General provisions

THE HEAD OF STATE

18475 Environmental Liability Act, LAW 26/2007 of 23 October.

JUAN CARLOS I
KING OF SPAIN

To all those who may have knowledge of these presents:
Know that the Cortes have passed and I have ratified the following Act:

PREAMBLE

I

Article 45 of the Constitution recognises the right of citizens to enjoy a suitable environment as a requisite condition for personal development and concurrently provides that those who breach their duty to rationally use natural resources and conserve nature are obliged to remedy the damage caused, irrespective of the administrative or criminal sanctions which may also apply.

This mandate has been implemented through different legal rules which, despite their pervasiveness and currency, have been unable to prevent the reiterated occurrence of different sorts of accidents which have had extremely serious consequences for natural surroundings. This underscores the need for environmental legislation featuring new liability systems capable of effectively preventing environmental damage and, when such damage does occur, assuring swift and proper remediation.

This need is met by Directive 2004/35/EC 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 which this Act transposes, incorporating an administrative environmental liability procedure into our legal system which is both objective and unlimited, based on the principles of prevention and “polluter pays”. This is indeed an administrative procedure inasmuch as it envisages a whole set of administrative regulatory authorities through which the public Administration ensures compliance with the law and enforcement of the liability procedure provided for therein. Hence, this marks a break with classic civil liability where disputes arising between the party responsible for the damage and the injured party settle their differences in court.

Environmental liability is also unlimited. The liable operator is under obligation to remedy damage (or to prevent it as the case may be), returning damaged natural resources to their original state and defraying all costs associated with such preventive or remedial action. By stressing full restoration of natural resources and services rendered, the accent is placed on the value of the environment — i.e. liability cannot be satisfied by mere pecuniary compensation.

Hence, environmental liability is objective insofar as mandatory action is imposed upon the operator, over and above any fault, fraud or negligence regarding his behaviour. In short, this completes the legal framework regarding natural resource protection given that environmental damage arising from administrative or criminal infringements was already classified in the different sectoral regulations which already regularly provided for obligatory remedy of damage arising from said infringements. Furthermore, by transferring the costs arising from remedy of environmental damage from the society at large to the economic operators benefiting from the use of natural resources, this Act provides for effective enforcement of the “polluter pays” principle.
Under no circumstances must the remedial dimension of the new environmental liability procedure take away from the preventive dimension. Special attention must therefore be given to prevention both in terms of regulation and administrative enforcement given that that prevention is the best conservation policy — i.e. preventing environmental damage from occurring in the first place. It is this vision that underlies the universal application of the environmental damage prevention and containment obligations envisaged in this Act, which are applicable to all types of activities and behaviours whether wilful or negligent or merely accidental or unforeseeable.

II

The Environmental Liability Act is divided into 49 Articles grouped in six chapters and a final part composed of 14 additional provisions, one transitional provision and six final provisions followed by six annexes. Chapter I covers the general provisions regulating the aim of the Act and its definitions. As tends to be the case with other Community regulations, definitions play a key role in defining the regulation’s scope. This is especially the case with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 and, by extension, with this Act. Not all natural resources are protected by this Act; only those coming within the meaning of environmental damage, namely: damage to water; land; coastal areas and estuaries; and damage to natural flora and fauna species found permanently or temporarily in Spain and to the habitats of all autochthonous natural species. Damage to the air and certain traditional damage, i.e. damage to persons and their property (unless the latter are a natural resource) are excluded. Furthermore, not all of the damage suffered by these natural resources gives rise to environmental liability. For this law to be applicable there must be a threat of damage or actual damage having a significant adverse effect on the natural resource in question. In the case of land, the concept of damage also includes significant risk of adverse effects on human health.

The provisions laid down in Article 3 complete the definition of the scope of the Act by combining three elements: the type of economic or professional activity under scrutiny; the type of measure which the operator is obliged to adopt and the nature of the latter’s liability. Thus there are three different ambits, which may be described in the following terms:

a) Article 3 first of all regulates an objective liability procedure whereby an operator who in carrying out any of the economic or professional activities enumerated in Annex III does actual damage to the environment or subjects the latter to the threat of such damage, must adopt the prevention, containment or remediation measures laid down in the Law.

b) Secondly, it regulates a liability procedure which is likewise objective but sectorally broader, covering threats of environmental damage caused by any type of economic or professional activity regardless of their inclusion in Annex III of this Act. This procedure, with a lesser degree of obligation inasmuch as it only requires the adoption of measures to prevent environmental damage or to make sure that no new damage is caused, is a new addition to the terms of the Directive.

c) Thirdly, it regulates a subjective liability procedure which includes environmental damage and the threat thereof caused by any type of economic or professional activity, regardless of whether it is included in Annex three of this Act, requiring the adoption of prevention, containment and remediation measures regulated by this Act. What is new about this procedure with respect to the way it is regulated by the Directive is that a wider range of natural resources are protected. The Community Directive only envisages inclusion of habitats and protected species, while this Act also covers damage to land and water as well as the seacoast and estuaries, hence raising the level of protection in line with already existing requirements under Spanish law.
The objective nature of the environmental liability procedure is enhanced by a presumption whereby economic or professional activities listed in Annex III shall be considered as having caused the damage or threat thereof when the intrinsic nature of such activities or they way in which they have been carried out warrant such a presumption.

And lastly, Article 3 also identifies those activities and damage which are excluded in all cases from the scope of the Act and identifies those situations in which damage caused by pollution of a diffuse nature warrant the application of environmental liability mechanisms. Article 4 defines the temporary application of liability, providing that the Act shall not apply to environmental damage if more than 30 years have elapsed since the emission, event or incident causing it took place. An especially relevant issue dealt with in Chapter I is the regulation of concurrent liability rules bearing in mind the number of existing procedures (of varying natures) through which remediation of environmental damage can be required. In this connection, Article 5 provides for the non-enforcement of the Law to compensate damages suffered by individuals to their person, property or rights (non-environmental damages) but does provide, with a view to preventing double recovery of costs, that these injured parties may not demand remedy for damages caused to the extent that the latter have been remedied by the application of this Act. On occasion it may happen that the said damages are in fact environmental, in which case they may be remedied in accordance with this Act. For that reason, non-environmental damages are regulated in a separate article specifically indicating that these are excluded from the scope of protection provided under this Act, except in cases where the damage in question affects a privately owned environmental asset, in which case remedy may be provided under this Act.

Article 6 deals with cases where environmental liability overlaps with liability considered as a legal infraction or crime. In these cases, the Act provides for compatibility between environmental liability and the administrative or criminal sanctions which may be imposed under law and which must be observed in cases where the course of a procedure regulated under this Act concurs with others whose aim is to impose administrative or criminal sanctions. In all cases, the Act ensures effective intervention in terms of prevention with a view to preventing any sort of jurisdictional obstacles. It also ensures the prevention of double recovery of costs while respecting at all times the scope of the Administration's sanctioning authority and the punitive authority of the Courts.

Article 7 deals with administrative powers, generally providing for enforcement of this Act through regional authorities but safeguarding those powers which legislation regarding water and coasts attributes to the General State Administration to protect State-owned public properties. Furthermore, considering that environmental damage may be supra-regional, the Act reinforces the obligation of public administrations to collaborate with a view to achieving better and more efficient enforcement thereof and makes it compulsory to request a report from those administrations whose powers or interests may be affected by the intervention of other administrations in the enforcement of this Act. And lastly, in anticipation of major disasters, the Act acknowledges the authority of the General State Administration, exceptionally as may be required for reasons of extreme seriousness or urgency, to promote, coordinate or adopt all measures needed to prevent irreparable environmental damage or to protect human life in collaboration with the Autonomous Communities and within their respective purviews.

In any case, the Act safeguards the regional power to implement State guidelines and to adopt rules for additional protection. Specifically, the Second Additional Provision allows Autonomous Communities, within their purviews, to adopt more stringent measures regarding the prevention, containment or remediation of environmental damage, including the authority to classify new infractions and sanctions and to subject other activities or subjects to the liability procedure provided for herein,
without prejudice to the exclusions adopted by the original legislator and those listed in the Second Additional Provision or the Tenth Additional Provision.

III

Chapter II lays down the rules regarding the attribution of liability. Article 9 enshrines the obligation of operators undertaking professional or economic activities to adopt prevention, containment and remediation measures and to defray their cost, regardless of the amount, resulting from enforcement of this Act. Operators also have a general duty to collaborate with the Administration and a specific duty to report all environmental damage or threat thereof which they are aware of. The objective nature of operators' environmental liability is once again reinforced in this article through a second presumption whereby compliance with the conditions laid down in any administrative authorisation needed to carry out the activities listed in Annex III does not exonerate the operator from any environmental liability to which he may be subject, barring those cases envisaged in Article 14 where the Public Administration itself authorises environmental damage the causing of which is deemed tolerable. Chapter II also includes specific rules for cases where liability is incurred by a group of undertakings, in which case the provisions of Commercial Code Article 42(1) apply, and for cases where there are a number of responsible parties in which case the rules of associative liability apply provided that it is proven that the operator played a part in causing the damage. It also includes rules providing for identification of those responsible for pecuniary debts left in the event of the death or extinction of the responsible operator and in cases of joint and several or subsidiary liability.

The rules laid down in Article 14, 15 and 16 address those cases where the operator is not under obligation to defray the costs of preventive and remedial measures. These Articles also identify the measures by which he may recover any costs incurred by virtue of enforcement of the law as required by the Directive. Article 14 does not stipulate causes for exemption from liability because operators are always under obligation to adopt measures to prevent, contain or remedy damage to the environment. However, under the circumstances envisaged in Article 14(1) and (2), an operator may recover cost incurred upon adoption of such measures. The circumstances envisaged in paragraph 1 have to do with the intervention of a third party unrelated to and independent of the organisation of the activity in question despite the implementation of suitable security measures, and compliance with orders or mandatory instructions delivered by a public authority. The two circumstances described in paragraph 2 only free the operator from costs incurred upon adoption of remedial measures and only apply in the absence of fraud, fault or negligence on his part. The first of these, an exception to the presumption in Article 9, may be claimed when the emission or act which is the direct cause of the environmental damage is the express, specific object of an administrative authorisation granted in accordance with rules applicable to the activities listed in Annex III. The operator, in conducting his activity, is further required to have strictly adhered to the stipulations or conditions laid down for that purpose in the said authorisation and to regulations in force at the time of the emission or act causing the environmental damage. The second circumstance envisaged in Article 14(2) may be claimed when the operator can prove that the environmental damage was caused by an activity, emission or the use of a product which, at the time of undertaking or use, was not deemed potentially damaging to the environment from the perspective of scientific and technical knowledge available at that time. Regarding cost recovery, under the circumstances described in Article 14(1) the operator must submit a complaint against the third party responsible for the damage or against the Administration which issued the order by taking the corresponding action in accordance with the provisions of civil or administrative law applicable in each case. Under the circumstances described in Article 14(2), costs shall be reimbursed either through the State Environmental Damage Repair Fund regulated by Article 34 or
through the instruments provided for by the regulations issued in implementation of this Act.

