

Letter from: Ambassador José Pascual Marco, Permanent Representative of Spain to the European Union

To: Karl Friedrich Falkenberg, Director-General for the Environment, European Commission

Date: Brussels, 24 April 2014

Subject: Updated report pursuant to Article 18(1) in conjunction with Annex VI of Directive 2004/35/EC

Please find the report pursuant to Article 18(1) in conjunction with Annex VI of Directive 2004/35/EC updated to March 2014.

[complimentary close]



MINISTRY FOR AGRICULTURE, FOOD AND THE ENVIRONMENT

STATE SECRETARIAT FOR THE ENVIRONMENT

DIRECTORATE-GENERAL FOR ENVIRONMENTAL QUALITY AND ASSESSMENT

Spanish report: Questionnaire on the experience gained in the application of the Directive pursuant to Article 18(1) in conjunction with Annex VI of the ELD

MANDATORY PART

The reports referred to in Article 18(1) shall include a list of instances of environmental damage and instances of liability under this Directive, with the following information and data for each instance: Q1. Type of environmental damage, date of occurrence and/or discovery of the damage and date on which proceedings were initiated under this Directive.

From 30 April 2007 until the time of writing, 12 environmental liability cases were processed by the Autonomous Communities of Catalonia, Andalusia, Galicia, Madrid, Extremadura and the Canary Islands. These involved damage to the following resources:

- one refers to land damage;
- nine to water and land damage;
- one to water, land and to the coastline and bays; and
- one to water..

The following table shows the classification of the 12 cases mentioned above according to the two categories of environmental damage that apply to them, as set out in Article 2.1 of Directive No 2004/35/EC. It should be pointed out that in many of these instances the damage was to more than one resource and when these cases are assigned to both resources (land and water) their sum is greater than 12, which is the number of cases processed.

Type of environmental damage	No of accidents
Damage to water	11
Damage to land	11

Table 1. Number of cases according to type of environmental damage.

Of the 12 cases, six have been closed and six are still open.

Furthermore, we know that in five of the cases proceedings were started following a request for action (from an operator or third party) and that also in five of the cases the process of drafting an official communication has started – in view of an imminent threat or for reasons of damage – in two and in three of these cases, respectively.

The table below gives an overview of the following information for ten of these cases: (1) date on which the damage occurred and/or was discovered; (2) date on which the procedure began and ended; (3) date on which the various measures began and ended (preventive measures, avoidance measures and remedial measures).

Case code	Date of occurrence	Date of discovery	Procedure		Preventive measures		Avoidance measures		Remedial measures		State of file
			Beginning	End	Beginning	End	Beginning	End	Beginning	End	
1	15/03/2010	15/03/2010	13/04/2010	01/03/2011	16/03/2010	01/03/2011	16/03/2010	01/03/2011	---	---	Closed
2	---	---	12/11/2010	08/10/2012	---	---	---	---	---	---	Closed
3	08/06/2011	08/06/2011	14/06/2011	---	08/06/2011	12/11/2011	08/06/2011	---	09/07/2011	06/12/2011	Open
4	---	May 07	23/08/2011	---	23/08/2011	03/04/2012	23/08/2011	03/04/2012	03/04/2012	12/12/2012	Open
5	Sept. 12	31/10/2012	16/11/2012	---	31/10/2012	---	31/10/2012	---	---	---	Open
6	20/10/2011	20/10/2011	02/11/2011	---	---	---	---	---	---	---	Open
7	14/05/2008	14/05/2008	27/10/2008	19/04/2012	---	---	14/05/2008	21/05/2008	22/05/2008	23/12/2009	Closed
8	07/12/2011	15/12/2011	23/12/2011	---	---	---	07/12/2011	08/04/2012	---	---	Open
9	25/02/2011	25/02/2011	02/03/2011	---	---	---	25/02/2011	29/03/2011	---	---	Open
10	14/10/2007	14/10/2007	19/10/2007	03/03/2008	14/10/2007	14/10/2007	14/10/2007	14/10/2007	14/10/2007	23/10/2007	Closed

Table 2. Date of beginning and end of the procedure and duration of the measures (preventive, evasive and remedial) applied in the case of each accident.

