Spanish Guidelines for environmental damage assessment

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2. SPANISH GUIDELINES FOR ENVIRONMENTAL DAMAGE ASESSMENT

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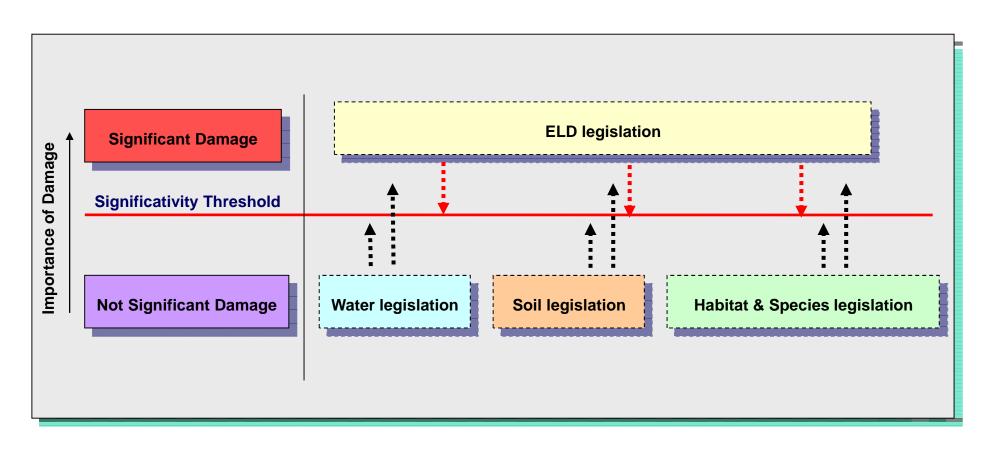
- The purpose of Directive 2004/35/CE is to establish a framework of environmental liability based on the "polluter-pays" principle, to prevent and remedy environmental damage.
- Operators are required, where environmental damage has occurred (art. 6), to take all practicable steps to limit or prevent further **environmental damages**, and to take all the necessary remedial measures in accordance with art. 7.
- Operators shall bear the costs of these preventive and remedial actions (art. 8).

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

Therefore the determination of the significance of environmental damage plays a key role in the implementation of ELD



ELD legislation vs sectorial legislation

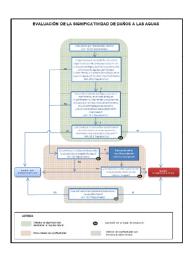


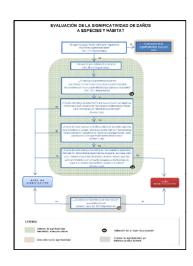
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- Guidance document to establish guidelines to help in the interpretation of the criteria for determination of significance for each resource, in the context of Law 26/2007
- Objective: Homogeneous evaluation of environmental damage significance, contributing to a harmonized implementation of environmental liability law.









□ Preamble of Law 26/2007 states that not all the environmental damages may cause environmental liability.

For Law 26/2007 to be applied, the imminent threat of environmental damages or damages itself should have **significant** adverse effects on a natural resource.

□ It is necessary to distinguish the concepts of "damage" and "environmental damage".

Within the scope Law 26/2007 refers to those damages or imminent threats of damages that have significant adverse effects on the natural resources protected by the law, <u>and only in these cases the environmental liability normative can be applied</u>.



Law 26/2007 on environmental liability criteria

- a) Damage to Habitats and Species: any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. To be assessed with reference to the baseline condition, taking account of the Annex I criteria.
- b) Water damage: Any damage that significantly adversely affects
 - 1.º The ecological, chemical or quantitative status of the <u>bodies of surface water or</u> <u>groundwater</u> as well as the ecological potential of the bodies of artificial water and heavily modified water, according to the definitions established by the water protection legislation.
 - 2.º The environmental status of the marine waters, as defined in Law 41/2010 on Protection of the Marine Environment, in so far as particular aspects of the envir. status are not already addressed through Water Law."
- c) <u>Soil damage</u>: Any soil contamination that creates a <u>significant risk of human health or</u> <u>environment being adversely affected</u> as a result of the direct or indirect deposit, discharge, or introduction of substances, preparations, organisms or micro-organisms in the soil or subsoil."
- d) <u>Seashore and estuaries damage</u>: The damage to seashore and estuaries, understood as any damage that produces <u>significant adverse effects</u> on its physical integrity and adequate conservation, and those that imply difficulty or impossibility of reaching or maintaining an adequate level of quality.



