Administrative competencies and coordination in applying environmental liability legislation

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1. Introduction

Law 26/2007 of 23 October on Environmental Liability transposing Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 established a new administrative framework for preventing, avoiding and remedying environmental damage whereby operators who cause damage, or threaten to do so, have the duty to take the necessary steps to prevent it or, when the damage has occurred, to take suitable measures to avoid further damage, as well as those required to restore damaged natural resources which fall within the scope of application of the law to their former state prior to the damage being caused.

On the other hand, Law 26/2007 lays down the obligation on certain operators in the activities included in Appendix III thereof to have a financial guarantee available to allow them to address the environmental liability inherent to the activity which they seek to engage in.

The Regulations partly implementing Law 26/2007, approved by Royal Decree 2090/2008 of 22 December, among other aspects, implement those related to the legal framework for obligatory financial guarantees, as well as the criteria for remedying environmental damage.

Final provision four of Law 26/2007 of 23 October on Environmental Liability establishes that the date from which providing the mandatory financial guarantee, that is envisaged in Article 24 of the law, shall be set under a Ministerial Order.

Thus Ministerial Order ARM/1783/2011 of 22 June established the order of priority and timetable for approving the ministerial orders, envisaged in final provision four of Law 26/2007 of 23 October on Environmental Liability, from which the mandatory financial guarantee will be enforceable.

Pursuant to this timetable, Ministerial Order APM/1040/2017 of 23 October set the date from which establishing the mandatory financial guarantee is enforceable for those activities in Appendix III of Law 26/2007 of 23 October, classified as priority level 1 and priority level 2, under Ministerial Order ARM/1783/2011 of 22 June: with effect from 31 October 2018 for priority level 1 activities and from 31 October 2019 for priority level 2 activities.

On 4 February 2019, the period began for public participation in the *"Draft Ministerial Order establishing the date from which the setting up of the mandatory financial guarantee will be enforceable for the activities in Appendix III of Law 26/2007 of 23 October, classified as priority level 3 under Ministerial Order ARM/1783/2011 of 22 June".*

In summary, the aims of environmental liability legislation are:

- To encourage risk management measures to reduce accidents that might cause environmental damage and limit the consequences of these.
- To ensure that measures are taken to prevent, avoid and remedy any environmental damage that occurs.
- To make certain that the costs of the measures that have to be taken are defrayed by the operator responsible.

As is described in depth further on, competency for the enforcement of environmental liability legislation generally falls to the regional governments, without detriment to the areas of competency which are entrusted to the Central Government.

It is therefore essential to have an adequate coordination among the various competent authorities in the regional governments and Central Government in applying the legislation. Key in such coordination is the role of the Technical Committee for the Prevention and Remedy of Environmental Damage, a body intended to promote technical cooperation and collaboration among the Central Government, the regional governments and local institutions, as well as the exchange of information, and to offer an advisory service as regards the prevention and remedy of environmental damage; it is attached to the Ministry for the Ecological Transition via the Directorate-General for Biodiversity and Environmental Quality.

2. Administrative competencies

Article 7.1 of Law 26/2007 of 23 October generally establishes regional competency for legislative implementation and enforcement of the law, although it does safeguard the competencies which legislation on waters and coasts assigns to the Central Government to protect state-owned public property.

Thus, pursuant to Article 7.2 of the law, if, besides a regional ownership resource, the damage or threat of damage affects river basins managed by the State (those shared by two or more regions) or state-owned public property, it shall be mandatory for the competent state body to issue a binding report exclusively regarding the preventive, avoidance or remedial measures that shall be taken with respect to such property.

On the other hand, as is laid down by Article 7.3 of the law, if, under the provisions of legislation on waters and coasts, it falls to the Central Government to look after protecting state-owned public property and to determine the preventive measures to avoid further damage and to remedy damage, that part of government shall apply the law within the scope of its authority.

From the previously discussed articles 7.2 and 7.3, we can infer that there are three exclusive possibilities for processing environmental liability enforcement procedure:

a. Given a threat of environmental damage or environmental damage affecting natural resources with different ownership, the regional government can process a single case file that includes the mandatory and binding Central Government report.

b. Given a threat of environmental damage or environmental damage affecting natural resources with different ownership, the Central Government can process a single case file that includes the mandatory and binding regional government report.

c. Given a threat of environmental damage or environmental damage affecting natural resources with different ownership, each competent authority can process different case files within the scope of their respective competencies.

On the other hand, in keeping with Articles 7.4 and 7.5 of the law and in addressing the supra-regional nature that environmental damage can have, the law reinforces the obligation of collaboration among the different public administrations and imposes an obligation to request a report from those administrative bodies where their competencies or interests might be affected by the intervention of other administrative bodies in implementing the law.

If territories in several regions are affected or when both these and the Central Government have to act, the administrative bodies concerned will establish the relevant mechanisms for collaboration so that the competencies that are laid down in the law can be properly exercised, in all cases in line with the principles of shared information, cooperation and collaboration. In such cases, provision can be made for designating a single body to process the pertinent administrative procedure.

