

COUNTRY PROFILE: SPAIN

LIABILITIES

Criminal, civil (third party liability arising from the failure to comply with environmental regulations) and administrative penalties can arise in Spain for a breach of environmental laws or permits. In common with many other countries, Spanish environmental regulations are based on the 'polluter pays principle'. This has traditionally required the repair of damage caused only by faulty or negligent behaviour, however, in recent years and for certain aspects there has been a change to a strict liability regime.

ENVIRONMENTAL INSURANCE (ENVIRONMENTAL LEGAL LIABILITY PREVIOUS TO LAW 26/2007¹)

Specific industrial activities are required to buy compulsory civil liability insurance for environmental pollution, in order to obtain permits for carrying out such activities. Examples of such activities include those subject to IPPC² as well as waste management operators. The limit and scope of insurance cover required is dictated by each autonomous region in Spain.

THE IMPLEMENTATION OF THE EU ENVIRONMENTAL LIABILITY DIRECTIVE ('ELD')

The ELD was transposed in to Spanish legislation by means of Law 26/2007 (the 'Law'). This Law was published in October 2007, although its effects are backdated to April 30, 2007.

Besides covering species and habitats captured by Natura 2000 and soil and water, the Law also includes in the definition of natural resources, habitats and species not listed in EU annexes designated by the Spanish authorities for equivalent purposes and the coastline.



The Law imposes unlimited liability for the protection of natural resources, including water, shore of the seas and the estuaries, soil, and protected habitats and wild species. Third party claims for bodily injury and property damage are excluded, as is air pollution, nuclear facilities and those damages included in International Treaties named in Annex IV of the ELD. Operators of activities included in Annex III of the draft Law are liable for environmental damage on a strict liability basis, whilst other operators will have to adopt the remediation measures only if they have been negligent.

¹ Law 26/2007, of October 23, on Environmental Liability (transposes ELD Into the Spanish law).

² IPPC: Integrated Pollution Prevention and Control (Directive 96/61/CE).

Under the Law, the competent authority will be able to act, for example by requirement of any other public administration, by a third party affected by the environmental damage or the threat of such damage, or any non-governmental organisation that demonstrates interest in environmental protection.

Subsidiary liability is imposed by the Law on the managers and administrators of the legal person whose conduct has resulted in the liability of the latter. Furthermore, article 10 of the Law establishes that where an operator is a company of a group of companies, the liability may be extended also to the parent company if abusive use has been made of the legal person or abuse of law has been committed.

FINANCIAL GUARANTEES

The Law requires mandatory financial guarantees for operators included in Annex III to cover their environmental liability by April 2010. Nevertheless, the compulsory guarantee does not cover all costs arising from the Law. On one hand, the security provided by the guarantee covers the costs of primary remediation and a small percentage of prevention and avoidance costs, but on the other hand, the compulsory guarantee refers only to damages produced by 'pollution', despite the Law being based on the concept of 'damage to natural resources' and not specifying whether the damage is caused by pollution or not (i.e. fire, aquifer depletion).

Decree 2090/2008, which has been in force since April 23, 2009, develops the Law and provides a method to determine the way the damage must be assessed in order to constitute the mandatory guarantee. The risk assessment must be done according to the provision of UNE 150008:2008 (a national non-binding standard on risk assessment) or similar method, and to be verified by an independent agent.

There are exemptions for operators in Annex III from the guarantee obligation:

- Operators of activities likely to cause damage which primary remediation is estimated to be less than 300,000 euros; and
- Operators of activities likely to cause damage, primary remediation of which is estimated at between 300,000 and 2,000,000 euros and who show that they are certified with EMAS or ISO 14001:1996.

Though compulsory financial security is limited in the Law to 20,000,000 euro, liability as stated in the ELD is unlimited.

In addition to insurance, the financial guarantee may take the form of a guarantee provided by a financial entity or technical reserve, and must be maintained for the entire period of operation.

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