sector-specific regulations in order to achieve the prevention, avoidance and remediation of significant environmental damage with the cost borne by the polluter, as long as the same level of protection is obtained.

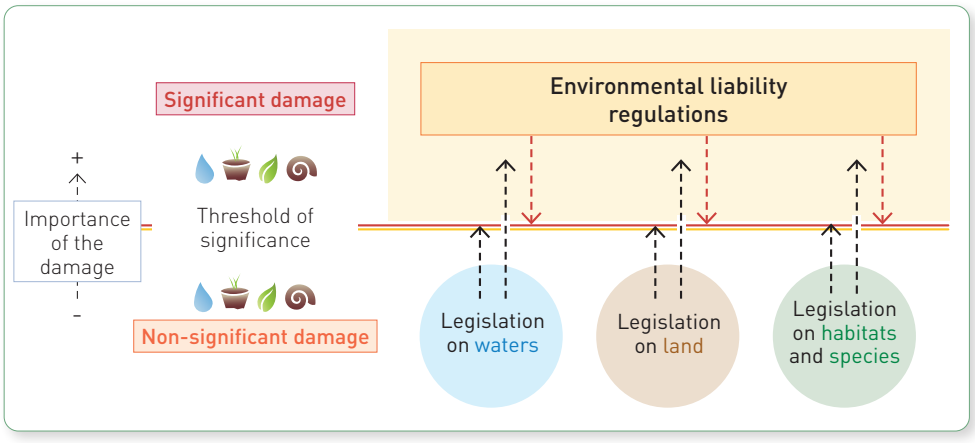


Figure 3: **Application of environmental liability regulations and sector-specific regulations, according to the significance of the damage.**
Source: ***Ministry for the Ecological Transition and the Demographic Challenge***

1 COMMISSION STAFF WORKING DOCUMENT REFIT Evaluation of the Environmental Liability Directive Accompanying the document Report from the Commission to the European Parliament and to the Council pursuant to Article 18(2) of Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage.

Exemptions

The environmental liability regulations shall not apply to environmental damage or the imminent threat of such damage occurring if caused by one of the following:

- An act of armed conflict, hostilities, civil war or insurrection.
- A natural phenomenon of exceptional, inevitable and irresistible character.
- Activities whose main purpose is to serve national defence or international security, or to activities the sole purpose of which is to protect from natural disasters.
- Environmental damage or any imminent threat of such damage arising from an incident, the consequences of which in terms of liability or compensation are established by any of the international conventions listed in Annex IV, including any future amendments thereof, in force in Spain.
- Nuclear risks, environmental damage or imminent threat of such damage as may be caused by activities using materials governed by legislation derived from the Treaty establishing the European Atomic Energy Community or caused by an incident or activity the consequences of which in terms of liability or compensation are established by any of the international conventions listed in Annex V, including any future amendments thereof, in force in Spain.

4. OBLIGATIONS OF OPERATORS AND ADMINISTRATIVE POWERS

The environmental liability regulations apply to environmental damage or the imminent threat of such damage occurring, if caused by **the economic or occupational activities listed in Annex III of Law 26/2007**, even where no intent, fault, or negligence exists. These activities are:

1. The operation of installations subject to authorisation in accordance with Royal Legislative Decree 1/2016, of 16 December, approving the consolidated text of the law on Integrated Pollution Prevention and Control (IPPC).

   It also includes any other activities and establishments subject to the scope of application of Royal Decree 840/2015, of 21 September, approving measures to control risks inherent to major accidents involving hazardous substances (SEVESO).

2. Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such operations, subject to permit or registration in accordance with Law 22/2011, of 28 July, on waste and polluted land.

   These operations include, inter alia, the operation and after-care of disposal sites in accordance with Royal Decree 1481/2001, of 27 December, regulating the elimination of waste by landfill and the operation of incineration plants, as established in Royal Decree 653/2003, of 30 May, on the incineration of waste.

3. All discharges into inland surface waters which require prior authorisation under Royal Decree 849/1986, of 11 April, approving the Regulations governing the Public Water Domain, and any applicable regional legislation.

4. All discharges into groundwater which require prior authorisation under Royal Decree 849/1986, of 11 April, and any applicable regional legislation.

5. All discharges into inland waters and territorial seas which require prior authorisation under Law 22/1988, of 28 July, on Coasts, and any applicable regional legislation.

6. The discharge or injection of pollutants into surface water or groundwater which require a permit, authorisation or registration under Royal Legislative Decree 1/2001, of 20 July, approving the consolidated text of the Water Law.

7. Water abstraction and impoundment of water subject to prior authorisation under Royal Legislative Decree 1/2001, of 20 July.

8. The manufacture, use, storage, processing, filling, release into the environment and onsite transport of:

   a) Dangerous substances as defined in Article 2.2 of Royal Decree 363/1995, of 10 March, approving the Regulation on the notification of new substances and classification, packaging and labelling of dangerous substances.

   b) Dangerous preparations as defined in Article 2.2 of Royal Decree 255/2003, of 28 February, approving the Regulation on classification, packaging and labelling of dangerous preparations.

   c) Plant protection products as defined in Article 2.1 of Royal Decree 2163/1994, of 4 November, implementing the harmonised EU system for authorising the placing on the market and use of plant protection products.

   d) Biocidal products as defined in Article 2.a) of Royal Decree 1054/2002, of 11 October, regulating the evaluation process for the registration, authorisation and placing on the market of biocidal products.

9) Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined either in Article 2.b of Royal Decree 551/2006, of 5 May, governing the transport of dangerous goods by road in Spanish territory, or in Article 2.b of Royal Decree 412/2001, of 20 April, governing various aspects relating to the transport of dangerous goods by rail, or Article 3.h of Royal Decree 210/2004, of 6 February, establishing a tracking and information system for maritime traffic.

10) The operation of installations subject to authorisation in pursuance of Council Directive 84/360/ EEC of 28 June 1984 on the combating of air pollution from industrial plants, in relation to the release into air of any of the polluting substances covered by the aforementioned Directive, which require authorisation in accordance with Law 16/2002, of 1 July, on Integrated Pollution Prevention and Control.

11) Any contained use, including transport, involving genetically modified micro-organisms as defined by Law 9/2003, of 25 April, establishing the legal regime of contained use, voluntary release and placing on the market of genetically modified organisms.

12) Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Law 9/2003, of 25 April.

13) Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Regulation (EC) No 1013/2006 of the European Parliament and of the Council, of 14 June 2006, on shipments of waste.

14) Management of waste from extractive industries, in accordance with Directive 2006/21/EC of the European Parliament and of the Council, of 15 March 2006, on the management of waste from extractive industries and amending Directive 2004/35/CE.

15) The operation of carbon storage facilities in accordance with Law 40/2010, of 29 December, on the geological storage of carbon dioxide.

The environmental liability regulations applies also to environmental damage and imminent threats of such damage when caused by economic or occupational activities other than those listed in Annex III of Law 26/2007. They also grant various administrative powers to the competent authorities in order to guarantee

compliance with the obligations established for operators of the economic activities within their scope of application.

4.1 OBLIGATIONS OF OPERATORS

The obligations of operators can be classified around the two pillars that make up the foundation of the environmental liability regulations: on one hand the administrative environmental liability regime, and on the other, the system of mandatory financial security.

FIRST PILLAR:
The administrative environmental liability regime

This first pillar, which affects all operators and economic activities, and which came into force on 30 April 2007, has the following characteristics:

Administrative environmental liability

This is an administrative rather than civil liability, which establishes a regime of protection from damage for the natural resources within the scope of application of the law. It does not include damage to people and property in the traditional sense.

It establishes a timeframe of 30 years to require the measures foreseen in the law, from the occurrence of the environmental damage or imminent threat of environmental damage caused by an emission, event or incident which took place starting from 30 April 2007.

Objective and subjective liability

This imposes an objective and subjective liability on the different operators, leading to the following obligations:

- First, it imposes the obligation on all economic operators, given an imminent threat of environmental damage, to **take the necessary measures to prevent it from happening**. We must clarify that in the context of the environmental liability regulations, "preventive measures" or "prevention measures" are defined as "*any measures taken in response to an event, act or omission that has created an imminent threat of environmental damage, with a view to preventing or minimising that damage.*"

- Second, it imposes the obligation on all economic operators to **immediately notify the competent authority** of the existence of environmental damage, or of an imminent threat of environmental damage, which they have caused or may cause.

- Third, when the damage has occurred, it imposes the obligation on all economic operators to **take the necessary measures to avoid further damage**. Thus, in the context of environmental liability regulations, "measures to avoid further damage" are defined as "*any measure, after environmental damage has occurred, intended to limit or prevent further environmental damage, by controlling, containing or removing or otherwise managing the damage factors*".

- Finally, it imposes the obligation on the operators of the economic activities listed in Annex III of the law, and on all other operators not included in Annex III if there is intent, fault or negligence, to **take the "remedial measures" permitting the restoration** of the natural resources which have undergone significant damage to the condition they were in before being affected (baseline condition) and which are defined as "*any action or combination of actions, including interim measures, to restore, rehabilitate or replace damaged natural resources and/or impaired services or to provide an alternative to those resources or services, as set forth in Annex II*".

Unlimited liability

Operators are required to carry out the preventive, avoidance and remedial measures necessary to return the damaged resources and services to their baseline condition, with no limitations on cost.

Exemptions from the obligation to bear costs

There are some situations in which the operator shall not be required to bear the costs of preventive, avoidance and remedial measures.

- First, the operator shall not be required to bear the costs of measures to prevent, avoid or remedy damage if he proves that the environmental damage or imminent threat of such damage occurring was caused exclusively by the following:

  a) The actions of a third party unrelated to and independent of the organisation of the activity in question, despite the existence of adequate safety measures.

  b) Compliance with an order or compulsory order or instruction issued by a competent public authority, including orders issued in the execution of a contract covered by legislation on government contracts.

  In such situations, the operator shall nevertheless be required to adopt and implement measures to prevent, avoid and remedy environmental damage.

  Any costs incurred will be recovered, either by taking proceedings against the third parties, or by claiming against the Public Administration responsible for the public authority that issued the order or instruction.

  Similarly, the competent authority may require the third party to bear the costs of the measures taken.

- Second, the operator shall not be required to bear the costs of remedial measures if it shows that no fault, intent or negligence existed on its part, in any of the following circumstances:

  a) Where the emission or the act directly causing the environmental damage is the express and specific purpose of an administrative authorisation granted in accordance with the legislation applicable to the activities listed in Annex III.

  In addition, in the performance of the activity the operator must have adhered strictly to the conditions and requirements established in the authorisation and in any applicable regulations in force at the time of the emission or act causing the environmental damage.

  b) Where the operator shows that the environmental damage was caused by an activity, emission or use of a product which, at the time of the emission or use, was not considered potentially damaging to the environment, based on the state of technical and scientific knowledge at the time.

  In such situations, the operator shall nevertheless be required to take and implement measures to remedy the environmental damage.

  The operator shall be entitled to recover the costs of measures to remedy environmental damage under the terms established in regional legislation.

SECOND PILLAR: Mandatory financial security

This second pillar consists of the obligation for certain operators in Annex III of Law 26/2007, of 23 October, to provide a financial security to cover the environmental liability inherent in their intended activity.

This obligation, which is independent and does not exempt operators from the general obligations of the first pillar on which the regulations are based, has the following characteristics:

Operators obliged

The operators of the economic activities of Annex III of the law required to provide a financial security are those established in Article 37.2 a) of the Regulation of partial development of the law:

- Operators subject to the scope of application of Royal Decree 840/2015, of 21 September, approving measures to control risks inherent to major accidents involving hazardous substances (SEVESO).
- Operators subject to the scope of application of Royal Legislative Decree 1/2016, of 16 December, approving the consolidated text of the law on Integrated Pollution Prevention and Control (IPPC).
- Waste management operators in the extractive industries, in the case of installations classified as Category A, according to Royal Decree 975/2009, of 12 June.

For all other operators, providing the financial guarantee shall be voluntary.

Determining the financial security and reporting to the competent authority

The determination of the amount of the mandatory financial security for operators required to provide it must be based on an **environmental risk analysis**, to be performed by the operators or by a third party contracted by them, following the structure established by Standard UNE 150008 or other equivalent standards.

The regulations introduce the possibility of producing sector-specific environmental risk analyses, voluntary instruments on which, following a favourable report from the Technical Commission for the Prevention and Remediation of Environmental Damages, individual environmental risk analyses can be based.

Based on the environmental risk analyses, the operators must perform the following operations, described in Article 33 of the Regulation of partial development of the law:

a) Identify the accident scenarios and establish the probability of occurrence of each scenario.

b) Estimate the **Environmental Damage Index** associated to each accident scenario, following the steps established in Annex III of the regulations.

c) Calculate the risk associated with each accident scenario based on the probability of occurrence of the scenario and the value of the environmental damage index.

d) Select the scenarios with the lowest associated environmental damage index representing 95 percent of the total risk.

e) Set the amount of the financial security as the value of the environmental damage of the scenario with the highest environmental damage index among the selected accident scenarios. This process shall follow these steps:

   1. First, the environmental damage generated in each scenario shall be quantified.
   2. Second, the environmental damage generated in each scenario shall be monetized, the value of which shall be equal to the cost of the primary remediation project.

The cost of prevention and avoidance measures, representing at least 10% of the cost of the primary remediation project, must be added to the calculated amount.

The Regulation of partial development of the law also establish the possibility of developing rate tables (tablas de baremos), which following a favourable report from the Techni cal Commission for the Prevention and Remediation of Environmental Damage will enable the operator to determine the amount of the financial security without having to perform an individual environmental risk analysis.

Once the financial security has been provided, the operator must submit to the competent authority an **affidavit stating** that it has been provided in accordance with the procedure established in the regulations. The competent authorities shall establish the corresponding monitoring systems enabling them to check operators' compliance with their obligations to determine and provide the financial security.

Flexibility mechanisms

Once the environmental risk analyses have been performed, the following operators are exempted from the obligation to provide a financial security:

- Operators of activities likely to cause damage remediation which is estimated to cost less than 300,000 euros.
- Operators of activities likely to cause damage remediation which is estimated to cost between 300,000 and 2,000,000 euros, and who can accredit adherence either to the EU Eco-Management and Audit System (EMAS) or to the current UNE- EN ISO 14001 environmental management system.

Nevertheless, these operators must also submit an affidavit to the competent authority.

Limited coverage

Preventive, avoidance and primary remedial measures must be covered, to a maximum of 20 million euros.

Voluntarily, operators may provide a financial security for a larger amount. It is important to take this into account, as despite having provided a financial security, which has a limited coverage, unlimited environmental liability is applicable.

Deadlines for the provision of a financial security

The obligation to provide a financial guarantee is being introduced gradually, as recommended by the European Commission in its report of October 2010 on the application of Directive 2004/35/CE.[2]

Order ARM/1783/2011, of 22 June, established the order of priority and calendar for approval of the Ministerial Orders marking the requirement for the mandatory financial security, according to the Fourth Final Provision of Environmental Liability Act, Law 26/2007, of 23 October.

