



Annex II

# Member State Summaries

Improving financial security in the context of the  
Environmental Liability Directive

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## EXPLANATORY NOTE

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The summaries in this annex, which are derived from information in annex I, provide information on the following key issues in financial security for ELD and other environmental liabilities.

- Availability and demand for
  - stand-alone environmental insurance policies
  - environmental extensions to general liability policies
  - environmental extensions to property policies
- Existence of
  - an environmental pool
  - a mandatory financial security system for ELD liabilities
  - mandatory financial security for other environmental liabilities
  - a fund to pay to prevent or remediate environmental damage under the ELD

The bullet points on the availability of, and demand for, environmental insurance concern only the availability of, and demand for, environmental insurance to businesses with sites and/or operations in the Member State described in an individual summary.

Stand-alone environmental insurance policies are available from multinational insurers for businesses that have sites and/or operations in more than one Member State. This annex does not describe their availability or demand because the reasons for the availability or demand tend to be influenced by factors that do not depend on the status of environmental insurance in a single Member State. Accordingly, this annex refers to such multinational stand-alone environmental insurance policies only as relevant.

Unless a summary for a Member State states that an environmental extension to a general liability policy specifically provides cover for remediation under the ELD (which is rare), the extension provides such cover only if there is a requirement to remediate the pollution under environmental legislation other than the ELD, in which case there may be an overlap. The overlaps in all Member States are at most for the remediation of off-site land/soil damage from a pollution incident on an insured's site.

## AUSTRIA

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Financial security for ELD liabilities is widely available in Austria, which has the highest coverage of operators than any other Member State except Germany.

The most prevalent form of insurance for ELD liabilities is an environmental extension to a general liability policy pursuant to model terms and conditions, called 'Special Conditions ELD Austria (Insurance for costs of remediation of environmental damage)' (*Umweltsanierungskostenversicherung; USKV*), drafted by the Austrian Insurance Association.

The USKV have been available, in various versions, since the ELD was transposed into Austrian law in 2009. Whilst not obligatory, virtually all insurers that offer general liability policies in Austria include them and the vast majority of insureds purchase them as part of their general liability policies.

The USKV focus specifically on liabilities under the ELD with the exception of the following:

- environmental damage that is caused gradually, with the proviso that incidents such as the leakage of a pipeline due to corrosion is considered to be sudden even if the leakage starts from a tiny hole and the corrosion process is gradual;
- the remediation of environmental damage on an insured's own site unless a competent authority requires the operator to carry out measures at the site to prevent contaminants migrating to an area within the Natura 2000 network or a similarly protected area, or to prevent an adverse effect on a water body, and the operator did not cause the damage intentionally or with gross negligence;
- preventive measures with the proviso that costs to prevent loss that would have occurred immediately but for such measures are covered if the environmental damage also results in a claim under article 6 of the USKV which provides cover for civil law claims from environmental impairment; and
- environmental damage that is caused other than by a disruption of operations (deviation from normal operations) and that involves emissions.

The USKV include a sub-limit of liability for compensatory remediation under the ELD of 50% of the total of primary and complementary remediation, with the caveat that individual insurers can adapt this.

Environmental extensions to property policies are not available.

All the gaps in cover for ELD liabilities indicated above could be filled if an insured purchases a stand-alone environmental insurance policy. Most businesses with sites and/or operations only in Austria, however, do not do so due to the near universal use of the USKV. Stand-alone environmental insurance policies in Austria tend to be purchased mainly as part of global insurance programmes by large operators that have sites and/or operations in Austria as well as other States.

Austria has not introduced mandatory financial security for ELD liabilities.

Austria has imposed mandatory financial security for liabilities for bodily injury and environmental impairment for operators of gene technology laboratories and facilities.

Austria has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot be found or pay.

## BELGIUM

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Financial security for ELD liabilities is widely available in Belgium.

Stand-alone environmental insurance policies that provide cover for all ELD liabilities including environmental damage in addition to pollution and gradual environmental damage are widely available. Demand is good.

Environmental extensions to general liability policies are also widely available. They provide cover for the remediation of off-site land/soil pollution from a sudden and accidental incident on an insured's site. At least three of the main extensions specifically provide cover for liabilities under the ELD but only if the environmental damage is off-site land/soil pollution from a sudden and accidental incident (as above). The three extensions include the additional limitation that a pollution incident must begin and end within a continuous 24-hour period in order for cover to be provided. Most extensions have very low sub-limits. Demand for environmental extensions to general liability policies is good.

Environmental extensions to property policies are available but only to a very limited extent.

Neither the Federal Government nor any of the regions in Belgium have imposed mandatory financial security for ELD liabilities.

All three regions impose mandatory financial security for other liabilities, mainly liabilities of businesses that carry out operations involving waste and the remediation of soil pollution.

In particular, mandatory financial security is required in the Flemish Region and the Walloon Region if there is a transaction in land that is subject to the respective Soil Decree and the land that is being transferred is contaminated. In such a case, the transaction must be accompanied by financial security in the amount of the cost of remediating the land. In the Brussels-Capital Region, the Brussels Institute for Environment may require persons that remediate contaminated soil to provide bank guarantees or insurance policies to ensure that they carry out the necessary remediation measures.