IV

Chapter III defines the obligations of operators regarding matters of prevention, containment and remediation and the duties of public administrations and the powers vouchsafed to them to ensure compliance. In accordance with the provisions of Articles 17 and 18, in the event of a threat of environmental damage arising from any economic or professional activity, it is the operator's duty to adopt prevention and containment measures and to communicate the event to the competent authority, which may require the operator to furnish additional information or adopt certain measures. The said authority may likewise instruct the operator as to the way in which these measures must be carried out or, as the case may be, execute them at his own cost if so warranted by the circumstances envisaged in this Act.

According to Article 19, in the event of environmental damage arising from one of the professional activities listed in Annex III appended hereto, it is the operator's duty to adopt the requisite remediation measures and to communicate the event to the competent authority. If the damage arises from activities other than those listed in Annex III, the operator must only perform the aforementioned duties if he is at fault or negligent. Article 20 makes it compulsory for the operator to draft a proposal of remedial measures in accordance with the criteria laid down in Annex II and submit it to the competent authority, which in turn is responsible for its formal approval and, if appropriate, establishing an order of priority for their execution. As in cases of the threat of damage, the Administration reserves the right to demand additional information from the operator, to require the latter to take emergency action or take such action itself, to require the operator to take remedial action, to give the latter instructions regarding how this should be done, and lastly to subsidiarily execute the said measures at the expense of the operator when so warranted by the circumstances envisaged herein.

Chapter III concludes with two regulatory provisions. First of all, Article 22 describes the powers vouchsafed to the Administration for the purpose of ensuring that operators comply with the duties imposed by this environmental liability law and identifies the administrative actions to be taken if they fail to meet those obligations. Secondly, Article 23 gives the Administration the authority to take direct action in execution of measures provided herein to prevent new damage or to remedy that already done when so required for protection of natural resources to be most effective and when so warranted by the circumstances.

V

Chapter IV deals with financial guarantees which are an essential requirement in order to undertake the activities listed in Annex III of this Act. Their purpose is to ensure that operators have sufficient economic resources to cover the costs arising from the implementation of environmental damage prevention, containment and remediation measures. Article 24 makes the competent authority responsible for establishing the amount of the financial guarantee for each type of activity on the basis of the intensity and extent of the damage which such activity could cause in accordance with the criteria laid down in the regulations. This amount is to be determined following the methodology for economic assessment of environmental damage remediation, the development of which is provided for in paragraph 3 and which must be approved by the National Government to ensure uniform application throughout the country.

Article 24 defines up to three types of financial guarantees which may be alternative or complementary:
a) An insurance policy taken out with a company authorised to operate in Spain. In this case the functions referred to in Article 33 would be discharged by the Insurance Clearing Consortium.

b) A guarantee granted by a financial institution authorised to operate in Spain.

c) The constitution of a technical *ad hoc* reserve fund to cover liability for possible environmental damage stemming from the activity in question, in the form of financial investments backed by the public sector.

The rest of the articles lay down the rules designed to govern the constitution and operation of these guarantees; define the risks and costs covered by them; define the rules regarding their duration and quantitative limits; and identify the parties responsible for constituting the guarantees and the operators exempt from such obligation. This exemption applies to operators who undertake activities liable to cause damage whose remedy is estimated at under 300,000 euro and to those others whose damage remediation costs are between 300,000 euro and 2,000,000 euro and who can establish that they are permanently affiliated to an environmental management and audit system. This exemption is likewise applicable to the use of plant health products and biocides for agricultural and forestry purposes as listed in Annex III, paragraph 8 c) and d). And lastly, provision is made for the intervention of the Insurance Clearing Consortium in managing the environmental damage compensation fund, which is to be constituted with the contributions made by those operators who take out insurance. The said Fund is intended to extend coverage for the liabilities insured in the original policy and for those damages which, having been caused by the activities authorised during the authorisation period, are discovered or claimed after the discovery or claim periods stipulated in the insurance policy have elapsed, and within a number of years as from the expiration date of the policy equal to the number of years that the said policy was in force, subject to a limit of 30 years as specified in Article 4. The Consortium will also use Fund monies to cover the obligations of those insured operators whose insurer is declared bankrupt, is subject to an audited settlement procedure or has been taken over by the Insurance Clearing Consortium itself.

To supplement the financial guarantee system, Article 34 creates a State Fund for the remedy of environmental damage, to be managed by the Ministry of the Environment, and which will be financed from the General State Budget. This fund will cover the costs arising from remediation measures of State-owned public properties in those cases where the causes warranting exemption from the obligation to defray the costs regulated in Articles 14(2) and 15(2) apply. This Fund is open to the participation of the Autonomous Communities through the collaboration instruments provided for in applicable laws.

VI

Chapter V of the Act focuses on infringement and punitive procedure. In contrast to the workings of the environmental liability scheme, where the operator may be either a private or a public person, the Act’s punitive procedure only provides for the levying of sanctions on private natural or legal persons. The infringements classified under Article 37 define those actions which constitute a breach of the legal obligations of operators, grouping them into two categories, very serious and serious, on the basis of the degree of damage that such actions cause to natural resources. Sanctions are in the form of fines ranging from 50,001 euro to 2,000,000 euro in the case of a very serious infringement, and from 10,001 euro to 50,000 euro in the case of a serious infringement. In both cases provision is made for suspension of the authorisation granted to the operator for up to two years in the case of a very serious infringement and up to one year in the case of a serious infringement.
Chapter VI deals with procedural issues. The obligation of adopting environmental damage prevention, containment and remediation measures stems directly from the implementation of this Act. However, the appropriate procedural channels must be followed when the government intervenes in the apportionment of environmental liability by determining the responsible party or the measures to be adopted. The Act does not regulate this procedure because that is the duty of the Autonomous Communities. It merely establishes certain procedural guarantees which, in most cases, can be traced back to the Directive itself. For example, Article 41 regulates the way in which procedures for apportioning environmental liability can be initiated, identifying two possibilities:

a) At the request of a party which may be the operator himself or any other person concerned.
b) Ex officio, either at the initiative of the competent authority itself, at the request of another public administration or through a complaint.

The most interesting feature here relates to requests for public intervention submitted by private parties other than the operator. These concerned persons are owners of property, rights or legitimate interests which may be affected by environmental damage or the threat thereof, or organisations whose aim is to protect the environment — in other words, the stakeholders identified in Article 31 of the Public Administrations and Common Administrative Procedure (Legal Regime) Act, Law 30/1992 of 26 November, and non-profit legal persons who meet the following requirements:

a) The aims laid down in their bylaws include protection of the environment in a general sense or include specific elements thereof.
b) They were legally constituted at least two years prior to the complaint and have been actively engaged in the activities necessary to achieve the aims laid down in their bylaws.
c) Pursuant to their bylaws, they carry on their activity in a territory which is affected by the environmental damage or threat thereof in question.

The complaints submitted by these stakeholders must adhere to the provisions of this Act and will cause the initiation of the procedure for apportionment of administrative environmental liability. This procedure must be duly regulated by each public administration and in any case must respect the guarantees established under the Community Directive, namely: the right of the stakeholder to formulate observations and submit data; the grant of a hearing to the operator and other stakeholders; and to receive a reasoned decision with express notification addressed to the requesting party and other stakeholders within a maximum of three months. To offset the legal weight attached to liability demands by stakeholders and to prevent frivolous or abusive use of this legal instrument, the Act gives the competent public administration the authority to deny any request which is clearly ungrounded or abusive.

Chapter VI also provides for the possibility of adopting provisional measures during the processing stage, it regulates the basic content of resolutions of environmental liability procedures, including the possibility of conventional termination, it addresses the regulation of forcible execution measures and sets a time limit on the prosecution of actions by the Administration to recover any costs it may have incurred as a result of adopting prevention, containment or remediation measures. This limit is five years.
Regarding the final part of the law, the First Additional Provision provides for preferential application of regulatory legislation applicable to civil and health emergencies as opposed to the liability procedure laid down herein; the Second ratifies the preferential enforcement of any other regulation whose environmental liability obligations are more stringent than those provided for herein; the Third acknowledges the operator’s right to limit his liability in accordance with the provisions of international law as regards claims filed under maritime law; the Fourth addresses non-environmental damage caused by genetically modified organisms; the Fifth obliges public administrations to furnish the Ministry of the Environment with the data and information described in Annex VI appended hereto with a view to proper fulfilment of the duties laid down in applicable Community regulations; the Sixth declares the occupation of certain properties and private ownership rights to be in the public interest; the Seventh provides that compulsory financial guarantees are not required of public legal persons; the Eighth recognises the legal capacity of the Public Prosecutor to intervene in contentious-administrative proceedings dealing with cases having to do with the enforcement of this Act; the ninth extends the application of environmental damage remediation rules laid down in Annex II to all obligations to remedy damages of this type regardless of the legal origin of that obligation; the Tenth defines the environmental liability procedure applicable to public works; the Eleventh lays down the procedure for evaluating the enforcement of this Act; the Twelfth regulates review of the thresholds established for exemption from the obligation of procuring financial guarantees; the Thirteenth introduces the obligation of remedying environmental damage caused outside the European Union; and the Fourteenth regulates compensation paid to those affected by the bursting of the Tous dam.

The Sole Transitional Provision declares that this Act is not applicable to damage caused by an emission, an event or an incident taking place before its entry into force or to damage caused by an emission, an event or an incident which took place after its entry into force when these are the result of a specific activity undertaken and concluded before that date.

And lastly, the Final Provisions define the authority underlying competences; they explicitly refer to the fact that this Act transposes Community Law; they authorise the Government to draft implementing regulations for this Act; they lay down the rules governing establishment of the temporary schedule for enforcement of the obligations regarding financial guarantees; they regulate cooperation between the Central Government and the Autonomous Communities in the enforcement of this Act; and they establish the date of entry into force as the day following its publication in the Official State Gazette, making it retroactive to 30 April 2007 barring the provisions of Chapters IV and V.

Having regard to the Annexes, Annex I lays down the criteria to be used in determining whether damage to a natural species or habitat is significant or not. Annex II deals with the remedy of environmental damage; III lists the professional activities referred to in Article 3(1); IV and V list the international conventions alluded to in Articles 3(5) a) and 3(5) b) respectively; and lastly, Annex VI describes the information and data referred to in the Fifth Additional Provision.

CHAPTER I

General provisions

Article 1. Aim.

This Act regulates the responsibility of operators to prevent and repair environmental damage pursuant to Article 45 of the Constitution and the principles of prevention and “polluter pays”.
Article 2. Definitions.

For the purposes of this Act the following definitions shall apply:

1. “Environmental damage”:
   a) Damage to natural species or habitats, i.e. any damage having significant adverse effects on the possibility of attaining or maintaining a favourable state of conservation of these habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I.

   Damage to species and habitats shall not include previously identified adverse effects arising from any initiative undertaken by the operator and expressly authorised under the following regulations:
   1. Article 6(3) and 6(4) or Article 13 of Royal Decree 1997/1995 of 7 December laying down measures to help assure biodiversity by conserving natural habitats and natural fauna and flora.
   2. State or regional regulations concerning woodlands, inland hunting and fishing within the framework of Article 28 of the Natural Areas and Wild Flora and Fauna (Conservation) Act, Law 4/1989 of 27 March.

   b) Damage to water, meaning any damage having a significant adverse effect on the ecological, chemical and quantitative state of surface and underground bodies of water and on the ecological potential of artificial and significantly modified bodies of water.