Please note the following in respect of the other two cases:

– One of these cases took place on 30 June 2010 and remedial measures had to be applied in the place affected by the damage. These remedial measures were implemented in the July-August 2010 period. The file in this case is already closed.

– Another accident took place on 7 November 2008 and remedial actions started in the same month, ending in January 2011. This file is already closed.

Q2. Activity classification code of the liable legal person(s) (1).

The table below provides the data known to us concerning the classification codes for the activities that caused the damage for each of the 12 cases. The table includes information both on the CNAE code (*Clasificación Nacional de Actividades Económicas* – National Classification of Economic Activity) corresponding to the activity that caused the damage, and also, for each of these cases, on the type of activity as listed in Annex III to Law No 26/2007.

Case code	CNAE activity		Annex II to Law No 26/2007	
	Code	Description	Code	Description
1	351	Ship building and repairs	8	Manufacture, use, storage, processing, packaging, release into the atmosphere and transport <i>in situ</i> of dangerous substances and preparations, plant protection products and biocides.

2	---	---	8	Manufacture, use, storage, processing, packaging, release into the atmosphere and transport <i>in situ</i> of dangerous substances and preparations, plant protection products and biocides.
3	---	---	8	Manufacture, use, storage, processing, packaging, release into the atmosphere and transport <i>in situ</i> of dangerous substances and preparations, plant protection products and biocides.
4	---	---	8	Manufacture, use, storage, processing, packaging, release into the atmosphere and transport <i>in situ</i> of dangerous substances and preparations, plant protection products and biocides.
5	---	---	8	Manufacture, use, storage, processing, packaging, release into the atmosphere and transport <i>in situ</i> of dangerous substances and preparations, plant protection products and biocides.
6	4950	Transport via pipelines	8a	Manufacture, use, storage, processing, packaging, release into the atmosphere and transport <i>in situ</i> of dangerous substances.
7	---	---	9	Transport by road, rail, waterways, by sea or by air of dangerous or contaminating goods.
8	---	---	1	Excercise of activities subject to an authorisation in accordance with IPPC Law No 16/2002, de 1 July 2002.
9	---	---	1	Excercise of activities subject to an authorisation in accordance with IPPC Law No 16/2002, de 1 July 2002.
10	2059	Manufacture of other chemical products not classified elsewhere	8	Manufacture, use, storage, processing, packaging, release into the atmosphere and transport <i>in situ</i> of dangerous substances and preparations, plant protection products and biocides.
11	13	Textile industry	---	---
12	---	---	9	Transport by road, rail, waterways, by sea or by air of dangerous or contaminating goods.

Table 3. Economic activities causing environmental damage.

To sum up, all the cases of damage have been caused by operators covered by Annex III to Law No 26/2007 on environmental liability. The economic activities causing the damage belong to paragraphs 1, 8 and 9 of Annex III.

Q3. Whether there has been resort to judicial review proceedings either by liable parties or qualified entities. (The type of claimants and the outcome of proceedings shall be specified.)

In just one case (case No 2) was an administrative appeal lodged in respect of the obligation to prevent, avoid or remedy the damage; this appeal is pending and was lodged by a legitimate entity (a natural or legal person).

Meanwhile, three cases have reached the courts. Please find below the reasons why these cases were brought before the courts, together with the positions of the proceedings as they currently stand.

1. Case 2: Apart from an administrative appeal, the legitimate entities lodged a case before the courts which is currently being heard.
2. Case 3: We have been informed that a case has been lodged before the courts and is currently being heard.
3. Case 6: The undertaking that caused the damage went to the courts to denounce an act of vandalism. The Regional Delegation referred the matter to the Public Prosecutor's Office on 5 July 2012. The outcome of the proceedings is not yet known.

Note: Since all these administrative appeals and legal actions are ongoing, these have not been entered in the three categories set out in the guide to drawing up this report (successful; unsuccessful; partly successful/unsuccessful).

Q4. Outcome of the remediation process.