Order APM/1040/2017, of 23 October, complies with the ruling of Order ARM/1783/2011, of 22 June, setting the date from which the mandatory financial security must be provided for the activities in Annex III of Law 26/2007, of 23 October, classified as priority level 1 and priority level 2, according to the Annex to Order ARM/1783/2011, of 22 June.

According to Order APM/1040/2017, of 23 October, priority level 1 activities must provide a financial security from 31 October 2018, and priority level 2 activities from 31 October 2019.

For priority level 3 operators, Order TEC/1023/2019, of 10 October, establishes 16 October 2021 as the date from which the mandatory financial security will be required,

2 https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52010DC0581&from=EN

except for the activities of intensive rearing of poultry or pigs, where the financial guarantee must be provided from 16 October 2022.

Types

The types of financial security specified in Law 26/2007 are:

- An insurance policy meeting the requirements of Law 50/1980, of 8 October, on Insurance Contracts and taken out with an insurance company authorised to operate in Spain.
- A bank guarantee provided by a financial institution authorised to operate in Spain.
- A technical reserve consisting of an ad hoc fund of financial investments backed by the public sector.

The financial security can consist of a combination of any of the above, used individually or complementing each other in terms of amount and guaranteed events.

These two pillars, on which the environmental liability regulations are based, ensure that measures to prevent and remedy environmental damage and to avoid further damage are taken, and that their financial costs are transferred from society in general to the economic operators which were responsible for the damage taking place.

This ensures the effective application of the "prevention" and "polluter pays" principles on which the environmental liability regulations are based.

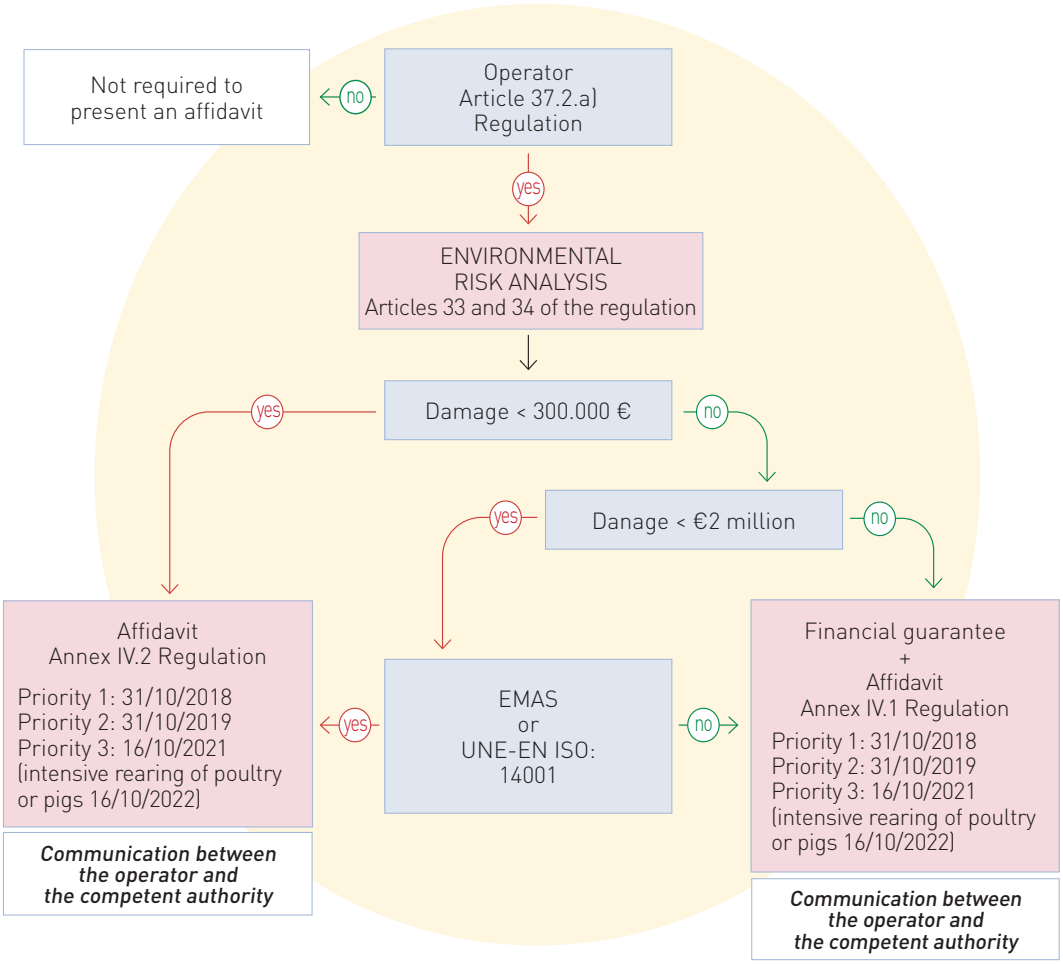


Figure 4: Mandatory financial security.
Source: *Ministry for the Ecological Transition and the Demographic Challenge*

In addition to these two pillars, another element is very important for achieving the goals of the environmental liability regulations: the promotion of **risk management measures**, which are all the actions to be taken during the normal operation of the installations or activity in order to reduce risk, representing a change to the probability of an accident and/or its consequences.

Thus, the measures to be considered before an environmental damage occurs are those of risk management, to be implemented during normal operation or even at the design stage. These measures should not be confused with preventive measures, which are those applied when an imminent threat of damage appears. The dividing line between these measures is the occurrence of an event, act or omission which causes an imminent threat of damage in other words, the installations are no longer functioning normally.

Adopting these risk management measures, based on the information obtained from **environmental risk analyses**, leads to a reduction in the probability of accidents and of their consequences, and lowers the associated costs and the costs of the financial security to be provided.

Environmental risk analyses are therefore a tool to assist corporate decision-making, enabling appropriate risk management for the installations, benefiting not only the environment but the company as a whole, including industrial safety.

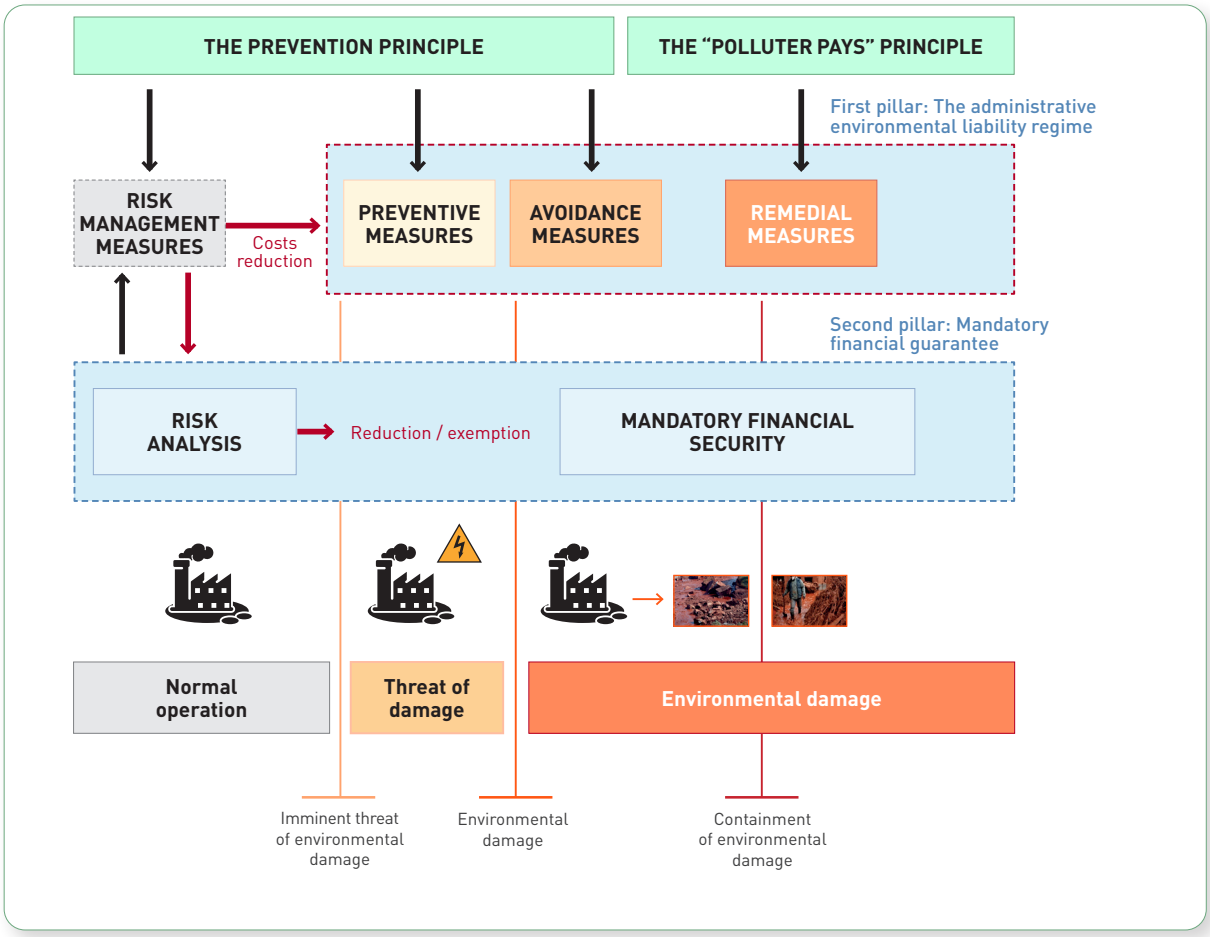


Figure 5: Principles and pillars of the environmental liability regulations.
Source: *Ministry forthe Ecological Transition and the Demographic Challenge*

Benefits of the mandatory financial guarantee system

- **Benefits for operators**
  - A competitive advantage for the operator, improving its corporate image, integrating with its corporate social responsibility policies and distinguishing it from others that have not covered their risks, leading to lower operational risks and greater viability if an accident should occur.
  - In the case of accident, the financial security would cover the remediation costs which would otherwise be borne by the operator and could harm the viability of the business.
  - Environmental risk analyses are a tool to assist corporate decision-making, enabling appropriate overall risk management of the installations.
  - It introduces common operating standards in Spain for companies with higher potential risk to the environment, ensuring that they all cover their environmental risks and avoiding imprudent cost-cutting. This helps avoid skewing the Spanish domestic market and ensures that the environmental costs of operators are internalised in their production costs.
- **Benefits for the State and society in general**
  - It promotes the culture of environmental risk management, contributing to a reduction in the number of accidents affecting the environment and minimising their consequences.
  - If an accident occurs which causes environmental damage, the prevention, avoidance and remediation costs are not borne by the State and society in general, but transferred to the liable operator

4.2 ADMINISTRATIVE POWERS

Independently of the obligations for operators defined in Law 26/2007, of 23 October, described above, the competent administration has a set of **powers to prevent or avoid further damage**, as defined in Article 18 of Law 26/2007, of 23 October, establishing the following:

"Where it considers that there is a threat of damage or that new damage may be caused, the competent authority may at any time issue a reasoned ruling, in accordance with the provisions of Chapter VI, on any of the following decisions:

It may require the operator to provide information on any imminent threat of environmental damage where there are indications that such damage may occur.

It may require the operator to immediately take measures to prevent damage and avoid new damage and enforce its compliance

It may give the operator mandatory instructions concerning the measures to prevent damage or avoid further damage, or the cancellation of such measures, as appropriate

It may implement the preventive and avoidance measures at the expense of the liable party, in the circumstances foreseen in Articles 23 and 47."

Meanwhile, Article 21 of Law 26/2007, of 23 October, establishes the administration's **powers relating to damage remediation**:

"In instances of environmental damage, the competent authority may at any time issue a reasoned ruling, in accordance with the provisions of Chapter VI, on any of the following decisions:
It may require the operator to provide supplementary information on damage that has occurred.

It may take, require the operator to take or give instructions to the operator concerning all urgent measures to immediately control, contain, remove or otherwise manage the relevant contaminants and/ or any other

damage factors in order to limit or to prevent further environmental damage, adverse effects on human health, or further impairment of services.

It may require the operator to take the necessary remedial measures, in accordance with Annex II.

It may give mandatory instructions to the operator with regard to the remedial measures to be taken, or the cancellation of such measures, as applicable.

It may itself take the remedial measures, at the expense of the liable party, in the circumstances established in Articles 23 and 47."

Thus, the competent authority has the power to assess the effectiveness of the damage prevention, avoidance and remediation measures taken by the operator, and if applicable, require the operator to take new measures of this type, or execute them itself at the expense of the liable operator.

The competent authority may exercise these powers at two different times: before beginning environmental liability administrative proceedings, or during such proceedings.

4.2.1 Before beginning administrative proceedings

Administrative powers before beginning environmental liability administrative proceedings take the form of the ability to apply the interim measures specified in Article 44.2 of the law, and the ability to take action in the cases of emergen cy established in Article 23.2 of the law:

Interim measures

Article 44.2 of Law 26/2007, of 23 October, establishes the possibility of adopting such measures before beginning the proceedings, with the limits and conditions established in Article 56.2 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

These interim measures, according to Article 44.3 of Law 26/2007, may be imposed upon the operator, and if not complied with, may be enforced and their costs borne by the liable operator.

This group of interim measures would include the measures which the competent authority may require of the operator at any time, or may cancel, relating to the preventive measures and the measures to avoid further damage to which Article 18 of Law 26/2007 refers.

As established in Article 56.2 of Law 39/2015, the interim measures must be confirmed, amended or lifted in the agreement to begin environmentalliability administrative proceedings, which must take place within fifteen days of their adoption.

Direct action in case of emergency

Article 23.2 of Law 26/2007 establishes that *"in emergency situations the competent authority may act without having to initiate the procedure established in the present law to establish remedial, preventive or avoidance measures or order them to be taken."*

Article 23.2 goes on to establish that *"once the emergency situation has ended, the competent authority, having initiated the corresponding procedure, shall issue a decision setting the amount of the costs of the measures implemented under the present article and identifying the person(s) obliged to bear these costs, which may be enforced."*

Once the necessary measures have been implemented, the competent authority will order the corresponding environmental liability administrative proceedings, the resolution of which, in accordance with Articles 23.2 and 23.3 of Law 26/2007, of 23 October, will set the amount of the costs of the measures taken, and the operator, or if applicable, the third party which caused the damage or the imminent threat of damage will be required to cover that cost for its recovery.

4.2.2 During the enforcement proceedings

During the environmental liability enforcement proceedings, the competent authority will have the following powers:

It may require the operator to provide information or take measures, and may give it instructions

Both Article 18 of Law 26/2007, and Law 39/2015 of 1 October, on the Common Administrative Procedure for Public Administrations, empower the competent authority to require the operator, through a reasoned ruling, to provide information on any imminent threat of environmental damage and to immediately take the necessary prevention and avoidance measures, and to give mandatory instructions to the operator on the preventive or avoidance measures to be taken or cancelled.