Regulation on the partial development of Law 26/2007 criteria

ASPECTS TO BE CONSIDERED IN THE EVALUATION OF SIGNIFICANCE OF ENVIRONMENTAL DAMAGE		Article of Regulation
Identification of the agent causing the damage		15.1
Quantification of the damage	Extent	15.1
	Intensity	15.1
	Time scale (duration, frequency and reversibility)	15.1
Analysis of the variation of, among other parameters	a) The conservation status of the affected resource	15.2
	b) The ecological, chemical and quantitative status of the affected resource	15.2
	c) The physical integrity of the affected resource	15.2
	d) The quality level of the affected resource	15.2
	e) The risks to human health or the environment associated with the affected resource	15.2
Demonstrated effects on human health		15.3

Once these aspects are considered, **the significance of the damage will be evaluated using the criteria established in article 16 of the Regulation**, by reference to the affected natural resource, in line with the definitions in article 2 of Law 26/2007



Regulation on the partial development of Law 26/2007 criterio by reference to the natural resource affected (art. 16)

Damage to Habitats and Species:

The environmental damage cause adverse effects on reaching or maintaining the favourable conservation status of such habitats or species

Water damage:

The env. damage implies a change in the classification of thE water body acording to Royal Decree 907/2007 (water planning legislation acording to WFD)

Soil damage:

Criteria set in Royal Decree 9/2005, on contaminated soils

• Seashore and estuaries damage

Significant when the damage to water, habitat, species or soil within them is significant

Subsidiary criteria for water and soil damage: If it is not posible to determine, it is significant if it so significant to the species present in them.



Precautionary principle

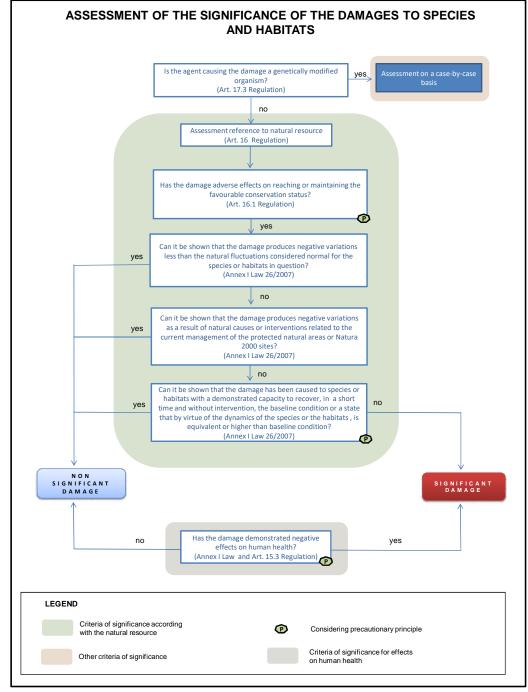
- The assessment of significance must be carried out in on a case-by-case basis. It may have certain complexity, due to uncertainty associated with the forecast of the effects of the agents causing damage on the natural resources, especially in cases of imminent threats of damage.
- When there are technical difficulties in the assessment of the significance, as well as to simplify it in time and cost, the "precautionary principle" can be considered

The "precautionary principle" is an essential element of the European policy, which basis are developed in the Communication from the Commission on the precautionary principle (2000).

The EC defends that the precautionary principle is particularly relevant to the management of risk, and that communication is a guidance to the Member States on using this principle in the decision-making process.

The communication establishes that: "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation"