Belgium has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

The Fund for the Protection of the Environment in the Walloon Region has a larger scope than the ELD, but one of its missions is to fund compensation for lost natural resources and rehabilitation measures.

## BULGARIA

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Financial security for ELD liabilities is available in Bulgaria but not widely available.

Stand-alone environmental insurance policies are offered by three insurers based in, or with branches in, Bulgaria. They provide cover for preventing and remediating gradual as well as sudden and accidental pollution but not environmental damage other than pollution. They do not provide cover for complementary or compensatory remediation under the ELD. Demand for the policies is low.

Extensions to general liability policies that provide cover for remediating off-site land/soil pollution from a sudden and accidental incident on an insured's site are more widely available. They do not provide cover for preventing such pollution, remediating gradual pollution or complementary or compensatory remediation. Further, they have a sub-limit of liability. Demand for the extensions is higher than for stand-alone environmental insurance policies but is still low.

Environmental extensions to property policies are not available.

Bulgaria has not introduced mandatory financial security for *ex ante* ELD liabilities.

The legislation that transposed the ELD in Bulgaria, however, provides that specified operators may submit an insurance policy in the amount of BGN 50,000 (EUR 25,555) to the competent authority within seven days after placement of the policy. The policy must name the competent authority as beneficiary and must provide cover for the risks of creating an imminent threat of, or actual, environmental damage under the ELD.

If an operator does not submit such an insurance policy and its activities subsequently cause environmental damage, it must provide financial security to the competent authority in the form of (1) an insurance policy, (2) a bank guarantee, (3) a mortgage or real rights over real estate, or (4) a pledge of receivables, personal property or securities. The financial security must cover the costs of the measures to prevent and/or remediate the environmental damage.

The operators to which the above *ex post* mandatory financial security applies are those that are subject to the following items under annex III of the ELD (items in parentheses):

- operations subject to the Industrial Emissions Directive (item 1);
- waste operations (item 2);
- discharges into inland waters (items, 3, 4 and 5);
- manufacture, use, storage, processing, filling and release of chemical substances (item 7); and
- management of extractive waste (item 13).

Bulgaria has not introduced mandatory financial security for liabilities under any other environmental legislation.

Bulgaria has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## CROATIA

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Financial security for ELD liabilities is not generally available in Croatia.

Stand-alone environmental insurance policies that provide cover to businesses with sites and/or operations only in Croatia are not available.

Environmental extensions to general liability policies are widely available. They provide cover only for remediating off-site land/soil pollution from a sudden and accidental incident on an insured's site. They do not provide cover for ELD liabilities, environmental damage other than pollution, or gradual pollution. Demand is low.

Extensions to property policies that provide cover for remediating sudden and accidental on-site pollution are available on demand. They do not provide cover for remediating gradual pollution or environmental damage other than pollution. They do not provide cover for ELD liabilities. Demand is low.

Croatia has introduced legislation to establish mandatory financial security for ELD liabilities. The provisions had not entered into force when this report was published.

Croatia has also introduced mandatory financial security for persons that hold waste management permits, including permits for landfills and extractive waste facilities. The financial security requirements for landfills and extractive waste facilities are in addition to those required under the Landfill Directive and the Extractive Waste Directive.

Croatia is expected to adopt a regulation later in 2020 to provide detailed guidance on the content and scope of stand-alone environmental insurance policies to satisfy the above requirements for holders of waste management permits.

In addition to the above, holders of waste management permits must have an insurance policy that provides cover for bodily injury and property damage resulting from waste management operations.

In February 2019, the Croatian Financial Services Supervisory Authority issued an instruction to insurance undertakings in Croatia to state that should notify persons carrying out insurance distribution activities (brokers), to alert their clients to the above incoming requirements for mandatory insurance.

## CYPRUS

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Financial security for ELD liabilities is available in Cyprus only to a very limited extent.

There is a wide range of stand-alone environmental insurance policies that tend to provide the same level of cover for ELD and other environmental liabilities as those in well-developed markets in some other Member States. They are not generally available, however, as described below. Demand for them is very low.

The policies are available from a small number of insurers based in, or with branches in, Cyprus by means of fronting. That is, a local insurer in Cyprus issues a stand-alone environmental insurance policy on behalf of another insurer that has capacity for the risk – usually a London environmental market insurer. The local insurer may transfer some, or all, of the risk to the other insurer and agrees to pay losses covered by the policy and then seek reimbursement through a reinsurance agreement.

The other means of obtaining stand-alone environmental insurance policies for businesses that have sites and/or operations only in Cyprus is to purchase stand-alone environmental insurance policies by either directly contacting insurers in the London environmental insurance market or by operating through national brokers which propose London market environmental insurance policies.

Extensions to general liability policies that provide cover for preventing or remediating environmental damage are not available.

Extensions to property policies that provide cover for remediating environmental damage are not generally available. Even when available, they do not provide cover for ELD liabilities.

Cyprus has not introduced mandatory financial security for ELD liabilities.

Cyprus has imposed mandatory financial security in the form of insurance or a guarantee for persons that have a waste management permit or an integrated pollution prevention and control permit. The financial security is for remediating pollution incidents that result from such operations. Most of the demand for environmental insurance, and to a lesser extent bank guarantees, in Cyprus is from operators that are subject to this requirement.