Direct action

Meanwhile, Article 23.1 of Law 26/2007, of 23 October, establishes that *"the competent authority may itself decide upon and take the preventive, avoidance and remedial measures provided for in this Law, inter alia in the following circumstances:*

The liable operator cannot be identified and a delay in identification might result in environmental damage being caused.

More than one operator is responsible and effective distribution is not possible in time and space to guarantee correct execution of the measures.

Studies and expertise are required or the technical means so advise.

Action is required in relation to the property of Public Administrations or of third parties which would be difficult or inappropriate for the responsible operator to undertake.

The seriousness or importance of the damage so require."

Regarding the costs of the measures adopted, article 23.3 of the law establishes that the competent authority shall recover the costs of the preventive, avoidance (or remedial) measures taken from the operator or, as the case may be, from the third party who caused the damage or imminent threat of damage.

Interim measures

Interim measures, as specified in Article 44 of Law 26/2007, can also be invoked during environmental liability administrative proceedings. Due to their temporary nature, such measures are subject to expiry, as established in Article 56 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

As established in Article 56.2 of Law 39/2015, the interim measures must be confirmed, amended or lifted in the agreement to begin environmental liability enforcement proceedings, which must take place within fifteen days of their adoption.

It is important to take into account that such interim measures will not come into force if the proceedings do not start within that time, or if the initial agreement does not rule expressly to that effect.

Enforced compliance

Finally, compliance with any of the measures which the competent authority may impose on the operator may be enforced, following a warning, in accordance with Article 47 of the law.

Such enforced compliance can take the form of subsidiary implementation and/or the imposition of a maximum of five penalty payments, each no more than 10% of the estimated total cost of the measures being implemented (Article 47.3 of Law 26/2007).

In relation to the subsidiary implementation by the Administration of measures to prevent damage and/ or avoid further damage, Article 48 of the law establishes that the competent authority shall recover the costs of the prevention and/or avoidance measures from the operator or, if applicable, from the third party who caused the damage or imminent threat of damage.

5. ACTIONS TAKEN TO IMPLEMENT THE REGULATIONS

Article 3 of the Regulation of partial development of the Environmental Liability Act, Law 26/2007, of 23 October, created the **Technical Commission for the Prevention and Remediation of Environmental Damages**.

The Technical Commission facilitates technical cooperation and collaboration between the State Government, the Autonomous Regions and local authorities, to share information and advice on preventing and remedying environmental damage, and is attached to the Ministry for the Ecological Transition and the Demographic Challenge through the Directorate-General for Environmental Quality and Assessment.

To achieve the goals of the environmental liability regulations, and facilitate compliance with the obligations established in the law both for the competent administrations and for operators, the Directorate-General for Environmental Quality and Assessment of the Ministry for the Ecological Transition and the Demographic Challenge, in its role as chair and secretariat of the Technical Commission for the Prevention and Remediation of Environmental Damages, has driven the development of implementing regulations of Law 26/2007, of 23 October, producing a series of technical instruments, guides and protocols for action. At the same time, it carries out work on training, dissemination and access to information.

The development of all these tools, as indicated in the Commission's report to the European Council and Parliament in the context of Article 18.2 of Directive 2004/35/CE[3], together with the European Commission's working document REFIT, which assesses the implementation of Directive 2004/35/CE, is one of several highly effective actions incentivising operators to adopt a preventive approach, and thus contribute to the goals of the Directive.

This report establishes that the two main goals of the Directive, and thus of Law 26/2007, of 23 October, are to prevent significant environmental damage when there is an imminent threat, and to remedy such damage when it occurs.

This European Commission report highlights that these goals are prioritised, incentivising operators within the scope of application of the Directive to adopt a preventive approach, such as implementing an environmental management system, environmental safety measures, carrying out risk assessments, investing in risk abatement technology and aquiring sufficient financial security.

3 Report from the Commission to the European Parliament and to the Council pursuant to Article 18(2) of Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage.

Second, in case of imminent threat of damage or actual damage, operators are liable to take the necessary preventive or remedial action and to bear all costs.

Both the working document of the European Commission REFIT, and the Report from the Commission to the European Parliament and to the Council pursuant to Article 18(2) of Directive 2004/35/CE, take an overall positive view of the Directive, highlighting that:

It contributes to improving the level of environmental protection and to preventing and remedying environmental damage in the European Union.

It is having a significant preventive effect, although this is difficult to quantify with the available information, which appears to be leading to fewer incidents, resulting in less environmental damage, and they emphasise that work must continue to gather the information needed to evaluate this aspect in the future.

The practical application of the regulation has increased. They also show an increase in the offering available from the insurance industry for environmental liability.

On the other hand, the report recognises limitations in the beneficial effects of the Directive, and that its full potential has not yet been developed. The report notes aspects in need of improvement, including:

Variations in transposition and implementation in the different Member States.

The difficulties the regulation itself presents in the interpretation and practical application of certain concepts, such as the damage significance threshold and favourable conservation status.

The need to gather more information and more harmonised information in order to assess the different aspects of the Directive.

The lack of resources and technical competencies for applying the Directive in some Member States.

In short, the reports published by the European Commission in April 2016 consider that in general the Directive is effective, though not uniformly across the different Member States. For this reason, they conclude that more work must be done to improve some aspects and achieve a more homogeneous implementation across Europe, through promoting support instruments.

To this end, the European Commission has launched a Multi-Annual Work Plan for the period 2017-2020, with the participation of the Group of National Experts on Directive 2004/35/CE on environmental liability, created by the European Commission in order to provide support for the implementation of the Directive through interpretative notes, training programmes and professional assistance services. The Directorate-General for Environmental Quality and Assessment has represented Spain in this National Experts Group since 2008.

Alongside this, the European Commission report recommends that Member States take initiatives to support the above measures, such as:

- Producing guidance documents, training activities, and electronic risk analysis tools, incentivising the operators within the scope of application of the Directive to take a precautionary approach.

It gives examples of Member States that have already done this, such as Spain.

- Sharing experiences and best practices, and supporting each other in developing skills.

- Reviewing their interpretation of key rulings of the Directive.

- Gathering and systematically recording data to show the effective implementation of the Directive and accumulate experience.

To summarise, the European Commission reports of 2010 and 2016 emphasise that several Member States, including Spain, have made a great deal of progress in the development of financial and technical evaluation guidelines, environmental risk analysis tools, and other elements, making them better prepared to implement the Directive.

All the information on the technical instruments, guides and action protocols developed can be consulted and are publicly available via the environmental liability section of the Ministry for the Ecological Transition and the Demographic Challenge website.

Figure 6: Environmental liability section. Ministry website.
Source: *Ministry for the Ecological Transition and the Demographic Challenge*

5.1 TECHNICAL INSTRUMENTS DEVELOPED

These are the main technical instruments developed since 2008 by the Directorate-General for Environmental Quality and Assessmnet of the Ministry for the Ecological Transition and the Demographic Challenge to facilitate the implementation of the environmental liability regulations.

5.1.1 Drafting the document "*Structure and general content of the sector-specific instruments for environmental risk analysis*"

Article 24 of the Environmental Liability Act, Law 26/2007, of 23 October, establishes that the operators of the activities included in Annex III of the law, without prejudice to the exemptions noted in its Article 28, must provide a financial security to cover the inherent environmental liability of their intended activity.

The same Article determines that the amount of this financial security will be set based on the environmental risk analisys of the activity, to be performed according to the methodology established in government regulations.

Article 34 of the Regulation of partial development of Law 26/2007, of 23 October, approved by Royal Decree 2090/2008 of 22 December and amended by Royal Decree 183/2015 of 13 March, indicates that the environmental risk analyses will be performed by the operators or a third party contracted by them, following the schema established by UNE 150008 or other equivalent standards.

In order to facilitate the evaluation of risk scenarios and to reduce costs, the Regulation of partial development of Law 26/2007, of 23 October, introduces two voluntary instruments: sector-specific environmental risk analyses and rate tables (tablas de baremos in Spanish).

Sector-specific environmental risk analyses may consist of model environmental risk reports, known as MIRAT, or guides to risk analysis methodology, depending on the degree of homogeneity of the sector in terms of environmental risk. Rate tables are envisaged for sectors or small and medium enterprises whose high degree of homogeneity enables the standardisation of their environmental risks.

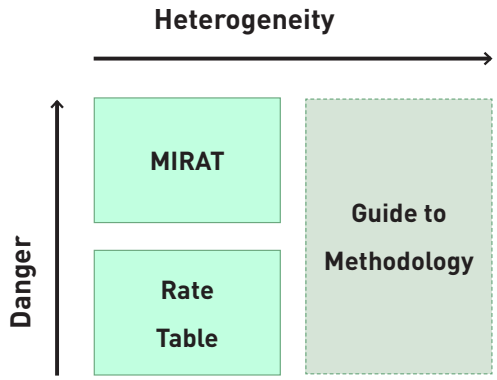


Figure 7: Sector-specific risk analysis and rate tables.
Source: *Ministry for the Ecological Transition and the Demographic Challenge*

Operators can create their environmental risk analyses based on these sector-specific risk analysis tools, which must have previously received a favourable report from the Technical Commission for the Prevention and Remediation of Environmental Damages for each sector.

This document on the structure and general content of the sector-specific instruments for environmental risk analysis was approved by the Technical Commission for the Prevention and Remediation of Environmental Damages in 2011, and made available to the interested parties on the Ministry website. The entire document can be consulted and downloaded at this link:

Structure and general content of the sector-specific instruments for environmental risk analysis

Two example models of the MIRAT and the Rate Table were also created and published on the Ministry website after approval by the Technical Commission for the Prevention and Remediation of Environmental Damages. These documents are available via these links:

Example MIRAT form

Example rate table form

5.1.2 Creation of a support service for sectors developing sector-specific environmental risk analyses

Since 2010, the Directorate-General for Environmental Quality and Assessment has provided a technical support service for the occupational sectors in Annex III who voluntarily choose to present a sector-specific environmental risk analysis or rate table to the Technical Commission for the Prevention and Remediation of Environmental Damages. The goals of this service are:

- To answer questions on specific aspects of the methodology for creating and planning sector-specific environmental risk analyses or rate tables.
- To help in the creation of a practical exercise to determine the coverage of the financial security for a specific activity representing the sector, and guidance in quantifying the damage associated with the risk scenarios.
- To advise on monetising the accident scenarios extrapolated from the environmental risk analysis, and answer questions on the use and functioning of the Environmental Liability Supply Model (MORA). This service is also open to individual operators who are developing individual environmental risk analyses.

In the context of these consultation services, which are still functioning, since 2008 over 600 queries on environmental risk analyses have been answered, through written consultations or through holding specific meetings with the sectors and operators using this service.

All the information on this service can be consulted via the following link:

Service to support sectors mailbox

It is also available the Guidance document for the development of environmental risk analyses

5.1.3 Developing pilot experiments for the design of MIRAT (Model Environmental Risk Reports), Rate Tables and Guides to Methodology

The Directorate-General for Environmental Quality and Assessment has funded and developed a set of analytical instruments to support different sectors in the creation of sector-specific risk analyses.

Sector-specific risk analysis instrument or rate table	Date of creation
Rate table for the paint and printer ink manufacturing sector, created for the Asociación Española de Fabricantes de Pinturas y Tintas de Imprimir (ASEFAPI).	2011
Guide to methodology for the polymetallic sulphide and sodium and potassium salts mining industry, created for the Confederación Nacional Empresarios Minería y Metalurgia (CONFEDEM).	2012
MIRAT for the olive oil and oilseed industry, created for the Federación Española de Industrias de la Alimentación y Bebidas (FIAB).	2012
Guide to methodology for hazardous and non-hazardous waste management activities, created for the Asociación Nacional de Gestores de Residuos de Automoción (AN- GEREA), Asociación de Empresas Gestoras de Residuos y Recursos Especiales (ASEGRE) and Federación Española de la Recuperación y el Reciclaje (FER).	2015
MIRAT for road freight transport activities, created for the Confederación Española de Transporte de Mercancías (CTEM).	2015
MIRAT for the smelting industry, created for the Federación Española de Asociaciones de Fundidores (FEAF).	2016
MIRAT and rate table for the poultry meat and egg sector.	2018
MIRAT and rate table for the pig sector.	2019

The complete documents of these sector-specific risk analyses are available in the environmental liability section of the Ministry for the Ecological Transition and the Demographic Challenge website, in the section on sector-specific risk analysis tools.

Meanwhile, numerous industrial associations have developed sector-specific risk analyses and rate tables at their own expense, and submitted them to the Technical Commission for the Prevention and Remediation of Environmental Damages for approval.

After evaluating these sector-specific instruments, following the procedure approved by the Technical Commission for the Prevention and Remediation of Environmental Damage, a favourable report was issued for the following 25 sector-specific environmental risk analysis instruments and rate tables:

Sector-specific risk analysis instrument or rate table	Date of favourable report
"Desarrollo y aplicación de un proyecto MIRAT para el sector siderúrgico (SID-MIRAT). Acería eléctrica, laminaciones y tratamientos superficiales" (Development and application of a MIRAT project for the steel sector, electric arc furnaces, lamination and surface treatments), by the Unión de Empresas Siderúrgicas (UNESID).	December 2012
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) del sector pasta y papel" (Model environmental risk report for the pulp and paper sector), by the Asociación Española de Fabricantes de Pasta y Papel (ASPAPEL).	February 2014
"Guía Metodológica del sector perfumería y cosmética" (Guide to methodology for the perfumery and cosmetics sector), by the Asociación Nacional de Perfumería y Cosmética (STANPA).	February 2014