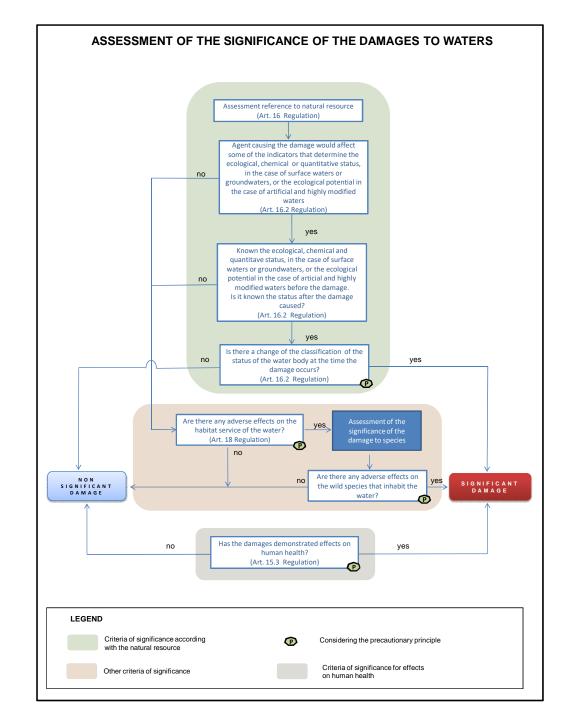




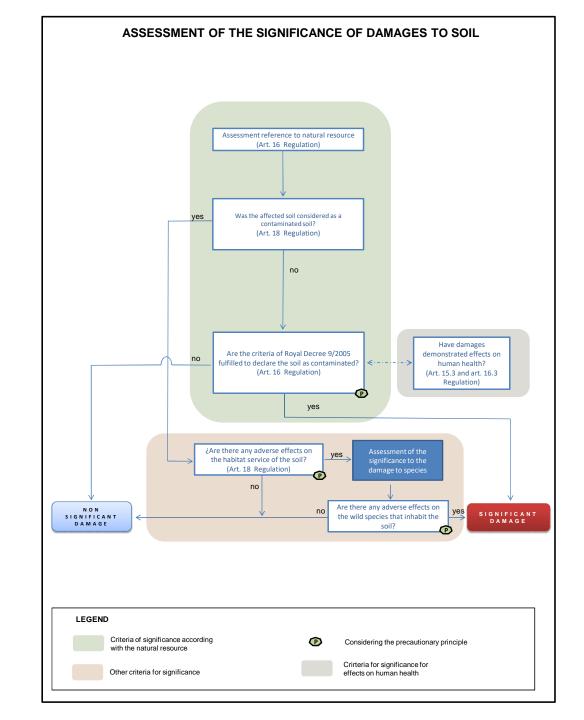
The time scale must be taken into account. The assessment of the status of the water body under WFD is carried out at the end of each hydrological planning cycle.

Likewise, the effect of an incident on water, especially in the case of groundwater, may not occur immediately, but may appear some time later.

Nevertheless, under the scope of the environmental legislation it will be necessary to evaluate the change in the classification of the status of the water body at the time the damage occurs.



