

IMPEL CAED

**WEBINAR ON ENVIRONMENTAL
LIABILITY DIRECTIVE ENFORCEMENT**

27/04/2022



PORTUGUESE ENVIRONMENTAL LIABILITY LEGAL REGIME

NATIONAL REPORTS AND COMMUNICATION SYSTEM

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**REPÚBLICA
PORTUGUESA**

ENVIRONMENT AND
CLIMATE ACTION

The 2008-2021 National ELD Report

- ❖ Main results, achievements and trends
- ❖ Conclusions of the Report
- ❖ Relevant developments:
 - Technical guidance documents
 - Yearly implementation reports
 - **National Communication System**
- ❖ Recommendations / Upcoming challenges



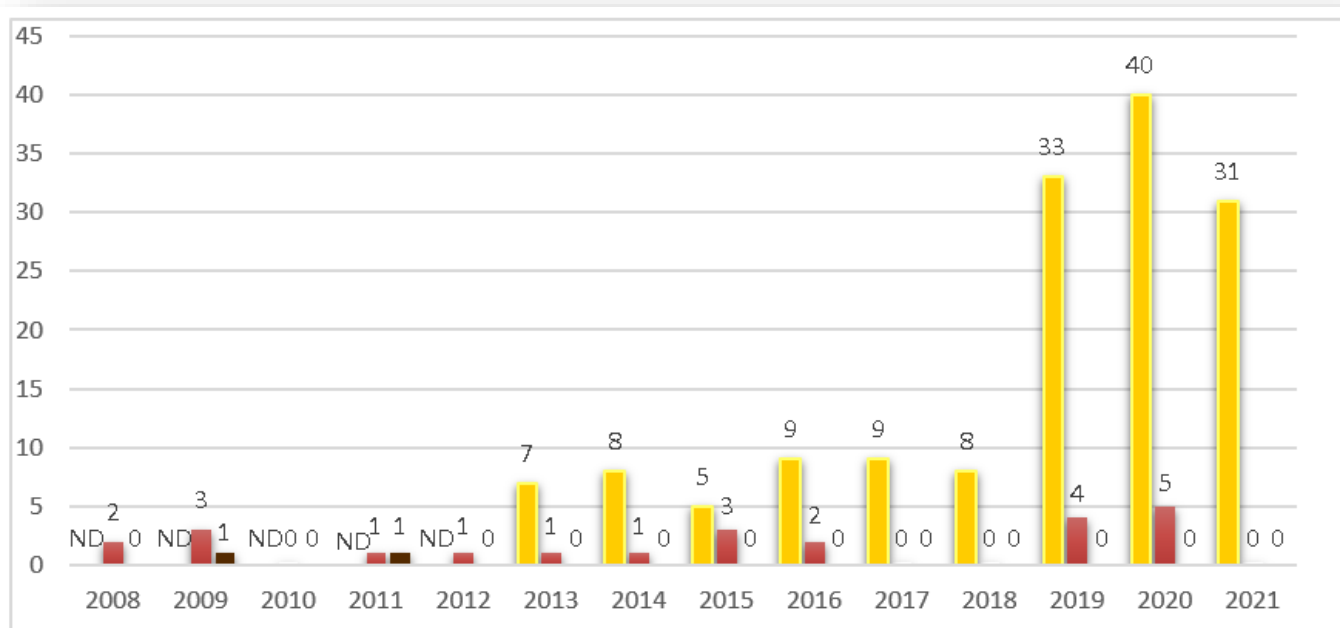
❖ The 2008-2021 National ELD Report

- Main results, achievements and trends

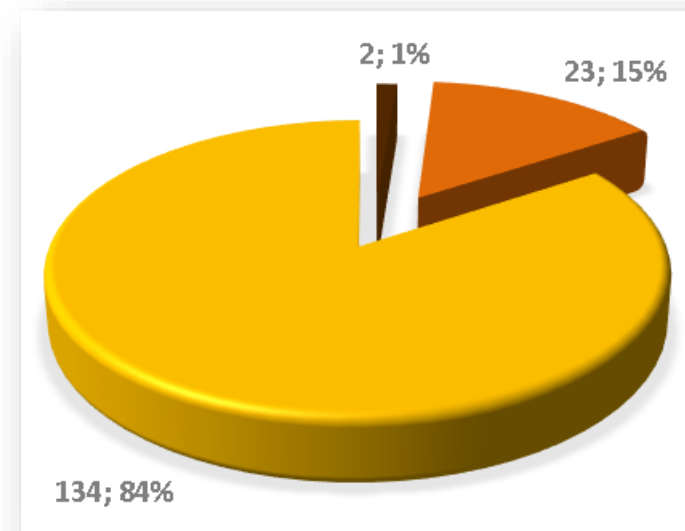


Main results, achievements and trends

Evolution of environmental cases reported to APA,
from 01/08/2008 to 31/12/2021,
and their classification as Environmental Damages or
Imminent Threats of Environmental Damages under ELD



Classification of Environmental cases reported to APA,
from 01/08/2008 to 31/12/2021



- Environmental damages (01/08/2008 to 31/12/2021)
 - Imminent threats of environmental damages (01/08/2008 to 31/12/2021)
 - Environmental cases outside the scope of the ELD (01/01/2013 to 31/12/2021)
- ND – Data not available

184 environmental cases were reported, of which **134 (84%)** were considered **outside the scope of the ELD**, **23 (15%)** were considered **imminent threats of environmental damages** and **2 (1%)** **environmental damages**.