   For this purpose, the definitions laid down in water legislation shall apply.


   c) Damage to seacoasts and estuaries, meaning any damage producing significant adverse effects on their physical integrity and proper conservation and any other effects resulting in difficulty or the impossibility of attaining or maintaining an acceptable level of quality.

   d) Damage to land, i.e. any land pollution presenting a significant risk of adverse effects on human health or the environment due to the deposition, dumping or direct or indirect introduction of substances, preparations, organisms or microorganisms in soils or subsoils.

2. “Damage”: An adverse and measurable change brought about in a natural resource, or damage done to a natural resource service, either directly or indirectly.

   Environmental damage caused by airborne elements is included in the concept of damage.

3. “Risk”: Function of the probability of an event taking place and of the amount of damage it could cause.

4. “Natural species”: The flora and fauna species mentioned in Article 2(3) a) of Directive 2004/35/EC 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, those protected by Community, national and or regional law and by international treaties to which Spain is party and which exist in a natural state within Spanish territory on a permanent or seasonal basis. Special emphasis is placed on species listed in the National Catalogue of Endangered Species and in the endangered species catalogues compiled by the Autonomous Communities within their respective territories.
Exotic invasive species, i.e. those intentionally or accidentally taken from their natural area of distribution and introduced into another and which pose a threat to habitats or autochthonous natural species, are excluded from the preceding definition.

5. “Habitat”: Land or aquatic areas which stand out for their geographical, abiotic and biotic characteristics and which are referred to in Article 2(3) b) of Directive 2004/35/EC 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, and those protected by other Community regulations, national and or regional law and by international treaties to which Spain is party.

6. “Conservation status”:
   a) Regarding habitats, the sum of the influences acting on them and the species typical of them which could have a long-term effect on their natural range, on their structure and their functions and on the long-term survival of their typical species in their natural area of distribution within those habitats in Spanish territory. The conservation status of a habitat will be taken as “favourable” when:
   1. its natural range and areas it covers within that range are stable or increasing;
   2. the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
   3. the conservation status of its typical species is favourable, as defined in b);

   b) In respect of a species, the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the natural range of that species in Spanish territory.
   The conservation status of a species will be taken as “favourable” when:
   1. population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats;
   2. the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future; and
   3. there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

7. “Water”: All continental surface and underground coastal and transitional waters defined in the consolidated text of the Water Act approved by Legislative Royal Decree 1/2001 of 20 July and all other elements forming part of the public water domain.


9. “Land”: The upper layer of the earth’s crust situated between the bedrock and the surface, composed of mineral particles, organic material, water, air and living organisms, which acts as an interface between the earth, air and water, thus endowing it with the capacity to perform natural and anthropogenic functions. Areas permanently covered by surface water shall not be considered as such.

10. “Operator”: Any natural or legal, public or private person performing an economic or professional activity or who, under any title, controls the said activity or has decisive economic power over its technical operation. In determining such status, the provisions laid down in sectoral, national or regional law concerning the granting of permits or authorisations, inscriptions in registries or communications to the administration for each activity shall be taken into consideration.

   Without prejudice to the provisions of Article 14(1) b), procurement bodies of the public administrations are not included in this definition when they exercise the powers vouchsafed to them by public procurement law concerning administrative or other
contracts concluded with any type of contractor, the latter being considered the operator for the purposes of this Act.

11. “Economic or professional activity”: All activity undertaken within the framework of an economic activity, business or enterprise, public or private, profit or non-profit.


14. “Prevention measure”: Measure adopted in response to an event, act or omission causing an imminent threat of environmental damage with a view to preventing its occurrence or reducing the said damage as much as possible.

15. “Measures to prevent new damage”: those employed in the aftermath of environmental damage to contain or prevent greater environmental damage by controlling, containing or eliminating the factors giving rise to the latter or combating them in any other way.

16. “Remediation measure”: Any action or set of actions, including provisional ones, whose aim is to remedy, restore or replace damaged natural resources and natural resource services or to provide an equivalent replacement alternative in accordance with Annex II.

17. “Natural resource”: Natural species and habitats, water, ocean and estuary coast and land.

18. “Natural resource services”: The functions carried out by a natural resource to the benefit of another natural resource or the public.

19. “Baseline condition”: Condition in which, based on the best available information, natural resources and natural resource services would have been found at the time of the environmental damage had it not occurred.

20. “Recovery”, including “natural recovery”: means, in the case of water, natural species and habitats, the return of damaged natural resources and impaired natural resource services to baseline condition, and in the case of damage to land, the elimination of any significant risk adversely affecting human health.

21. “Costs”: Expenses which are justified by the need to ensure the proper and effective implementation of this Act in the event of environmental damage or the threat of such damage regardless of the amount. This specifically includes all expenses relating to the proper execution of preventive measures, those undertaken to prevent further damage, and remedial measures; those relating to the assessment of environmental damage and the imminent threat of such damage; those relating to the establishment of possible options and the selection of the most suitable from among these; those generated in securing useful data; and those intended to ensure follow-up and supervision. Administrative and legal costs and material and technical expenses relating to the aforementioned activities shall be assumed to be included.

22. “Competent authority”: The authority responsible for the discharge of the duties envisaged in this Act, designated by the General State Administration, the Autonomous Communities and the cities of Ceuta and Melilla, within their respective purviews, for the implementation of this Act subject to the terms of Article 7.

23. “Public”: Any natural or legal person or association of such persons, organisations and groups formed in accordance with applicable legislation.

Article 3. Scope.

1. This Act shall apply to environmental damage and the imminent threat of such damage when caused by the economic or professional activities listed in Annex III, even in the absence of fraud, fault or negligence.

Unless there is evidence to the contrary, any of the economic or professional activities listed in Annex III shall be presumed to have caused the damage or the
imminent threat of damage when it is the probable candidate given the intrinsic nature or the course of the incident.

2. This Act shall likewise apply to environmental damage or the imminent threat of such damage when caused by economic or professional activities other than those listed in Annex III, in the following terms:

   a) In the event of fraud, fault or negligence, prevention, containment and remediation measures shall be required.
   b) In the absence of fraud, fault or negligence, prevention and containment measures shall be required.

3. This Act shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse nature where it is possible to establish a causal link between the damage and the activities of individual operators.

4. This Act shall not apply to environmental damage or the imminent threat of such damage when caused by any of the following:

   a) an act of armed conflict, hostilities, civil war or insurrection;
   b) a natural phenomenon of an exceptional, inevitable and irresistible nature;
   c) activities whose main purpose is to defend national or international security and activities whose sole purpose is to provide protection against natural disasters.

5. This Act shall not apply to the following types of damage:

   a) environmental damage or imminent threat of such damage caused by an incident in respect of which liability or compensation falls within the scope of any of the international instruments listed in Annex IV, including any future amendments thereof, in force in Spain;
   b) nuclear risks or environmental damage or imminent threat of such damage as may be caused by activities employing materials whose use is controlled by regulatory law deriving from the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the international instruments listed in Annex V, including any future amendments thereof, in force in Spain.

Article 4. Temporal scope of environmental liability.

This Act shall not apply to environmental damage if more than 30 years have elapsed since the emission, event or incident causing it took place.

This period shall be calculated as from the day on which the emission, event or incident causing the damage ceased completely or occurred for the last time.

Article 5. Damages suffered by individuals.

1. This Act does not apply to suits filed for damages to individuals or private property, nor to any type of economic loss or any right relating to this type of damage or any other type of property damage other than that falling into the category of environmental damage even if it is a consequence of the same events giving rise to environmental liability. These suits shall be governed by the legislation applicable in each case.

2. The injured private parties referred to in the preceding paragraph may not demand remedy or compensation for the environmental damages caused to them inasmuch as the said damages are remedied through enforcement of this Act. A responsible party who has made double compensation may file for recovery from the injured party of the amount paid in excess.
3. In no case shall claims lodged by private injured parties in procedures of any kind exonerate the liable operator from fully and effectively adopting the prevention, containment and remediation measures required under this Act, nor shall they prevent public administrations from taking action in this connection.

Article 6. Concurrence of environmental liability and criminal and administrative sanctions.

1. Without prejudice to the provisions of Article 36(3), the liability provided for in this Act shall be compatible with the administrative penalties or sanctions applicable for the same events as gave rise to such liability.

2. The following rules shall apply when environmental liability concurs with criminal or sanction proceedings:

   a) This Act shall apply, in any case, to the remedy of environmental damage caused by operators of the economic or professional activities listed in Annex III, regardless of any other procedures.
   
   b) This Act shall apply, in any case, to the adoption by operators of economic or professional activities of preventive and containment measures and those whose aim is to avoid further damage, regardless of any other procedures.
   
   c) The adoption of measures to remedy environmental damage caused by economic or professional activities other than those listed in Annex III shall only be required when fraud, fault or negligence has been determined in the relevant administrative or criminal proceedings.

In any case, compensatory measures necessary to prevent the double recovery of costs shall be adopted.

3. If, by virtue of the enforcement of other laws, the responsible party has taken prevention, containment and remediation measures concerning the environmental damage in question and defrayed their costs, it shall not be necessary to take the action envisaged under this Act.

Article 7. Administrative competences.

1. Implementation and execution of this law is the responsibility of the Autonomous Communities where damages or the threat of such damages have occurred.

   This likewise applies to the cities of Ceuta and Melilla.

2. If the damage or threat of damage affects catchment areas managed by the central government or State-owned public properties, a report shall be required from the competent state body, which shall be binding solely as regards prevention, containment and remediation measures which must be implemented with respect to such properties.

3. Where legislation on water and coasts requires the General State Administration to safeguard State-owned public property and to determine prevention, containment and remediation measures, that Administration shall apply this Act within its purview.

4. Where the territories of several Autonomous Communities are affected or where the latter and the General State Administration must take action in accordance with the preceding paragraph, the affected administrations shall set up such collaboration mechanisms as they deem appropriate for the efficient discharge of the competences laid down by this Act. Such mechanisms may envisage the appointment of a single body to conduct the appropriate administrative proceedings. In any case, all action taken shall be guided by the principles of mutual information, cooperation and collaboration.
5. In all cases where the decisions or actions of one Administration may affect the interests or competences of others, the former must request reports from the latter before taking action.

6. Exceptionally, when required for reasons of extreme seriousness or urgency, the General State Administration may promote, coordinate or adopt all measures necessary to prevent the occurrence of irreparable environmental damage or to protect human life, with the collaboration of the Autonomous Communities in accordance with their respective competences.

Article 8. Cross-border damage.

1. When environmental damage or the imminent threat of such damage affects or could affect another Member State of the European Union, the competent authority discovering this shall immediately pass this information on to the Ministry of the Environment.