The table below shows the types of measures implemented to remedy each of the 12 cases, together with the action taken in respect of the same. It should be noted that – with the exception of a single case – remedial work has always been carried out in the place of the damage and that for all cases the conclusion has been that this remedial work has had the effect of returning these damaged natural resources to their baseline condition.

Case code	Type of remedial measure			Primary measures	Compensatory measures	Additional measures
	Initial	Compensatory	Additional			
1	Yes	No	No	Eliminate or neutralise the pollution	---	---
2	<i>Administrative appeal and court proceedings are ongoing.</i>					
3	Yes	No	No	Eliminate or neutralise the pollution	---	---
4	Yes	No	No	Eliminate or neutralise the pollution	---	---
5	Yes	No	No	Eliminate or neutralise the pollution	---	---
6	Yes	---	---	Removal of the pollutant	---	---
7	Yes	No	No	Eliminate or neutralise the pollution	---	---
8	<i>File is being processed. Approval of remedial action project pending.</i>					
9	<i>File is being processed. Approval of remedial action project pending.</i>					
10	Yes	No	No	Eliminate or neutralise the pollution	---	---
11	<i>Remedial measures have been implemented.</i>					
12	Yes	No	No	---	---	---

Table 4. Remedial measures implemented to remedy environmental damage.

Q5. Date of closure of proceedings.

The answer to this question has been included with the answer to Q1.

VOLUNTARY PART

1. *Costs incurred with remediation and prevention measures, as defined in this Directive:*
 - paid for directly by liable parties, when this information is available
 - recovered ex post facto from liable parties;
 - unrecovered from liable parties. (Reasons for non-recovery should be specified)

In all cases where remedial work has been started, the costs of same have been shouldered in full by those responsible for the damage. We have the following information on the costs of this remedial work:

1. Cases 1, 2 and 4. The total cost of avoidance and remediation varied from EUR 12 000 to EUR 250 000.
2. Case 6. Avoidance costs totalled EUR 80 000 and initial remediation costs are estimated (this is an estimate as the work has not yet been completed) at EUR 2 000 000.
3. Case 11. The remedial measures had an associated cost of EUR 80 000.
4. Case 12. It cost EUR 250 000 to remedy the damage.

2. Results of the actions to promote and the implementation of the financial security instruments used in accordance with the Directive.

Law No 26/2007 of 23 October 2007 on environmental liability transposed into Spanish law Directive No 2004/35/EC of the European Parliament and of the Council of 21 April 2004.

This Law was partly implemented by the Regulation on the partial implementation of Law No 26/2007, adopted by Royal Decree No 2090/2008 of 22 December 2008. It lays down a new administrative framework for remedying environmental damage in accordance with which operators which cause damage to the environment or threaten to do so must adopt the necessary measures to prevent it happening or – when the damage has already taken place – must return the damaged natural resources to the state they were in before the damage happened (baseline condition).

Law No 26/2007 provides that operators of activities included in its Annex III must have a **financial guarantee**, where this obligation applies, enabling them to shoulder the environmental liability inherent in the activity or activities that they intend to carry out. If it is thought that an operator could cause damage for which the initial remediation is estimated at EUR 300 000 or more, a ceiling which goes up to EUR 2 000 000 if the operator participates in the Community Eco-Management and Audit Scheme (EMAS) or is certified under the applicable UNE-EN ISO 14001 standard.

In accordance with the fourth final provision of Law No 26/2007, the date on which a financial guarantee is required for each activity listed in Annex III will be laid down by a ministerial order, after the agreement of the Government Executive Committee on Economic Affairs and after consulting the Autonomous Communities and the sectors affected.

This is why Order No ARM/1783/2011 of 22 June 2011 was published in the Spanish Official Gazette on 29 June 2011. This Order lays down the order of priority and the timetable for adopting the ministerial orders that will require a financial guarantee, as indicated in the fourth final provision of Law No 26/2007, of 23 October 2007, on environmental liability. Article 2 of the Order states the following:

'Article 2. Order of priority and timetable.

1. *The order of priority for the requirement to hold a financial guarantee for the sectors of*

activity shall be laid down in the Annex.

2. The publication of ministerial orders requiring a financial guarantee for sectors of activity that are classed as priority 1 in the Annex will be made between one and three years following the date on which this Order enters into force.