Main results, achievements and trends

Geographical distribution of the environmental cases under the scope of the ELD, from 01/08/2008 to 31/12/2021

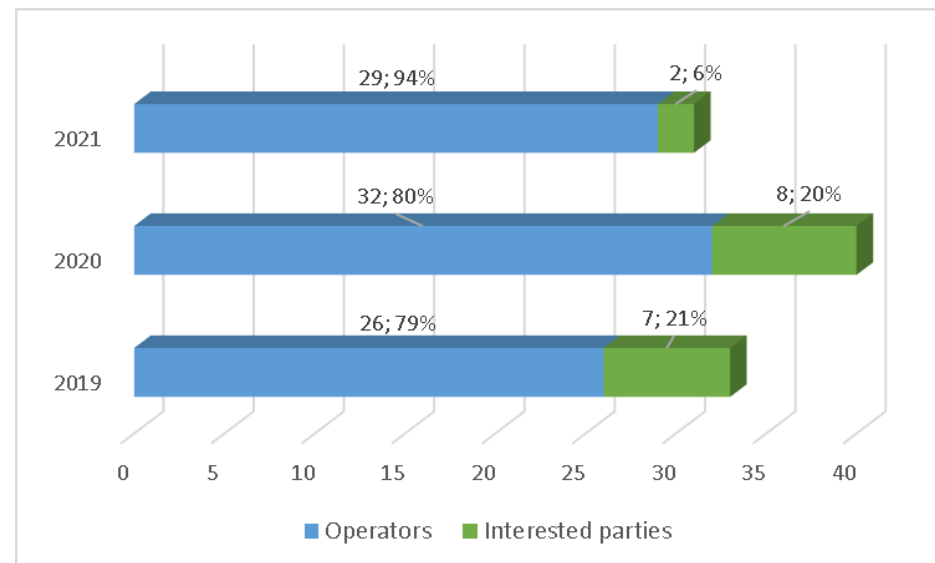


Geographical distribution of the environmental cases reported to APA (under and outside the scope of ELD) from 2019 to 2021



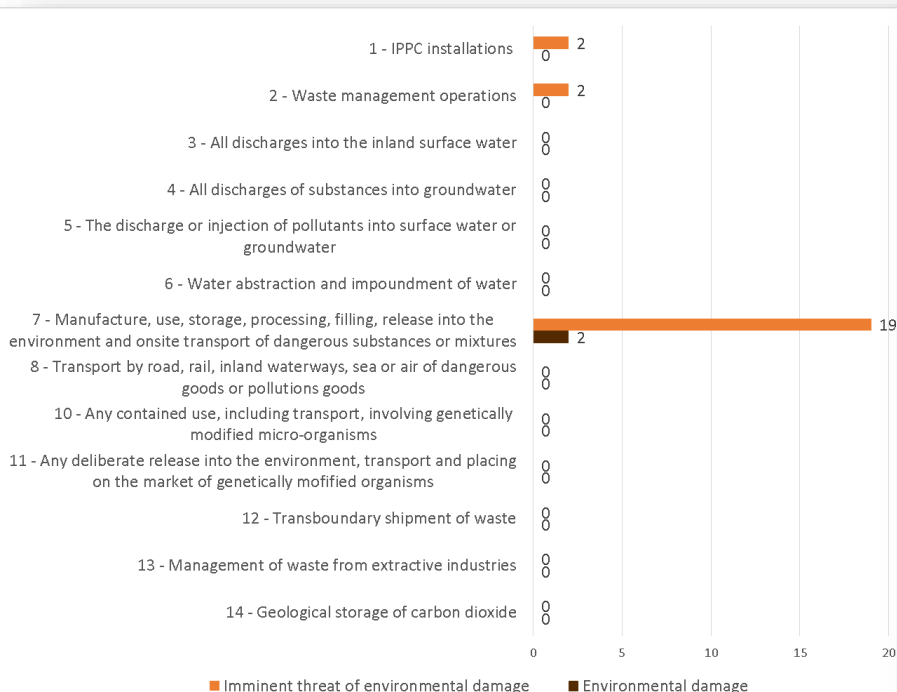
In the 2019-2021 triennium, there were cases outside the scope of the ELD dispersed through all mainland Portuguese territory and 1 case in Azores; and cases **under the scope** of the ELD, that were mainly located in the **coast** and in the **Lisbon region**.

Entities that reported Environmental Cases to APA, from 2019 to 2021

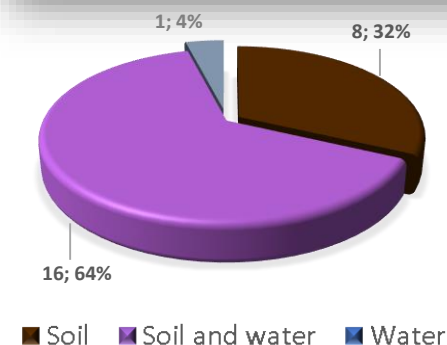
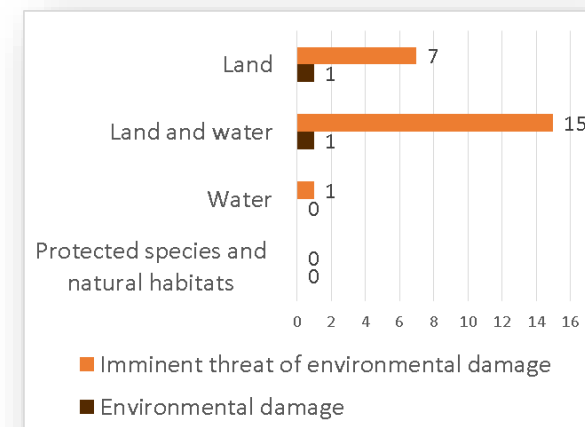


Main results, achievements and trends

Environmental Damages and Imminent Threats of Environmental Damages, by Annex III Occupational Activity, from 01/08/2008 to 31/12/2021



Environmental Damages and Imminent Threats of Environmental Damages, by natural resource affected, from 01/08/2008 to 31/12/2021



2 environmental damages and 19 of the 23 imminent threats of environmental damage occurred within the exercise of the activity “manufacture, use, storage, processing, filling, release into the environment and onsite transport of dangerous substances or mixtures” (No. 7 of Annex III of the ELD) – 84%. In the majority of cases – 64%, contamination affected soils and groundwater concomitantly.

Main results, achievements and trends

Prevention and **remedial measures** adopted:

- Investigation of contamination plumes in soil (including release of volatile contaminants) and in groundwater
- Removal of contaminated soil
- Non-aqueous phase liquids (NAPL) removal
- Extraction of hydrocarbons from the soil by vacuum, through controlled injection of water with surfactants
- Groundwater treatment through *in situ* chemical oxidation

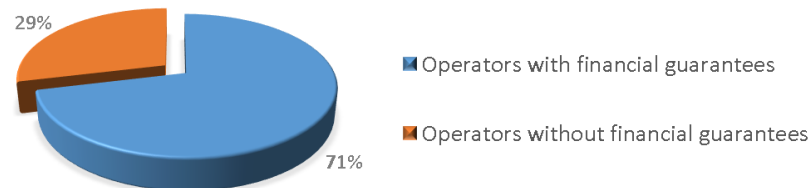
In some cases, where applicable, the following measures were implemented:

- **Quantitative Risk Assessment** for human health and/or the environment
- **Post-remediation monitoring plans**

The application of these measures had an average duration of **24 months**.