The administrative body that receives the notification of the initiation of the environmental liability enforcement procedure will firstly have to determine which authority has competency as regards the matter at hand so that, in those cases where it does not have competency, it can pass the case file documentation on to the body in charge of the enforcement procedure. Otherwise, it will press ahead with the environmental liability enforcement procedure itself. Likewise, when several administrative bodies have competency due to the nature of the threat of damage or actual damage to the environment, Article 3 of the Regulations partly implementing Law 26/2007 of 23 October empowers the Technical Committee for the Prevention and Remedy of Environmental Damage to propose the competent authority that is to process the administrative case file when the circumstances referred to in Article 7.4 of the law occur. In this way, the body that is to process the procedure will be established and the mechanisms activated for coordinating two-way information transfer between the examining body in the procedure and the agencies which it organises.

Article 7.6 of Law 26/2007 of 23 October also stipulates that, in exceptional cases and when warranted on grounds of extraordinary seriousness or urgency, the Central Government can initiate, coordinate or take any measures required to avoid irremediable environmental damage or protect human health in collaboration with the regional governments and according to their respective competencies.

Similarly Article 7.7 establishes that it is the duty of the Central Government to require that appropriate preventive, avoidance and remedial measures be taken when public works of general interest and within its competency are concerned. In such cases, if the damage or threat of damage affects natural resources the protection of which is the responsibility of the regional governments, it is obligatory to obtain the report from the competent regional body. Likewise, regional legislation applicable to the matter in question is empowered to decide on taking such measures, in the case of public works of particular significance and interest that are comparable to those of general interest to the State when ownership and competency for them falls to the regions.

3. Coordination in applying the legislation

The Technical Committee for the Prevention and Remedy of Environmental Damage plays a key role in coordinating how the legislation should be applied among the various different competent authorities at regional and national levels.

In this respect, to facilitate compliance with the obligations laid down in the law for both administrative bodies and operators, and in its role of chair and secretariat for the Technical Committee for the Prevention and Remedy of Environmental Damage, the Directorate-General for Biodiversity and Environmental Quality at the Ministry for the Ecological Transition actively fostered the regulatory progress of Law 26/2007 of 23 October and developed a set of technical tools which are available to the public on the website of the Ministry for the Ecological Transition at: http://www.miteco.gob.es/es/calidad-y-evaluacion-ambiental/temas/responsabilidad-mediambiental/.

As the report of the European Commission's regulatory fitness and performance programme (REFIT), published in 2016, states, the development of all these technical tools comes within the context of highly useful actions to incentivise operators to adopt a preventive approach and thus help achieve the aims of the directive.

In its 2010 and 2016 reports, the European Commission makes the point that several Member States (including Spain) have come a long way in developing guidelines on financial and technical appraisal, environmental risk assessment tools, and other elements, which places them in a much better position to apply Directive 2004/35/EC.