2. The Ministry of the Environment, in collaboration with the competent authority affected and through the Ministry of Foreign Affairs and Cooperation, shall:

   a) furnish the competent authorities of the Member States affected with all relevant information enabling the latter to take whatever action they deem appropriate concerning the event giving rise to the damage or threat of such damage;
   
   b) set up collaboration mechanisms with the competent authorities of other Member States to facilitate the adoption of all measures having to do with the prevention, containment or remediation of environmental damage;
   
   c) take due note of the recommendations formulated by the competent authorities of the other Member States affected and pass these on to the competent authority affected;
   
   d) take the necessary steps to ensure that the operators responsible for the environmental damage or imminent threat of such damage assume the costs incurred by the competent authorities of the Member States affected, subject to reciprocity criteria laid down in international treaties or in the laws of those States.

3. When a Spanish authority which is competent by virtue of the nature of the event in question identifies damage or the imminent threat of damage to its territory due to an economic or professional activity in the territory of another Member State of the European Union, it shall inform the European Commission or any other Member State affected, through the Ministry of Foreign Affairs and Cooperation. It may also:

   a) formulate recommendations for the adoption of preventive or remediation measures, which shall be conveyed to the Member State where the damage occurred through the Ministry of Foreign Affairs and Cooperation;
   
   b) initiate the procedure for recovery of costs incurred by adopting preventive or remediation measures, in compliance with the provisions of this Act and any other applicable provisions.

The Ministry of Foreign Affairs and Cooperation shall immediately pass on all information provided by other Member States concerning cross-border environmental damage to the Ministry of the Environment and the competent authorities affected.

CHAPTER II

Attribution of liability

Article 9. Operators' liability
1. Operators of the economic or professional activities included under this Act must adopt and execute environmental damage prevention, containment and remediation measures and defray their costs, regardless of their amount, when they are liable for such damage.

Compliance with the requirements, precautions and conditions laid down in legal and regulatory norms or those established in any administrative entitlement necessary for the exercise of an economic or professional activity, especially integrated environmental authorisations, shall not exonerate the operators included in Annex III from environmental liability, without prejudice to the provisions of Article 14.

2. The operators of any of the economic or professional activities included in this Act must immediately communicate to the competent authority any environmental damage or the imminent threat of such damage that they have caused or may cause.

3. The economic or professional operators included under this law must collaborate in defining remedial measures and in the execution of those adopted by the competent authority.

4. The public administration which has awarded a contract or authorised an activity which later gives rise to environmental damage or the threat of such damage shall collaborate with the competent authority but shall share no environmental liability for the actions of the operator except in the case envisaged in Article 14(1) b).

Article 10. Liability of groups of companies.

In the event that the operator is a trading company belonging to a group of companies pursuant to Article 42(1) of the Commercial Code, the environmental liability regulated under this Act may likewise extend to the parent company if the competent authority detects abusive use of legal personality or fraud.

Article 11. Multiple parties responsible for the same damage.

In cases where there are multiple operators and they are shown to have had a part in causing the damage or the imminent threat of such damage, they shall be considered jointly liable unless a special law is applicable providing for a different approach.

Article 12. Death or extinction of the responsible parties.

In the event of the death or extinction of the parties responsible according to this Act, their duties, especially relating to pecuniary obligations, shall be passed on and become payable in accordance with the provisions applying to tax obligations.

Article 13. Joint and several and subsidiary liability.

1. Subjects referred to in Article 42(2) of the General Tax Act, Law 58/2003 of 17 December shall be held jointly and severally liable for the pecuniary obligations resulting from the application of this Act.

2. The following subjects shall be held subsidiarily liable for the duties resulting from the application of this Act, especially pecuniary obligations:

   a) Legal and de facto managers and administrators of legal persons whose conduct has been the determining factor in the latter’s liability.

   b) Managers or administrators of those legal persons who have abandoned the activities in question, having regard to duties and obligations pending at the time of the abandonment if the necessary steps for compliance with the said duties and obligations were not taken or if decisions have been made or measures taken such as to cause non-compliance.
c) The successors, of whatever nature, of the responsible party in the ownership or the undertaking of the activity causing the damage, subject to the limits and exceptions provided for in Article 42(1) c) of Law 58/2003 of 17 December.

d) Receivers and liquidators of legal persons who have failed to take the necessary steps to comply with duties and obligations arising prior to these situations.

3. This pecuniary liability shall be declared and enforced through executive procedures, in the terms laid down by the laws on taxation and public revenue collection.

Article 14. Non-applicability of the obligation to defray costs.

1. Operators shall not be obliged to defray the costs arising from damage prevention, containment and remedial measures if they are able to prove that the environmental damage or imminent threat of such damage occurred exclusively due to any of the following causes:

   a) Action of a third party unconnected with the organisation of the activity in question and independent of the latter, despite sufficient security measures.

   b) Compliance with an order or compulsory instruction issued by a competent public authority, including orders issued in performance of any of the contracts referred to in Public Administration contract law.

   This shall not apply to cases where the order or instruction has been issued in response to an emission or an incident caused previously by the activity of the operator.

   Approval of projects by the public administrations, when required by regulations in force, shall not be considered an order or instruction for the purposes of the provisions of this paragraph. Specifically, projects approved by the contracting administration shall not be considered as compulsory orders or instructions for the purposes of this paragraph as regards environmental damage not expressly envisaged in the environmental impact statement or comparable instrument.

   When environmental damage is the result of defects in a project drawn up by the Administration as part of a works contract or manufacturing supply contract, the operator shall not be obliged to defray the cost of the measures adopted.

2. The operator shall not be under obligation to defray the costs arising from remedial measures if he proves the absence of fault, fraud or negligence in any of the following circumstances:

   a) Where the emission or event which is the direct cause of the environmental damage is the specific, express object of an administrative authorisation issued in accordance with regulations applicable to the activities listed in Annex III.

      Moreover, in undertaking the activity the operator must have strictly adhered to the stipulations or conditions laid down in this connection in the aforementioned authorisation and in the regulation that was applicable when the emission or the event causing the environmental damage occurred.

   b) Where the operator proves that the environmental damage was caused by an activity, emission or use of a product that, when undertaken or used, was not considered potentially damaging to the environment in accordance with the state of scientific and technical knowledge available at that time.

3. In the circumstances envisaged in paragraphs 1 and 2, the operator shall in any case be obliged to take environmental damage prevention, containment and remediation measures. The costs incurred in this connection shall be recovered under the terms laid down in Article 15.
Article 15. Recovery of costs.

1. When, under the provisions of Article 14(1), the operator is not obliged to defray the costs attributable to environmental damage prevention, containment or remediation measures, he may recover such costs by filing a motion for recovery as described in Article 16 or filing claim for patrimonial liability from the public administrations served by the public authority issuing the order or instruction.

The competent authority may likewise require the third party to defray the costs of the measures taken.

2. In the circumstances described in Article 14(2), the operator shall be entitled to recover the costs attributable to environmental damage remediation measures according to the terms laid down in regional law, without prejudice to the provisions of Article 34.


1. An operator who has taken prevention, containment or remediation measures may file a motion for recovery against any other person who, in accordance with this or any other law, culpably or otherwise, causes or is liable for the environmental damage or threat of such damage that made those measures necessary.

2. When the damage or threat of damage is caused by the use of a product, the operator may lodge a claim against the manufacturer, importer or supplier for the costs incurred, provided that in pursuing his activities the operator has strictly adhered to the conditions established for the use of the product and the regulations in force at the time of the emission or the event causing the environmental damage.

CHAPTER III

Prevention, containment and remedy of environmental damage

SECTION 1. PREVENTION AND CONTAINMENT OF ENVIRONMENTAL DAMAGE

Article 17. Operators’ obligations regarding prevention and limitation of further damage.

1. In the event of imminent danger of environmental damage arising from any economic or professional activity, the operator of that activity must adopt appropriate preventive measures, without delay and without there necessarily being any prior warning, order or official action.

2. In the event of environmental damage caused by any economic or professional activity, the operator of the said activity must also, in the same terms, take appropriate steps to avoid further damage regardless of whether he is obliged to adopt remedial measures under the provisions of this Act.

3. The criteria laid down in point 1(3) of Annex II shall be adhered to as far as possible in determining prevention and containment measures, without prejudice to any additional criteria that may be laid down by the Autonomous Communities for the same purpose.

4. Operators shall immediately furnish the competent authority with all information relating to the environmental damage or the threat of such damage as provided in Article 9(2), and likewise to the prevention and containment measures adopted.

In the event that the threat of damage persists despite the adoption of prevention or containment measures, the operator shall immediately inform the competent authority of that fact.
Article 18. Administrative authority in respect of the prevention or containment of further damage.

When the competent authority believes that there is a danger of damage or the occurrence of new damage, it may at any time adopt any of the following decisions by means of a reasoned order issued in accordance with the terms laid down in Chapter VI:

a) When there is evidence to suggest that damage will occur, it may require the operator to furnish information on all imminent threats of such environmental damage.

b) It may require the operator to take immediate steps to prevent the occurrence of such damage and to see that they are carried out.

c) It may give the operator binding instructions as to what prevention or containment measures it must either adopt or set aside as the case may be.

d) It may execute prevention or containment measures at the expense of the responsible party when warranted by the circumstance envisaged in Article 23 and 47.

SECTION 2. REMEDIATION OF ENVIRONMENTAL DAMAGE

Article 19. Operators’ duties in remediation of damage.

1. Operators of any of the economic or professional activities listed in Annex III who causes environmental damage as a result of these activities must immediately inform the competent authorities of such damage and take appropriate remedial action as prescribed in this Act, even if there is no question of culpability, fraud or negligence.

2. Operators of economic or professional activities not listed in Annex III who cause environmental damage as a result of these activities must immediately inform the competent authorities and adopt containment measures. Such operators need only take remedial action in the event of culpability, fault or negligence.

In any case, operators failing to fulfil their obligations as regards damage prevention and containment must take remedial action.

Article 20. Remediation measures.

1. In compliance with the provisions of Article 19, in the event of environmental damage the operator must, without delay and without there necessarily being any prior official warning, order or action:

a) Take all necessary preliminary steps to immediately remedy, restore or replace damaged natural resources and natural resource services, subject to the criteria laid down in Annex II, without prejudice to any additional criteria that may be laid down by the Autonomous Communities for the same purpose. He must also inform the competent authority of the measures adopted.

b) Propose measures to remedy the environmental damage for approval by the competent authority in accordance with the provisions of Chapter VI. This proposal must be drawn up as stipulated in Annex II, without prejudice to any additional criteria that may be laid down by the Autonomous Communities for the same purpose.

2. When possible, the competent authority shall entitle the operator to choose from among different suitable measures or different forms of execution.

3. In the event that there are several different types of environmental damage making it impossible to adopt all the necessary remedial measures simultaneously, the decision shall establish the order of priority which must be followed.
In this connection the competent authority shall take into account, inter alia, the nature, scope and seriousness of each type of environmental damage, and likewise the possibility of natural recovery.

In any case, measures taken to eliminate risk to human health shall be prioritised.

Article 21. Administrative authority regarding remedy of damages.