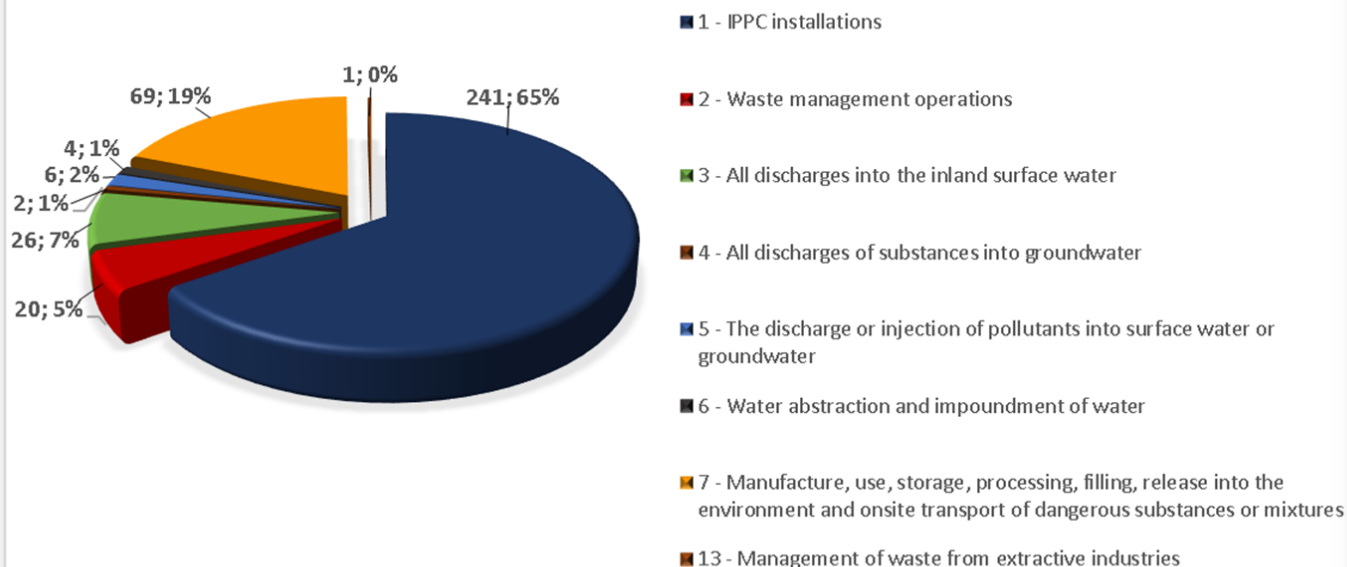
Main results, achievements and trends



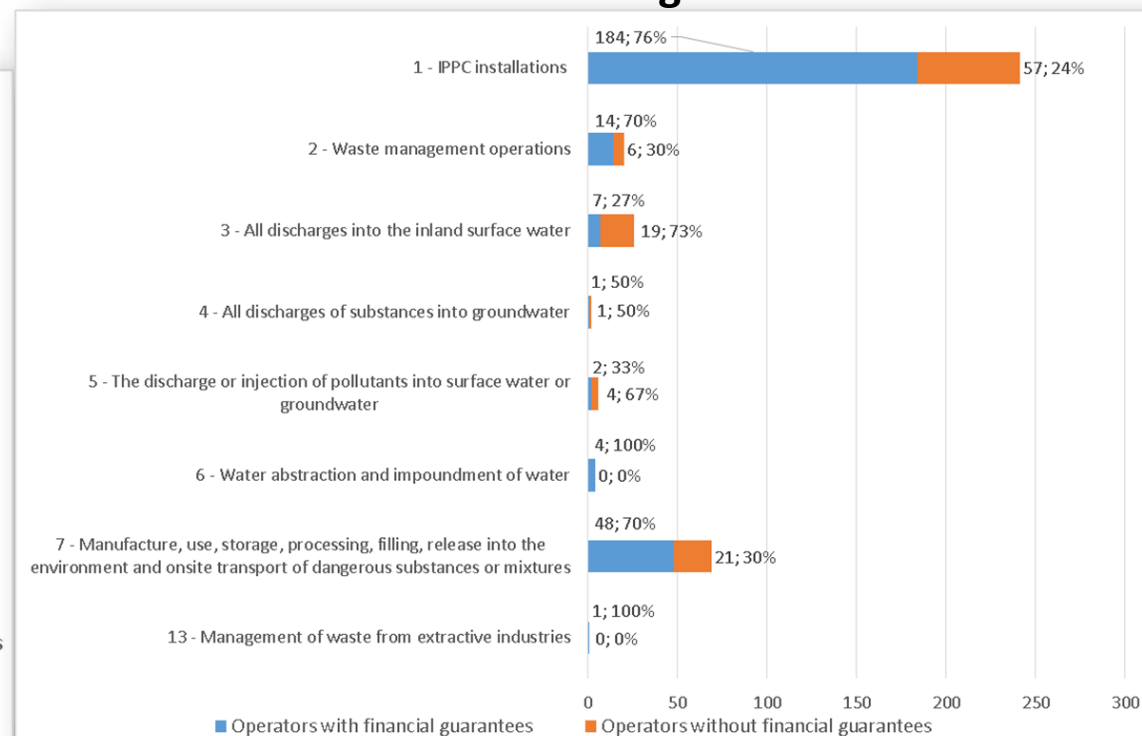
365 operators were inspected concerning the compliance of the **financial guarantees** under the scope of ELD, in 2021

71% had financial guarantees under ELD and 29% did not

By annex III activities carried out



ELD Annex III Operators that had or had not financial guarantees



❑ Conclusions of the Report



Conclusions of the Report

Regarding environmental cases communicated to APA under the scope of the ELD
(from 01/08/2008 to 31/12/2021):

- ❑ There were **184** environmental cases, **25** of which were considered **under the scope of the ELD**
- ❑ **2** were classified as **environmental damages** and **23** as **imminent threats of environmental damages**
- ❑ These environmental cases were **mostly communicated by operators** (94% in 2021)
- ❑ The 2 situations of environmental damages occurred within the scope of the **activity listed in No. 7 of the Annex III (hazardous substances or mixtures)** of DL 147/2008 (ELD) and, 19 out of the 23 cases of imminent threats of environmental damages also occurred within the exercise of the same activity (84%)
- ❑ In 64% of the cases (16 cases), the contamination affected concomitantly **soil and groundwater**
- ❑ In all of these ELD cases, the operators had **financial guarantees**, which allowed them to cover the necessary prevention and remedial costs
- ❑ There were no judicial review proceedings associated with any of the communicated environmental cases

❑ Relevant developments



Responsabilidade ambiental

O regime jurídico da responsabilidade por danos ambientais (regime da responsabilidade ambiental) estabelece que em caso de dano ambiental ou ameaça iminente desses danos, causado no exercício de uma atividade económica, o operador responsável adotada as medidas de prevenção e de reparação necessárias.