Sector-specific risk analysis instrument or rate table	Date of favourable report
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para las actividades desarrolladas por las empresas del sector de fabricación de cemento por vía seca" (Model environmental risk report for the dry process cement manufacturing sector), by the Agrupación de Fabricantes de Cemento de España (OFICEMEN).	March 2014
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para las actividades desarrolladas por las graveras del sector de fabricación de áridos" (Model environmental risk report for the gravel industry), by the Federación de Áridos (FDA).	March 2014
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT)" (Model environmental risk report for public cleaning businesses) by the Asociación de Empresas de Limpieza Pública (ASELIP).	March 2014
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT)" (Model environmental risk report for public cleaning businesses) by the Asociación de Empresas de Limpieza Pública (ASELIP).	July 2014
"Proyecto Piloto Tabla de Baremos del Sector Fabricación de Pinturas y Tintas de imprimir" (Pilot project rate table for the paint and printer ink manufacturing sector) by the Asociación Española de Fabricantes de Pinturas y Tintas de Imprimir (ASEFAPI).	July 2014
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para las centrales térmicas" (Model environmental risk report for thermal power plants), by the Asociación Española de la Industria Eléctrica (UNESA).	November 2014
"Guía Metodológica para la elaboración de los análisis de riesgos medioambientales para plantas de GNL" (Guide to methodology for environmental risk analyses for LNG plants), by the Asociación Española del Gas (SEDIGAS).	May 2015
"Guía Metodológica para la elaboración de los análisis de riesgos medioambientales para el sector gasista" (Guide to methodology for environmental risk analyses for the gas sector), by the Asociación Española del Gas (SEDIGAS).	May 2015
"Guía Metodológica del sector de tecnología sanitaria" (Guide to methodology for the health technology sector) by the Federación Española de Empresas de Tecnología Sanitaria (FENIN).	May 2015
"Modelo de Informe de Riesgos Ambientales Tipo para el sector de producción y comercialización de productos fitosanitarios" (Model environmental risk report for the plant protection product manufacturing and marketing sector), by the Asociación Empresarial para la Protección de las Plantas (AEPLA).	June 2015
"Modelo de Informe de Riesgos Ambientales Tipo para el sector de la cal" (Model environmental risk report for the lime (calcium oxide) industry), by the Asociación Española de Fabricantes de Cal y Derivados (ANCADE).	June 2015
"Guía Metodológica para determinadas actividades de gestión de residuos peligrosos y no peligrosos" (Guide to methodology for certain hazardous and non-hazardous waste management activities) presented by the Asociación de Empresas Gestoras de Residuos y Recursos Especiales (ASEGRE), the Asociación Nacional de Gestores de Residuos de Automoción (ANGEREA) and the Federación Española de la Recuperación y el Reciclaje (FER).	June 2015
"Guía Metodológica de Análisis de Riesgos Medioambientales en el Sector Químico y Petroquímico" (Guide to methodology for environmental risk analyses in the chemical and petrochemical sector), by the Federación Empresarial de la Industria Química Española (FEIQUE).	December 2015
"Proyecto de Responsabilidad Medioambiental: Realización de MIRAT para Unidad de Separación de Gases del Aire (ASU)" (Environmental liability project: MIRAT for Air Separation Units) by the Asociación de Fabricantes de Gases Industriales y Medicinales (AFGIM).	January 2016
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para las actividades de transporte por carretera" (Model environmental risk report for road haulage), submitted by the Confederación Española de Transporte de Mercancías (CTEM), Asociación Empresarial Española de Carga Fraccionada (AECAF) and Asociación de Transporte Internacional por Carretera (ASTIC).	October 2016
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para ATEDY" (Model environmental risk report for the plaster industry), by the Asociación Técnica y Empresarial del Yeso (ATEDY).	November 2016

Sector-specific risk analysis instrument or rate table	Date of favourable report
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para el sector de patatas fritas y productos de aperitivo" (Model environmental risk report for the potato chip and snack sector), by the Asociación de Fabricantes de Aperitivos (AFAP).	December 2016
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para el sector cerámico" (Model environmental risk report for the ceramics sector), by the Asociación Española de Fabricantes de Azulejos y Pavimentos Cerámicos (ASCER).	December 2016
"Modelo de informe de Riesgos Ambientales TIPO (MIRAT) para el sector de la fundición" (Model environmental risk report for the smelting industry), presented by the Federación Española de Asociaciones de Fundidores (FEAF).	March 2017
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para el sector de fabricación de fritas, esmaltes y colores cerámicos" (Model environmental risk report for the ceramic frits, glazes and colour manufacturing sector), by the Asociación Nacional de Fabricantes de Fritas, Esmaltes y Colores Cerámicos (ANFFECC).	March 2017
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para el sector de instalaciones de logística y almacenamiento de productos químicos y petrolíferos" (Model environmental risk report for the sector of logistics and storage of chemical and petroleum products), by the Asociación Española de Terminales Receptoras de Graneles Químicos, Líquidos y Gases (ASTERQUIGAS).	May 2018
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para el sector galvanización en caliente" (Model environmental risk report for the hot dip galvanizing sector), by the Asociación Técnica Española de Galvanización (ATEG).	March 2019
"Modelo de Informe de Riesgos Ambientales Tipo (MIRAT) para el sector de la avicultura de puesta y de carne" (Model environmental risk report for the poultry meat and eggs sector) and "Tabla de Baremos para el sector de la avicultura de puesta y carne" (Rate table for the poultry meat and eggs sector) presented by the Asociación de Productores de Huevos (ASEPRHU) and the Interprofesional Avícola PROPOLLO.	October 2019

These tools will help operators required to provide afinancial security to determine its amount, and have considerable added value for identifying risk management measures, with an emphasis on the precautionary principle which is the basis of Law 26/2007, of 23 October.

It should be noted that having so many sector-specific Article risk analysis instruments available is a significant element to take into account in the evaluation of the implementation of Law 26/2007, of 23 October, mainly in the application of the prevention principle. As remarked above, environmental risk analysis instruments are tools which provide extremely valuable information for the environmental risk introduction of risk management measures, reducing the likelihood of environmental damage and its consequences.

5.1.4 Development of an environmental risk analysis for an individual operator and estimation of the corresponding financial security

The determination of the amount of the financial security foreseen in Article 24 of Law 26/2007, of 23 October, on Environmental Liability, which certain operators are required to provide, will be based on the environmental risk analysis for an individual operator.

Article 34 of the Regulation of partial development of Law 26/2007, of 23 October, approved by Royal Decree 2090/2008 of 22 December and amended by Royal Decree 183/2015 of 13 March, indicates that the environmental risk analyses will be performed by the operators or a third party contracted

by them, following the schema established by UNE 150008 or other equivalent standards.

In order to support the operators that according to 37.2 a) of the Regulation of partial development of Law 26/2007 of 23 October must provide a financial security and who must therefore determine its amount with an environmental risk analysis, the Directorate-General for Environmental Quality and Assessment has developed an analysis for individual operators.

This environmental risk analysis was made available to all interested operators in 2015 on the Ministry for the Ecological Transition and the Demographic Challenge website, to provide guidance and assistance in performing their environmental risk analyses.

Individual environmental risk analysis

5.1.5 Drafting the methodology of the Environmental Liability Supply Model (MORA) and designing a software tool

Article 33 of the Regulation of partial development of Law 26/2007 of 23 October establishes the procedure for determining the amount of the financial security required of certain operators of the activities included in Annex III of the law.

The procedure takes into account the requirement for these operators to perform an environmental risk analysis, in order to identify possible accident scenarios, and to establish the value of any environmental damage which might occur, and thereby determine the amount of the mandatory financial security.

In this context, the Directorate-General for Environmental Quality and Assessment, in order to offer all operators and industrial sectors a tool to help them meet these requirements, has created a methodology for calculating remediation costs, the Environmental Liability Supply Model, enabling a monetary value to be assigned to the risk scenarios identified by the operators in the environmental risk analyses of their premises.

This methodology was approved by the Technical Commission in its meeting on 13 April 2011, and the document summarising it is available on the Ministry for the Ecological Transition and the Demographic Challenge website.

Environmental Liability Supply Model methodology document

The Directorate-General for Environmental Quality and Assessment has also developed a software tool based on this methodology, in order to offer all operators and industrial sectors a comprehensive tool to assist in finding the monetary value of the environmental damage associated with each risk scenario, in accordance with the evaluation methodology established in the Regulation of partial development of Law 26/2007, of 23 October, and the remedial measures (primary, compensatory and complementary), together with the available technical improvements needed for returning the natural resources and the services they provide to their base-line condition.

This software tool enables operators, on the one hand, to know if they are required to provide a financial security, and calculate its ammount; and on the other, to evaluate the potential damage associated with their risk scenarios, allowing them to manage their own environmental risk.

It should be clarified that the Environmental Liability Supply Model is a voluntary tool to support the process of monetising environmental damage in the context of the Environmental Liability Act, Law 26/2007, of 23 October, and its results are not legally binding.

The software tool based on this methodology was made available free of charge to the public in April 2013, on the website of what is now the Ministry for the Ecological Transition and the Demographic Challenge, via the following link: Access to the MORA software tool

To make it easier to use the software tool, a user guide
is available at the following link: MORA software tool user guide

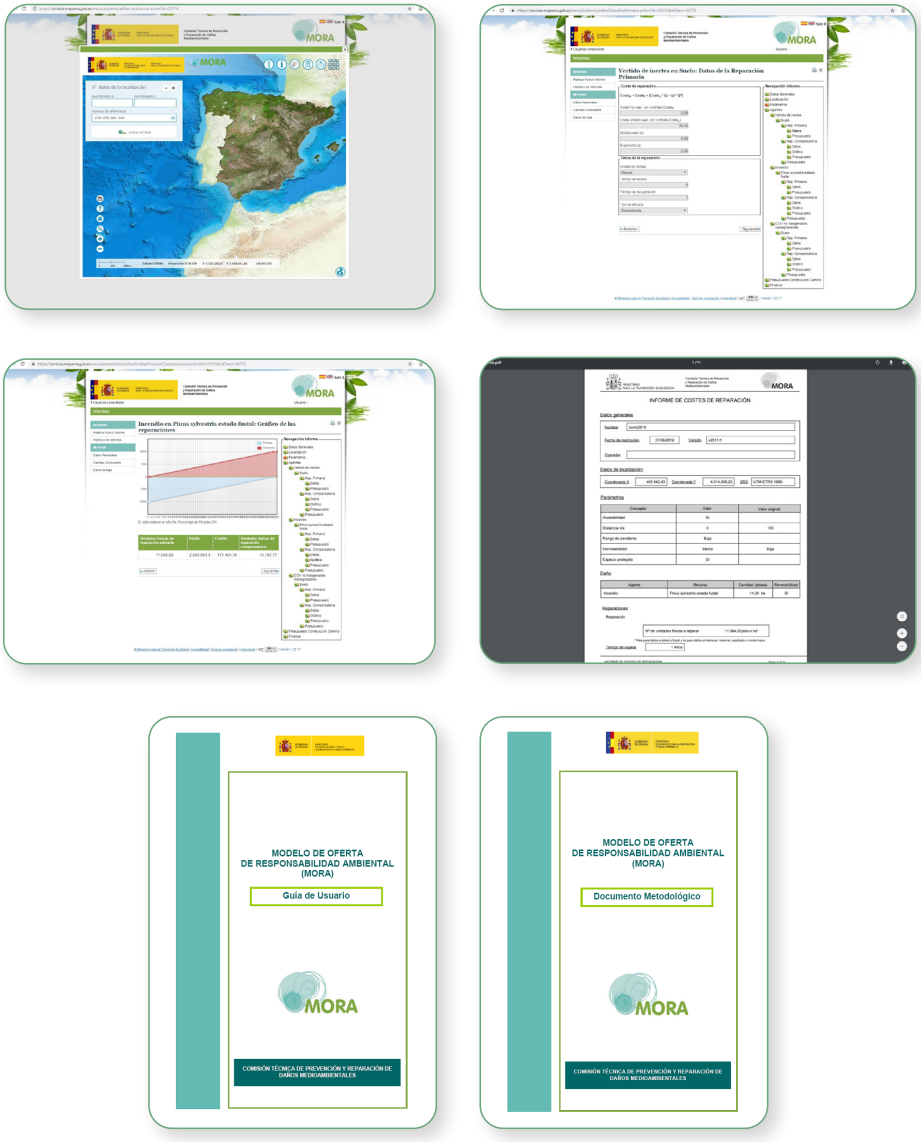


Figure 8: MORA software tool.
Source: *Ministry for the Ecological Transitionand the Demographic Challenge*

One of the most difficult input parameters to calculate is the quantification of the damage; in other words, estimating the amount of each resource which would be affected by each damaging agent. The environmental liability regulations, and more specifically the Regulation of partial development of Law 26/2007, offer the option of using models to simulate the transport and behaviour of the damaging agent in dispersion mediums and in receptors. For this purpose, the document "*Analysis of tools to evaluate the dispersion and behaviour of chemical agents in the context of environmental liability regulations*" was drafted to help operators choose the most suitable models for their case from all those available, analysing their potential application to the Environmental Liability Supply Model.

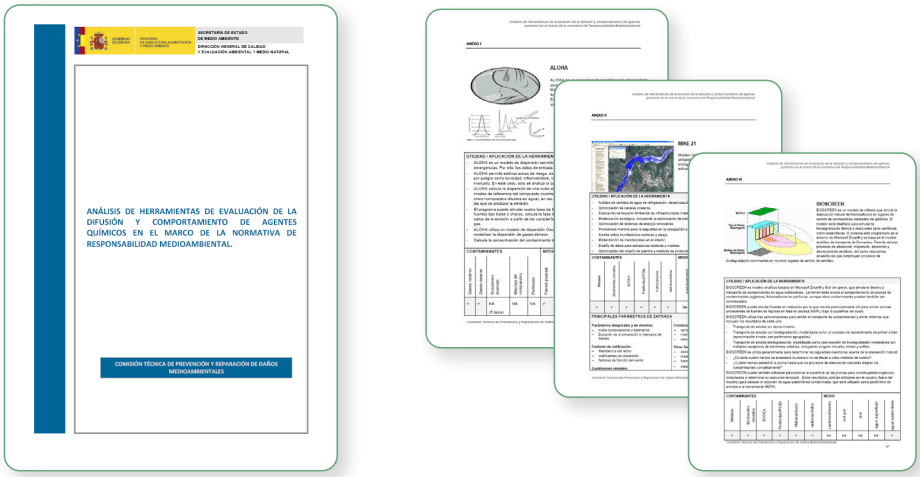


Figure 9: **Entries from the document "Analysis of tools to evaluate the dispersion and behaviour of chemical agents in the context of environmental liability regulations".**
Source: *Ministry for the Ecological Transition and the Demographic Challenge*

The entire document can be consulted and downloaded at this link:

Analysis of tools to evaluate the dispersion and behaviour of chemical agents in the context of environmental liability regulations

5.1.6 Web service of the Environmental Liability Supply Model (MORA) application

Several industry associations which developed sector-specific risk analyses asked the Directorate-General for Environmental Quality and Assessment to develop a web service to enable them to automatically connect their risk analysis computer tools to the Environmental Liability Supply Model computer application.

In response to these requests, a web service was developed which lets external applications connect to MORA and automatically access the system's functions. This web service was launched in September 2015.

As a result the monetary value of an environmental damage can be calculated through the MORA software tool either manually , or automatically through the web service, allowing external applications to connect to MORA.

Technical specifications of the MORA web service

5.1.7 Development of the Environmental Damage Index (IDM) software tool

Royal Decree 183/2015, of 13 March, amending the Regulation of partial development of Law 26/2007, of 23 October, approved by Royal Decree 2090/2008, of 22 December, amended the wording of Article 33 of the Regulations, introducing a new method which made it much simpler for the operator to determine the amount of the financial security.

This simplification is based on introducing an environmental damage index which the operator must estimate for each accident scenario identified in its environmental risk analysis, following the steps established in the new Annex III of the regulations.

The Environmental Damage Index (IDM) makes it possible to estimate an order of magnitude of the environmental damage caused in each accident scenario. This lets users compare different scenarios and choose a reference scenario as the basis for calculating the financial security.

This calculation is supported by a set of estimators of primary remediation costs, deduced from the methodology costs equation of the Environmental Liability Supply Model for each agent-resource combination.