In the event of environmental damage, the competent authority may at any time issue reasoned decisions as provided in Chapter VI to any of the following effects:

a) that the operator furnish additional information regarding the damage;
b) to adopt, require the operator to adopt or instruct the operator having regard to, all possible emergency measures for the purpose of immediate control, containment, elimination or any other action taken in the event of pollution and any other damaging factors in order to limit or prevent greater environmental damage and adverse effects to human health or greater damages to services;
c) that the operator take the necessary remedial action as provided in Annex II;
d) to give the operator binding instructions as to what remedial measures it must either adopt or set aside as the case may be;
e) to implement remedial measures at the expense of the responsible party when warranted by the circumstances described in Articles 23 and 47.

SECTION 3. COMMON PROVISIONS

Article 22. Failure to comply with environmental damage prevention, containment or remediation duties.

1. The competent authority shall make certain that the operator adopts the environmental damage prevention, containment or remediation measures and complies with all of the other obligations laid down in this Act in the terms envisaged herein. To this end it shall exercise the authority vested in it by this and any other statutory rule.

2. In the event of total or partial default by operators in their duties to implement environmental damage prevention, containment or remediation measures, the competent authority shall issue a reasoned decision as provided in Chapter VI ordering the operator to comply.

3. The terms of the foregoing paragraph are without prejudice to the penalties prescribed for such default.

Article 23. Direct action on the part of the Administration.

1. In order to render the protection of natural resources and the services provided by the latter as effective as possible, the competent authority may, of its own accord, order and execute measures to prevent, contain or remedy damage envisaged in this Act when, inter alia, the following circumstances arise:

a) where it is not possible to immediately identify the operator responsible and taking the time to do so could lead to environmental damage;
b) where there are several responsible operators and there is neither time nor space to apportion liability in such a way as to guarantee the proper execution of the measures;
c) where studies, knowledge or technical means are required;
d) where actions must be taken on property belonging to the public administration or to private third parties making it difficult or inappropriate for the responsible operator to act;
e) where warranted by the seriousness and future repercussions of the damage.

2. In emergency situations the competent authority may act without having to adhere to the procedure laid down in this Act to determine environmental damage remediation, containment or prevention measures or require the adoption thereof. Once this emergency situation has passed the competent authority shall, through the appropriate procedure, issue an order, which shall be legally enforceable, establishing the cost of the measures executed in application of this article and the party or parties responsible for defraying such cost.

3. The competent authority shall recover the costs arising from the said prevention, containment or remediation measures from the operator or from the third party causing the damage or imminent threat of such damage, as the case may be. However, the competent authority may decide not to recover the total amount when the cost exceeds the amount recoverable. This requires an economic report warranting such a decision.

CHAPTER IV

Financial guarantees

SECTION 1. COMPULSORY FINANCIAL GUARANTEE

Article 24. Constituting a compulsory financial guarantee.

1. Operators of activities included in Annex III must have a financial guarantee enabling them to cover the environmental liability inherent in the activity or activities in which they intend to engage.

2. The minimum amount of the guarantee, which in no way limits legally established liability, shall be determined by the competent authority based on the intensity and extent of the damage that the operator’s activity could cause in accordance with the criteria laid down in the regulations.

3. The competent authority must justify the amount it establishes using the method provided for in government regulations, subject to consultation with the Autonomous Communities. This method shall be based on technical criteria guaranteeing a standard assessment of the risk scenarios and remediation costs associated with each one and ensuring a uniform delimitation of the coverage necessary for each activity or for each installation.

Article 25. Liability covered by the guarantee.

1. The guarantee shall be used specifically and exclusively to cover any environmental liability of the operator that may arise from the latter’s economic or professional activity.

2. The guarantee regulated in this section shall be distinct from and independent of coverage of any other criminal, civil, administrative or other liability and therefore shall not be diminished or exhausted to cover expenses, claims or requirements unrelated to the said environmental liability, nor may it be used for any purpose other than that for which it was constituted. The guaranteed amount shall likewise be independent of any other monies used to secure activities sanctioned by different authorisations granted by the environmental authority or any other. This guarantee may not be pledged or mortgaged, either wholly or in part.
Article 26. Modalities.

The financial guarantee may be constituted by any of the following means which may be alternative or complementary in terms of the amount and events guaranteed:

a) An insurance policy conforming to the Insurance Contract Act, Law 50/1980 of 8 October, taken out with an insurance company authorised to operate in Spain. In this case the functions referred to in Article 33 shall be discharged by the Insurance Clearing Consortium.

b) A guarantee granted by a financial institution authorised to operate in Spain.

c) The constitution of a technical reserve in the form of an ad hoc fund consisting of financial investments backed by the public sector.

The financial guarantee chosen may include damage limiting or delimiting conditions as envisaged in this chapter or others determined by law.

Article 27. Subjects guaranteed.

The operators of economic or professional activity shall be considered guaranteed subjects. Subcontractors and professionals collaborating with such operators in the authorised activity may likewise be considered guaranteed subjects.

Article 28. Exemptions to the obligation of constituting financial guarantee.

The following are exempt from constituting the obligatory financial guarantee:

a) Operators of activities liable to cause damage whose remedy is assessed at under 300,000 euro.

b) Operators of activities liable to cause damage whose remedy is assessed at between 300,000 euro and 2,000,000 euro, who establish by means of certificates issued by independent bodies that they are permanently and continuously members of the Community eco-management and audit scheme (EMAS) or the environmental management system UNE-EN ISO 14001:1996.

c) The use of plant health products and biocides listed in paragraph 8 c) and d) of Annex III for agricultural and forestry purposes.

Article 29. Costs covered.

The terms of the guarantee constituted by any of the means described in Article 26 must cover the following costs:

a) Those arising from the operator’s obligations as regulated in Article 17, provided that the damage it is intended to prevent or contain was caused by pollution.

b) Those arising from the operator’s obligations as regulated in Articles 19 and 20., provided that the damage it is intended to prevent or contain was caused by pollution. In the case of damage affecting water, natural species and their habitats or sea or estuary coast, guaranteed expenses are limited to those listed under the heading “primary remediation” defined in paragraph 1 a) of Annex II.

Article 30. Quantitative limits of the guarantee.

1. Coverage of the obligatory financial guarantee shall never exceed 20,000,000 euro.
2. The amount determined shall be applied as a limit per event and year, and operators may be allowed to stand liable for not more than 0.5% of the amount guaranteed established for each case. For the purpose of the foregoing, all the environmental damage claims arising from the same emission, event or incident shall be considered the same singular event even when these claims are made at different times and regardless of the number of affected parties. The amount per event and year of the insurance established under the guarantee shall be applicable as the limit to the said event unit or serial event.

3. The costs related to prevention and containment envisaged in Article 17 may be specifically sub-limited. In any case, the aforementioned sub-limit must be at least 10% of the amount established in each case.

Article 31. **Duration of the guarantee.**

1. The guarantee must be constituted as from the date of entry into force of the authorisation needed to carry out the activity. The operator must maintain the guarantee current while activity is ongoing. The competent authority shall establish the appropriate control systems to check the validity of the guarantees, and to this end the insurance companies, financial institutions and the operators themselves must provide the competent authority with the necessary information.

2. When guarantees are exhausted or have been depleted by over 50%, the operator is under obligation to replenish them within six months of the date on which the amount of the guaranteed debt is ascertained or estimated with a reasonable degree of certainty.

Article 32. **Temporal limitations of the guarantee.**

1. The temporal scope of the guarantee may be limited in such a way as to include liabilities where the following circumstances arise:

   a) The commencement of the emission causing the pollution or the commencement of the situation of imminent risk of pollution is identified and can be shown to have occurred within the period of guarantee.
   
   b) The first verifiable sign of pollution took place within the guarantee period or within a period of three years following the expiry of that period. First sign shall mean the moment at which the existence of pollution is discovered for the first time regardless of whether or not it was considered dangerous or damaging at that time.
   
   c) The pollution claim against the operator was lodged within the guarantee period or within three years of the expiry of that period.

2. For the purposes of the foregoing subsection, the event triggering the pollution shall be presumed to have been accidental and random; in other words, it shall be presumed to be an extraordinary event and not:

   a) caused intentionally;
   
   b) a normal and foreseeable consequence of possessing buildings, facilities or equipment at the service of the authorised activity;
   
   c) the result of an act foreseen and allowed by the operator, taking place within the enclosure where the said activity is carried out or within the geographical area where the activity was authorised;
   
   d) due to infringement by the insured of the regulations applying to the insured activity as regards environmental matters or any others, of which he was aware or could not have been unaware.
   
   e) due to wilful faulty use or poor or non-existent maintenance, repair or replacement of facilities or mechanisms and their components.
f) due to abandonment or prolonged lack of use of the facilities without taking the appropriate measures to prevent the deterioration of their protection or safety conditions.

g) as a consequence of mass disturbances, riots, strikes, internal disturbances, sabotage or acts of terrorism or armed gangs.


1. The Insurance Clearing Consortium will administer and manage, independently of the rest of its activities as regards finance and accounts, an environmental damage clearing consortium which shall be set up with the contributions of the operators who take out insurance polices to cover their environmental liability, in the form of a surcharge on the premium paid for that insurance. The purpose of the Fund is to extend coverage of the liabilities insured in the original policy, in the same terms, to cover damages which were caused by authorised activities during the period of validity of the insurance but materialise or are claimed after the deadline date envisaged in the policy for such materialisation or claim, and for which a claim is submitted within a period equal to most of the number of years during which the insurance policy was in force, counting from the date on which the policy expired, and subject to a limit of 30 years.

2. The Consortium will also use Fund monies to cover the liability of any insured operators, subject to the same terms and limits laid down in this section, whose insurer has been declared bankrupt or, having been dissolved and declared insolvent, has been subject to an audited settlement procedure or taken over by the Insurance Clearing Consortium itself.

3. In each case the amount to be paid by the Fund shall be the same as the amount which has been determined for each type of activity in accordance with the provisions of Article 24. The amounts mentioned in the first paragraph of this article shall also be limited to the total amount in the Fund.

SECTION 2. STATE FUND TO REMEDY ENVIRONMENTAL DAMAGE

Article 34. *State fund to remedy environmental damage.*

1. A state fund to remedy environmental damage is created for the purpose of defraying costs arising from prevention, containment or remedial measures of state-owned public domain properties when the provisions of Article 7(3) in connection with Articles 14(2) and 15(2) are applicable. The said Fund shall be managed by the Ministry of the Environment and shall be endowed with resources from the General State Budget.

2. The Autonomous Communities may participate in the funding and management of the State Fund to remedy environmental damage through any of the collaboration instruments provided for in Title I of the Public Administrations and Common Administrative Procedure (Legal Regime) Act, Law 30/1992 of 26 November. In these cases the scope of the Fund may be extended to cover other environmental damage pursuant to the terms of the said instruments of collaboration.

CHAPTER V

Infractions and sanctions

Article 35. Parties responsible for infractions.
Private natural and legal persons who are operators of economic or professional activities and are responsible for the latter may be sanctioned for acts constituting administrative infractions regulated in this Chapter.