[AVALIAÇÃO E GESTÃO AMBIENTAL](#) / [Responsabilidade ambiental](#)

O regime da responsabilidade ambiental aplica-se aos danos ambientais e às ameaças iminentes desses danos (na aceção das alíneas e) e b), respetivamente, do artigo 11.º do Decreto-Lei n.º 147/2008, de 29 de julho, na sua redação atual), causados em resultado do exercício de uma qualquer atividade desenvolvida no âmbito de uma atividade económica, independentemente do seu carácter público ou privado, lucrativo ou não, abreviadamente designada atividade ocupacional.

O regime da responsabilidade ambiental visa assegurar, perante a sociedade, a reparação dos danos ambientais causados em resultado do exercício de uma atividade ocupacional, tendo como base o princípio da responsabilidade, o princípio da prevenção, e a operacionalização do princípio do poluidor-pagador, consagrados respetivamente nas alíneas f), c) e d) do artigo 3.º da Lei n.º 19/2014, de 14 de abril, que define as bases da política de ambiente.



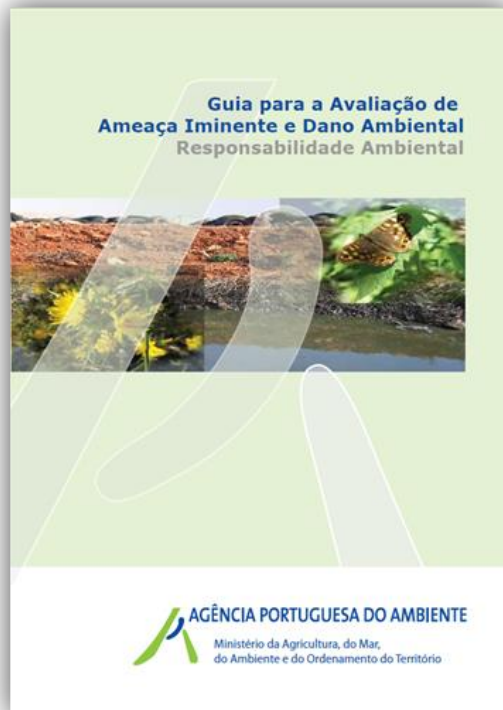
01. [Garantias financeiras](#)
02. [Comunicação de dano ambiental ou de ameaça iminente de dano ambiental](#)
03. [Guias técnicos](#)
04. [Relatórios de implementação](#)
05. [Legislação](#)

<https://www.apambiente.pt/avaliacao-e-gestao-ambiental/responsabilidade-ambiental>

Technical guidance documents

“Guide for the Assessment of Imminent Threats and Environmental Damages – Environmental Liability”

(APA, 2011)



<https://sniambgeoviewer.apambiente.pt/GeoDocs/geoportaldocs/solos/GuiaAvaliacaoDanoAmeacalminente.pdf>

Guide for the Assessment of
Imminent Threats and Environmental Damages
Environmental Liability

Prepared by

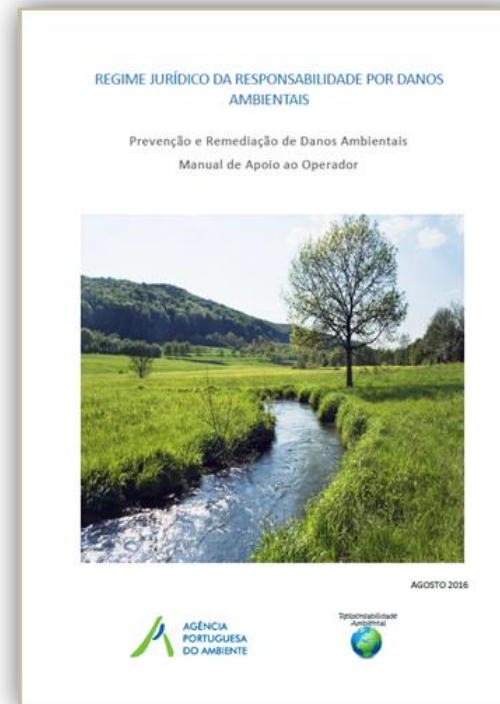
The Environmental Protection Agency of Portugal
The Ministry of Agriculture, the Sea, the Environment and Territorial Planning
October 2011

Note: The official version of this document, available in Portuguese only, can be found at http://ec.europa.eu/environment/legal/liability/pdf/eld_guidance/portugal.pdf. The Ad-Hoc Industry Natural Resource Management Group (www.NRMonline.org) commissioned this English translation and is now making it available to the European Commission Environment DG, the Portuguese Environment Agency and other interested parties.

https://ec.europa.eu/environment/legal/liability/pdf/eld_guidance/Portugal%20-%20Guide.pdf