Cyprus has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## CZECH REPUBLIC

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Financial security for ELD liabilities is available in the Czech Republic but the scope of cover that is provided is limited.

Stand-alone environmental insurance policies are widely available. Whilst they provide cover for ELD liabilities, only three insurers provide cover for gradual as well as sudden and accidental environmental damage. Demand is low but growing.

Environmental extensions to general liability policies are widely available but most provide cover only for claims for bodily injury and property damage and the cost of remediating off-site land/soil pollution from a sudden and accidental incident at an insured's site. Some provide cover only if the pollution is caused by an incident that begins and ends within 72 hours. Others limit cover to pollution caused by an incident involving a protective or containment device. They do not generally provide cover for ELD liabilities. Demand is higher than demand for stand-alone environmental insurance policies but is still low.

Environmental extensions to property policies are not available.

The Czech Republic introduced mandatory financial security for ELD liabilities in the legislation that transposed the ELD into Czech law in 2008. The methodology for self-assessment by operators to determine whether they are subject to the mandatory financial security system came into effect on 1 January 2013 in order to allow time for them and financial security providers to prepare for its introduction.

Under the system, annex III operators under the ELD must carry out a basic risk assessment. If 'control points' in the assessment total less than 50, the cost of remediating potential environmental damage is deemed to be less than CZK 20,000,000 (EUR 783,800) and they are not required to prepare a detailed risk assessment. Businesses have tended to assess their ELD liabilities at a low level, resulting in many being excluded from the system. If the control points total more than 50, that is, if the costs of remediating potential environmental damage are more than CZK 20,000,000, businesses must either submit financial security to the competent authority or show that they are registered or have begun procedures to be registered under EMAS or ISO 14001. Businesses have tended to use this exception rather than to purchase insurance for ELD liabilities, resulting in a lowering of demand for stand-alone environmental insurance policies.

Czech legislation also requires the operator of a landfill to have liability insurance for harm to human health and the environment and related harm caused by operation of the landfill or measures for its closure.

In addition, Czech legislation requires operators of Seveso facilities to have mandatory liability insurance for damage resulting from a major incident at the facility.

The Czech Republic has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot be found or pay. A region in which a serious threat of pollution of surface or ground water has occurred may establish funding mechanisms for preventing and remediating such damage under the ELD, including the reimbursement of the competent authority's costs by means of a special account.

## DENMARK

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Financial security for ELD liabilities is widely available in Denmark.

Stand-alone environmental insurance policies that provide cover for ELD liabilities from a limited number of insurers including multinational insurers are widely available. Some provide cover only for remediating sudden and accidental pollution. Demand is low.

Environmental extensions to general liability policies are also widely available from a limited number of insurers including multinational insurers. The extensions do not provide cover for all ELD liabilities. Some do not provide cover for any ELD liabilities. Demand is low.

Environmental extensions to property policies from a limited number of insurers including multinational insurers are also available. Cover under them is primarily limited to remediating land/soil pollution from a sudden and accidental incident on an insured's site. Demand is low.

Denmark has not introduced mandatory financial security for liabilities under the ELD.

Denmark has introduced mandatory financial security, subject to limited exceptions, for various businesses that handle waste including businesses that extract metals from cables; rinse or clean drums for storing chemicals and chemical waste; dismantle and recycle vehicles such as cars; renovate appliances, machines, motors and other equipment for resale; and reclaim metal waste.

The financial security must cover the competent authority's cost of transporting and destroying or otherwise handling waste from the businesses. Acceptable financial security instruments, which must be submitted to the competent authority for approval are: a bank guarantee; an insurance policy; and a deposit of cash in a dedicated bank account. A competent authority may agree to accept other types of financial security instruments including the deposit of valuables other than cash, such as securities and a mortgage on real property. If the authority accepts such instruments, it may include conditions for its acceptance.

Denmark also has a mandatory insurance scheme, financed by a levy on companies that sell home oil in Denmark, to provide funding for the liability of tank owners to remediate damage from oil stored in their tanks.

Denmark has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot be found or pay.

## ESTONIA

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Financial security for ELD liabilities is not generally available in Estonia.

Stand-alone environmental insurance policies that provide cover for businesses with sites and/or operations in Estonia are not generally available. They are not offered by insurers based in, or with branches in, Estonia. The rare times that businesses request such policies, they are provided by multinational insurers via passporting.

Extensions to general liability policies that provide cover for remediating off-site pollution from a sudden and accidental incident on an insured's site are widely available. They tend to be limited to the remediation of land/soil damage. They do not provide cover for ELD liabilities. Cover is generally subject to a sub-limit of liability. Demand is low.

Environmental extensions to property policies that provide limited cover for the remediation of land/soil pollution at an insured's site are available. Demand for them is lower than for environmental extensions to general liability policies.

Estonia has not introduced mandatory financial security for ELD liabilities.

Estonia has introduced mandatory insurance that requires an operator of a facility subject to the Seveso III Directive to have 'liability insurance for indemnifying non-contractual and unlawful damage that may be caused to a third party'.

Estonia has also introduced mandatory financial security for liabilities from hazardous waste, including a financial security requirement concerning the storage and/or disposal of waste that entered into force on 1 January 2020. The financial security must cover the costs of organising and handling the waste.

