

EDL implementation in Portugal, technical guidance and financial security

Vera Lopes, 2011.10.07, Brussels



MINISTÉRIO DA AGRICULTURA, DO MAR, DO AMBIENTE E DO ORDENAMENTO DO TERRITÓRIO

- **ELD transposition in Portugal – main features**
- Operationalization of Environmental Liability Regime in PT
- Collaboration protocols
- Technical Guidance
- Financial Security – work in progress

ELD transposition

Portuguese transposition of Environmental Liability Directive



- Decree-Law n.º 147/2008, 29/07

In to force - August 1, 2008

- Decree-Law n.º 245/2009, 22/09

Changes the definition of environmental damage to water - Compliance with ELD

- Decree-Law n.º 29-A/2011, de 01/03

Changes some of the requirements for the financial provision

ELD transposition

Main features

- Competent Authority for the implementation of the ELD



Portuguese Environment Agency
Technical competences – land contamination

WFD – INAG and ARH
Bird and Habitats Directives - ICNB

- Strict liability

Occupational activities cover → Annex III of ELD
(exemption of spreading of sewage sludge)

- Opcional defences

- ✓ State of the art defence
- ✓ Permit defence

- FIA

Environmental Intervention Fund

➤ **Mandatory Financial Security**

Article 22 – Mandatory financial security for operators who operates the occupational activities listed in Annex III