<https://www.apambiente.pt/avaliacao-e-gestao-ambiental/guias-tecnicos>

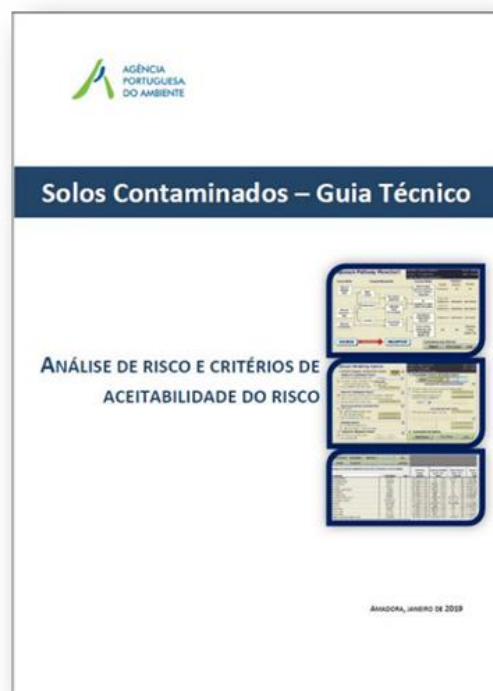
“Environmental Liability Legal Regime – Prevention and Remediation of Environmental Damage – Operator Support Manual” (APA, 2016)



<https://sniambgeoviewer.apambiente.pt/GeoDocs/geoportaldocs/solos/ManualOperadorPT.pdf>

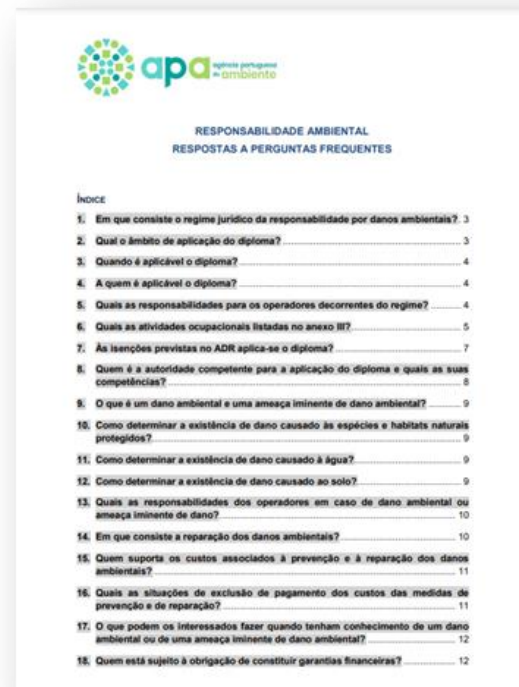
Technical guidance documents

“Technical Guide – Risk analysis and risk acceptability criteria” (APA, 2011)



https://sniambgeoviewer.apambiente.pt/GeoDocs/geoportaldocs/AtQualSolos/Guia_Tecnico_Analise_de_Risco_Criterios_de_Aceitalidad_e_2019_01.pdf

Document with answers to the most Frequently Asked Questions



https://apambiente.pt/sites/default/files/Avaliacao_Gestao_Ambiental/Responsabilidade_ambiental/FAQ_RA_Versao_2022_02.pdf

Includes, among other aspects, the requirements that must be met by the operators for the constitution of the accepted types of financial guarantees.

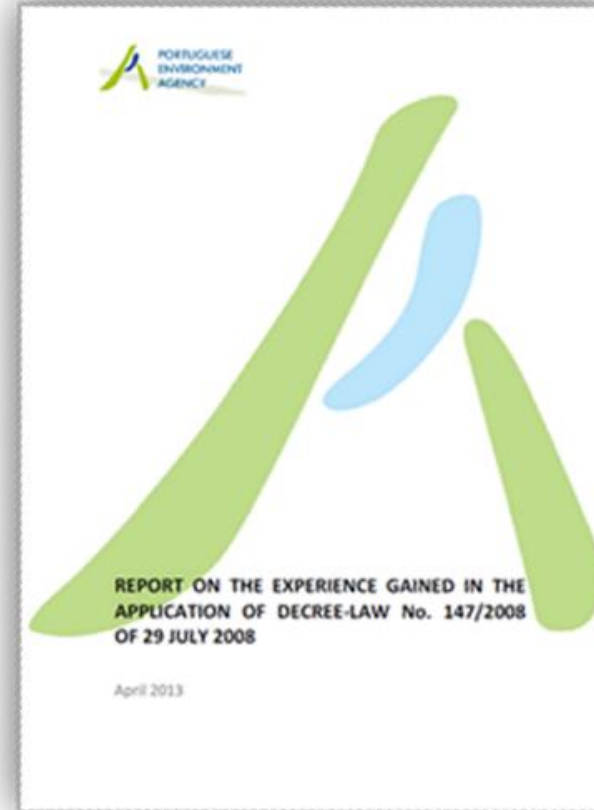
Yearly implementation reports

<https://www.apambiente.pt/index.php/avaliacao-e-gestao-ambiental/relatorios-de-implementacao>

“Report on the Experience Gained in the Application of Decree-Law No. 147/2008 of 29 July 2008” (APA, 2013)



https://sniambgeoviewer.apambiente.pt/GeoDocs/geoportaldocs/solos/RelatorioRAAbril_2013.pdf



https://ec.europa.eu/environment/legal/liability/pdf/eld_ms_reports/PT%20Report%20En.pdf

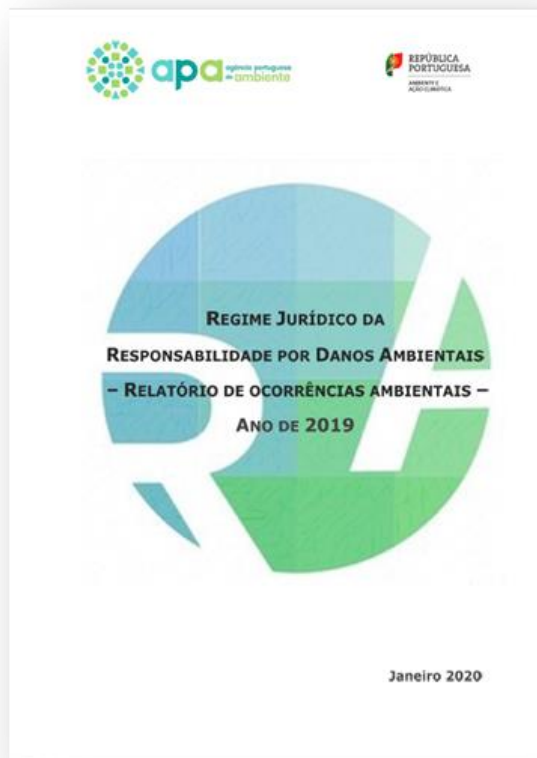


Yearly implementation reports

<https://www.apambiente.pt/avaliacao-e-gestao-ambiental/ocorrencias-ambientais>

Published on an yearly basis, in the last three years:

*“Environmental Liability Legal Regime – **Environmental Cases Report – Year 2019**” (APA, 2020)*



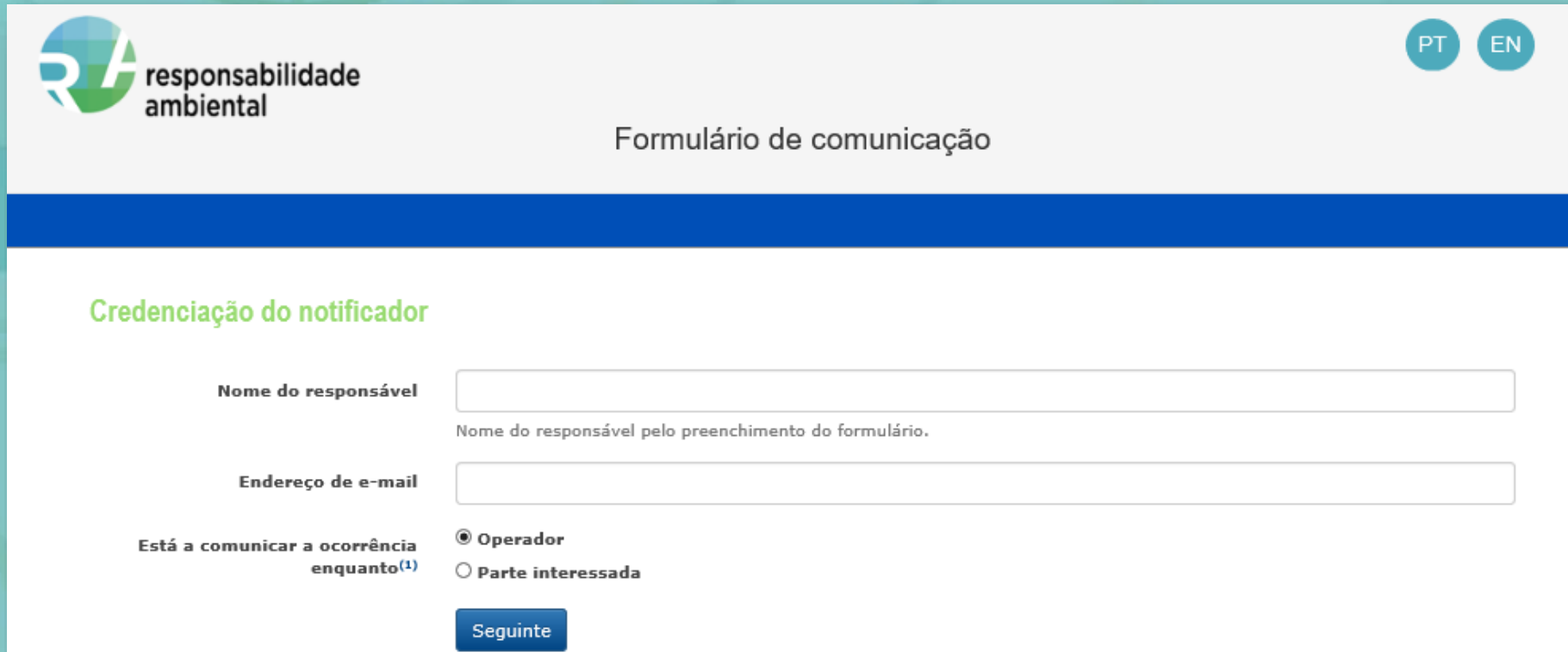
*“Environmental Liability Legal Regime – **Environmental Cases Report – Year 2020**” (APA, 2021)*




https://sniambgeoviewer.apambiente.pt/GeoDocs/geoportal/docs/docs/2021-03_relatorio_ocorrencias_ano2020.pdf

https://sniambgeoviewer.apambiente.pt/GeoDocs/geoportal/docs/docs/2021-03_relatorio_ocorrencias_ano2020.pdf

❑ National Communication System



 **responsabilidade ambiental**

PT EN

Formulário de comunicação

Credenciação do notificador

Nome do responsável

Nome do responsável pelo preenchimento do formulário.

Endereço de e-mail

Está a comunicar a ocorrência enquanto⁽¹⁾

☒ **Operador**

☐ **Parte interessada**

Seguinte

<https://ra.apambiente.pt/form>

National Communication System



ENVIRONMENTAL LIABILITY ENVIRONMENTAL DAMAGE OR IMMINENT THREAT OF DAMAGE COMMUNICATION Following Decree-Law No. 147/2008 of 29 July

Notifier accreditation

Name of the person responsible for
filling in the form*:

E-mail*:

You are communicating the occurrence
as ^{(1)*}:

☐ The operator

☐ An interested party

Brief characterization of the occurrence

The occurrence you are
communicating took place in marine
waters?

Yes

Latitude:

Longitude:

Latitude and Longitude - geographic coordinates (datum WGS84 or ETRS89)

No

Occurrence site georeferencing ^{(2)*}:

[Identify on the GIS map the occurrence location, by filling in the form on the map or using the mouse]

Geographic coordinates (latitude /
longitude):

[Pre-filled information based on the selected point in georeferencing]

District:

[Pre-filled information based on the selected point in georeferencing]

Municipality:

[Pre-filled information based on the selected point in georeferencing]

Parish:

[Pre-filled information based on the selected point in georeferencing]

Brief description of the occurrence*:

(Example: Nafta spill at the chemical factory xnameX)

Occurrence date*:

yyyy-mm-dd

Photo(s) upload:

[Files of the following formats are supported: JPeG, PNG e GIF]

Maximum of 12 photos can be uploaded, with a 2 MB size limit per photo]

National Communication System

Notifier identification

If the communication is being submitted by the operator or someone on his behalf, the address and contact fields concern the operator. If the notification is made by an interested party, those fields should be filled in with data of the interested party.

Name/Company Name*:

Country*: [Portugal, by default]

Address/Company headquarters*:

Postal Code*: XXXXX - XXXX Locality

District: [Pre-filled information with the postal code district]

Municipality: [Pre-filled information with the postal code municipality]

Phone/mobile number*:

If you are an interested party: To what extent are you an interested party*?

☐ Because you were affected or might be affected by the occurrence

Justify:

☐ Because you have a sufficient interest in the environmental decision making relating to the damage.