In addition, Estonia requires persons that have a licence to carry out operations involving radiation to provide a financial guarantee for the safety of the radioactive material, equipment containing it, and radioactive waste. The provider of the financial security must be an Estonian or international credit or financial institution.

Further, an undertaking that wishes to apply for an operating licence or an operational safety certificate concerning railways must have a liability insurance policy that provides compensation for environmental damage caused by unexpected or unforeseen incidents, including the removal of pollutants, as well as claims for bodily injury and property damage.

Estonia has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot be found or pay.

## FINLAND

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Financial security for ELD liabilities is available in Finland.

Stand-alone environmental insurance policies that provide cover for ELD liabilities are available from a limited number of insurers. Demand by small to medium sized businesses is low but steadily growing. Demand by large businesses is higher but is still low although it is also steadily growing.

Environmental extensions to general liability policies are widely available. Demand for them is low but is higher than demand for stand-alone environmental insurance policies. The extensions provide cover for remediating off-site land/soil pollution from a sudden and accidental incident on an insured's site. They do not provide cover for gradual pollution, environmental damage other than pollution, or ELD liabilities. In addition, they tend to require an insured to notify the insurer of the pollution within a specified period of time.

Some insurers offer extensions to property policies, often called Decontamination and Cleanup Expense Extensions, that provide cover for the costs of preventing and remediating environmental damage on an insured's own site and thus may also provide cover for the costs of preventing the migration of pollution from the site. They tend to be purchased by operators to prevent damage to insured property in the form of industrial buildings or warehouses. They provide cover for damage only from sudden and accidental pollution incidents in connection with property damage. They typically provide cover for the remediation of soil or water (including its disposal) that has been contaminated during emergency measures to mitigate environmental damage. They are thus somewhat similar to enhanced cover for debris removal. They do not provide cover for compensatory or complementary remediation. The extensions are widely available. Demand for them is also low but is higher than demand for stand-alone environmental insurance policies.

Finland has not introduced mandatory financial security for ELD liabilities.

Since 1 June 1999, Finland has imposed mandatory insurance for claims for compensation for bodily injury, property damage and economic loss caused by environmental damage. The Environmental Damage Insurance Act provides that all companies whose activities involve a significant risk of environmental damage, or whose operations generally cause harm to the environment, must obtain a statutory EIL policy within three months of commencing operations subject to it. The purpose of the system is the protection of persons who suffer the above losses when the person that caused the loss cannot be found or is insolvent. Whilst compensation payable under the scheme theoretically includes some costs for preventing and remediating environmental damage under the ELD, any overlap with the ELD would be rare. This is largely because liability under the Act is imposed for *compensation* for the costs of such measures and not a requirement to carry out preventive and/or reinstatement measures.

Finland has also imposed mandatory financial security for holders of exploration permits and gold panners for the costs of remediating potential damage and carrying out aftercare measures.

Finnish law also provides that a competent authority may require an operator that is subject to the legislation that implements the Industrial Emissions Directive to provide financial security for restoration of the environment if a permit under the Directive is challenged and the operator proceeds with activities subject to it.

Finland has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## FRANCE

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Financial security for ELD liabilities is widely available in France.

Stand-alone environmental insurance policies that provide cover for liabilities under the ELD and other environmental legislation are widely available. They are underwritten by individual, including multinational, insurers independently as well as through Assurpol, the French co-reinsurance environmental pool. Demand for the policies is good.

Extensions to general liability policies that provide cover for remediating off-site pollution from a sudden and accidental incident on an insured's site are also widely available. As with stand-alone environmental insurance policies, they are underwritten by individual, including multinational, insurers independently as well as through Assurpol. Most extensions do not provide cover for ELD liabilities although a few extensions that specifically provide cover for ELD liabilities are available subject to cover being limited to sudden and accident pollution. They have very small sub-limits. Demand for environmental extensions is good.

Environmental extensions to property policies are not generally available. There may be exceptions for some large accounts, in which case there is a sub-limit of liability for remediation costs.

France has not introduced mandatory financial security for ELD liabilities.

France imposes mandatory financial security on specified installations classified for environmental protection (*installations classées pour la protection de l'environnement*; ICPE). ICPE facilities include landfills, storage facilities subject to the Extractive Waste Directive, facilities subject to the Industrial Emissions Directive, and facilities subject to the Seveso III Directive. The financial security must cover measures to respond to a pollution incident. It must also cover measures to monitor and maintain the safety of the ICPE facility if there is an exceptional event that is likely to affect the environment.

Acceptable financial security instruments and mechanisms include: the written commitment of a credit institution, a finance company, an insurance company or a mutual bonding company; a consignment with the *Caisse des dépôts et consignations*; a guarantee fund managed by the Environment and Energy Management Agency (for waste storage facilities); a private guarantee fund, proposed by an industry and whose adequate financial capacity is defined by the Minister responsible for ICPE facilities; and a written undertaking in the form of a self-contained guarantee in accordance with requirements of applicable French legislation.

None of the legislative provisions that mandate financial security for the above operations refers to the ELD or the French law that implements it although some of the measures required under the above legislation, such as measures to respond to land/soil or groundwater pollution following an accident or pollution from an ICPE facility could overlap with liabilities under the ELD.

France has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## GERMANY

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Financial security for ELD liabilities is widely available in Germany, which has the highest coverage in the EU.