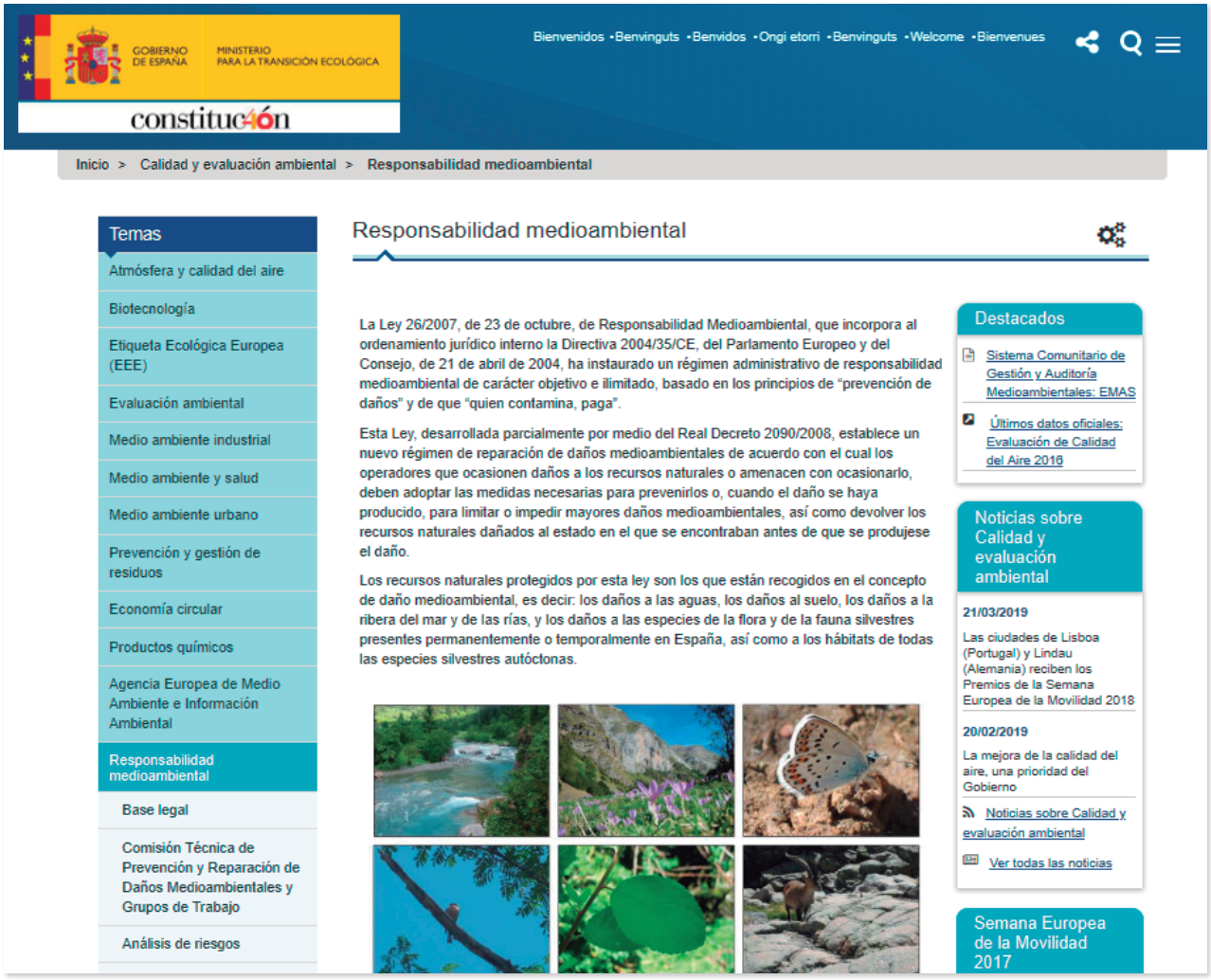

Figure 1. Section on environmental liability. Ministry website.
Source: The Ministry for the Ecological Transition.

The most outstanding technical instruments developed are described below:

The creation of a support service for sectors to develop their industry environmental risk assessments

Since 2010, the Directorate-General for Biodiversity and Environmental Quality has had a support service in operation to provide technical advice for the occupational sectors in Appendix III that voluntarily wish to submit an industry environmental risk assessment or a rate table to the Technical Committee for the Prevention and Remedy of Environmental Damage. The aims of this service are:

- To clear up doubts over specific methodological aspects for performing and setting out a sector environmental risk assessment or scale chart.

- To help set up a practical exercise to determine the cover provided by the financial guarantee for a specific activity that is representative of the sector and offer guidance in quantifying the damage associated with risk scenarios.

- To offer advice on monetising the damage associated with accident scenarios that are inferred from the environmental risk assessment, as well as to resolve queries in relation to the use and functioning of the MORA (Environmental Liability Supply Model) computer-based tool. This utility is also available to those individual operators who are developing their individual environmental risk assessments.

Within the context of such consultancy services, which are still running, since 2008 over 600 questions on developing environmental risk assessments have been addressed, which were discussed via written consultations or specific meetings with the sectors and operators who have used the facility.

The drafting of the document entitled "Structure and general content of sector instruments for environmental risk assessment"

Article 24 of Law 26/2007 of 23 October on Environmental Liability lays down that the operators engaging in the activities included in Appendix III thereof shall, without detriment to the exemptions provided for in Article 28 thereof, have to have a financial guarantee available to allow them to address the environmental liability inherent to the activity which they seek to pursue.

The same article establishes that setting the amount of this financial guarantee shall be based on the assessment of the environmental risk attaching to the activity, which shall be carried out in accordance with the methodology established by government regulation.

Article 34 of the Regulations partly implementing Law 26/2007 of 23 October, endorsed by Royal Decree 2090/2008 of 22 December and amended by Royal Decree 183/2015 of 13 March, states that environmental risk assessments should be performed by the operators or a third party contracted by them according to the format established by the UNE 150.008 standard or others that are equivalent.

To facilitate the appraisal of risk scenarios, as well as to reduce the cost of their accomplishment, the Regulations partly implementing Law 26/2007 of 23 October introduce various different instruments on a voluntary basis, such as sector environmental risk assessments and scale charts.

Sector environmental risk assessments can comprise either environmental risk type report models (known as MIRATs for the Spanish) or methodological guides to risk assessment, according to the degree of homogeneity in the sector from the environmental risk standpoint. The rate tables are envisaged for sectors or small and medium-sized enterprises which, given how very alike they are, allow standardisation of their environmental risks.

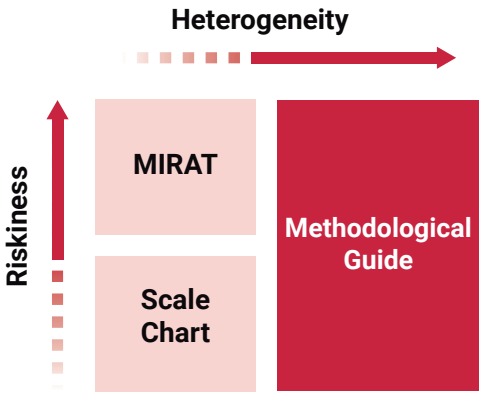

Figure 2. Sector risk analysis and scale chart.
Source: The Ministry for the Ecological Transition.