Justify:

☐ Because it seems to have occurred a violation of a right or an interest protected by law.

Justify:

Identification of the operator involved, concerned site and activities

Operator identification [If the communication is being submitted by the operator, this section is pre-filled with the data entered in the previous section (Notifier identification) but with the possibility of changing it]

Name/Company name*:

Country*: [Portugal, by default]

Address/Company headquarters*:

Postal Code*: XXXXX - XXXX Locality

District: [Pre-filled information with the postal code district]

Municipality: [Pre-filled information with the postal code municipality]

Phone/mobile number*:

E-mail*:

Site identification

Country*: [Portugal, by default]

Site address*:

Postal Code*: XXXXX - XXXX Locality

District: [Pre-filled information with the district of the postal code]

Municipality: [Pre-filled information with the municipality of the postal code]

National Communication System

Activity(ies) identification

CAE*: Classification of economic activity - [CAE List - rev. 3]

Type of activity(ies) listed in annex III ☐ 1 - IPPC (Integrated pollution prevention and control) installations^[2]

of the Decree-Law No 147/2008*: ☐ 2 - Waste management operations

☐ 3 - Discharges into the inland surface water

☐ 4 - Discharges of substances into groundwater

☐ 5 - Discharges or injections of pollutants into surface water or groundwater

☐ 6 - Water abstraction and impoundment of water

☐ 7 a) - Manufacture, use, storage, processing, filling, release into the environment and onsite transport of dangerous substances

☐ 7 b) - Manufacture, use, storage, processing, filling, release into the environment and onsite transport of dangerous mixtures

☐ 7 c) - Manufacture, use, storage, processing, filling, release into the environment and onsite transport of plant protection products

☐ 7 d) - Manufacture, use, storage, processing, filling, release into the environment and onsite transport of biocidal products

☐ 8 a) - Transport by road of dangerous or polluting goods

☐ 8 b) - Transport by rail of dangerous or polluting goods

☐ 8 c) - Transport by sea or inland waterways of dangerous or polluting goods

☐ 8 d) - Transport by air of dangerous or polluting goods

☐ 10 - Contained use, including transport, involving genetically modified micro-organisms (GMM)

☐ 11 - Deliberate release into the environment, transport and placing on the market of genetically modified organisms (GMO)

☐ 12 - Transboundary shipment of waste

☐ 13 - Management of waste from extractive industries

☐ 14 - Geological storage of carbon dioxide

☐ Other. Indicate which:

Licence type

Licence type: [Industrial, comercial, WMO (waste management operator), exploration or other]

Licence No.:

Licensing entity:



National Communication System

Description of the occurrence

Supply all available information concerning the occurrence. The description should be as detailed as possible and focus on the facts involving the environmental damage or the imminent threat of damage.

Environmental damage or imminent threat of damage^{(4)*}: ☐ Environmental damage that has already occurred
☐ Imminent threat of environmental damage

Can you indicate the date and time of the occurrence (incident or emission)?*: ☐ Yes

Date-start: yyyy-mm-dd
 Date-end: yyyy-mm-dd

Hour-start: hh:mm
 Hour-end: hh:mm

☐ No Indicate the date and hour you took note of the occurrence:
 Date: yyyy-mm-dd Hour: hh:mm

Identification of the dangerous substances or mixtures, hazardous wastes, GMM ou GMO involved

Identification of the dangerous substances or mixtures, hazardous wastes, GMM ou GMO involved and their quantities:

Select the typology	Designation	Indicate the quantity involved and its unit (kg, liters)	Indicate no. CAS or no. CE	Indicate ELW code	Indicate variety	Indicate hazard statement(s) code(s)
Dangerous substances	✓	✓	✓	x	x	✓
Dangerous mixtures	✓	✓	x	x	x	✓
Hazardous waste	✓	✓	x	✓	x	x
GMM	✓	✓	x	x	✓	x
GMO	✓	✓	x	x	✓	x

Upload the safety data sheet(s) of the dangerous mixture(s)*:

[If you have identified dangerous mixtures. Files of the following formats are supported: PDF e TIFF]

Detailed description of the occurrence

Description of the occurrence*: [Detailed description of the occurrence]

Estimation of the affected area*: [Indicate an estimate of the extent of the affected area in square meters]

Initial causes: [Description of the events that caused the occurrence]

National Communication System

Characterization of the place of the occurrence and its surroundings

Land use on the place ^{(5)*} :	[Selection list: Agricultural; Commercial; Industrial; Urban]
Classified areas ⁽⁶⁾ in the surroundings*:	<p>Is there at least one classified area, and how far from the place?</p> <p><input type="checkbox"/> Less than 30 m</p> <p><input type="checkbox"/> Between 30 and 500 m</p> <p><input type="checkbox"/> Between 500 and 1000 m</p> <p><input type="checkbox"/> More than 1000 m</p> <p><input type="checkbox"/> Unknown data</p>
Surface waters ⁽⁶⁾ or marine waters in the surroundings*:	<p>Are there surface waters or marine waters, and how far from the place?</p> <p><input type="checkbox"/> Less than 30 m</p> <p><input type="checkbox"/> Between 30 and 50 m</p> <p><input type="checkbox"/> Between 50 and 100 m</p> <p><input type="checkbox"/> Between 100 and 500 m</p> <p><input type="checkbox"/> More than 500 m</p> <p><input type="checkbox"/> Unknown data</p>
Groundwaters in the surroundings*:	<p>Are there groundwaters, and how far from the place?</p> <p><input type="checkbox"/> Less than 250 m</p> <p><input type="checkbox"/> Between 250 and 500 m</p> <p><input type="checkbox"/> More than 500 m</p> <p><input type="checkbox"/> Unknown data</p>
Water abstractions for public supply in the surroundings*:	<p>Are there water abstractions for public supply, and how far from the place?</p> <p><input type="checkbox"/> Surface water abstractions located less than 1000 m away, downstream of the occurrence</p> <p><input type="checkbox"/> Groundwater abstractions located less than 1000 m away</p> <p><input type="checkbox"/> Water abstractions located more than 1000 m away</p> <p><input type="checkbox"/> Unknown data</p>
Human occupation ⁽⁶⁾ in the surroundings*:	<p>Is there human occupation, and how far from the place?</p> <p><input type="checkbox"/> Less than 200 m</p> <p><input type="checkbox"/> Between 200 and 500 m</p> <p><input type="checkbox"/> Between 500 and 1000 m</p> <p><input type="checkbox"/> More than 1000 m</p> <p><input type="checkbox"/> Unknown data</p>
Spatial occupation of the surrounding area ⁽⁷⁾ :	
North surrounding*:	[Brief description of the spacial occupation of the North surrounding]
South surrounding*:	[Brief description of the spacial occupation of the South surrounding]
East surrounding*:	[Brief description of the spacial occupation of the East surrounding]
West surrounding*:	[Brief description of the spacial occupation of the West surrounding]



National Communication System

Natural resources affected or potentially affected

Select the natural resources and/or their services and describe how they were affected or may be affected^[6].