The most prevalent form of insurance for ELD liabilities is an environmental extension to a general liability policy pursuant to model terms and conditions for environmental damage (*Umweltschadensversicherung*; USV) drafted by the German Insurance Association (*Gesamtverband der Deutschen Versicherungswirtschaft*; GDV).

The USV have been available, in various revisions, since the ELD was transposed into German law in 2007. Whilst not mandatory, virtually all insurers that offer general liability policies in Germany include them and the vast majority of insureds purchase them as part of their general liability policies. Their purchase is considered to be best practice.

The USV are available in two alternatives:

- General Insurance Conditions for Environmental Damage Basic Insurance (*Allgemeine Versicherungsbedingungen für die Umweltschadens-Basisversicherung*; Basic Cover); and
- General Insurance Conditions for Environmental Damage (*Allgemeine Versicherungsbedingungen für die Umweltschadensversicherung*) which consists of the baseline wording (*I. USV-Grunddeckung*; Comprehensive Cover), and two optional modules (*II. USV-Zusatzbaustein 1*, and *III. USV-Zusatzbaustein 2*).

In 2018, general liability policies for over one million small to medium sized operations with low environmental risks included the Basic Cover; general liability policies for nearly 90,000 industrial installations included the Comprehensive Cover, some with one or both of its optional modules.

The USV are focused specifically on liabilities under the ELD, with the exception of the following:

- environmental damage that is caused gradually with the caveat that gradual pollution from a disruption of operations is covered;
- environmental damage that exists at a covered site prior to the inception date of the policy especially if the operator that caused the damage has divested the site;
- the costs of remediating groundwater unless the operator has purchased Comprehensive Cover and optional module 1 to the Comprehensive Cover;
- preventive measures under the ELD with the exception of measures to avoid or minimise environmental damage that would otherwise inevitably occur; and
- environmental damage caused other than by a disruption of operations, a limitation that effectively narrows their scope to ELD incidents that involve pollution.

In addition, they do not provide cover for preventing or remediating pollution or any other environmental damage at an insured's site due to being an extension to a general liability policy.

Further, they include a sub-limit of liability for compensatory remediation under the ELD, with the caveat that individual insurers can adapt this.

In October 2019, the GDV revised the USV again. The revisions combine the USV with the model terms and conditions for civil law environmental liability (*Umwelthaftpflichtversicherung*; UHV) and the integration of both into the GDV's non-binding model terms and conditions for public and products liability insurance (*Allgemeine*

*Versicherungsbedingungen für die Betriebs- und Berufshaftpflichtversicherung; AVB BHV*) as standard cover under a separate section.

All the gaps in cover for ELD liabilities indicated above may be filled if an insured purchases a stand-alone environmental insurance policy. Most operators with sites and/or operations only in Germany, however, do not do so due to the near universal use of the USV. Stand-alone environmental insurance policies tend to be purchased mainly as part of global insurance programmes by large operators that have sites and/or operations in Germany as well as other States.

Environmental extensions to property policies are not available.

Germany has not introduced mandatory financial security for ELD liabilities.

Germany has introduced mandatory insurance for companies that transport waste. Such companies must have insurance for environmental liabilities as well as standard motor vehicle insurance cover.

Germany has also introduced financial security, including insurance, for mining activities.

Further, if public funds are used to remediate a contaminated site owned by a person that is not liable for remediating it and as a result the market value of the site increases, the owner of the site must pay compensation to the competent authority for the increase in the amount that results from the remediation by public funds unless an exemption applies. In such a case, the compensation is a public burden on the property and is recorded in the Land Register.

Germany has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot be found or pay.

## GREECE

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Financial security for ELD liabilities is available in Greece only to a very limited extent.

Approximately three insurers based in, or with branches in, Greece offer stand-alone environmental insurance policies that provide cover to businesses with sites and/or operations only in Greece. Cover under the policies is limited to preventing and remediating pollution (not other types of environmental damage) under the ELD. Demand for the policies is very low.

Due to the lack of demand from businesses, cover for ELD and other environmental liabilities is generally excluded from annual reinsurance treaties with very few potential exceptions. As common practice, an insurer can request a reinsurance broker to obtain facultative cover to meet the demands of a specific insured.

Extensions to general liability policies that provide cover for remediating off-site pollution under the ELD and other environmental legislation from a sudden and accidental incident on an insured's site are available on a limited basis. Most extensions do not provide cover for gradual pollution or other environmental damage. They do not provide cover for complementary or compensatory damage under the ELD. Demand for the extensions is very low.

Extensions to property policies that provide cover for remediating on-site sudden and accidental pollution under the ELD and other environmental liabilities are available on a limited basis. They do not provide cover for complementary or compensatory remediation. Demand for them is very low.

Greece has enacted legislation to impose mandatory financial security for ELD liabilities. The Ministerial Decision to bring the requirements into force had not been enacted when this report was published but there was ongoing extensive discussion regarding its potential adoption.

Greece has established mandatory financial security for businesses that have a permit to transport hazardous waste, or to handle, store, dispose of, or recover hazardous waste at their sites. Acceptable financial security instruments are insurance and a bank guarantee that provide cover/funds for liability for third-party civil liability claims and restoration of the environment to its condition before the damage. The financial security does not include cover/funds for ELD liabilities. Most of the demand for environmental insurance (and to a lesser extent bank guarantees) is from businesses subject to these mandatory financial security requirements.