Operators can prepare their environmental risk assessments by basing themselves on these sector risk analysis that previously have been favourably reported on by the Technical Committee for the Prevention and Remedy of Environmental Damage for each sector.

This document on the structure and general content of sector instruments for environmental risk assessment was approved by the Technical Committee for the Prevention and Remedy of Environmental Damage in 2011 and was made available to stakeholders via the Ministry's website. Likewise, two standard MIRAT and rate table examples were prepared, which were also published on the Ministry's website having been approved by the Technical Committee for the Prevention and Remedy of Environmental Damage.

Pursuing pilot programmes to design MIRATs (environmental risk type report models), scale charts and methodological guides

To provide support for various sectors in preparing environmental risk assessments, the Directorate General for Biodiversity and Environmental Quality has funded and developed a set of tools to analyse industry environmental risks. Selection of sectors was performed in conjunction with the Confederation of Employers and Industries of Spain (CEOE for the Spanish).

All of these sector risk assessments are to be found in the section on environmental liability on the website of the Ministry for the Ecological Transition.

Furthermore, in 2018, a MIRAT was completed for the intensive poultry rearing sector and, in 2019, another MIRAT is set to be concluded for the intensive pig rearing sector. In the near future, all of these sector risk assessments will be made available for all those who are interested on the website of the Ministry for the Ecological Transition.

Tool for analysing sector risk or scale chart	Date drafted
Scale chart for the paint and print-ink manufacture sector, prepared for the Spanish Association of Paint and Print Ink Manufacturers (ASEFAPI).	2011
Methodological guide for the polymetallic sulphide and sodium and potassium salt mining industry, prepared for the National Confederation of Mining and Metallurgy Employers (CONFEDEM).	2012
MIRAT for the olive oil and oil product sector, prepared for the Spanish Food and Drink Industries Federation (FIAB).	2012
Methodological guide for hazardous and non-hazardous waste management activities, prepared for the National Association of Automotive Waste Managers (ANGEREA), the Association of Special Resource and Waste Management Companies (ASEGRE) and the Spanish Federation for Recovery and Recycling (FER).	2015
MIRAT for road freight haulage activities, prepared for the Spanish Confederation of Freight Hauliers (CTEM).	2015
MIRAT for the smelting sector, prepared for the Spanish Federation of Foundry Associations (FEAF).	2016

On the other hand, numerous industry associations have, with their own funds, developed sector risk analysis and scale charts which they have submitted for a favourable report from the Technical Committee for the Prevention and Remedy of Environmental Damage.

After going through the procedure for evaluating these sector tools and respecting the process that has been approved by the Technical Committee for the Prevention and Remedy of Environmental Damage, some 25 tools for analysing sector environmental risks and rate tables have been reported on favourably.

These tools will help determine the financial guarantee for those operators under the obligation to set it up. They also represent a great deal of added value in identifying measures for managing risk and have some impact on the principle of taking precautions upon which Law 26/2007 of 23 October is based.

We should highlight the importance of developing such a high number of tools to assess sector risks to the extent that this is an element to take into account in evaluating the application of Law 26/2007 of 23 October, fundamentally with respect to implementing the prevention principle. As has been pointed out previously, environmental risk assessment tools are a means of providing highly valuable information when it comes to implementing risk management measures to reduce the chances of environmental damage and its consequences occurring.

Devising the methodology for the Environmental Liability Supply Model (MORA) and designing a software application that enables monetization of the environmental damage associated with each risk scenario, consistent with the appraisal methodology established by Royal Decree 2090/2008 of 22 December

Law 26/2007, of October 23, on Environmental Responsibility lays down that certain operators engaging in the activities included in Annex III thereof should have a financial guarantee at the moment in which said obligation comes into force subject to the corresponding ministerial order, to allow them to face the environmental responsibility inherent to their activity.

Likewise, environmental liability legislation establishes an obligation on these operators to draw up an environmental risk assessment intended to identify potential accident scenarios and gauge the value of any environmental damage they may bring about so that they can determine the amount for the mandatory financial guarantee, pursuant to the procedure described in Article 33 of the Regulations partly implementing Law 26/2007 of 23 October.

Against this backdrop, the Directorate-General for Biodiversity and Environmental Quality has devised a methodology to calculate restoration costs known as the Environmental Liability Supply Model. This seeks to offer all operators and industry sectors a tool to help them fulfil the abovementioned obligations and which enables monetisation of the risk scenarios identified by operators in the environmental risk assessments for their facilities.

This methodology was approved by the Technical Committee at their meeting of 13 April 2011.

In addition to this, the Directorate-General for Biodiversity and Environmental Quality has developed a software application based on this methodology aimed at offering all operators and industry sectors a comprehensive tool to assist them with the monetisation of both the environmental damage associated with each risk scenario in a way consistent with the methodology for valuation as established by the Regulations partly implementing Law 26/2007 of 23 October, and remedial measures (primary, compensatory and supplementary), together with the leading edge techniques available that might be required to return natural resources and the services that they provide to their original state.

Thus this app allows operators, on the one hand, to find out if they are under an obligation to set up a financial guarantee and, if so, to work out how much this comes to, and, on the other hand, to assess the damage associated with their particular risk scenarios so that they can perform environmental risk management at their facilities.