Article 36. *Infractions.*

1. The omissions classified in the following articles, and those established by regional legislation where applicable, shall be considered administrative infractions.
2. If a single act or omission should constitute two or more infractions, only the one carrying the largest penalty shall be taken into consideration.
3. Acts which have already been the subject of criminal or administrative sanctions may not be penalised again in cases where the subject, the act and the grounds are the same. In cases where infractions could constitute a crime or misdemeanour, the competent authority shall pass on the evidence of culpability to the competent jurisdiction and shall abstain from moving forward with the sanctioning procedure pending the opinion of the judicial authority.

If it is determined that a crime or misdemeanour has not been committed, the public prosecutor shall inform the competent authority, which may then pursue the sanctioning procedure, always with due regard for the facts that the courts have deemed to be proven.

4. The conduct of a sanctioning procedure for infractions regulated in this chapter shall not delay the obligation to adopt the prevention, containment or remediation measures envisaged in this Act, which shall be independent of any sanctions imposed.

Article 37. *Classification of infractions.*

1. The infractions envisaged in this Act are classified as very serious and serious.
2. The following infractions are considered very serious:
   a) Failure to adopt the prevention or containment measures demanded of the operator by the competent authority pursuant to Article 17 where this results in the damage that was supposed to be prevented.
   b) Failure to follow the instructions received from the competent authority pursuant to Article 18 when implementing the obligatory prevention or containment measures where this results in the damage that was supposed to be prevented.
   c) Failure to adopt the remedial measures required of the operator pursuant to Articles 19 and 20 where such failure reduces the efficacy of these remedial measures.
   d) Failure to follow the instructions received from the competent authority pursuant to Article 21 when implementing the obligatory remediation measures where such failure reduces the efficacy of these measures.
   e) Failure to inform the competent authority of the existence of environmental damage or the imminent threat of damage which has been or may be caused by or known to the operator, or unwarranted delay in furnishing such information, where this results in aggravation of the effects or actual occurrence of the damage.
   f) Failure to arrange the financial guarantees to which the operator is obliged to provide, in the terms laid down in this Act, or failure to maintain such guarantees in force during the obligatory period.
3. The following infractions are considered serious:
   a) Failure to adopt the prevention or containment measures demanded of the operator by the competent authority pursuant to Article 17 where such failure does not constitute a very serious infraction.
b) Failure to follow the instructions received from the competent authority pursuant to Article 18 when implementing the obligatory prevention or containment measures where such failure does not constitute a very serious infraction.

c) Failure to adopt the remedial measures demanded of the operator by the competent authority pursuant to Article 19 where such failure does not constitute a very serious infraction.

d) Failure to follow the instructions received from the competent authority pursuant to Article 21 when implementing the obligatory remedial measures where such failure does not constitute a very serious infraction.

e) Failure to inform the competent authority of the existence of environmental damage or the imminent threat of damage which has been or may be caused by or known to the operator, or unwarranted delay in furnishing such information, where such failure does not constitute a very serious infraction.

f) Failure to furnish the information required of the operator by the competent authority or to fail to do so in a timely fashion as provided in Articles 18 and 21.

g) Failure on the part of the affected operator to provide the assistance required by the competent authority for the execution of the remedial, preventive or containment measures as provided in Article 9.

h) Omission, resistance to or obstruction of obligatory actions as provided in this Act.

Article 38. **Sanctions.**

1. The infractions classified in Article 37 are punishable by all or some of the following sanctions:

   a) in the case of very serious infractions:

      1. Fine of between 50,001 euro and 2,000,000 euro.
      2. Permanent or temporary suspension of authorisation for at least one and up to two years.

   b) in the case of serious infractions:

      1. Fine of between 10,001 euro and 50,000 euro.
      2. Suspension of authorisation for a maximum of one year.

2. If environmental damage is caused or existing damage is aggravated through omission, delay, resistance or obstruction on the part of the operator in fulfilling the obligations envisaged in this Act and this constitutes an infraction, the operator shall in any case be obliged to adopt the prevention, containment and remedial measures regulated in this Act regardless of the applicable penalty.

3. The competent authorities shall annually make public the penalties imposed for infractions of this Act, the acts constituting such infractions and the identity of the operators responsible.

Article 39. **Severity of sanctions.**

When imposing sanctions, the public administrations shall make sure that the seriousness of the infraction is commensurate with the sanction imposed and in so doing shall consider the criteria laid down in Article 131 of Law 30/1992 of 26 November.

Article 40. **Statute of limitations on infractions and sanctions.**

1. Very serious infractions expire in three years and serious ones in two years.
The expiration date shall be calculated as from the day on which the infraction was committed or, in the case of an ongoing activity, as from the date of its termination.

2. Sanctions imposed for serious misdemeanours shall expire in two years and those imposed for very serious misdemeanours in three years.

The expiration deadline for sanctions shall be calculated as from the day following that on which the final judgement imposing the sanction is issued.

CHAPTER VI

Procedural rules for the enforcement of environmental liability

Article 41. Initiation of the procedure.

1. The procedures for enforcement of environmental liability regulated in this Act may be initiated either ex officio or upon request by the operator or any other person concerned.

2. When procedures to enforce environmental liability are initiated by a person concerned other than the operator, the request shall be made in writing and shall in any case specify the damage or threat of damage to natural resources protected by this Act. The request shall likewise specify the following aspects where possible:

   a) The action or omission of the alleged liable party.
   b) Identification of the alleged liable party.
   c) The date on which the action or omission occurred.
   d) The location of the damage or threat of damage to natural resources.
   e) A description of the causal relationship between the action or omission of the alleged liable party and the damage or threat of damage.

Article 42. Persons concerned.

1. For the purposes of this Act, persons concerned shall mean:

   a) Any natural or legal person meeting any of the circumstances described in Article 31 of Law 30/1992 of 26 November.
   b) Any non-profit legal persons able to establish compliance with the following requirements:

      1. The aims laid down in their bylaws include protection of the environment in a general sense or include specific elements thereof.
      2. They were legally constituted at least two years prior to initiation of the action and have been actively engaged in the activities necessary to achieve the aims laid down in their bylaws.
      3. According to their bylaws, they engage in their activity in a territory which is affected by the environmental damage or threat thereof in question.
   c) The owners of land on which environmental damage prevention, containment or remedial measures must be implemented.
   d) Any others provided for under Autonomous Community legislation.

2. The persons concerned may make whatever representations they deem appropriate and submit such information as they consider relevant, which must be taken into consideration by the competent authority to which these are addressed.

3. The competent authority shall meet with the owners of land referred to in paragraph 1 c), the operator and all other persons concerned, so that they can make
whatever representations they deem appropriate and submit any additional documentation that they consider relevant.

Article 43. Access to information.

The public may request the information in the possession of the public administration regarding environmental damage and prevention, containment or remedial measures taken with regard to the said damage.

Article 44. Provisional measures.

1. While procedures are in process, all necessary prevention and containment measures may be provisionally adopted to prevent the situation from deteriorating, to prevent environmental damage and especially to guarantee human health.

2. With the same objective in view, essential provisional measures may be taken before the procedure is initiated, subject to the limitations and conditions laid down in Article 72(2) of Law 30/1992 of 26 November.

3. Provisional measures may consist in ordering the operator to take such actions as are deemed necessary, subject to enforcement in the case of failure to comply, or in their execution by the competent authority but at the expense of the liable party.

Article 45. Resolution.

1. The competent authority shall deliver an express, reasoned resolution of environmental liability procedures, declaring whether the operator is or is not the subject of environmental liability.

   In any case, manifestly groundless or abusive requests may be denied by reasoned decision.

2. The resolution must contain at least the following:

   a) Description of the environmental damage or threat thereof that must be eliminated.

   b) Assessment of the environmental damage or threat thereof.

   c) When required, definition of the prevention or containment measures which must be adopted and, where appropriate, instructions concerning their proper execution.

   d) When required, definition of the remedial measures which must be adopted and, where appropriate, instructions concerning their proper execution. Definition of these measures shall be in accordance with the provisions of Annex II or any additional criteria that may be established for the same purpose by the Autonomous Communities, with due consideration for the proposal formulated by the operator.

   e) Identification of the party which must implement the measures.

   f) Deadline for execution.

   g) Amount and obligation of payment for any measures which may have been adopted and executed by the competent authority.

   h) Identification of the actions, if any, that the public administration must carry out.

3. The competent authority must issue a resolution and notify the parties within a maximum of 3 months. In cases which are scientifically and technically complex, the authority may extend this period for an additional three months, notifying the persons concerned of such extension. Solely for the purpose of ensuring the right of the persons concerned to administrative and judicial protection, once the aforementioned period has elapsed the request shall be considered to have been dismissed, or the
procedure terminated where it is initiated ex officio, without prejudice to the absolute obligation of the competent authority to issue a resolution.

The said period may be suspended from the time the order is issued to the operator to submit his proposal for remedial measures referred to in Article 20(1) b), or to correct such proposal as the case may be, until effective compliance on the part of the addressee.

4. Appeals may be made against resolutions delivered by the competent authority as provided in Title VII of Law 30/1992 of 26 November and other applicable legislation.

Article 46. Conventional termination.

1. At any point in the procedure agreements may be reached between the authority competent to deliver the resolution and the responsible operator(s) with a view to establishing the content of the final resolution having regard to the following items:

   a) The content and scope of the measures which must be adopted by the responsible party or parties.
   b) Form of execution.
   c) Stages and priorities and partial and total execution deadlines.
   d) Means of administrative management or control.
   e) Performance guarantees and any other guarantees that help to ensure the effectiveness and feasibility of the measures.
   f) Measures to be implemented by the competent authority at the expense of the responsible parties.

2. Agreements must in any case guarantee the purposes of this Act.

3. The agreement may be made at the proposal of the competent authority or of the liable operators.

   Upon commencement of negotiations the period allowed for the delivery of a resolution shall be suspended for up to two months. If there is no agreement at the end of those two months, the competent authority shall take the procedure to its conclusion.

4. If other parties are involved, they shall be notified of the commencement of negotiations and they shall be allowed 15 working days to submit their views. They will likewise be notified of the agreement.

5. If an agreement is reached it will be included in the resolution unless — especially in the case of representations made by the other parties concerned, the body authorised to settle the procedure considers it necessary to reject or amend the agreement for reasons of legality, in which case it shall deliver a decision upholding the terms of the agreement as far as possible.

   New negotiations may also be initiated to amend the agreement as needed.

6. Agreements shall be binding upon the signers. The competent authority shall oversee compliance with the agreement.

Article 47. Enforcement.

1. In the event of failure to comply, the administrative orders imposing the duty to undertake environmental damage prevention, containment and remedial measures shall be enforced subject to prior notice. Such enforcement may be requested by interested parties.

2. The competent authority shall execute the order on a subsidiary basis, especially when the environmental damage is serious or the threat of damage is imminent.
3. When deemed advisable so as to avoid delays which could jeopardise the natural resources affected, the competent authority may successively impose up to five periodic penalty payments, each for a maximum of 10% of the estimated cost of the set of measures being executed.