Greece has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## HUNGARY

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Financial security for ELD liabilities is available in Hungary.

Stand-alone environmental insurance policies that provide cover for liabilities under the ELD are available from at least four insurers based in, or with branches in, Hungary. Some insurers limit cover to pollution from sudden and accidental incidents rather than including gradual pollution and environmental damage other than pollution. Demand for the policies is low.

Environmental extensions to general liability policies are available. They do not provide cover for ELD liabilities. Some extensions provide cover for measures to remediate off-site pollution from a sudden and accidental incident on an insured's site. Other extensions are limited to cover for third-party claims for bodily injury and property damage from sudden and accidental pollution that migrates from an insured's site. Demand for the extensions is greater than demand for stand-alone environmental insurance policies but is still low.

Environmental extensions to property policies are not available.

Hungary has not introduced mandatory financial security for ELD liabilities. Whereas legislation that amended several pieces of legislation stated that the Hungarian Government would introduce 'rules of environmental protection insurance', the Government Decree to provide such rules had not been issued when this report was published.

Hungary enacted provisions to introduce mandatory financial security in respect of protected sites in amendments to the Nature Conservation Act in 2005 and 2008 but, again, the Government Decree to provide the necessary rules had not been issued when this report was published.

A provision in waste legislation authorises the Hungarian Government to make a Government Decree covering, among other things, 'the detailed rules on environmental insurance and the detailed rules for the provision of security by manufacturers'. Again, the Government Decree had not been issued when this report was published.

Another provision in waste legislation states that the Hungarian Government would issue a Government Decree to require the following three types of businesses to have an environmental liability insurance policy to provide cover for remediating accidental environmental damage:

1. those whose activities produce specified amounts of waste as defined in regulations;
2. those that carry out activities subject to a waste management permit or registration pursuant to the Waste Act; and
3. those that import, export or transport waste to Hungary under the legislation that implements Regulation (EC) No 1013/2006 on shipments of waste.

The above requirement is in addition to those required under EU legislation. On 1 January 2013, the Government Decree was issued for the second category by requiring persons subject to such activities to have an environmental insurance policy for environmental liabilities. The requirement could potentially include liabilities under the legislation that implements the ELD in Hungary but this was not specified.

Hungary has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## IRELAND

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Financial security for ELD liabilities is widely available in Ireland.

Stand-alone environmental insurance policies that specifically provide cover for ELD liabilities from gradual as well as sudden and accidental environmental damage including pollution are widely available. Demand is good.

Some insurers offer a version of their stand-alone environmental insurance policies specifically to meet the requirements for mandatory financial security.

Environmental extensions to general liability policies that provide cover for the remediation of off-site pollution from a sudden and accidental incident at an insured's site are widely available. The extensions tend to be limited to pollution rather than including other types of environmental damage. They do not generally provide cover for ELD liabilities. Demand for them is much lower than the demand for stand-alone environmental insurance policies.

Environmental extensions to property policies are not available.

Ireland has introduced a mandatory financial security system for ELD and other environmental liabilities as well as environmental responsibilities. The system is not imposed directly by legislation. Instead, it is a hybrid under which the competent authority requires operators of specified facilities licensed by it to have financial security (called financial provision) for the costs of (1) liabilities in the form of preventing and remediating environmental damage from accidents including the prevention and remediation of environmental damage under the ELD, and (2) responsibilities for the costs of closure, restoration and aftercare of licensed facilities.

Before November 2019, the system applied to most holders of such licences. In November 2019, the competent authority published its approach to the system. Whilst it recommended that licensed businesses should continue to have financial security for their operations, it formally adopted a risk-based approach that requires financial security only for licensable classes of activities considered to be 'high risk'. This resulted in the number of facilities subject to the system decreasing from about 700 facilities to approximately 192 facilities, with the caveat that this figure is dynamic.

The categories of licensed facilities that are subject to assessment and the mandatory financial security system are: landfills; Category A extractive waste facilities; upper and lower tier Seveso facilities; hazardous waste transfer stations; non-hazardous waste transfer stations that accept more than 50,000 tonnes of waste per year; incineration and co-incineration waste facilities; high risk contaminated land; and sites for which there are exceptional circumstances. These include the following categories under annex III of the ELD (item numbers in parentheses):

- Industrial Emissions Directive (item 1);
- Waste Framework Directive (item 2);
- Landfill Directive (item 2);
- Extractive Waste Directive (item 13); and
- Directive on the geological storage of carbon dioxide (item 14).

High risk licensees must have financial security for two types of risks; Environmental Liability Risk Assessment (ELRA) costs for unexpected incidents, and Closure Restoration and Aftercare Management Plan (CRAMP) costs for foreseen events such as closure, restoration and aftercare. Licensees are required to have financial security for the costs of preventing further damage, remediating environmental damage including pollution from incidents, closure and aftercare and, depending on the type of facility, restoration of land.

The scope of financial security requirements for ELRA is similar for all licensees. The scope of requirements for CRAMP differs depending on the facility for which the licence is issued. For example, the conditions of a licence pursuant to the Industrial Emissions Directive require the licensee to ensure that, when the licence is surrendered to the competent authority, the site of the licensed facility is returned to a 'satisfactory state', as required by the Directive. Quarries and mines require restoration plans whereas other licensed facilities may not do so.