We should clarify that the Environmental Liability Supply Model is a voluntary tool to support monetisation of environmental damage within the framework of Law 26/2007 of 23 October on environmental liability and the results it returns are not binding.

The app based on this methodology was publicly released in April 2013 on a free basis via the website of what is now the Ministry for the Ecological Transition. Since that date, some 1,150 users of the app have registered and over 1,600 projects have been generated.

The document summarising the methodology in the Environmental Liability Supply Model and the user guide for the software app are also available on the website of the Ministry for the Ecological Transition.

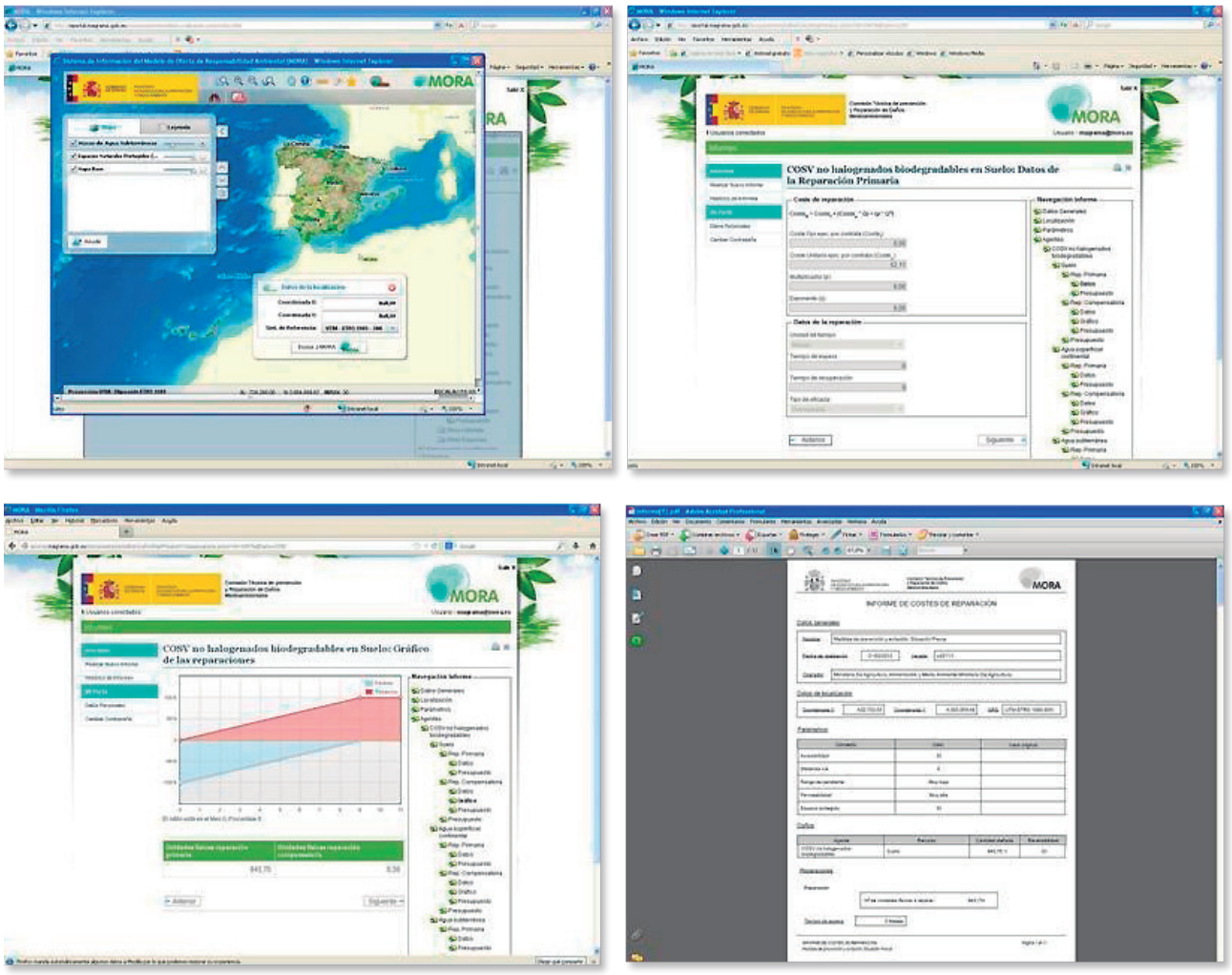

Figure 3. The MORA software application.
Source: The Ministry for the Ecological Transition.

The web service for the Environmental Liability Supply Model (MORA) app

Several industry associations which have implemented sector risk assessments asked the Directorate General for Biodiversity and Environmental Quality to develop a web service that allows them to connect their risk assessment software tools automatically to the Environmental Liability Supply Model app.

In response to this request, a web service was developed letting other external apps to hook up with MORA so that they can automatically access the system's functions. This new application service became operational in September 2015.

Thus, it will be possible to monetise the environmental damage associated with each risk scenario via the MORA app either manually and using the wizard to produce app reports, or else automatically using the web service by allowing other external apps to connect to MORA.