Article 48. *Recovery of costs by the public administration.*

1. When the competent authority has itself adopted the prevention, containment or remedial measures in accordance with Article 23 and 47, it shall order the liable operator to cover the costs incurred.
2. The competent authority shall have five years in which to order the liable operator to cover the expenses referred to in the preceding paragraph. This period shall commence upon whichever the following dates falls last:
   a) That on which execution of the measures was concluded.
   b) That on which the liable party was identified.
3. Calculation of the time period shall be suspended in the event of:
   a) any action taken by the competent authority, with the formal knowledge of the liable party, for the purpose of requiring the latter to assume any type of liability relating to the same events in accordance with this or any other law;
   b) investigation under criminal proceedings for the same events causing liability as regulated by this Act;
   c) a request by the persons concerned with the formal knowledge of the liable party, as provided in Article 44.
   d) any action entailing recognition of liability by the responsible party.
4. The order to pay costs, and any other act entailing cash payment, even if ordered as a provisional measure, shall be executed in accordance with the provisions of Article 10 of the General Budget Act, Law 47/2003 of 26 November.

Article 49. *Applicable regulations.*

Where this Act does not provide, proceedings instituted in application hereof shall be governed by Law 30/1992 of 26 November and by the legislation applicable to each competent public administration.


The provisions of this Act shall be applied without prejudice to civil protection legislation for emergency situations; the regulations contained in Articles 24, 26 and 28 of the General Health Act, Law 14/1986 of 25 April; provisions concerning health emergencies contained in the Public Health (Special Measures) Act, Organic Law 3/1986 of 14 April; and regional legislation applicable to civil protection matters and health emergencies.

Second additional provision. *Application of more stringent environmental regulations.*

1. This Act shall be enforced without prejudice to more stringent Community regulations on environmental liability.
2. The national government or Autonomous Communities, within their respective purviews, may maintain or adopt more stringent provisions regarding the prevention, containment and remedy of certain environmental damage or concerning certain activities.
3. This Act shall not preclude the attribution of liability to subjects other than the operators under other environmental regulations.

4. The Autonomous Communities may render other activities or other persons subject to the liability procedure laid down in this Act.

5. Environmental damage caused by activities whose main aim is national defence or international security are excluded from subsequent implementing legislation referred to in the foregoing sections.

Third additional provision. *Limitation of liability arising from maritime and inland navigation law.*

This Act shall be interpreted without prejudice to the right of operators to limit their liability pursuant to the 1996 Protocol amending the 19 December 1976 Convention on Limitation of Liability for Maritime Claims or the Strasbourg Convention on Limitation of Liability in Inland Navigation, 1988, including any future amendments, in force in Spain, or to national implementing legislation of the two international instruments.

The terms of this Act shall also be interpreted without prejudice to Article 108 of the Fiscal, Administrative and Social Order Act, Law 62/2003 of 30 December and its implementing regulation having regard to the monitoring and information system for maritime traffic of dangerous goods.

Fourth additional provision. *Non-environmental damage to crops due to the release of genetically modified organisms into the environment.*

Non-environmental damage to crops from the release of genetically modified organisms shall be remedied in the form of compensation for damages in accordance with civil law.

Fifth additional provision. *Forwarding of information to the Ministry of the Environment.*

1. The public administrations shall furnish the Ministry of the Environment with the data and information cited in Annex VI for full compliance with the duties laid down in applicable Community regulations.

2. The Ministry of the Environment shall make public the information sent to the Commission.

Sixth additional provision. *Social interest declaration regarding the temporary occupation of certain properties and private rights.*

1. The temporary occupation of properties and private rights shall be declared to be of social interest when this is necessary to remedy environmental damage or to prevent it from occurring. The public administrations may declare the said occupation urgent when so warranted by the circumstances.

2. The execution of temporary occupation measures envisaged in this provision, and compensation for any damages produced thereby, shall be in accordance with compensation for temporary occupation provided for in expropriation legislation.

Seventh additional provision. *Non-applicability of the obligatory financial guarantee to public legal persons.*

1. Article 24 does not apply to the General State Administration or to public bodies linked to or dependent upon it. Neither does it apply to local governments, regional bodies or to any public law bodies dependent upon these.
2. The Autonomous Communities shall determine the applicability of Article 24 to their administration and dependent public bodies.

Eighth additional provision. *Legitimation of the public prosecution service.*

1. In compliance with the provisions of Article 19(1) f) of the Contentious Administrative Jurisdiction Act, Law 29/1998 of 13 July, the public prosecution service may take part in any contentious-administrative proceeding for the purpose of enforcing this Act.

For the purposes of the provisions of the foregoing paragraph, the competent authority shall inform the public prosecution service of all environmental liability cases arising from this Act.

2. The public administrations shall take such steps as are necessary to ensure that their authorities and personnel provide the public prosecution service with technical, material and any other support which the latter may need to discharge its duties in the contentious-administrative proceedings referred to in the foregoing paragraph in accordance with the provisions of Article 4(3) of Law 50/1981 of 30 December regulating the Organic Statutes of the Public Prosecution Service.

Ninth additional provision. *Application of Annex II in judicial and administrative proceedings.*

The regulations laid down in Annex II or other supplementary regulations laid down in regional law with the same objective shall be applied in determining whether environmental damage remediation is obligatory, regardless of whether the said obligation is required in a civil, criminal or contentious-administrative legal proceeding or in an administrative proceeding.

Tenth additional provision. *Environmental liability of public works.*

In accordance with Article 2(1) of this Act and the Fourth Additional Provision of Legislative Royal Decree 1302/1986 of 28 June on Environmental Impact Assessment, in the case of public works in the general interest the competent authority shall not require the adoption of the measures envisaged in this Act nor execute them subsidiarily when the procedure established for the assessment of their impact has been followed in accordance with available information and the prescriptions laid down in the environmental impact statement have been followed.

The applicable regional regulations shall determine the applicability of the provisions of the preceding paragraph to the environmental impact statement or equivalent public works instrument under the jurisdiction of the Autonomous Communities.

Eleventh additional provision. *Assessment of the enforcement of this Act.*

The Ministry of the Environment shall submit a biannual report assessing the enforcement of this Act and the need, as the case may be, to implement the necessary legislative or administrative measures to improve the efficacy of the environmental liability procedure; special attention will be paid to the efficacy of the exception laid down in Article 28 b).

The Ministry shall mandatorily consult with the Autonomous Communities and collect all necessary information from them in compiling this report.

Twelfth additional provision. *Review of the thresholds regulated under Article 28 of this Act.*
The thresholds laid down in Article 28 of this Act to identify the operators who are exempt from the obligation of constituting financial guarantees will be studied and revised by the Government in the light of the experience gained from the application of the methods referred to in Article 24 for the establishment of coverage of the said guarantees. Prior to 31 December 2015, the Government shall submit a report proposing the maintenance or where appropriate the amendment in one direction or the other, of the aforementioned thresholds.

Thirteenth additional provision. Cross-border Environmental liability

1. Operators undertaking economic or professional activities regulated under this Act in non-European Union Member States must prevent, contain and remedy environmental damage in compliance with international agreements, principles, targets and regulations endorsed by Spain in this connection; by virtue of these, the damage prevention, containment and remediation measures regulated under this Act may apply, with the same scope and aim.

2. Operators failing to comply with the obligations envisaged in the foregoing paragraph and which are beneficiaries of public schemes supporting foreign Spanish investment must forfeit all public foreign investment aid received for the conduct of the activity giving rise to the environmental damage and shall not be eligible to receive similar aid for a period of two years, in addition to whatever sanction may be imposed by virtue of the agreements concluded by Spain referred to in the foregoing paragraph.

3. The terms of the foregoing paragraphs shall not exonerate operators from compliance with other legal obligations in force in the State where the activity causing the environmental damage is carried on.

Fourteenth additional provision. Compensation for damages arising from the bursting of the Tous dam.

1. Those affected by the breakage of the Tous dam referred to in the motion passed by the Senate Plenary on 8 May 2007 shall be entitled to receive, in accordance with the criteria and under the conditions established in the Judgement delivered by the Supreme Court Chamber for Contentious Administrative Proceedings of 20 October 1997, the compensation to which they would have been entitled had they been included in the list of affected parties in the proceedings. Should the initially determined beneficiaries have died, the compensation entitlement shall be transferred to their heirs by virtue of a will or to their legitimate successors.

2. Before receiving this compensation, the beneficiaries must expressly renounce in writing all legal action they may have taken or which they have a right to take through any administrative or legal channels, both national and international, for the purpose of procuring compensation for damages sustained as referred to in this provision.

3. The Ministry of the Environment shall issue the appropriate provisions and instructions to ensure effective compliance with this precept.

Sole Transitional Provision. Damages predating the entry into force of this Act.

1. This Act shall not apply to the following types of damage:

a) Those cause by an emission, event or incident which occurred prior to 30 April 2007.

b) Those caused by an emission, event or incident which occurred after 30 April 2007 but which are the result of a specific activity undertaken and concluded prior to that date.
2. The non-retroactivity of this Act in the terms described in the foregoing paragraph shall not prevent the adoption of any of the following measures:

a) Claim of liability in accordance with other applicable regulations.
   b) Imposition of prevention or containment measures in accordance with the provision of this Act.
   c) Obligation to remedy damages not excluded in paragraph 1.

First final provision. Constitutional authority.

1. This Act is considered basic environmental protection legislation, without prejudice to the authority vouchsafed to the Autonomous Communities to establish additional protective regulations in compliance with the provisions of Article 149(1) 23 of the Constitution, with the exception of the following provisions:

   The Eighth Additional Provision, which constitutes procedural law delivered under the aegis of Article 149(1) 6 of the Constitution.
   Section 1 of Chapter IV, which constitutes basic insurance legislation delivered under the aegis of Article 149(1) 11.
   Section 2 of Chapter IV, drawn up under the aegis of Article 149(1) 14 of the Constitution regarding matters of general public finance and national debt.

2. The following shall not be considered basic legislation: The time period established under Article 45(3); the time periods under Article 46(3) and (4); and paragraph 1 of the Seventh Additional Provision, which shall only apply to the General State Administration, its public bodies and state agencies.

Second final provision. Incorporation of Community Law.


Third final provision. Implementing authority.

1. The Government is empowered, subject to consultation with the Autonomous Communities, to introduce, within its purview, as many provisions as are needed for the implementation and execution of Chapter IV and the Annexes of this Act.

   In particular, the Government shall, by virtue of a royal decree before 31 December 2008 and subject to consultation with the Autonomous Communities, approve the implementation of the provisions set out in Chapter IV and the definition of a method for assessing damage for the purposes of Article 24.

   2. The Government is empowered, subject to consultation with the Autonomous Communities, to amend the annexes for the purpose of adapting them to any modifications introduced by Community Law.

Fourth final provision. Application of the compulsory financial guarantee.

1. The date as from which the constitution of the compulsory financial guarantee is required for each of the activities listed in Annex III shall be determined by order of the Minister of the Environment subject to prior resolution of the Government’s Delegate Commission for Economic Affairs and subject to consultation with the Autonomous Communities and affected sectors.