The following types of financial security instruments are, in principle, acceptable to the competent authority for ELD and other environmental liabilities and responsibilities:

- secured fund with a first ranking fixed charge in favour of the competent authority;
- perpetual and on demand performance bonds with the proviso that the failure, on expiry, to renew or replace the bond with an alternative financial security is a drawdown event;
- parent company guarantees (and guarantees from other affiliated companies) but not for the inevitable costs of closing a landfill or other facility;
- first ranking fixed charge over property in favour of the competent authority provided that the charge is used only for a specified percentage of the value of the property; and
- environmental insurance.

In order to be acceptable the competent authority must agree the wording of all financial security instruments in advance. Bonds and company guarantees must be agreed before their execution; the wording of insurance policies must be agreed before their finalisation and payment of the premium.

The competent authority may agree to accept other forms of financial security provided it is satisfied that they are secure, sufficient and available when required. Its guidance provides examples such as letters of credit, industry-sponsored mutual guarantee funds, and other group funds.

All the financial security instruments listed above, either individually or combined, are acceptable forms of financial security for ELRA incidents. The competent authority has published templates for them.

Environmental insurance is acceptable only for ELRA incidents; it is not acceptable for closure, restoration or aftercare costs. Secured funds are generally only used for closure costs rather than incidents; closure costs are predominantly covered by bonds.

Ireland has not imposed mandatory financial security under legislation other than the above.

Ireland has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## ITALY

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Financial security for ELD liabilities is widely available in Italy.

Stand-alone environmental insurance policies that provide cover for liabilities under the ELD and other environmental legislation are widely available. The policies are underwritten by individual, mainly multinational, insurers and insurers associated with the Environmental Pool (*Pool Ambiente*). Demand for the policies is low.

Extensions to general liability policies that provide insurance for remediating off-site pollution from a sudden and accidental incident at an insured's site are also widely available. The extensions are subject to limitations and low sub-limits. They do not provide cover for complementary or compensatory remediation. The Environmental Pool does not reinsure such extensions due to the lack of specialised environmental underwriting for them. Demand is low.

Environmental extensions to property policies are not available.

Italy has not introduced a mandatory financial security system for ELD liabilities.

Italy indirectly requires financial security for some ELD liabilities as follows. The legislation that transposed the ELD states that a person against whom the Ministry of the Environment has initiated procedures to reclaim and remediate environmental damage for National Interest Priority Sites (*Siti di interesse nazionale*) or has taken related judicial action can make a settlement proposal that includes an indication of appropriate financial guarantees. The intent appears to be that the financial guarantees must include the costs of primary, complementary and compensatory remediation measures under the ELD.

In addition, traders of waste and brokers of waste that do not hold the waste themselves must have financial security for expenses directly or indirectly inherent in or connected with the transportation and disposal of waste, safety measures (including their implementation), remediation, restoration of installations and contaminated areas. The legislation (which is not the legislation that implements the ELD in Italy) states that the financial guarantees can be used, without prejudice to the overall maximum limit of the guaranteed amount, for the restoration of further damage to the environment pursuant to the legislation that transposed the ELD.

Further, the Italian legislation that implements the Industrial Emissions Directive includes mandatory financial security provisions for the restoration of the site of an installation to a 'satisfactory state'.

Still further, the legislation that implements the Seveso III Directive includes mandatory insurance to provide cover for the risk of injury to persons, damage to property and damage to the environment.

Further, the Veneto Region requires financial security for specified waste operators including operators of landfills to have mandatory insurance for civil liability claims from waste generated by third parties as well as financial guarantees for the operative phase of the landfill.

Italy has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## LATVIA

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Financial security for ELD liabilities is available in Latvia but only to a very limited extent.

Stand-alone environmental insurance policies are not generally available. One insurer may consider possibly underwriting such a policy in individual cases. If the insurer agrees to do so, the policy would provide cover only for remediating sudden and accidental pollution. It would also be subject to a low limit of liability. Demand is low to non-existent.

Environmental extensions to general liability policies are available but cover provided by them is limited to measures to remediate off-site land/soil pollution from a sudden and accidental incident on an insured's site. Cover is not provided for complementary or compensatory remediation under the ELD, gradual pollution, or environmental damage other than pollution. One insurer offers an extension that provides cover for remediating off-site environmental damage under the ELD from a sudden and accidental incident on an insured's site. Demand for the extensions is low.

Cover provided by at least one extension is limited to direct losses caused by a sudden and accidental incident provided that the insured becomes aware of the incident within 72 hours after it has commenced and reports the incident to insurers within seven days after its commencement. The losses covered by the extension are required and reasonably practicable measures to control and contain pollutants, and measures to prevent or reduce further damage to human health and the environment including deterioration in the functions of natural resources. The body of the general liability policy specifically excludes cover for losses from gradual pollution, with the notation that cover is not provided if it is not possible to determine the time and the location of the leakage, emission, dispersal or spreading of pollutants.

Environmental extensions to property policies are not generally available with the exception of one extension issued by one insurer that provides cover for the costs of emergency and remedial measures to remove pollution from oil and other chemicals up to a sub-limit. The extension does not provide cover for ELD liabilities. Demand for the extension is rare.