The development of the Environmental Damage Index software application (IDM for the Spanish)

Royal Decree 183/2015 of 13 March amending the Regulations partially implementing Law 26/2007 of 23 October, endorsed by Royal Decree 2090/2008 of 22 December, amended the wording of Article 33 of the Regulations to include a new method which substantially simplifies the process of determining the financial guarantee amount for the operator.

This simplification is based on introducing an environmental damage index which the operator will have to estimate for each accident scenario that is identified in their environmental risk assessment following the steps established in the new Appendix III of the Regulations.

The environmental damage index makes it possible to estimate an order of magnitude of the environmental damage caused under each hypothesis of an accident scenario. This facilitates the comparison of different scenarios with each other and the selection of the benchmark scenario which will serve as the basis for calculating the financial guarantee.

Calculation of this relies on a set of estimators of primary remedy costs that are deduced from the cost equation in the methodology used in the Environmental Liability Supply Model for each agent-resource pairing.

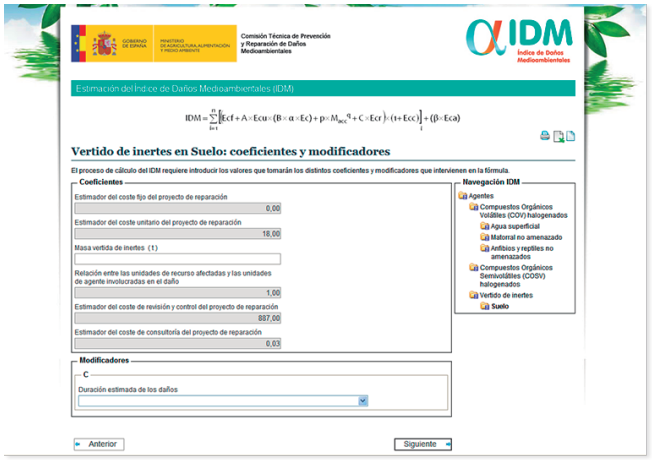

Figure 4. The IDM software application.
Source: The Ministry for the Ecological Transition.

With this new procedure, for working out the amount for the financial guarantee it will only be necessary to quantify and monetise the environmental damage caused for a single benchmark scenario selected instead of for all the scenarios identified, as envisaged in the previous drafting of Article 33 of the Regulations partly implementing Law 26/2007, which represents a substantial simplification and saving of resources.

The Directorate-General for Biodiversity and Environmental Quality has developed a software app to estimate the environmental damage index associated with each accident scenario in the context of the procedure for working out the amount of financial guarantee that has been available at no cost on the website of the Ministry for the Ecological Transition since April 2015.

Participation in the IMPEL project "Financial Provision-Protecting the Environment and the Public Purse"

Since 2016, the Directorate-General for Biodiversity and Environmental Quality has taken part in the project carried out by the network IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law) known as "Financial Provision-Protecting the Environment and the Public Purse" and serves to identify what types of financial guarantee are most suited to providing sufficient and reliable cover and available to regulatory authorities when required.

The aim of the project is to heighten awareness of the availability and suitability of financial guarantee instruments on a Europe-wide basis. This helps afford better protection of the environment and public funds, ensure the principle that the "polluter pays" is observed and encourage operators to invest in preventing environmental damage.

Within this project, in 2018, an in-depth analysis was carried out of various different approaches to determining the amount for financial guarantees for unforeseen situations and to evaluate the potential for applying the methodologies used in Spain, the Netherlands and Ireland in a wider context, not just that of environmental liability regulation but also of other regulation.

The conclusions from this study were that the three methodologies share traits in common. Those in Spain and Ireland use an approach that establishes the environmental risk that activities entail. The evaluation also concluded that there is potential for wider application of the three methodologies in different regulatory spheres and Member States, while always bearing in mind the specific aims which they have been designed to accomplish.

By way of a contribution by Spain to facilitate knowledge and the use by other Member States of the methodology for establishing the mandatory financial guarantee envisaged in Law 26/2007 of 23 October, an English version was developed of the "Environmental Liability Supply Model" (MORA) and the "Environmental Damage Index" (IDM) tools, available on the website of the Ministry for the Ecological Transition since March 2018.

For further information on this project and to consult the full reports, please visit:
https://www.impel.eu/projects/financial-provision-what-works-when/

The development of an environmental risk assessment that targets an individual operator and estimating the relevant financial guarantee

Article 24 of Law 26/2007 of 23 October on environmental liability lays down that the operators engaging in the activities included in Appendix III thereof shall, without detriment to the exemptions provided for in Article 28 thereof, have to have a financial guarantee available to allow them to address the environmental liability inherent to the activity which they seek to pursue.

The same article establishes that setting the amount of this financial guarantee shall be based on the assessment of the environmental risk attaching to the activity, which shall be carried out in accordance with the methodology established by government regulation.

Article 34 of the Regulations partly implementing Law 26/2007 of 23 October, endorsed by Royal Decree 2090/2008 of 22 December and amended by Royal Decree 183/2015 of 13 March, states that environmental risk assessments should be performed by the operators or a third party contracted by them according to the format established by the UNE 150.008 standard or others that are equivalent.