3. The publication of ministerial orders requiring a financial guarantee for sectors of activity that are classed as priority 2 in the Annex will be made between three and five years following the date on which this Order enters into force.

4. The publication of ministerial orders requiring a financial guarantee for sectors of activity that are classed as priority 3 in the Annex will be made between five and eight years following the date on which this Order enters into force.

This timetable means in practical terms that the requirement to hold a financial guarantee will be introduced gradually, with the corresponding ministerial orders being published according to the timetable laid down in Article 2. These will determine the date when each sector of activity is required to hold a financial guarantee.

A technical study was made to classify the various sectors of activity listed in Annex III to Law No 26/2007 on the basis of different levels of priority. These sectors of activity were first, identified and then given National Classification of Economic Activity codes.

Secondly, information on each of these activities was analysed, with priority given to those activities scoring highest using a series of criteria related to their environmental risk. This meant that all sectors of activity could be classified as belonging to priority levels 1, 2 and 3, enabling priority to be given to the task of bringing about a gradual application of the obligation to hold a financial guarantee as laid down in Law No 26/2006.

Meanwhile Spanish legislation on environmental liability lays down an obligation for operators of activities listed in Annex III to draw up an environmental risk assessment with the aim of identifying possible accident scenarios and calculating the cost of the environmental damage that these might entail. This risk assessment will enable operators to find out if they are obliged to hold a financial guarantee and, if so, calculate its value. It is also a vital part of the management of environmental risk.

The Regulation on the partial implementation of Law No 26/2007 provides for a number of voluntary instruments, i.e. environmental risk assessments by sector and scale charts, to help assess risk scenarios and reduce the cost of drawing them up. In this way operators are able to draw up their environmental risk assessments taking as a starting point these sectoral risk assessment tools which were at an earlier stage approved for each sector by the Technical Commission for Damage Prevention and Remediation (a body set up in Article 3 of the Regulation on the partial implementation of Law No 26/2007).

The sectoral environmental risk assessments take the form either of templates for environmental risk assessment reports, known as MIRATs, or methodological guides for risk analysis ordered according to the degree of similarity of the sectors from an environmental risk perspective.

The scale charts apply to sectors or small or medium-sized businesses which, given their high degree of similarity, mean that their environmental risks can be standardised.

To simplify matters for both the competent public administrations and the operators, on the matter of tasks linked to the obligation to hold a financial guarantee, the Technical Commission for Damage Prevention and Remediation approved a series of activities and technical instruments drawn up by the Directorate-General for Environmental Quality and Assessment of the Ministry for Agriculture, Food and the Environment which are as follows:

A. Design of sectoral tools for Environmental Risk Assessment

To support the various business sectors listed in Annex III to Law No 26/2007 in drawing up the sectoral environmental risk assessments, the Directorate-General for Environmental Quality and Assessment of the Ministry for Agriculture, Food and the Environment has produced a document entitled 'Structure and general content of the sectoral instruments used for environmental risk assessment'. The purpose of this document is to assist the different sectors with their drafting of sectoral risk assessments and to establish a structure and general content that these should contain.

To illustrate the methodology contained in this document, two templates were drafted for two generic sectors (a scale chart and a MIRAT). It is hoped these will help in the understanding of the steps that have to be followed. The templates are general in nature and aim to guide the sectors as regards the operations that should be made when the time comes to draw up this type of instrument.

The documents can be consulted on the web page of the Ministry for Agriculture, Food and the Environment at the following address: <http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/responsabilidad-mediambiental/analisis-de-riesgos-sectoriales/herramientas.aspx>

The Directorate-General for Environmental Quality and Assessment has also carried out the activities listed below:

– Technical assistance for activities and/or professional sectors listed in Annex III to Law No 26/2007 of 23 October 2007 on the design of sectoral tools for environmental risk assessment

Since June 2010 the Ministry for Agriculture, Food and the Environment has been operating a mailbox for queries from sectors or groups of professional activities listed in Annex III to Law No 26/2007 wishing to design, or are in the process of developing, sector-specific tools for environmental risk assessments.