   The order shall lay down a specific timetable for activities authorised prior to its publication.
2. The Ministerial orders alluded to in the foregoing paragraph shall be approved as from 30 April 2010 and in their drafting due consideration shall be given to the report of the European Commission referred to in Article 14(2) of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 and to the capacity of financial markets to provide a comprehensive and universal range of guarantees at reasonable prices.

Fifth final provision. Collaboration between public administrations.

The General State Administration shall promote the signing of collaboration and cooperation instruments with the Autonomous Communities with a view to drawing up action protocols ensuring coordinated and effective action on the part of those public administrations having the authority to execute this Act.

Sixth final provision. Entry into force.

This Act shall enter into force on the day following its publication in the Official State Gazette. However, it is retroactive to 30 April 2007 barring the provisions of chapters IV and V.

Wherefore, I order all Spaniards, whether individuals or authorities, to abide by this Organic Law and ensure that it is observed.

Madrid, 23/10/07.

JUAN CARLOS R.

The President of the Government
JOSÉ LUIS RODRIGUEZ ZAPATERO

ANNEX I

Criteria within the meaning of Article 2(1) a)

1. The significance of any damage that has adverse effects on reaching or maintaining the favourable conservation status of habitats or species has to be assessed by reference to the conservation status at the time of the damage, the services provided by the amenities they produce and their capacity for natural regeneration. Significant adverse changes to the baseline condition should be determined by means of measurable data such as:

a) the number of individuals, their density or the area covered;

b) the rarity of the damaged species or habitat (assessed at local, regional and higher level including Community level) and the degree of threat it faces;

c) the role of the specific individuals or area damaged having regard to the species or conservation of its habitat;

d) the species' capacity for propagation (according to the dynamics specific to that species or to that population), its viability or the habitat's capacity for natural regeneration (according to the dynamics specific to its characteristic species or to their populations);

 e) the species' or habitat's capacity, after damage has occurred, to recover within a short time, without any intervention other than increased protection measures, to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.
Damage with a proven effect on human health must be classified as significant damage.

2. The following shall not be considered significant damage:

a) negative variations that are smaller than natural fluctuations which are regarded as normal for the species or habitat in question;

b) negative variations due to natural causes or resulting from intervention relating to the normal management of protected natural reserves or Natura 2000 Network sites, as defined in their respective management plans or comparable technical instruments.

c) damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

ANNEX II

Remedying of environmental damage

This Annex sets out a common framework to be followed in choosing the most appropriate measures to ensure the remedying of environmental damage.

1. Remedying of damage to water, natural species and habitats and sea and estuary coast:

Remedying of environmental damage in relation to water, natural species or habitats and sea and estuary coast is achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation, where:

a) “Primary” remediation is any remedial measure which returns the damaged natural resources or impaired services to or towards baseline condition;

b) “Complementary” remediation is 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;

c) "Compensatory" remediation is 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.

d) "interim losses" means losses which result from the fact that the damaged natural resources 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.

Where primary remediation does not result in the restoration of the environment to its baseline condition, then complementary remediation shall be undertaken. In addition, compensatory remediation shall be undertaken to compensate for the interim losses.

Remedying of environmental damage, in terms of damage to water or natural species or habitats, also implies the elimination of any significant risk of adverse effects on human health.

1.1 Remediation objectives.

Purpose of primary remediation.
1.1.1 The purpose of primary remediation is to restore the damaged natural resources or services to, or towards, baseline condition.

Purpose of complementary remediation.

1.1.2 Where the damaged natural resources or services are not restored to their baseline condition, complementary remediation shall be undertaken. The purpose of complementary remediation is to provide a level of natural resources or services — including an alternative site if necessary — similar to that which would have been provided if the damaged site had been restored to its baseline condition. Where possible and appropriate, the alternative site should be geographically linked to the damaged site, taking into account the interests of the affected population.

Purpose of compensatory remediation.

1.1.3 Compensatory remediation shall be undertaken to compensate for the interim loss of natural resources and services pending recovery. This compensation consists of additional improvements to natural habitats and species or water either at the damaged site or at an alternative site. It does not consist of financial compensation to members of the public.

1.2 Identification of remedial measures.

Identification of primary remedial measures.

1.2.1 Options comprised of actions to directly restore the natural resources and services towards baseline condition on an accelerated time frame, or through natural recovery, shall be considered.

Identification of complementary and compensatory remedial measures.

1.2.2 When determining the scale of complementary and compensatory remedial measures, the use of resource-to-resource or service-to-service equivalence approaches shall be considered first. Under these approaches, actions that provide natural resources or services of the same type, quality and quantity as those damaged shall be considered first. Where this is not possible, alternative natural resources or services shall be provided. For example, a reduction in quality could be offset by an increase in the quantity of remedial measures.

1.2.3 If it is not possible to use the first-choice resource-to-resource or service-to-service equivalence approaches, alternative valuation techniques shall be used. The competent authority may prescribe a method to determine the extent of the necessary complementary and compensatory remedial measures. If valuation of the lost resources or services is practicable, but valuation of the replacement natural resources or services cannot be performed within a reasonable time-frame or at a reasonable cost, then the competent authority may choose remedial measures whose cost is equivalent to the estimated monetary value of the lost natural resources or services.

The complementary and compensatory remedial measures should be so designed that they provide for additional natural resources or services to reflect time preferences and the time profile of the remedial measures. For example, the longer the period of time before the baseline condition is reached, the greater the amount of compensatory remedial measures that will be undertaken (other things being equal).

1.3 Selection of remedial measures.

1.3.1 Reasonable remedial measures should be evaluated using the best available technologies, based on the following criteria:

The effect of each measure on public health and safety.
The likelihood of success of each measure.
The extent to which each measure will prevent future damage, and avoid collateral damage as a result of implementing the measure.
The extent to which each measure benefits each component of the environmental resource or service.
The extent to which each measure takes account of social, economic and cultural concerns and other relevant factors specific to the locality.
The length of time it will take for the restoration of the environmental damage to be effective.
The extent to which each measure achieves restoration of the site of the environmental damage.
The geographical linkage to the damaged site.
The cost of implementing the measure.

1.3.2 When evaluating the different identified remedial measures, primary remedial measures that do not fully restore the damaged water or natural species or habitat to baseline or that restore it more slowly can be chosen. This decision can be taken only if the damaged natural resources or services are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources or services. These additional remedial measures shall be determined in accordance with the rules set out in section 1.2.2.

1.3.3 Notwithstanding the rules set out in section 1.3.2., in accordance with Article 21, the competent authority is entitled to decide that no further remedial measures should be taken if:

1. the remedial measures already taken secure that there is no longer any significant risk of adversely affecting human health, water or natural species and habitats, and
2. The cost of the remedial measures that should be taken to reach baseline condition or similar level would be disproportionate to the environmental benefits to be obtained in which case a public economic report to warrant such a decision would be required.

2. Remediation of land damage.

Within the framework of Articles 27 and 28 of the Waste Act, Law 10/1998 of 21 April and Royal Decree 9/2005 of 14 January listing activities which could give rise to land contamination and the criteria and standards for the declaration of contaminated land, and likewise of the regulations protecting land quality approved by the Autonomous Communities, the necessary measures shall be taken to ensure, as a minimum, that the damaging substances, preparations, organisms or microorganisms concerned are removed, controlled, contained or diminished so that the contaminated land no longer poses any significant risk of adversely affecting human health, taking account of its current use or approved future use at the time of the damage.

This land use shall be ascertained on the basis of the land use regulations, or other relevant regulations, if in force, if any, when the damage occurred. If land use regulations, or other relevant regulations, are lacking, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.

A natural recovery option, that is to say an option in which no direct human intervention in the recovery process would be taken, shall be considered.
Activities referred to in Article 3(1)

1. The operation of installations subject to permit pursuant to the Integrated Pollution Prevention and Control Act, Law 16/2002 of 1 July. This means all activities listed in Annex I with the exception of installations or parts of installations used for research, development and testing of new products and processes.

Also included are all other activities and establishments coming within the scope of Royal Decree 1254/1999 of 16 July establishing measures to control risks inherent to serious accidents involving hazardous substances.

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 pursuant to Law 10/1998 of 21 April.

These operations include, inter alia, the operation of landfill sites and management subsequent to their closing pursuant to Royal Decree 1481/2001 of 27 December regulating the disposal of waste through landfills and the operation of incineration plants pursuant to Royal Decree 653/2003 of 30 May on the incineration of waste.

3. All discharges into inland surface water which require prior authorisation pursuant to Royal Decree 849/1986 of 11 April establishing the Public Water Domain Regulation and applicable regional legislation.

4. All discharges of substances into groundwater which require prior authorisation pursuant to Royal Decree 849/1986 of 11 April and applicable regional legislation.

5. All discharges into inland surface water and territorial seas which require prior authorisation pursuant to the Coasts Act, Law 22/1988 of 28 July and applicable regional legislation.

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

7. Abstraction and impoundment of water subject to prior authorisation pursuant to Legislative Royal Decree 1/2001 of 20 July.

8. 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 establishing the Regulation relating to 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 establishing the Regulation relating to classification, packaging and labelling of dangerous substances.

   c) Plant protection products as defined in Article 2(1) of Royal Decree 2163/1994 of 4 November implementing the harmonised Community authorisation system concerning 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 assessment 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 regulating the transport of dangerous goods by road in Spain or Article 2 b) of Royal Decree 412/2001 of 20 April regulating different aspects relating to the transport of dangerous goods by rail or as defined in Article 3 h) of Royal Decree 210/2004 of 6 February setting up a maritime traffic monitoring and information system.

10. The operation of installations which, subject to authorisation pursuant to 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, require authorisation pursuant to the Pollution (Integrated Prevention and Control) Act, Law 16/2002 of 1 July.

11. Any contained use, including transport, involving genetically modified micro-organisms as defined by Law 9/2003 of 25 April setting up the legal procedure for the contained use, deliberate release and placing on the market of genetically modified micro-organisms.


ANNEX IV

International conventions referred to in Article 3(5) a)

1. The International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
5. The Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

ANNEX V

International conventions referred to in Article 3(5) b)

2. The Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage.
5. The Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

ANNEX VI

Information and data referred to in the Fifth Additional Provision
1. The reports referred to in the Fifth Additional Provision shall include a list of instances of environmental damage and instances of liability under this Act, with the following information and data for each instance:

   a) Type of environmental damage, date of occurrence and/or discovery of the damage and date on which actions were initiated under this Act.
   b) Activity classification code of the liable person(s) or legal person(s).
   c) Whether there has been resort to judicial review procedures either by liable parties or qualified entities. (The type of claimants and the outcome of procedures shall be specified.)
   d) Outcome of the remediation process.
   e) Date of conclusion of procedure.

2. The public administrations may include in their reports any other information and data they believe may help to achieve a proper assessment of the functioning of this Act, for example:

   a) Costs incurred from remediation and prevention measures, as defined in this Act:

      1. Paid for directly by liable parties, when this information is available.
      2. Recovered ex post facto from liable parties;
      3. Unrecovered from liable parties. (Reasons for non-recovery should be specified.)

   b) Results of promotional actions and implementation of the financial security instruments used in accordance with this Act.
   c) 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 Act.