To support operators who, pursuant to Article 37.2 a of the Regulations partly implementing Law 26/2007 of 23 October, have the obligation to set up a financial guarantee, and therefore to perform an environmental risk assessment to determine the amount thereof, the Directorate-General for Biodiversity and Environmental Quality developed an environmental risk assessment for individual operators.

This environmental risk assessment was made available to all operators concerned in 2015 via the section on environmental liability on the website of the Ministry for the Ecological Transition with the intention of it serving as guidance and being of use in performing their environmental risk assessments.

Guide to preparing simplified studies for environmental risk management

Law 26/2007 of 23 October on Environmental Liability includes environmental damage prevention among its key objectives.

The law obliges all operators, irrespective of whether their activity is included or not in Appendix III and where there is an imminent risk of damage, to take the necessary preventive measures or steps to avoid further damage if damage materialises.

To achieve these aims, operators have to be incentivised so that they take a preventive approach by developing tools that allow them to implement suitable environmental risk management for their activity. Thus one of the key tools that help to perform effective risk management is the environmental risk assessment.

Within the commitment of the Directorate-General for Biodiversity and Environmental Quality to providing support for the operators included within the scope of application of Law 26/2007 of 23 October a "Simplified Environmental Risk Management Study" (ESGRA in Spanish) has been developed so that those operators who are exempt from performing an environmental risk assessment due to not being obliged to set up a financial guarantee have a means to enable them to carry out appropriate environmental risk management for their line of activity.

ESGRAs focus on the area of risk management, on prevention and on avoidance efforts with the aim of offering operators who are exempt from carrying out environmental risk assessments a form of assistance in this field. The methodology developed makes it possible to take the risk management decisions that are considered most apt in reducing, where possible, the likelihood of occurrence and cost of damage associated with hypothetical accident scenarios.

This document was made available to all operators concerned in 2015 via the section on environmental liability on the website of the Ministry for the Ecological Transition.

The protocol for acting in the event of an incident and the procedure for enforcing environmental liability

The Directorate-General for Biodiversity and Environmental Quality has produced a document entitled "The protocol for acting in the event of an incident within the context of the regulations on environmental liability and the administrative procedure for enforcing this".

The document was approved by the Technical Committee for the Prevention and Remedy of Environmental Damage and, in the first part thereof, it includes a protocol for acting that provides guidelines for doing so, for both operators and the competent administrative body, in the event of an incident that gives rise to or represents an imminent threat of environmental damage in the context of Law 26/2007 of 23 October.

The second part of the document expands on a procedure for enforcing environmental liability, which includes separate phases in which the competent authority as well as interested parties and operators take part and provides certain minimum criteria to be taken into account throughout the processing of the procedure. The intention is therefore to ensure that the preliminary examination and ruling in these case files adheres to what is laid down in environmental liability legislation and Law 39/2015 of 1 October on Common Administrative Procedure of the Public Administrations.

This document was made available to all operators concerned in 2018 via the section on environmental liability on the website of the Ministry for the Ecological Transition.

The document entitled "Structure and general content of projects to remedy environmental damage"

Measures to remedy environmental damage represent a core component of Law 26/2007 of 23 October on Environmental Liability, as well as of the Regulations partly implementing it, to comply with the principle of "the polluter pays".

Law 26/2007 of 23 October and the Regulations thereof establish an obligation on operators accountable for causing environmental damage to present a remedial project to the competent authority that includes the measures needed to restore damaged natural resources to their basic state.

In this context the Directorate-General for Biodiversity and Environmental Quality has drafted a document called "Structure and general content of projects to remedy environmental damage", which, pursuant to environmental liability legislation, provides a description of the structure and content the operator should take into account when drawing up their proposed remedial project to be filed to the competent authority.

This document was approved by the Technical Committee for the Prevention and Remedy of Environmental Damage and offers the operator guidelines on the phases of which the remedial project consists and the technical aspects to bear in mind. Appendix I to it includes an explanatory index of the parts into which the remedial project for the environmental damage should be structured.

Appendix II to the document provides a set of forms that relate to the content which must be included in the remedial project so as to help systematise all the information required from the operator.

Lastly, Appendix III to the document features the catalogue of remedial techniques included in the software app the Environmental Liability Supply Model (MORA) and the procedure for selecting techniques from those which it recommends.

To illustrate the form which presentation of a remedial project for environmental damage should take, there is a walk-through of a practical case for explanatory purposes.

This document was made available to all operators concerned in 2018 via the section on environmental liability on the website of the Ministry for the Ecological Transition.

Guide to setting up the financial guarantee that is provided for in Law 26/2007

The Directorate-General for Biodiversity and Environmental Quality has written a document entitled "Guide to setting up the financial guarantee provided for in Law 26/2007 of 23 October; notification and checking".

The document contains important information on the procedure for determining the amount of the financial guarantee envisaged in Law 26/2007, including the most complicated technical aspects of environmental risk assessment, the obligations which the operator must shoulder in submitting their statement of liability and the components of the financial guarantee.