The mailbox has the following features:

- It gives answers to queries on specific methodological aspects relating to the approach to take in carrying out a sectoral environmental risk assessment.
- It helps in the practical exercise of calculating the level of cover of the financial guarantee regarding sector-specific activities by giving a financial value to accident scenarios that are the result of applying the risk assessment instrument drawn up for the sector in question, and in view of their submission to the Technical Commission for Damage Prevention and Remediation. The document entitled 'Structure and general content of the sectoral instruments used for environmental risk assessment' makes reference to this practical exercise.
- It answers queries on the information required to apply the IT tool to provide comprehensive assistance for calculating the financial cost of environmental damage which is currently being developed (called the MORA).

These services are available by consulting the web page of the Ministry for Agriculture, Food and the Environment at the following address:

http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/responsabilidad-mediambiental/analisis-de-riesgos-sectoriales/buzon_empresas.aspx

– Creation of three pilot schemes for the design of a MIRAT (standardised environmental risk report), a scale chart and a methodological guide

To support the various business sectors listed in Annex III to Law No 26/2007 in drawing up the sectoral environmental risk assessments, the Directorate-General for Environmental Quality and Assessment of the Ministry for Agriculture, Food and the Environment has produced a scale chart and a methodological guide for three industrial sectors.

Reports on these tools services are available to all interested sectors, so that they might be a useful guide for them when they draw up their own sectoral tools, by consulting the web page of the Ministry for Agriculture, Food and the Environment at the following address:

<http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/responsabilidad-mediambiental/analisis-de-riesgos-sectoriales/herramientas.aspx>

B. Creation of a standard environmental liability tender form and the corresponding informatics application

With the aim of offering all operators and industrial sectors a tool to help them comply with the obligations laid down by Law No 26/2007, the Directorate-General for Environmental Quality and Assessment has drawn up a methodology to calculate the costs of remedial actions, named the Standard Environmental Liability Tender Form, which helps to calculate the financial cost of risks that operators identify in the environmental risk assessments for their plants.

An IT application based on this methodology has also been developed to offer all operators and industrial sectors a tool to provide comprehensive assistance in calculating the financial cost of the environmental damage associated with each risk scenario in accordance with the cost methodology laid down by Royal Decree No 2090/2008, and of the remedial actions, both those carried out initially and also compensatory and additional measures – along with the best available techniques – to return the natural resources, and the services that these provide, to their baseline condition.

In addition, this IT application provides the costs of remedial actions associated with risk scenarios and, in so doing, gives operators a tool that enables them to manage the risks of their plant correctly. This is without any doubt a tool that helps businesses make the correct decisions on their environmental management.

Finally, the application gives both operators and public administrations guidance as to which are the best remedial techniques to apply if environmental damage occurs and the need arises to design a project to remedy it.

The Standard Environmental Liability Tender Form informatics application has been available since 5 April 2013, at no cost, on the web page of the Ministry for Agriculture, Food and the Environment at the following address: <http://eportal.magrama.gob.es/mora/login.action>

The document entitled 'Structure and general content of the sectoral instruments used for environmental risk assessment', which describes the methodology underpinning the informatics application, is also available: (http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/responsabilidad-mediambiental/Documento_metodolog%C3%ADa_tcm7-270600.pdf).

The 'User's Guide' to the IT application can also be found at the following address: http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/responsabilidad-mediambiental/Gu%C3%ADa_Usuario_Aplicaci%C3%B3n_MORA_tcm7-270599.pdf

The Directorate-General for Environmental Quality and Assessment held presentation sessions on the Standard Environmental Liability Tender Form IT application for the benefit of all players involved in the application of rules on environmental liability, with the purpose of giving an overview of how they work, and so making them easier to understand and use.

These sessions were held on 4 and 10 April 2013 in the Salón de Actos (main meeting room) of the Ministry for Agriculture, Food and the Environment. All information pertaining to these sessions can be found at: <http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/formacion/jornadas-presentacion-MORA.aspx>

One of the most complex inputs needed to calculate the financial cost of damage is the quantification of the damage itself, i.e. an estimate of the quantity of each resource affected by each agent causing the damage. The rules on environmental liability, i.e. the Regulation on the partial implementation of Law No 26/2007, open up the possibility of using simulation models for transport and the behaviour of the agent causing the damage in this task as it is released and as regards recipients.