Land <input type="checkbox"/> *	[Description of the effects on the natural resource land and/or on its services]
Surface waters <input type="checkbox"/> *	[Description of the effects on the natural resource surface waters and/or on its services]
Marine waters <input type="checkbox"/> *	[Description of the effects on the natural resource marine waters and/or on its services]
Groundwaters <input type="checkbox"/> *	[Description of the effects on the natural resource groundwaters and/or on its services]
Protected species and natural habitats <input type="checkbox"/> *	[Description of the effects on the natural resource protected species and natural habitats and/or on its services]

Measures already taken and planned to be adopted

Measures already taken

Indicate all the measures already taken to control, contain, eliminate or manage the environmental damage or the imminent threat of damage and eventual entities involved.

Description/Purpose of the intervention	Responsible entity	Involved entities	Starting date of the intervention	End date of the intervention	Achieved results

Measures planned to be adopted

Indicate all the measures planned to be adopted in the future, in order to limit or prevent further environmental damages to resources or services or adverse effects on human health.

Description/Purpose of the intervention	Responsible entity	Entities to involve	Expected start date of the intervention	Expected results
[Monitoring plan; sampling plan; piezometers installation; etc.]				

Financial security

Do you have financial security for environmental liability coverage? *

☐ Yes

Upload the financial security file(s) *

[Files of the following formats are supported: PDF e TIFF]

☐ No

Complementary observations

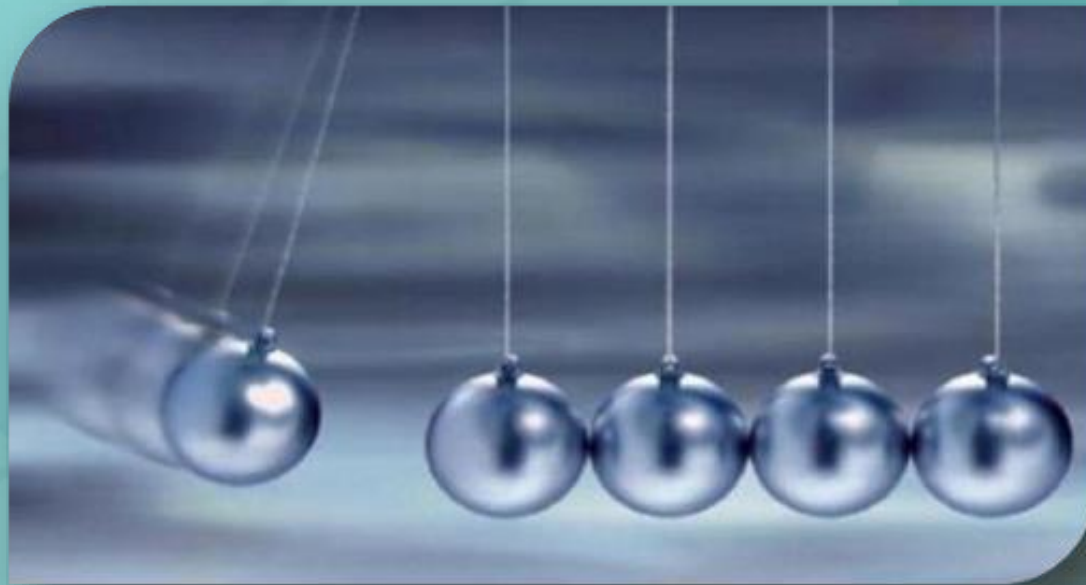
If you want to add more information or elements that help in the evaluation of the occurrence, you can use the fields below.

Upload the element(s) you consider relevant:	[Files of the following formats are supported: PDF, TIFF, JPEG, PNG e GIF]
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* Mandatory fields.



❑ Recommendations/Upcoming challenges



➤ Recommendations / Upcoming challenges

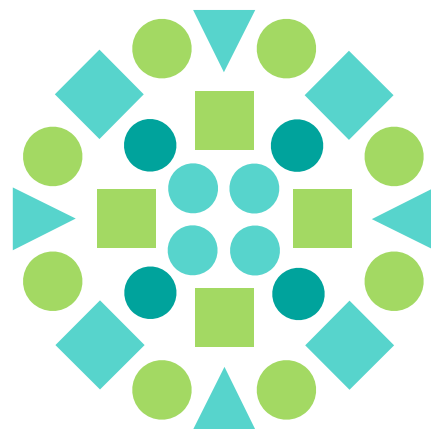
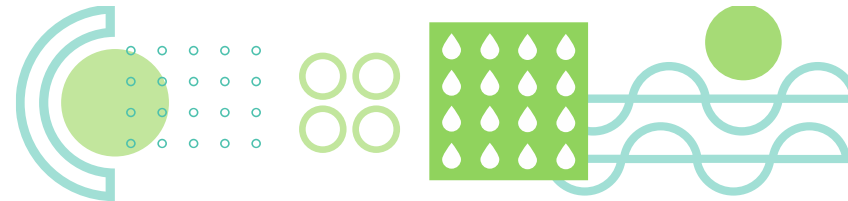
At national level:

- ☐ Derogation of financial guarantees for **low-risk activities**, based on a Simplified Risk Assessment
- ☐ Awareness-raising of the regime

At EU level:

- ☐ Introduction of a **mandatory system of financial guarantees** for operators carrying out activities listed on Annex III of the ELD, with the development of an harmonized methodology for calculating the amount of the financial guarantees
- ☐ Development of a **risk assessment methodology** for human health to support the identification of cases of damages / imminent threats of damages to soil





**THANK YOU
FOR YOUR ATTENTION!**

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