This document was made available to all operators concerned in January 2019 via the section on environmental liability on the website of the Ministry for the Ecological Transition, in a space on the environmental liability financial guarantee which also includes a section on the Environmental Damage Compensation Fund prepared in conjunction with the Directorate-General for Insurance and Pension Funds and the Consorcio de Compensación de Seguros.

Training and dissemination, and access to information

In addition to the aforementioned technical instruments that have been developed, extensive efforts have been made to provide training and circulate information in relation to them, as well as to improve access to the information on environmental liability legislation.

Thus, activities aimed at training up personnel from Central and Regional Governments have featured eight courses on environmental liability since 2009, organised by the Directorate-General for Biodiversity and Environmental Quality. Besides this, several regions have organised other specific training courses.

With respect to efforts to circulate information, since 2008, the Directorate-General for Biodiversity and Environmental Quality has participated in over 120 conferences, seminars and talks involving industry associations, consultancy firms, NGOs, insurers and re-insurers, and other organisations.

This is all geared towards disseminating the aims of the Environmental Liability Law, and raising awareness and encouraging the use of the tools that have been developed to facilitate its implementation, as well as listening to the views of all of the stakeholders involved in applying environmental liability legislation and involving them in an open and receptive dialogue. The opinions received have, as far as possible, taken form in the shape of the rules and regulations that have been processed through, as well as in the technical tools developed.

With respect to access to information on environmental liability legislation and its implementation, the Directorate-General for Biodiversity and Environmental Quality has offered the public details on all the technical tools that have been developed via the website of the Ministry for the Ecological Transition. Also available to the public is a general consultation service which is intended to clear up any doubts and attend to any requests for information that arise in connection with this issue.

Thanks to these services, since 2008, every single one of over 1,300 consultations received regarding legal and technical matters has been attended to, as have requests for information of a different kind, as well as the enquiries directed at the regional governments.

Finally, it should be noted that the "Report to the European Commission from Spain pursuant to Article 18.1 of Directive 2004/35/EC" is available on the Ministry's website, including the information required on cases of enforcement of environmental liability processed from 2007 to 2017.

Similarly, the "Report to the Environmental Advisory Council" of July 2018 is publicly available. This report evaluates enforcement of the law pursuant to Additional Provision Eleven. In Appendix II to it, the report includes a list of cases of environmental damage arisen since 2013 and 2017 where Law 26/2007 of 23 October has been applied. This adheres to the same format for filing information approved by the European Commission for the report envisaged in Article 18.1 of Directive 2004/35/EC.

In addition to all this, in March 2019, the "Register of cases of enforcement of environmental liability" was published for those that were processed between 30 April 2007 and 31 December 2017, which involved an update of the information given in previous reports.

Conclusions

In evaluating enforcement of Law 26/2007, the elements must be included which incorporate the principle of prevention, on the one hand, and, on the other hand, that of "the polluter pays".

With respect to application of the prevention principle, a set of environmental risk assessment instruments, technical financial valuation tools, documents and guides have been produced, as mentioned previously. Likewise, implementation of legislation has been carried out focused on encouraging and enhancing the preventive aspects of the law, while there has been intensive work in terms of informing, training and disseminating.

Despite the difficulty of quantifying their impact, all of these measures that have been promoted within the context of Law 26/2007 of 23 October have made a noteworthy contribution to the implementation of the prevention principle.

The technical tools and instruments that have been developed in Spain to facilitate application of Law 26/2007 of 23 October to implement the prevention principle are pioneers in the European Union and are presented as an example to follow in the reports evaluating Directive 2004/35/EC that were published by the European Commission in 2010 and 2016.

With regard to applying the "polluter pays" principle, up to 2013, the number of cases of environmental liability enforcement procedures that were processed and reported to the European Commission was 12. This number of cases of environmental damage that were processed in Spain is in keeping with the number of cases processed in the other EU Member States.

From 2013 to 2017, a further 22 cases of environmental liability enforcement were processed, bringing the total since 2007 up to 34. This represents a substantial increase in the number of cases opened.

On the other hand, with approval of Ministerial Order APM 1040/2017 of 23 October, a date has been set for the entry into force of the obligatory financial guarantee system, which we should recall is voluntary in Directive 2004/35/EC.

Due to all the above, the conclusion from an appraisal of enforcement of Law 26/2007 of 23 October is very positive.

This evaluation concurs with that expressed by the European Commission in its reports of 2010 and 2016, in which it makes the point that several Member States (including Spain) have come a long way in developing guidelines on financial and technical appraisal, environmental risk assessment tools and other elements, which places them in a much better position to apply Directive 2004/35/EC.

Therefore, the actions set in train by Spain that are aimed at enforcing Law 26/2007 of 23 October are in line with the recommendations made by the European Commission for applying Directive 2004/35/EC.

Whatever the case, in its role of chair and secretariat for the Technical Committee for the Prevention and Remedy of Environmental Damage, the Directorate-General for Biodiversity and Environmental Quality continues to promote the implementation of the measures needed to press ahead with making progress in efforts to coordinate the application of Law 26/2007 of 23 October on environmental liability.