

# 2nd ELD Stakeholder Conference - 11 June 2013 in Brussels Breakout Group A – Financial Security

Nils Hellberg, German Insurance Association – GDV, Berlin

# What function a fund for Environmental Liability Directive (ELD)-damages should have?

- Replace individual financial security (especially insurance)?
  - ➔ individual financial security will get unattractive, the demand for applicable insurance will be reduced and providers (insurers) will withdraw from the market
- In addition to individual financial security?
  - ➔ from how many million EUR in losses onwards should the fund apply?

## Problems:

- ➔ **contradicts objective of the ELD** to focus on operator responsibility and the polluter pays principle.
- ➔ a disaster fund would hardly work more efficiently than insurance does.
- ➔ introduction of a fund could foster risky industrial practices and create an environment of **“moral hazard”**. A fund can also reduce operator incentive to improve one’s security standards, as operators may begin to rely on the fund. **The result may be an increase in unsafe, risk-prone activities.**

# Does exist a need to introduce an industrial disaster fund at EU level?

- The **financial security instruments** currently in place for the liabilities of industrial disasters (in particular, insurance) **are not insufficient**. Quite the contrary: since the adoption of the ELD great developments in some member states have been made to adequately cover the needs of operators. **It is an evolving market that grows and develops in response to consumer demand.**
- There is **no failure of the insurance market** in this respect.
- When a Member State feels the need to introduce a fund, why should it be done at EU level?

## Conclusion:

- ➔ The need for a fund to cover industrial accidents should only be considered if the presently available financial instruments (such as insurance) are determined to not be available, affordable or efficient.

# How should a disaster fund work?

- A fund has to work under the same determination of liability insurers have to work. Insurers have gained experiences with the ELD-rules. → Can a fund also?
- Environmental damages often require a long-term approach, maybe a decade or more, to assess and run all the remediation measures required to restore the environment. Insurers can deal with it. → Can a fund also?
- The probability of environmental damage also have to be estimated to collect the needed money for paying for all restoration measures. Insurers can deal with it. → Can a fund also?

## Problems:

- A fund must build up the relevant expertise. It is a must to invest in know-how, structure and qualified employees. This will take time and money.

# How should a disaster fund be financed?

- **By EU budget?**
  - ➔ although Article 14 of the ELD requires the Member States to take measures to encourage the development of financial security instruments and markets ... with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive.
- **By all Member States?**
  - ➔ even though the Member States built up an effective licensing and controlling system?
  - ➔ even though financial security systems have developed properly in the Member State?
- **By the European industry?**
  - ➔ even though many companies invest in maintenance and appropriate financial security, these companies should pay for their competitors who do not? Additional to their own financial security and to their loss prevention measures? Can they afford this? Is that fair competition?

## Problems:

- ➔ What if the fund needs **more money** than estimated and collected before?
- ➔ **Hardly acceptance to finance the fund.**
- ➔ **Anti-competitive effect** on the EU (insurance) market, what is against the EU-philosophy.

## Additional questions – what are the answers?

- What are the limits and the threshold of the fund? What is the calculation of the limits/threshold?
- How could a fund manage the cover of environmental risks more efficiently and quicker than the present financial security instruments in place (particularly insurance)?
- Which entity would be responsible for implementing and managing the fund, as well as collecting operator contributions?
- How will the required contributions from operators remain cost-effective and affordable, so as not to push operators out of the market?
- How will the monies of the fund be equitably distributed, particularly if the fund runs out due to multiple industrial accidents within one year?
- How will the varying levels of risks be considered (eg. high-risk v. low-risk operators/sectors)?
- What safeguards will be put in place to ensure that SMEs do not get pushed out of the market due to the burden of the proposed annual levy on operators for capitalising the fund?

## More appropriate proposals instead of a fund

- Strengthen the **polluter pays principle** by letting develop risk adequate and appropriate insurance solutions.
- **Avoiding disasters instead of paying for them:** More emphasis should be placed on the reason why industrial accidents could happen. Such disasters may often result from inadequate maintenance, poor safety standards and lack of control by national authorities.
- The **level of security standards** within the EU must be not less than state of the art.
- If reasonable **preventive measures are required** and implemented throughout different industrial sectors and if these rules are reliably **controlled**, the demand and supply for appropriate liability insurance will increase. By contrast: If an operator does not maintain high security standards, the risk grows more severe and it might consequently become uninsurable.

# Thank you for your attention!

Nils Hellberg

Head of Liability, Credit, Marine and Aviation Insurance, Statistics

German Insurance Association

Gesamtverband der Deutschen Versicherungswirtschaft (GDV) e. V.

Wilhelmstraße 43 / 43 G

10117 Berlin, Germany

Telefon: +49-30-2020-5310

E-Mail: [n.hellberg@gdv.de](mailto:n.hellberg@gdv.de)