In this connection, the Directorate-General for Environmental Quality and Assessment has drawn up a document entitled 'An analysis of the tools to assess the release and behaviour of chemical agents against the background of the rules on environmental liability' with a view to giving operators the choice, among the offers available, of the templates most appropriate to their case, and assessing whether or not the Standard Environmental Liability Tender Form might be used.

This document is available at the following address: http://www.magrama.gob.es/es/calidad-y-evaluacion-ambiental/temas/responsabilidad-mediambiental/Herramientas_de_evaluacion_de_difusion_y_comportamiento_de_agentes_quimicos_tcm7-270598.pdf

C. Assessment of the sectoral tools for Environmental Risk Assessment

As mentioned above, operators can draw up their environmental risk assessments using as a starting point the sectoral environmental risk tools, which were at an earlier stage approved for each sector by the Technical Commission for Damage Prevention and Remediation.

To secure approval, an assessment of the sectoral tools presented by the different industrial sectors is needed. To do this, the Technical Commission for Damage Prevention and Remediation approved a corresponding assessment procedure.

Under these procedures, in the first instance the business sector presents its sectoral tool (MIRAT, methodological guide or scale chart, where appropriate) to the Secretariat of the Technical Commission for the latter to consider.

If an evaluation of the sectoral tool shows that it does not meet the criteria laid down in the rules on environmental liability, the tool is returned to the sector for it to correct the

shortcomings that have been detected.

If it is then shown to be compliant with the criteria laid down in the rules, it is submitted to the members of the Technical Commission. Subsequently it is passed on to the Working Group on the Analysis of Sectoral Risks which will request the designation of a number of Experts. When the list of experts proposed is made known, the Working Group will set up an 'Expert Panel' to make an *ad hoc* evaluation of each proposed sectoral tool. This Panel draws up a report setting out its discussions for submission to the Working Group and from there to the Technical Commission meeting in plenary.

The Technical Commission for Damage Prevention and Remediation then issues the sectoral tool with a favourable report if it considers the tool adequate. From this moment on it can be used by operators in the sector to draw up environmental risk assessments for their plants.

At present there are over 50 sectors in Spain which are drawing up tools to assess sectoral risks. At the time of writing, six sectors have submitted their sectoral environmental risk tools to the Technical Commission for Damage Prevention and Remediation for evaluation. A favourable opinion has been granted for one of these, with the others still pending.

D. Organisation of training courses and information sessions on environmental liability rules

Both the General Administration of the Spanish state and the Autonomous Communities have organised numerous training courses and information sessions on the application of environmental liability rules, including on how the financial guarantees apply.

These activities aim to pass on information on new aspects of the rules and technical advances. They are designed both for operators in the sectors of industry and for members of the administrations responsible for applying Law No 26/2007 on environmental liability.

More than 1 500 people have taken part in these training courses and information sessions, both from the public and private sectors (operators, consultants, insurance sector) and also from non-governmental organisations.

3. An assessment of the additional administrative costs incurred annually by the public administration in setting up and operating the administrative structures needed to implement and enforce this Directive.

The following should be noted as regards the estimate of administration costs borne by the public administrations to put in place the administrative structures required to implement and apply Directive No 2004/35/EC on environmental liability through Law No 26/2007 and the Regulation on its partial implementation:

The development of technical tools in the General Administration of the State, described in the above section and carried out by the Directorate-General for Environmental Quality and Assessment of the Ministry for Agriculture, Food and the Environment, has cost over EUR 5 million in services contracts over the last four years.

On top of these costs must be added the staff costs of the Directorate-General for Environmental Quality and Assessment, which is tasked with activities in connection with the Presidency and Secretariat of the Technical Commission for Damage Prevention and Remediation. These are estimated at EUR 20 000 per year.

Meanwhile in the Autonomous Communities and Autonomous Cities the creation and running of the administrative structures required to apply the new environmental rules

has incurred administrative costs estimated as being between EUR 684 000 and EUR 1 995 000 per year.

March 2014