With this new procedure, to establish the amount of the financial security , operators just need to quantify and monetise the environmental damage caused by a single selected reference scenario, rather than for all the identified scenarios, as had been stipulated in the previous wording of Article 33 of the Regulation of partial development of Law 26/2007, representing a substantial simplification and savings on resources.

The Directorate-General for Environmental Quality and Assessment has developed a software tool for estimating the IDM associated with each accident scenario, within the procedure to determine the amount of the financial security, available free of charge from the Ministry for the Ecological Transition and the Demographic Challenge website from April 2015, at the following link:

Access to the IDM software tool

Figure 10: IDM software tool.
Source: *Ministry for the Ecological Transitionand the Demographic Challenge*

To make it easier to use the software tool a user guide is available at the following link: IDM software tool user guide

As mentioned above, the European Commission has highlighted the Environmental Liability Supply Model (MORA) and the Environmental Damage Index (IDM) tools, as elements facilitating the implementation of the environmental liability regulations. Other European Union Member States have also shown great interest in them.

5.1.8. Development of the Environmental Risk Analysis (ARM) software tool

It enables the elaboration of environmental risk analysis report, according to UNE 150.008:2008 standard for environmental risk analysis and assessment, by helping in the construction of the event tree analysis: selection of the sources of danger; determination of the initiating events; introduction of the conditioning factors; and obtaining the accident scenarios with their respective associated probability and, where appropriate, the amount of pollutant released.

Access to the ARM software tool

Responding to this interest, and to facilitate awareness and use of the MORA, IDM and ARM tools by other Member States, English-language versions of these tools have been developed, and are available on the Ministry for the Ecological Transition and the Demographic Challenge website.

5.2 DEVELOPMENT OF GUIDELINES AND PROTOCOLS FOR ACTION

As well as the technical instruments described above, the Directorate-General for Environmental Quality and Assessment of the Ministry for the Ecological Transition and the Demographic Challenge has created a set of guides and protocols for action:

5.2.1 Guide to drafting Simplified Environmental Risk Management Studies

The main goals of the Environmental Liability Act, Law 26/2007 of 23 October, include the prevention of environmental damage, applying the precautionary principle.

The law requires all operators faced with an imminent threat of damage, whether or not their activity is included in Annex III, to adopt the necessary measures to prevent damage, or avoid further damage.

To meet these goals, operators must be incentivised to take a preventive approach through the development of tools enabling them to manage the environmental risk of their activity appropriately. Thus, one of the main tools contributing to effective risk management is the environmental risk analysis.

Environmental liability regulations establish that operators of the activities requiring the provision of a financial security, as stipulated in Article 24 of Law 26/2007, must perform an environmental risk analysis of their activity to determine the amount of that financial security.

In the process of performing the environmental risk analyses, these operators have or generate information which can be used to improve the environmental risk management of their activity, and to identify and design possible measures to prevent damage or avoid further damage.

As part of the commitment of the Directorate-General for Environmental Quality and Assessment to support operators within the scope of application of Law 26/2007, of 23 October, it has developed a *"Simplified Environmental Risk Management Study"*

(ESGRA), so that operators exempted from producing environmental risk analyses and not required to provide a financial security can access an instrument enabling them to manage the environmental risks of their activity appropriately.

ESGRA studies focus on risk management, prevention and avoidance, in order to provide assistance for operators exempted from performing environmental risk analyses. This methodology enables them to take the risk management decisions they deem appropriate, in order to minimise as much as possible the probability of the hypothetical accident scenarios and the value of any associated damage.

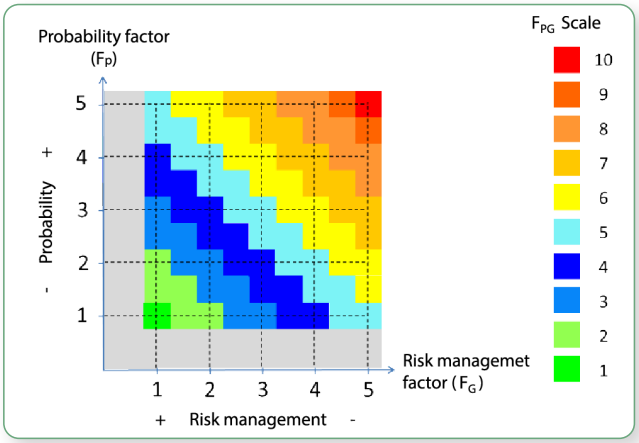


Figure 11: Risk management diagram.
Source: *Ministry for the Ecological Transition and the Demographic Challenge*

This document was made available to all interested operators in 2015 on the environmental liability section of the Ministry for the Ecological Transition and the Demographic Challenge website. The entire document and its annexes can be consulted and downloaded at this link:

ESGRA report

ESGRA annexes

5.2.2 Protocol for action in the case of incidents and environmental liability enforcement proceedings

The Directorate-General for Environmental Quality and Assessment has developed a "*Protocol for action in the case of incidents in the context of environmental liability regulations and administrative proceedings for environmental liability enforcement*".

The first part of this document, approved by the Technical Commission for the Prevention and Reme diation of Environmental Damage, includes a protocol for action with guidelines, both for operators and for the competent administration, in the case of an incident causing environmental damage or imminent threat of environmental damage, in the context of Law 26/2007, of 23 October.

The second part of the document sets out a procedure for environmental liability enforcement proceedings, covering different phases with interventions by the competent authority, the operators and interested parties, providing minimum criteria to be considered during the administrative proceedings. This

is intended to ensure that the instructions and resolution of these proceedings followenvironmental liability regulations and Law 39/2015 of 1 October, on the Common Administrative Procedure of Public Administrations.

This document, which includes a catalogue of prevention and avoidance measures, was made available to all interested operators in 2018 on the environmental liability section of the Ministry for the Ecological Transition and the Demographic Challenge website. The entire document and its annexes can be consulted and downloaded at these links:

Protocol for action and environmental liability enforcement proceedings

Annex I. Models

Annex II. Catalogue of prevention and avoidance measures

Several examples have been provided to illustrate how the administrative powers of the competent authority are articulated in the context of environmental liability and the liabilities and obligations of the operator. These examples are merely illustrative and. are not based on real cases where Law 26/2007, of 23 October, was or could have been applied, but they do present a realistic scenario.

Examples

5.2.3 Document on the "Structure and general content of environmental damage remediation projects"

Remedial measures are a key issue in the Environmental Liability Act, and its Regulation of partial development, in compliance with the "polluter pays" principle.

Law 26/2007, of 23 October, and its regulations establish the requirement for the operators responsible for causing environmental damage to present a remediation project to the competent authority, containing the remedial measures needed to return the damaged natural resources to their baseline condition.

In this context, the Directorate-General for Environmental Quality and Assessment has produced the document *"Structure and general content of environmental damage remediation projects"*, providing a description, as established in the environmental liability regulations, of the structure and content the operator must consider when drafting their proposed remediation project for submission to the competent authority.

This document, approved by the Technical Commission for the Prevention and Remediation of Environmental Damages, gives operators guidelines for the phases of the remediation project and the technical aspects to be taken into account when drafting it, with Annex I including an index explaining the required parts of the environmental damage remediation project.

Annex II of the document provides a set of forms corresponding to the content which must be included in the remediation project, helping to systematise all the information required of the operator.

Finally, Annex III of the document includes the catalogue of remediation techniques included in the Environmental Liability Supply Model (MORA) software tool and the procedure for choosing its recommended techniques.

This document, with its annexes, was made available to all interested operators in 2018 on the environmental liability section of the Ministry for the Ecological Transition and the Demographic Challenge website. It can be consulted and downloaded at these links:

Text structure and contents of remediation projects

Annex II. Forms for remediation projects

Annex III. Catalogue of remediation measures

A practical example has been produced to show how an environmental damage remediation project should be presented. It can be consulted and downloaded at these links:

Remediation project practical example

Annex I. Forms

Annex II. Cartography

Annex III. Characteristics of the substances

5.2.4 Guidance document on the financial security foreseen in Law 26/2007

The Directorate-General for Environmental Quality and Assessment has produced a "*Guide to the provision of the financial security stipulated in Law 26/2007, of 23 October, communication and review*".

This document contains important information on the procedure for determining the amount of the financial security stipulated in Law 26/2007, including some of the most complex aspects of the environmental risk analysis, the obligations assumed by the operator with the presentation of the affidavit, and the elements of the financial security.

This document was made available to all interested parties in January 2019 on the environmental liability section of the Ministry for the Ecological Transition and the Demographic Challenge website, in a section on the Financial Security for Environmental Liability, which also includes a section on the Environmental Damage Compensation Fund, created in partnership with the Directorate-General for Insurance and Pension Funds and the Insurance Compensation Consortium.

This document, and more information on financial security, can be consulted and downloaded in the section:

Financial security for environmental liability

5.2.5 Guidance document for determining the significance of damage

As indicated above, not all damage to natural resources will give rise to environmental liability. For Law 26/2007 to apply, there must be a threat of damage or actual damage causing significant adverse effects on a natural resource.

Law 26/2007, of 23 October, and its Regulation of partial development include a set of criteria for assessing the significance of the damage.

To facilitate its determination, the Directorate-General for Environmental Quality and Assessment has produced the guidedance document "*Determining the significance of environmental damage in the context of the Environmental Liability Act, Law 26/2007, of 23 October*".

This guidedance document analyses the concept of environmental damage in order to establish a set of criteria and/or guidelines for determining the significance of damage, taking as reference the sector-specific legal framework currently applicable at the national level, in order to facilitate the implementation of Law 26/2007, of 23 October.

This document can be consulted and downloaded at this link:

Guidedance document to determining significance

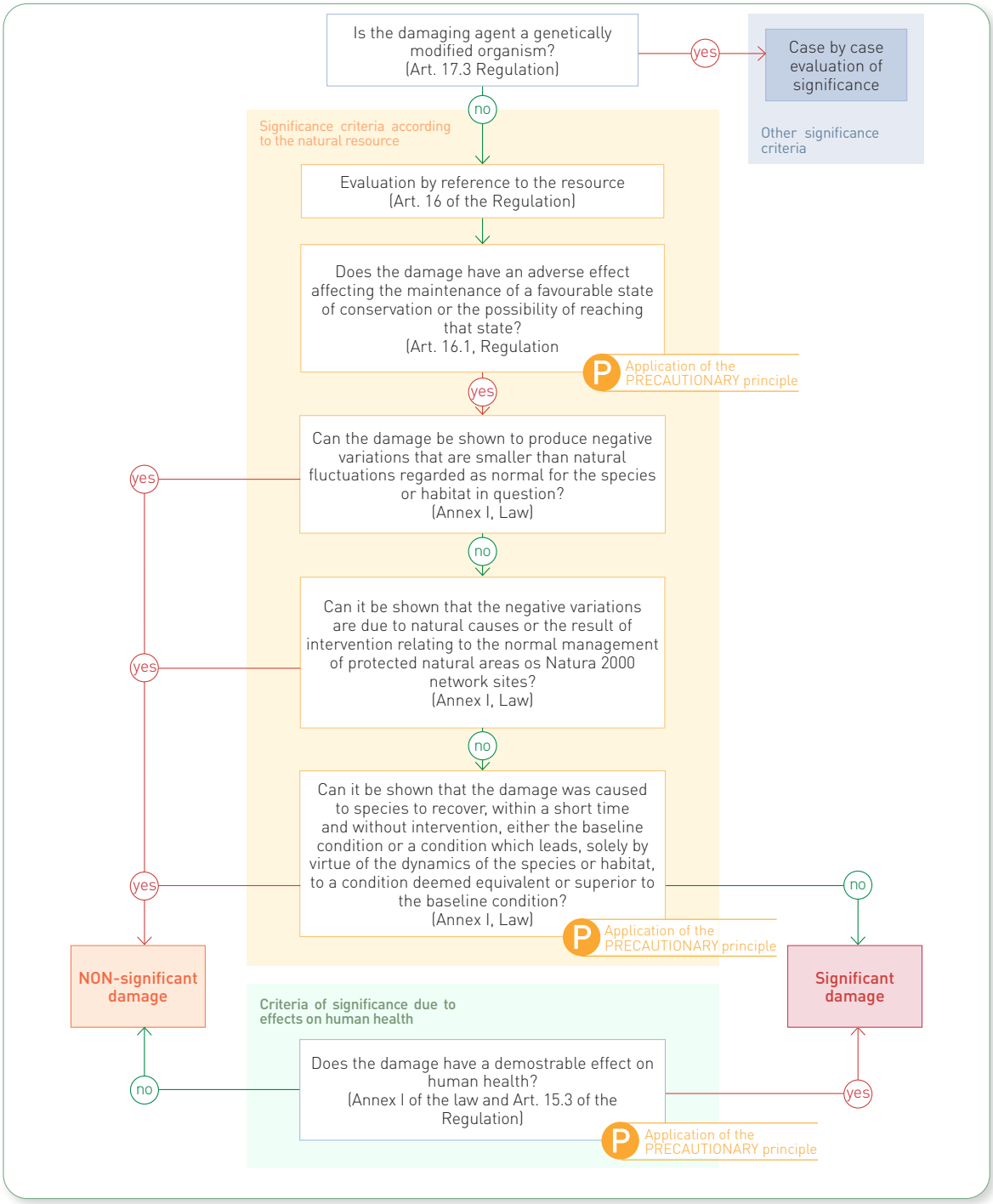


Figure 12: Diagram showing the criteria for assessing significance.
Source: *Ministry for the Ecolog- ical Transition and the Demographic Challenge*

In 2016, the European Commission published the Commission's report to the European Parliament and to the Council in the context of Article 18.2 of Directive 2004/35/CE[4] , together with the European Commission's working document REFIT[5] , which as sesses the implementation of Directive 2004/35/CE 2004/35/CE.

This report establishes that the two main goals of the Directive, and thus of Law 26/2007, of 23 October, are to prevent significant environmental damage when there is an imminent threat, and to remedy such damage when it occurs.

This European Commission report emphasises that these goals are sought by first, incentivising operators within the scope of application of the Directive to take a preventive approach, such as establishing an environmental management system, environmental safety measures, carrying out risk assessments, investing in risk abatement technology and taking out sufficient financial security.

And second, establishing that in the case of imminent threat of, or actual significant damage, the operators are liable to take the necessary preventive or remedial action and to bear all costs.

Therefore, to evaluate the implementation of Law 26/2007, we must take into account the elements that enable us to evaluate the implementation of the prevention principle on one hand, and the "polluter pays" principle on the other.

Developing environmental risk analysis instruments, technical tools for financial valuation, documents and guides contributes to the implementation of the prevention principle. Regulations have also been developed to encourage and reinforce the preventive aspects of the law, and there has been an intensive effort in training, information and dissemination.

Although their effect is difficult to quantify, all these measures introduced in the context of Law 26/2007, of 23 October, have had a significant preventive and deterrent effect, and have made a notable contribution to the implementation of the prevention principle.