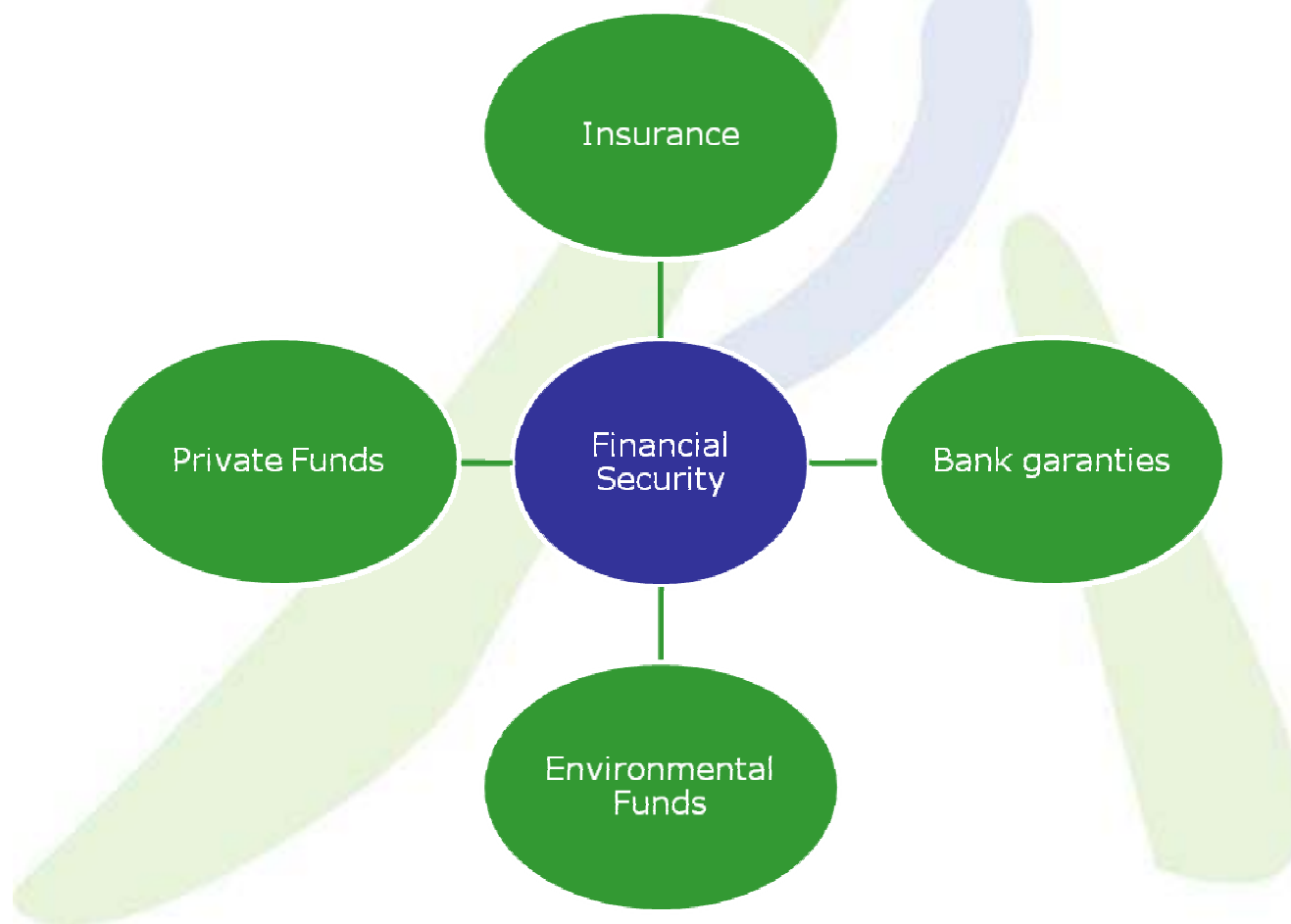
In to force - January 1st, 2010

Features

Autonomous

Exclusive

Financial Security Instruments



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Operationalization of Environmental Liability Regime in PT

Developed strategy for implementation of the DL

Main Goals:

- Establish operational procedures to support efficient articulation with other public entities;
- Collect information regarding baseline condition – databases available
- Raise the awareness level with main stakeholder groups
- Developing the concepts related with ELD application – Technical Guidance

EL implementation

Operationalization of Environmental Liability Regime in PT

Permanent Commission for Environmental Liability, which include environmental authorities for different subjects, such as:

- Water Framework Directive
- Bird and Habitats Directives
- Land and Spatial planning

Objectives:

- Establish coordination mechanisms (operational procedures to achieve efficient articulation);
- To assist the APA in decision-making, through technical cooperation and information sharing, whenever there is a cause environmental damage or imminent threat of such damage.

Kick-off- 2010

EL implementation

Operationalization of Environmental Liability Regime in PT

Consulting Council for Environmental Liability

Composition:

- Industrial, agricultural and business confederations;
- National Association of Portuguese Municipalities;
- Representatives of insurance and banking sectors;
- Portuguese Federation of Environmental Protection Associations (NGOs);
- Environment, economic, agriculture, health, transport and civil protection authorities;
- Representatives of Madeira and Azores Regional Government

EL implementation

Operationalization of Environmental Liability Regime in PT

Consulting Council for Environmental Liability

Duties:

- Provide technical advice and recommendations on subjects related to the definition of guidelines to support the application of the diploma;
- Monitor the technical and economic aspects of the mandatory financial security;
- Follow the development of market trends and conditions of financial security.

**Kick Off meeting
2011**

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Collaboration protocols

Operationalization of Environmental Liability Regime in PT

Protocol - Portuguese Environmental Agency & E.Value + Critical Software Project SARA.E (Assessing Corporate Environmental Liability)

SARAE specific goals:

- Build a Case Study – **Portucel Setúbal Pulp Mill** on the Sado River Estuary, allowing for:
 - the identification of responsibilities, technical and financial resources needs;
 - the characterization of the operator's environmental liability profile;
 - the validation of the methodology and the software system SARA tech.
- Develop a prototype software, SARA tech (integrates capacities of storage, processing and visualization of information (e.g., alert system of imminent threat and/or environmental damages)).

Collaboration protocols

Operationalization of Environmental Liability Regime in PT

Project SARA.E

Developed between

October 2008 and November 2010

Available for consultation at:

www.sara-eld.com

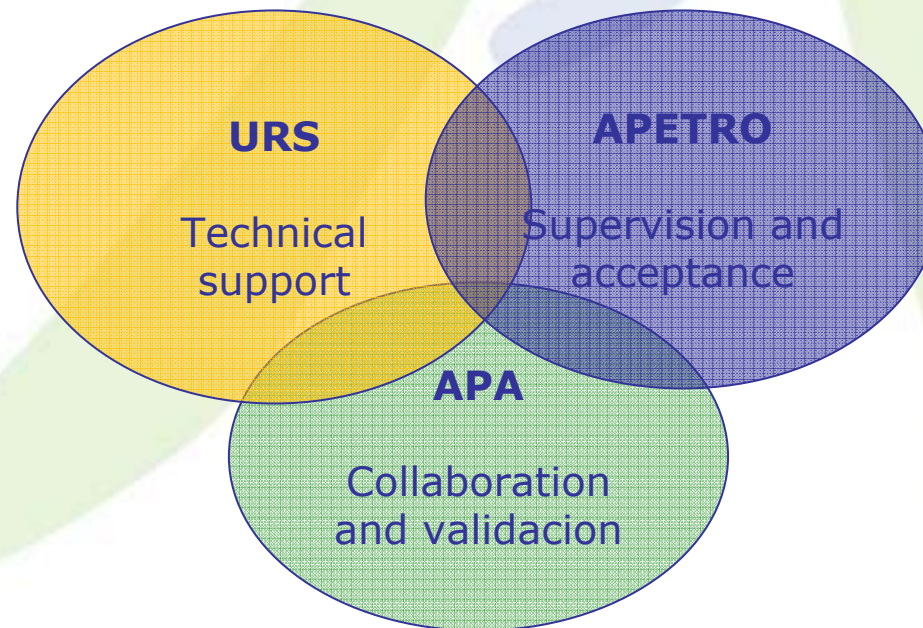
Collaboration protocols

Operationalization of Environmental Liability Regime in PT

Protocol - APA & APETRO (Portuguese Association of Oil Companies)

Develop tools to support the application of ELD to oil storage, oil distribution and service stations

Team:



Collaboration protocols

Protocol - APA & APETRO (Portuguese Association of Oil Companies)

1. Benchmark →

- Legal and technical developments in MS
- Specific tools
- Synergies with other regulations
- Financial Guarantees

Available since july 2010 at:

www.apetro.pt

Collaboration protocols

Protocol - APA & APETRO (Portuguese Association of Oil Companies)

2. Sectorial Guide for implementation of environmental liability scheme at oil storage, oil distribution and service stations activities



- Guidelines for accident analysis
- Specific tools for environmental risk assessment for each sector

Available since May 2011 at
www.apetro.pt

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Technical Guidance

Guidebook Evaluating imminent threat and environmental damage

Clarification on technical aspects of the EL Diploma:

- Scoap (natural resources, activities, etc);
- Base line condition (databases available, relevant data, conservation status, etc.);
- Procedures to be adopted in assessing, preventing and repairing damage;
- Report to competent authorities;
- Articulation with other legal frameworks



Soon available at: www.apambiente.pt

Technical Guidance

Guidebook Evaluating imminent threat and environmental damage

- ✓ Guidance document to support operators in the compliance with EL Diploma
- ✓ Tool to help the CA in decision making process
- ✓ Non binding Guidebook



Discussed with Permanent Commission for Environmental Liability



Released for evaluation by the Consultive Council

Agenda

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- Technical Guidance
- **Financial Security – work in progress**

Financial Security

Article 22° of EL DL 147/2008, amended by DL 29-A/2011

Possible definition of minimum values for the constitution of financial instruments by publication of legal document, related to:

- a) The scope of activities covered;
- b) The type of risk to be covered;
- c) The duration of financial instrument;
- d) The temporal scope of application financial instrument;
- e) The minimum value that must be guaranteed.

Financial Security

Given:

- ELDirective and ELD Report (article 14) – Suggests the possibility of a gradual approach for the mandatory financial security, ceiling for the financial guarantee and the exclusion of low-risk activities
- Diversity of occupational activities cover and types of permitting schemes



Two levels of complexity

Low-risk activities – Level C1



**Exclusion from Mandatory
Financial Security**

Level C2



Mandatory Financial Security

Reviewed and commented by Permanent Commission and Consultive Council

Being analysed by the Ministry

Work in Progress → Guide to the Constitution of Financial Guarantee

Goal:

- Developing Environmental Risk Assessment Methodology
- Stipulation of minimum values for the Financial Security Instruments



Thanks for your attention.