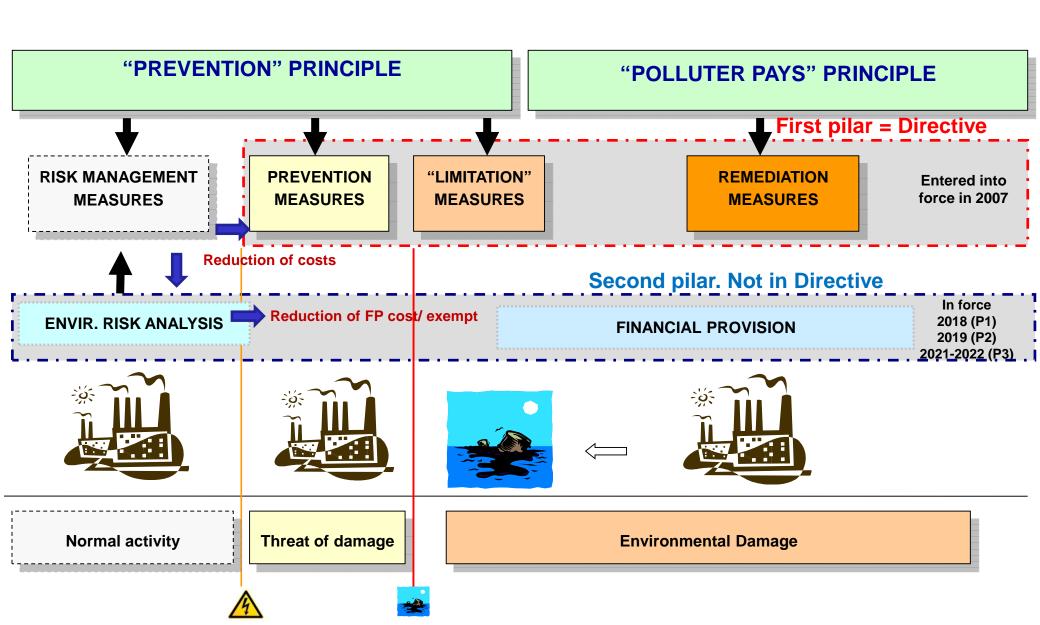


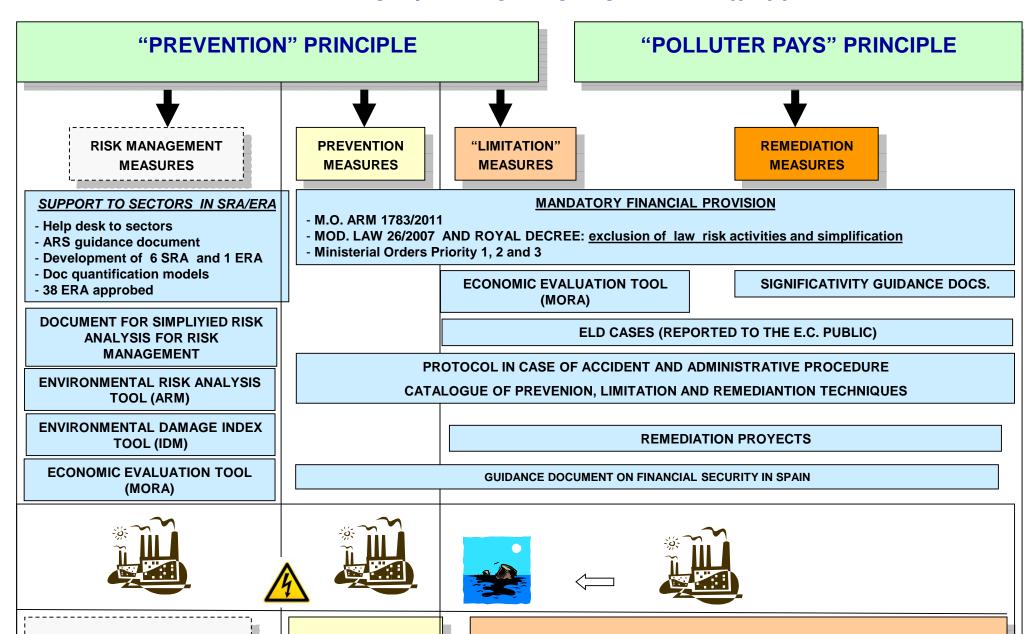


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ELD PRINCIPLES AND OBJECTIVES





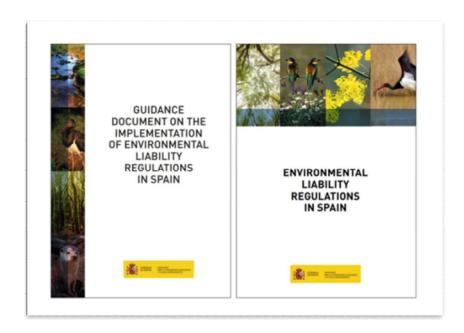
Damage

Threat of damage

Normal activity



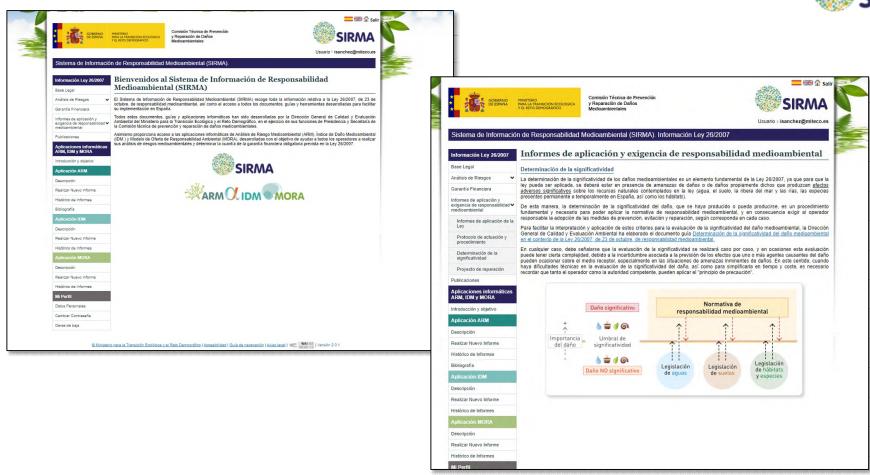
Guidance document and brouche on the implementation of environmental liability regulations in Spain

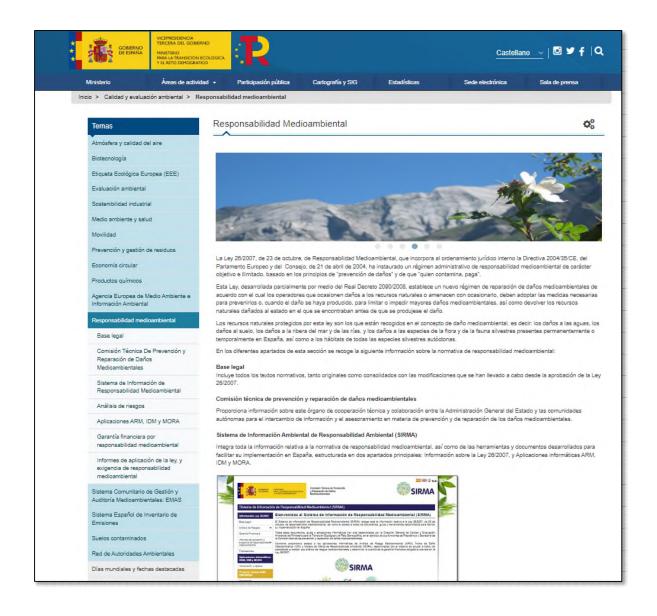




Environmental Liability Information System (SIRMA)







https://www.miteco.gob.es/es/calidad-y-evaluacion-ambiental/temas/responsabilidad-mediambiental/





THANK YOU FOR YOUR ATTENTION!!

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