The tools and technical instruments developed in Spain to facilitate the implementation of Law 26/2007, of 23 October, applying the prevention principle, are pioneering in the European Union and are shown as an example to be followed in the reports evaluating Directive 2004/35/CE published by the European Commission in 2010 and 2016.

On the other hand, the processing of environmental liability enforcement cases and the entry into force of the mandatory financial security system, which is voluntary in Directive 2004/35/CE, contribute to the implementation of the "polluter pays" principle

As well as encouraging good environmental risk management, the mandatory financial security system and the environmental risk analyses that must be used to determine them, are useful tools for corporate decision-making.

4 Report from the Commission to the European Parliament and to the Council pursuant to Article 18(2) of Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage.

5 COMMISSION STAFF WORKING DOCUMENT REFIT Evaluation of the Environmental Liability Directive Accompanying the document Report from the Commission to the European Parliament and to the Council pursuant to Article 18(2) of Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage.

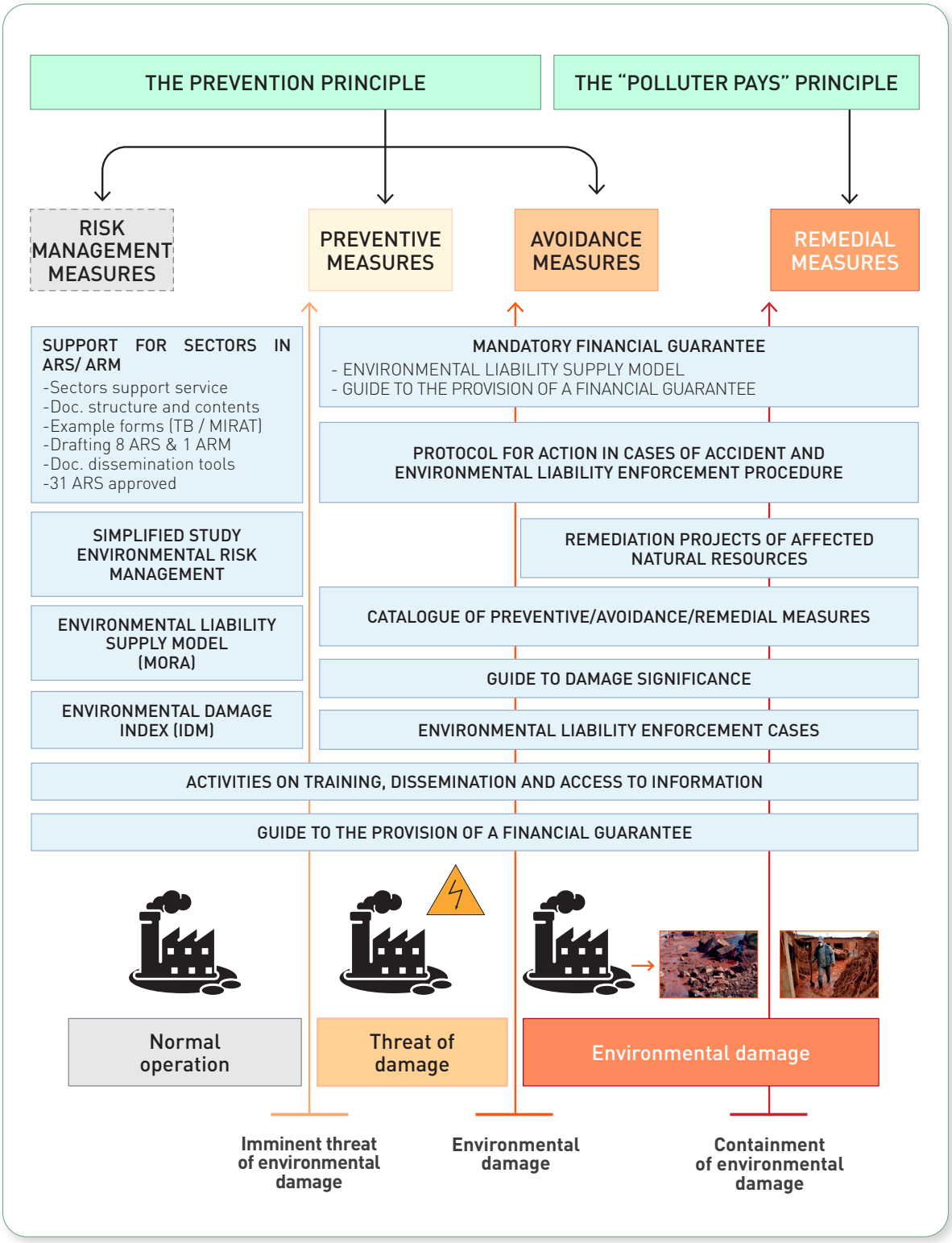


Figure 13: Actions taken to implement the environmental liability regulations.
Source: *Ministry fo ther Ecological Transition and the Demographic Challenge*

It has also been shown that the offer of insurance policies available from the insurance market has increased.

For these reasons, all the actions developed and described above have been very evaluated as very positive.

The Directorate-General for Environmental Quality and Assessment continues to push ahead with measures to further improve the implementation of the Environmental Liability Act, Law 26/2007, of October 23.

5.3 ACTIVITIES ON TRAINING, DISSEMINATION, AND ACCESS TO INFORMATION

As well as developing the technical instruments, guides and procedures described above, there has been intensive work on trainning in their use, disseminate awareness of them, and provide information on the environmental liability regulations.

5.3.1 Training and dissemination activities

In order to provide training to State and regional government staff, nine environmental liability courses have been taught since 2009, organised by the Directorate-General for Environmental Quality and Assessment. Also, various Autonomous Regions have organised other specific training courses.

In dissemination, since 2008 the Directorate-General for Environmental Quality and Assessment has participated in over 100 conferences, seminars and lectures with industrial associations, consultants, NGOs, insurance companies, and other bodies, to explain the goals of the Environmental Liability Act, raise awareness and encourage the use of the tools developed to facilitate its implementation, and listen to the opinions of all the actors involved in implementing the environmental liability regulations in an open, receptive dialogue. The opinions received have been reflected as much as possible in the regulations and technical tools developed.

In addition, the Autonomous Regions have also participated in conferences, seminars and other activities.

5.3.2 Access to information

Regarding the access of information on the environmental liability regulations and their implementation, the Directorate-General for Environmental Quality and Assessment, in addition to the information on all the technical tools which have been developed and made available to the public via the environmental liability section of the Ministry for the Ecological Transition and the Demographic Challenge website, there is also a publicly available general consultation service to respond to queries and requests for information.

Since 2008, this consultation service has responded to over 1,300 queries on legal and technical matters and requests for other types of information, as well as queries sent to the Autonomous Regions.

The evaluation report on the implementationof Law 26/2007, of 23 October, sent by the Ministry to the Environmental Advisory Council in July 2018, is also available on the Ministry website, in compliance with Additional Provision 11 of the law.

It should also be noted that since 2016, the Directorate-General for Environmental Quality and Assessment has participated in a project of the IMPEL network (European Union Network for the Implementation and Enforcement of Environmental Law), "Financial Provision-Protecting the Environment and the Public Purse", to identify what types of financial security are most appropriate for providing

sufficient, reliable cover which are available to the regulatory authorities when needed.

This project is intended to increase awareness of the availability and suitability of financial security instruments at the European level. This contributes to improving environmental protection and the public purse by ensuring compliance with the polluter pays principle, and encourages operators to invest in preventing environmental damage.

As part of this project, in 2018 of different approaches was performed to determine the amount of financial security for unforeseen events, and to evaluate the potential of applying existing methodologies in Spain, the Netherlands and Ireland, in a wider context, going beyond environmental liability to include other regulations.

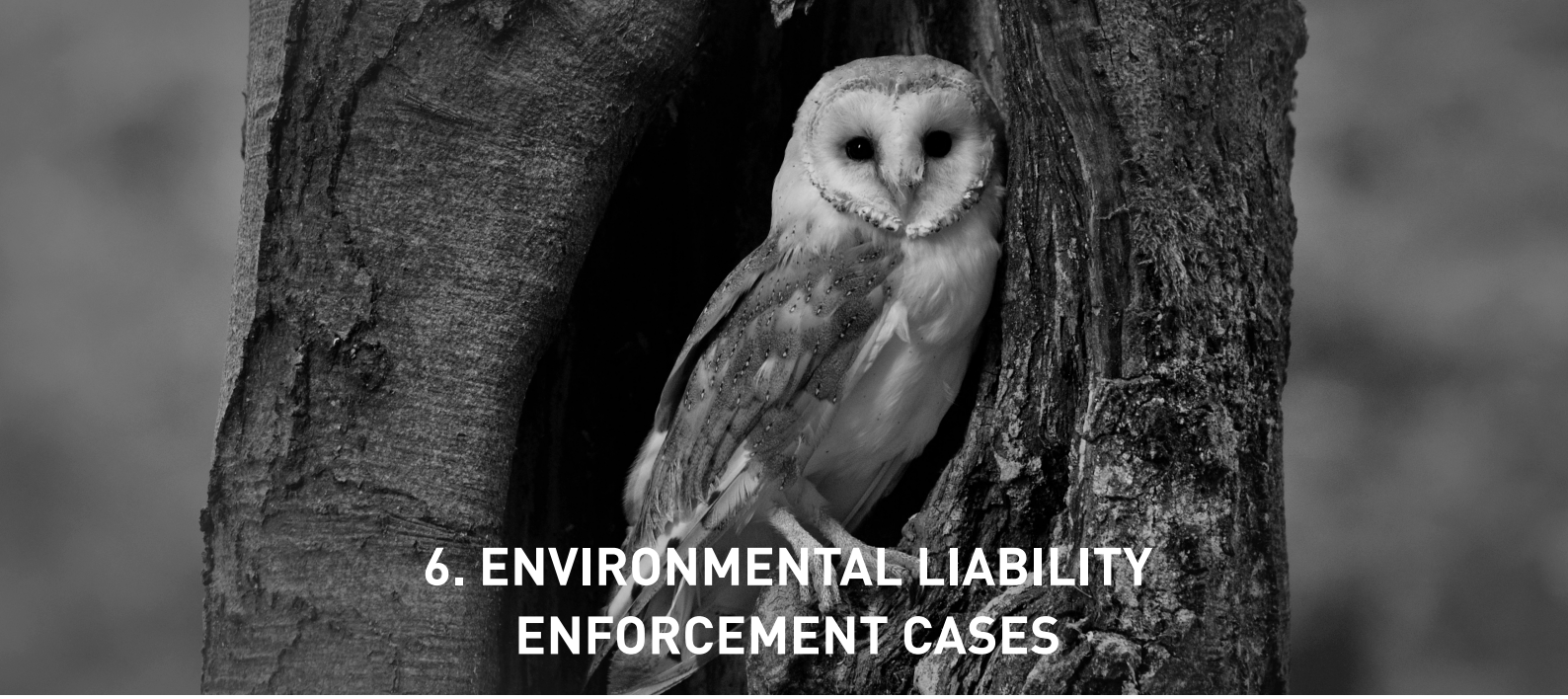
The conclusions of this analysis were that the three methodologies share common characteristics, and that the approach of Spain and Ireland took into account the environmental risk of activities. The assessment also concluded that there was potential for a wider application of the three methodologies in different regulatory contexts, and in different Member States, always taking into account the specific objectives for which they were developed.

As Spain's contribution to facilitating awareness and the use by other Member States of the methodology for establishing the mandatory financial security foreseen in Law 26/2007, of 23 October, English-language versions were developed of the Environmental Liability Supply Model (MORA) and Environmental Damage Index (IDM), tools, available on the Ministry for the Ecological Transition and the Demographic Challenge website since March 2018.

For more information on this project and to consult the full reports: https://www.impel.eu/projects/financial-provisions/

Finally, it should be noted that the report that Spain sent to the European Commission in April 2013 on the experience acquired implementing the Directive, in compliance with Article 18.1 of Directive 2004/35/CE, is available on the Ministry website, and includes the information required on the environmental liability enforcement cases processed from 2007 to 2013.

The assessment report on the execution of Law 26/2007, of 23 October, presented to the Environmental Advisory Council in July 2018, is also publicly available, in compliance with Additional Provision 11 of the law. Annex II of this report also includes a list of cases of environmental damage from 2013 to 2017 in which Law 26/2007, of 23 October, was applied, following the same format for sending information approved by the European Commission for the report specified in Article 18.1 of Directive 2004/35/CE.



6. ENVIRONMENTAL LIABILITY ENFORCEMENT CASES

In relation to the environmental liability enforcement cases, it must be remembered, as mentioned above, that not all damage to natural resources is protected by Law 26/2007, of 23 October.

Only those damages falling within the concept of environmental damage; in other words, those defined in Article 2.1: Damage to the resource water, including marine waters, to land, seashore and estuaries, and to wild flora and fauna species present permanently or seasonally in Spain, and the habitats of all wild native species.

Damage to air is excluded, which is covered by the corresponding sector-specific regulations, and is also excluded the so-called traditional damage, that is, harm caused to individuals and their property, except where this is a natural resource.

In the same way, not all damage to these natural resources will give rise to environmental liability. For the law to apply, there must be a threat of damage or actual damage causing "significant adverse effects" on a natural resource.

Therefore, a distinction must be made between the concepts of "damage" and "environmental damage", which within the scope of application of the Environmental Liability Act refers to damage or imminent threats of damage producing significant adverse effects, and **only in these cases may the environmental liability regulations be applied.**

In terms of **Government competencies** to process environmental liability enforcement proceedings, as mentioned in Section 2, Article 7.1 of Law 26/2007, of 23 October, establishes the general competence of the Autonomous Regions to implement and execute the law, with the exception of the powers attributed to the State Government by the legislation regarding waters and coasts in order to protect state-owned assets.

Thus, according to Article 7.2 of the law, if as well as a regionally owned resource, the damage or threat of damage affects state-managed river basins or state-owned assets, the competent state body must issue a binding report on the prevention, avoidance or remedial measures which must be adopted in relation to these assets.

Meanwhile, as established by Article 7.3 of the law, if the legislation on waters and coasts indicates that the State Government is responsible for protecting state-owned assets and determining the measures to prevent, avoid or remedy damage to them, the State Government shall apply the law within its areas of responsibility.

Sections 7.2 and 7.3 of the law allows the existence of three possibilities to start an environmental liability enforcement proceeding:

a) Given the environmental damage or a threat of environmental damage affecting natural resources with mixed ownership, the Autonomous competent authorithy may process a single environmental liability enforcement order which includes a mandatory, binding report from the State Government

b) Given the environmental damage or a threat of environmental damage affecting natural resources with mixed ownership, the State Government may process a single environmental liability enforcement order which includes a mandatory, binding report from the Autonomous Community competent authority.

c) Given the environmental damage or a threat of environmental damage affecting natural resources with mixed ownership, each competent authority may process a different environmental liability enforcement order within its respective areas of responsibility.

In line with Articles 7.4 and 7.5 of the law, and taking into account the multiregional nature of much environmental damage, the law reinforces the obligation of collaboration between public administrations and imposes the obligation to request a report from administrations whose competencies or interests may be affected by the intervention of other administrations in the implementation of the law.

