Financial Security

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Questions

• What are mandatory financial security requirements?
• In what circumstances have they been introduced?
• What kinds of financial security mechanisms are there?
• What kind of financial security for ELD liabilities is currently available to SMEs?
• What kind of financial security for ELD liabilities do SMEs and other operators need?
• What can be done to increase the uptake of financial security for ELD liabilities by SMEs and other operators?
What are mandatory financial security requirements?

• Legislative provisions that require a business to provide evidence of a secure source of funding for a specific risk or certainty
What are mandatory financial security requirements?

- **Examples**
  - decommissioning a facility
    - reclamation of surface mines, closure / post-closure of landfills
  - completion of works by contractors
    - highways, buildings
  - errors and omissions of professionals
    - solicitors, accountants, surveyors
What are mandatory financial security requirements?

• Examples
  – compensation for bodily injury and property damage caused by operation of things or facilities
    • cars, planes, nuclear facilities, storage tanks
  – remediation of environmental damage
    • marine oil spills, active phase of landfills, storage tanks, nuclear facilities
What are mandatory financial security requirements?

• NB: de facto mandatory security
  – repayment of a loan
    • cars, houses
  – bailment
    • goods stored in warehouses
  – errors and omissions of consultants and contractors
In what circumstances have they been introduced?

- **Victim protection**
  - motor, employees
- **Introduction of a new technology**
  - nuclear plants, carbon storage facilities
- **Remediation of environmental damage**
  - potentially polluting operations
  - closure of facilities
What kinds of financial security mechanisms are there?

- Financial test and corporate guarantees
- Bank guarantees
- Escrow agreements
- Letters of credit
- Trust funds
- Bonds
What kinds of financial security mechanisms are there?

- **Insurance**
  - commercial
  - pools
  - mutuals
  - captives
- **Governmental schemes**
  - funds
  - re/insurance schemes
  - bond pools
What kind of financial security for ELD liabilities is currently available to SMEs?

• Insurance

• NB: Other types of financial security mechanisms have not been developed in most Member States due to absence of legislative requirements
  – Portugal
  – Spain
What kind of financial security for ELD liabilities do SMEs and other operators need?

- Examples of factors determining need
  - type of business
  - size of business
  - type of operations
  - location
  - existence of environmental management system
  - level of enforcement of ELD by competent authority(ies)
What can be done to increase the uptake of financial security for ELD liabilities by SMEs and other operators?

• Increase awareness
  – ELD itself and liability imposed by it
  – ELD incidents
  – lack of cover for environmental liabilities in general liability policies
  – substantial cost of remedial measures
  – risk to solvency of businesses due to ELD and other environmental liabilities

• Increase enforcement of ELD in Member States

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