If the territories of more than one Autonomous Community are affected, or when they must take action alongside the State Government, the affected administrations will establish the appropriate mechanisms for collaboration in order to exercise their legally assigned competencies correctly, always acting within the principles of mutual information, cooperation and collaboration. In these cases, a single body may be designated to process the corresponding administrative procedure.

The administration receiving notification of the start of environmental liability enforcement proceedings, must first determine the competent authority in this matter, in such a way that in cases in which it is not competent, it transfers the documentation of the proceedings to the body responsible for its execution. Otherwise, it will continue with the environmental liability enforcement proceedings. Similarly, when several administrations are competent due to the nature of the environmental damage or threat of damage, Article 3 of the Regulation of partial development of Law 26/2007, of 23 October, empowers the Technical Commission for the Prevention and Remediation of Environmental Damages to process the administrative case in the circumstances to which Article 7.4 of the law refers. This will determine the body in charge of the procedure, activating the coordination mechanisms for sharing information in both directions between the body bringing the case and the bodies coordinated by it.

Article 7.6 of Law 26/2007, of 23 October, also stipulates that in exceptional cases and when required for reasons of extraordinary severity or urgency, the State Government may promote, coordinate or adopt such measures as necessary to avoid irreparable environmental damage or protect human health, with the collaboration of the Autonomous Communities and in accordance with their respective competencies.

At the same time, Article 7.7 establishes that the State Government has the power to require the adoption of the appropriate preventive, avoidance and remedial measures in the case of public works in the public interest within its competency. In these cases, if the damage or threat of damage affects natural resources which are owned by Autonomous Communities Member it must obtain a report from the competent regional body. It also stipulates that the regional regulations applicable to the matter can determine the adoption of such measures in the case of public works of special importance and interest equivalent to the public interest of the State whose ownership and competency corresponds to the Autonomous Communities.

Having made these clarifications on the damage covered by Law 26/2007 of 23 October, and the distribution of competencies for processing environmental liability enforcement proceedings, it should be noted that in 2013, Spain submitted to the European Commission the information it required according to Article 18.1 of Directive 2004/35/CE.

The information in this report was submitted according to the model for submitting information designed by the European Commission, including the number of environmental liability enforcement cases processed.

This report included the information requested by the European Commission relating to the 12 environmental liability enforcement cases processed up to that date, with the information submitted by the Autonomous Communities which processed them.

The information in the European Commission document reflects that the number of environmental damage cases processed in Spain is in line with the number of cases processed in the rest of the States.

This report, updated in 2014, included both the mandatory part and the voluntary part of this reporting, in order to provide as much information as possible to the European Commission on all the actions taken in Spain in order to implement Directive 2004/35/CE.

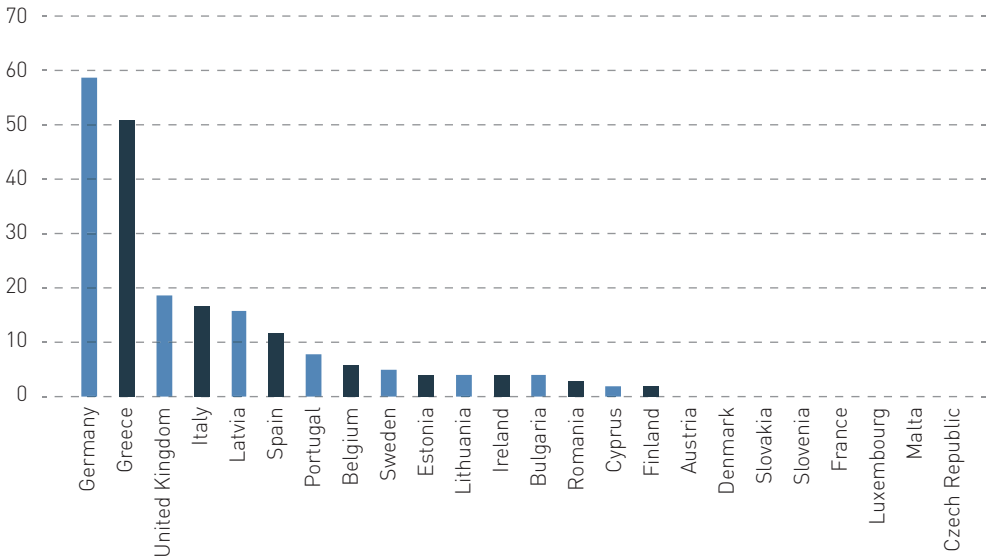


Figure 14: Number of cases processed implementing Directive 2004/35/CE up to 2013 (except Poland and Hungary).
Source: *Ministry for the Ecological Transition and the Demographic Challenge based on reports sent by the Member States to the European Commission in 2013*

This document can be consulted and downloaded from this link on the Ministry for the Ecological Transition and the Demographic Challenge website:

Report submitted by Spain to the European Commission (2014)

This report is also available on the European Commission website, alongside the reports submitted by the other Member States, in compliance with the reporting obligations stipulated in Article 18.1 of Directive 2004/35/CE, at the following link: http://ec.europa.eu/environment/legal/liability

Another 22 environmental liability enforcement cases were processed from 2013 to 2017, making for a total of 34 cases since 2007.

This was an importantincrease on the number of cases brought in previous years, permitting a positive assessment of this aspect in the evaluation of Law 26/2007, of 23 October, in its application of the "polluter pays" principle.

A register of the environmental liability enforcement cases processed since 30 April 2007 was published in March 2019 and is available at the following link:

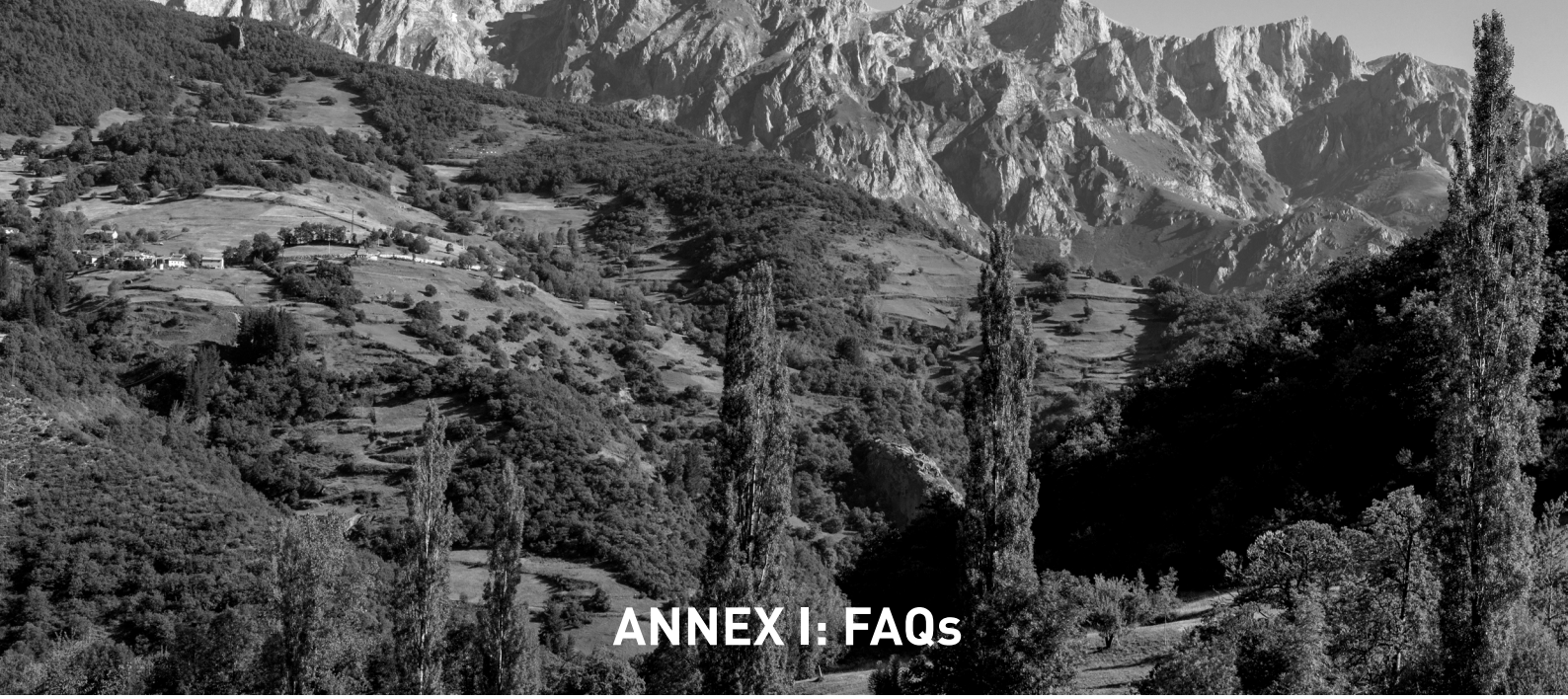
Register of environmental liability enforcement cases

This register includes an update of the information submitted by Spain to the European Commission, in compliance with Article 18.1 of Directive 2004/35/CE, and of the content of the evaluation of the implementation of Law 26/2007, of 23 October, submitted by the Ministry to the Environmental Advisory Council in July 2018, and can be consulted and downloaded at the following link:

Report to the Environmental Advisory Council (2018)

From the experience acquired in processing the cases in which the environmental liability regulations were applied, the competent authorities have extracted the following conclusions on the advantages and difficulties of using the environmental liability regulations as opposed to sector-specific regulations, when significant environmental damage occurs:

- The environmental liability regulations are useful, effective, efficient and fit for purpose.
- In particular, companies respond quickly and effectively when the environmental liability regulations are applied. In some of the cases processed, it is considered that applying the sector-specific legislation would have led to a slower and less effective response.
- The combination of Articles 3.1, 44, 37 and 38 of Law 26/2007, of 23 October, allows the most urgent measures to be applied with great speed.
- In most cases, sector-specific regulations are fit for purpose. In particular, sector-specific legislation is very efficient in cases where land is affected.
- When the damage affects a single resource, sector-specific procedures are considered to be more direct, given that the department responsible for the procedure has a great deal of experience in such cases. However, the Environmental Liability Act is especially effective in cases where more than one resource is affected.



ANNEX I: FAQs

The frequently asked questions (FAQs) listed below are also available at the following link on the Ministry for the Ecological Transition and the Demographic Challenge website, where they are regularly updated:

FAQs

What is the purpose of the Environmental Liability Act?

Law 26/2007 regulates the responsibility of operators to prevent, avoid and remedy environmental damage in accordance with Article 45 of the Constitution and the prevention and "polluter pays" principles. It is intended to:

- Strengthen preventive mechanisms to avoid accidents with adverse consequences for the environment.
- Ensure the remediation of environmental damage arising from economic activities, even when the activities are fully in line with the law and all available preventive measures have been taken.
- Ensure that the cost of preventing and remedying environmental damage is borne by the liable operator.

What is Environmental Liability?

This liability is defined in Law 26/2007, which requires operators within its scope of application to take measures to prevent, avoid and remedy any environmental damage they may cause, in order to return the resources damaged to their baseline condition.

Environmental liability requires the owner of the economic or occupational activity which caused the damage to bear all costs for the preventive, avoidance, or remedial measures taken.

Law 26/2007 establishes two types of environmental liability:

- **Objective and unlimited,** for all activities includ ed in Annex III of the law, requiring the operator to take the necessary preventive, avoidance and remedial measures, notwithstandingit has been at fault or negligent or not.
- **Subjective**, for all other activities, in which the adoption of remedial measures is limited to cases where the operator has been at fault or negligent. In all cases, operators are required to adopt the necessary preventive and avoidance measures, and shall be required to takeremedial measures if they fail to comply with their obligations relating to damage prevention and avoidance measures.

This is an administrative liability, which means it is required by the public administration and is independent of any civil or criminal liability arising from the same event.

What activities are inclued in Annex III of Law 26/2007?

1. The operation of installations subject to authorisation in accordance with the consolidated text of the Law on integrated pollution prevention and control, approved by Royal Legislative Decree 1/2016, of 16 December. This includes all activities listed in Annex I, except installations or parts of installations used for research, development and testing of new products and processes.

   It also includes any other activities and establishments subject to the scope of application of Royal Decree 840/2015, of 16 July, approving measures to control risks inherent to major accidents involving hazardous substances.

2. Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, and the supervision of such operations, subject to permit or registration in accordance with Law 10/1998, of 21 July.

   These operations include, inter alia, the operation and aftercare of landfill sites in accordance with Royal Decree 1481/2001, of 27 December, regulating the elimination of waste by landfill and the operation of incineration plants, as established in Royal Decree 653/2003, of 30 May, on the incineration of waste.

3. All discharges into inland surface waters which require prior authorisation under Royal Decree 849/1986, of 11 April, approving the Regulations governing the Public Water Domain, and any applicable regional legislation.

4. All discharges into groundwater which require prior authorisation under Royal Decree 849/1986, of 11 April, and any applicable regional legislation.

5. All discharges into inland waters and territorial seas which require prior authorisation under Law 22/1988, of 28 July, on Coasts, and any applicable regional legislation.

6. The discharge or injection of pollutants into surface water or groundwater requiring a permit, authorisation or registration under Royal Legislative Decree 1/2001, of 20 July, approving the consolidated text of the Water Law.

7. Water abstraction and impoundment of water subJect to prior authorisation under Royal Legislative Decree 1/2001, of 20 July.

8. The manufacture, use, storage, processing, filling, release into the environment and onsite transport of:

   a) Dangerous substances as defined in Article 2.2 of Royal Decree 363/1995, of 10 March, approving the Regulation on the notification of new substances and classification, packaging and labelling of dangerous substances.

   b) Dangerous preparations as defined in Article 2.2 of Royal Decree 255/2003, of 28 February, approving the Regulation on classification, packaging and labelling of dangerous preparations.

   c) Plant protection products as defined in Article 2.1 of Royal Decree 2163/1994, of 4 November, implementing the harmonised EU system for authorising the placing on the market and use of plant protection products.

   d) Biocidal products as defined in Article 2.a) of Royal Decree 1054/2002, of 11 October,

regulating the evaluation process for the registration, authorisation and placing on the market of biocidal products

9. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined either in Article 2.b of Royal Decree 551/2006, of 5 May, governing the transport of dangerous goods by road in Spanish territory, or in Article 2.b of Royal Decree 412/2001, of 20 April, governing various aspects relating to the transport of dangerous goods by rail, or Article 3.h of Royal Decree 210/2004, of 6 February, establishing a tracking and information system for maritime traffic.

10. The operation of installations subject to authorisation in pursuance of Council Directive 84/360/EEC of 28 June 1994 on the combating of air pollution from industrial plants in relation to the release into air of any of the polluting substances covered by the aforementioned Directive, which require authorisation in accordance with Law 16/2002, of 1 July, on Integrated Pollution Prevention and Control.

11. Any contained use, including transport, involving genetically modified micro-organisms as defined by Law 9/2003, of 25 April, establishing the legal regime of contained use, voluntary release and placing on the market of genetically modified organisms.

12. Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Law 9/2003, of 25 April.

13. Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Regulation (EC) No 1013/2006 of the European Parliament and of the Council, of 14 June 2006, on shipments of waste.

14. Management of waste from extractive industries, in accordance with Directive 2006/21/EC of the European Parliament and of the Council, of 15 March 2006, on the management of waste from extractive industries and amending Directive 2004/35/CE.

15. The operation of carbon storage facilities in accordance with Law 40/2010, of 29 December on the geological storage of carbon dioxide.

What environmental damage is covered by the law?

The scope of application of the law includes damage and imminent threat of damage to water resources, seashore and estuaries, to land, to wild flora and fauna, and their habitats.

Also, it applies only to environmental damage which produces significant adverse effects on these resources, according to the criteria established in the law.

What environmental damage is excluded?

Damage to the air and the so-called traditional damage, that is, harm caused to individuals and their property, except where this is a natural resource.

Environmental damage or the imminent threat of such damage are also excluded if caused by any of the following:

- An act of armed conflict, hostilities, civil war or insurrection.
- A natural phenomenon of exceptional, inevitable and irresistible character.
- Activities the main purpose of which is to serve national defence or international security, or to activities the sole purpose of which is to protect from natural disasters.
- Nuclear risks, environmental damage or imminent threat of such damage caused

by activities using materials governed by legislation derived from the Treaty establishing the European Atomic Energy Community or caused by an incident or activity where responsibility is established by any of the international conventions listed in Annex V.

What are preventive measures?

These are measures that the liable owner of activity must adopt if an imminent threat of environmental damage should arise, with a view to preventing its occurrence or minimising that damage.

What are avoidance measures?

These are measures that the liable owner of the activity must adopt after environmental damage has occurred, to limit or prevent further environmental damage.

What are remedial measures?

These are any measures to restore, rehabilitate or replace damaged natural resources and/or impaired services.

The law distinguishes between the following remedial measures:

- Primary remediation: any remedial measure which returns the damaged natural resources to their baseline condition, or as close as possible to it.
- Complementary remediation: any remedial measure taken to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources.
- Compensatory remediation: any action taken to compensate for interim losses of natural resources that occur from the date of damage occurring until primary remediation has achieved its full effect.

What is the financial security?

The financial security is an instrument to ensure that operators have sufficient economic resources to meet their obligations regarding environmental liability arising from their activity.

Directive 2004/35/CE does not require the provision of mandatory financial security, leaving this to be decided by the Member States. In this case, Spain was one of the eight Member States to include this aspect in their transposition of the Directive.

The provision of a financial security is a requirement imposed by the Environmental Liability Act for activities listed in its Annex III, without prejudice to the exemptions specified in Article 28 of Law 26/2007.

The minimum amount which must be guaranteed, and which in no way limits the liabilities established in the law, will be determined by the operator, according to the intensity and area of the damage its activity may cause, in accordance with the criteria established in the Regulation of partial development of Law 26/2007, approved by Royal Decree 2090/2008, of 22 December. Operators must notify the competent authority that they have provided the financial security.

The amount of the financial security will be decided based on the environmental risk analysis of the activity, to a maximum of 20 million euros.

Regardless of whether they have an obligation to provide a financial security, the operators included in Annex III of Law 26/2007 have objective and unlimited liability. This means they are required to meet the obligation to prevent, avoid and remedy any environmental damage they may cause, what- ever the cost of such measures.

Who is required to provide a financial security?

Article 37.a) of the Regulation of partial development of Law 26/2007, of 23 October, establishes that the operators required to provide a financial security, because their activities are considered to be more likely to cause a more serious environmental incident in the case of accidents, are:

Operators subject to the scope of application of the consolidated text of the Law on integrated pollution prevention and control (IPPC), approved by Royal Legislative Decree 1/2016, of 16 December.

Operators subject to the scope of application of Royal Decree 840/2015, of 21 September, approving measures to control risks inherent to major accidents involving hazardous substances (SEVESO).

Waste management operators in the extractive industries, in the case of installations classified as Category A, according to Royal Decree 975/2009, of 12 June.

Who is exempted from providing the mandatory financial security?

Article 28 of the Environmental Liability Act, Law 26/2007, of 23 October, establishes that the following operators are exempted from the obligation to provide the mandatory financial security:

a) Operators of activities likely to cause damage remediation which is estimated to cost less than 300,000 euros.

b) Operators of activities likely to cause damage remediation which is estimated to cost from 300,000 to 2,000,000 euros,and which show, through certificates issued by independent bodies, that they are associated permanently and continuously with the Community's Eco-Management and Audit System(EMAS) or with the current UNE- EN ISO 14001 environmental management system.

c) Operators using the plant protection products and biocides referred to in Sections 8.c) and 9) of Annex III in farming and forestry.

d) Operators of the activities identified in the regulations as having a low likelihood of producing environmental damage, and a low accident rate.

Article 37.b) of the regulations shows the activities whose operators are provisionally exempted from providing a financial security, as well as from the requirement to perform environmental risk analyses, due to their low likelihood of producing environ- mental damage, and their low accident rate. These exempted operators are those of the remaining activities in Annex III of Law 26/2007, of 23 October, as long as they are not included in any of the cases on Article 37, Section 2 a) of the regulations.

Meanwhile a study has been carried out by the Technical Commission for the Prevention and Remediation of Environmental Damages which has updated the evaluation of potential environmental damage and the accident rate of the activities in Annex III of Law 26/2007.

On the basis of this study, it will be possible to extend the list of activities that are required for the mandatory financial security.

When will this financial security be required?

According to the Fourth Final Provision of Law 26/2007, of 23 October, the date by which the man- datory financial security for each activity in Annex III is required shall be determined by Ministerial Order.

Thus, Order ARM/1783/2011, of 22 June, establishing the order of priority and calendar for approval of the Ministerial Orders which will make the financial security mandatory, as set forth in the fourth final provision of the Environmental Liability Act, Law 26/2007, of 23 October, established a gradual approach for drafting the Ministerial Orders and gave an indication of the timescale in which operators should carry out the environmental risk analyses needed for calculating the amount of the financial security.

Order APM/1040/2017, of 23 October, in line with Order ARM/1783/2011, of 22 June, set the date from which the mandatory financial security foreseen in Article 24 of Law 26/2007, of 23 October, must be provided by the activities in Annex III of Law 26/2007, of 23 October, classified as priority level 1 and priority level 2, according to the Annex to Order ARM/1783/2011, of 22 June.

This Order establishes that the activities classified as priority level 1 in Order ARM/1783/2011, of 22 June, had to provide the financial security one year after the entry into force of this Order, and activities classified as priority level 2 two years after the entry into force of the Order.

Order TEC/1023/2019, of 10 October, sets the date from which the mandatory financial security foreseen in Article 24 of the Environmental Liability Act, Law 26/2007, of 23 October, must be provided for the activities in Annex III of Law 26/2007, of 23 October, classified as priority level 3 according to the Annex to Order ARM/1783/2011, of 22 June.

This Order establishes that operators of activities classified as priority level 3 must have a financial security enabling them to meet the inherent environmental liability of their intended activity or activities, within two years from the date this Order came into force, except for intensive rearing of poultry or pigs, where operators must provide a financial security within three years from the date the Order came into force.

How is the amount of the financial security calculated?

Article 33 of the Regulation of partial development of Law 26/2007 of 23 October establishes that the amount of the financial security has to be based on the environmental risk analysis of the activity, which will include the following operations:

a) Identify the accident scenarios and establish the probability of occurrence of each scenario.

b) Estimate the Environmental Damage Index (IDM) associated with each accident scenario, following the steps established in Annex III.

c) Calculate the risk associated with each accident scenario based on the probability of occurrence of the scenario and the value of the environmental damage index.

d) Select the scenarios with the lowest associated environmental damage index representing 95 percent of the total risk.

e) Set the amount of the financial security as the value of the environmental damage of the scenario with the highest environmental damage index among the selected accident scenarios. This process shall follow these steps:

1. First, the environmental damage generated in the selected scenario shall be quantified.
2. Second, the environmental damage generated in such a reference scenario shall be monetised, the value of which shall be equal to the cost of the primary remediation project.

If the primary remediation corresponding to the reference scenario for calculating the financial security consists entirely of natural recovery, the amount of the financial security will be the value of the damage associated with the accident scenario with the highest Environmental Damage Index among the selected scenarios where primary remediation is does not con sist of natural recovery.

The Directorate-General for Environmental Quality and Assessment has developed a software tool for estimating the **Environmental Damage Index** of each accident scenario identified in the operator's environmental risk analysis.

The Directorate-General has also developed the methodology and software tool of the Environmental Liability Supply Model (MORA), which supports operators in the process of monetising the damage associated with the selected reference scenar io, within the procedure to determine the amount ofthe financial security described above.

Once the amount of the mandatory financial security has been determined, the costs of prevention and avoidance of the damage shall be added. To calculate these, the operator may:

a) Apply a percentage to the total sum of the mandatory security.

b) Estimate such prevention and avoidance costs through the environmental risk assessment.

After the operator has performed the environmental risk analysis and provided the financial security, theand the criteria established in the Regulation partial development operator shall present an affidavit to the competent authority, declaring that it has provided the financial security and performed the operations stipulated in the regulations, containing at least the information included in Annex IV.1 of the Regulation of partial development of the Environmental Liability Act.

After the environmental risk analysis of their activity, operators who are exempted from providing a financial security according to the exemptions specified in Article 28, Sections a) and b) of Law 26/2007, of 23 October, must submit an affidavit to the competent authority containing at least the infor- mation included in Annex IV.2 of the Regulation of partial development of the Environmental Liability Act.

In all cases, the competent authority will establish the corresponding monitoring systems enabling it to check compliance with these obligations.

What are the environmental risk analyses?

Environmental risk analyses are instruments for analysing and assessing environmental risk, establishing the basis for effective risk management, and facilitating decision-making.

All operators of the activities included in Annex III of Law 26/2007 must perform environmental risk analyses, except for operators using plant protection products and biocides in farming and forestry, and operators of activities exempted in the Regulation of partial development of the Environmental Liability Act, due to their low likelihood of producing environmental damage, and their low accident rate.

Environmental risk analyses will enable operators to know if they are required to provide a financialsecurity, and if so, calculate its amount.

Environmental risk analysis is also an essential element in environmental risk management, as identifying the risk scenarios for each installation allows a better management of that facility, thus reducing possible environmental damage.

The environmental risk analyses must be performed according to the methodology established in the UNE 150008 environmental risk analysis and assessment standard, or another equivalent standard, of Law 26/2007.

What of financial security instruments areavailable?

There are three financial security instruments which the operator of the economic or occupational activities included in Annex III of the Environmental Liability Act may use, individually or complementing each other:

- An insurance policy taken out with an insurance company licensed to operate in Spain.
- A bank guarantee provided by a financial institution authorised to operate in Spain.
- A technical reserve consisting of an ad hoc fund of financial investments backed by the public sector.

What must the financial security cover?

The financial security must cover the obligations of the activity relating to the prevention and avoidance of environmental damage and the primary remediation of environmental damage caused in the course of the activity.

Are there any tools to help calculate the financial security?

The Directorate-General Environmental Quality and Assessment of the Ministry for theEcological Transition and the Demographic Challenge has developed a methodology for calculating the cost of remediation of the natural resources protected by the law, using the supply model.

This methodology, the "Environmental Liability Supply Model", is a comprehensive tool to assist in monetising environmental damage according to the environmental liability regulations, which based on resource-to-resource equivalence criteria, can be used to calculate the cost of remediation of the environmental damage associated with a risk scenario.

This instrument enables operators, on one hand, to know if they are required to provide a financial security, and calculate its amount; and on the other, to evaluate the potential damage associated with their risk scenarios, allowing them to manage their own environmental risk.

To make it easier for operators to use this methodology for monetising their risk scenarios, a software tool has been developed, which is available free of charge on the Ministry website, in the following section:

Environmental Liability Supply Model

What is the Environmental Damage Index?

Royal Decree 183/2015, of 13 March, amending the Regulation of partial development of the Environmental Liability Act, Law 26/2007, of 23 October, approved by Royal Decree 2090/2008, of 22 December, changed the procedure for determining the mandatory financial security established in Article 33 of the law.

It introduces a new method which makes it easier for the operator to set an amount for the financial security. First, it identifies the accident scenarios and their probability, a step which already formed part of the previous version of the procedure.

Second, the operator must estimate an Environmental Damage Index associated with each accident scenario, a new part of this procedure, following the steps set out in

the new Annex III of the Regulation of partial development of Law 26/2007.

The Environmental Damage Index (IDM) is designed to estimate the damage associated with each accident scenario, and is based on a set of estimators of the amount the resource which is damaged and the costs of remedying the natural resources covered by the law, offering a semi-quantitative result which allows users to sort accident scenarios by the extent of the potential environmental damage they can cause.

The third step is to calculate the risk associated with each accident scenario based on the probability of occurrence of the scenario and the value of the Environmental Damage Index.

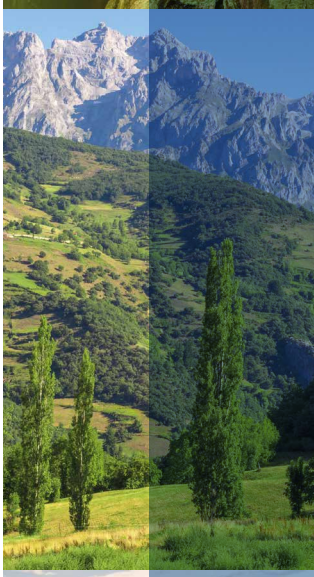
The fourth step is the selection of the scenarios with the lowest associated environmental damage index representing 95 percent of the total risk

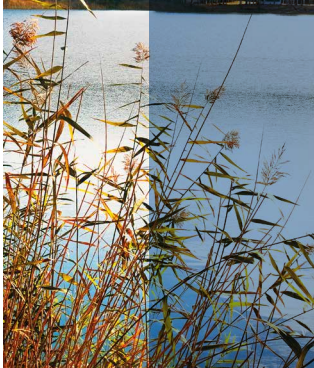
Finally, the amount of the financial security will be set as the value of the environmental damage of the scenario with the highest environmental damage index among the selected accident scenarios. To do this, first, the environmental damage generated in each scenario will be quantified, and second, this environmental damage will be monetised, the value of which shall be equal to the cost of the primary remediation project

Therefore, with this new procedure, to establish the amount of the financial security, it is no longer necessary to quantify and find an economic value for all the scenarios identified in the environmental risk analysis.

The Directorate-General for Environmental Quality and Assessment has developed a software tool for estimating the IDM associated with each risk scenario identified in the environmental risk analysis. This software is free to use, and is available in the environmental liability section of the Ministry for the Ecological Transition and the Demographic Challenge website, in the following section:

Environmental Damage Index





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