Latvia has not introduced mandatory financial security for ELD liabilities.

Latvian law that was introduced in January 2019 requires an applicant for a permit for (1) the transportation or storage of waste, (2) recycling and recovery of waste, or (3) digging up a closed and re-cultivated waste dump and re-grading the waste, to have evidence of financial security in the form of a bank guarantee or an insurance policy. The legislation specifies the required amounts of financial security, which are being increased annually. The legislation includes specimen formats for the insurance policy and the bank guarantee including provisions to be included in them.

Latvia has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## LITHUANIA

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Financial security for ELD liabilities is not available in Lithuania except for environmental extensions to general liability policies as indicated below.

Stand-alone environmental insurance policies are not available in Lithuania. Not only are they not offered by any insurers based in, or with branches in, Lithuania, multinational insurers do not offer them to operators with sites and/or operations only in Lithuania. Demand is low to non-existent.

Environmental extensions to general liability policies that provide cover for third-party claims for bodily injury and property damage from a sudden and accidental pollution incident are available. Cover is generally subject to a sub-limit. Demand for the extensions is increasing from low to moderate. In addition, the following two types of extensions may be agreed with an insurer.

First, cover may be provided for remediating off-site pollution caused by a sudden and accidental incident on an insured's site. The extension does not provide cover for: remediating environmental damage other than pollution; any ELD liabilities except for land/soil remediation when such remediation overlaps with liability for remediating pollution under other environmental legislation; or complementary or compensatory remediation.

Second, cover may be provided for compensation for environmental damage. The amount of compensation is calculated by applying specified methodology for calculating environmental damage under Lithuanian law. The purpose of the methodology is to assess damage to the environment that may occur in the future. The methodology applies to all legal and natural persons who have caused environmental damage in the territory of Lithuania, its territorial waters and its exclusive economic zone. The methodology does not include third-party claims for bodily injury or property damage. Accordingly, whereas environmental extensions provide cover for compensation calculated by the methodology, they do not provide cover for third-party claims unless an extension otherwise provides cover for them.

Environmental extensions to property policies are not available.

Lithuania has not introduced mandatory financial security for ELD liabilities.

Lithuanian legislation requires operators that manage hazardous waste to have an insurance policy that provides cover for civil liabilities. In addition, persons that manage waste oil must have a bank guarantee or insurance to cover the costs of processing the waste oil.

Lithuania has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## LUXEMBOURG

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Financial security for ELD liabilities is widely available in Luxembourg.

Approximately five insurers based in, or with branches in, Luxembourg offer stand-alone environmental insurance policies that provide cover for all ELD liabilities including environmental damage in addition to pollution. Cover is provided for gradual as well as sudden and accidental environmental damage. The policies are widely available. Demand is very low to rare.

Environmental extensions to general liability policies are also widely available in Luxembourg. At least three of the main extensions specifically provide cover for liabilities under the ELD but limit it to the remediation of off-site pollution from a sudden and accidental incident on an insured's site. The extensions also include the additional limitation that a pollution incident must begin and end within a continuous 24-hour period in order for cover to be provided. Demand is very low to rare.

Environmental extensions to property policies are not available.

Luxembourg has not introduced mandatory financial security for ELD liabilities.

Neither has Luxembourg introduced mandatory financial security for other environmental liabilities.

Luxembourg has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## MALTA

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Financial security for ELD liabilities is not available in Malta.

Stand-alone environmental insurance policies are not available from insurers that are based in, or have branches in, Malta. Demand is non-existent.

Environmental extensions to general liability policies are available to a limited extent. They provide cover only for third-party claims from a sudden and accidental pollution incident. They do not provide cover for remediating pollution or other types of environmental damage under the ELD or other environmental legislation. Demand is poor.

Environmental extensions to property policies are not available.

Malta has not introduced mandatory financial security for ELD liabilities.

The legislation that implements the Industrial Emissions Directive in Malta grants discretion to the competent authority to require the holder of an integrated pollution prevention and control permit to submit financial security to comply with the obligations in the permit as well as liabilities arising from activities subject to the permit. The legislation does not refer specifically to ELD liabilities.

Further, the Environmental Impact Assessment Regulations authorise the competent authority to recommend to the relevant permitting authority that it should require an applicant for development consent to have financial security for the development. Developers rarely purchase environmental insurance policies in response to the requirement. Instead they prefer to have a bank guarantee due to its lower cost for risks from the development.

Malta has an Environment Fund and a Waste Management Fund but these do not appear to provide funding for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## NETHERLANDS

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Financial security for ELD liabilities is widely available in the Netherlands.

At least 11 insurers, including five insurers based in or with branches in the Netherlands offer stand-alone environmental insurance policies that provide cover for all ELD liabilities including environmental damage in addition to pollution and gradual as well as sudden and accidental environmental damage. The policies are widely available. Demand is low to moderate but slowly growing.

There are three types of stand-alone environmental insurance policies in the Netherlands; policies drafted by multinational insurers, the Environmental Damage Insurance policy (*Milieuschadeverzekering*; MSV), and the Environmental Liability Insurance policy (*Milieuaansprakelijkheidsverzekering*; MAV). The first type provides cover for all ELD liabilities depending on the insurer. The MSV, which is first party insurance only, does not provide cover for ELD liabilities. The MAV, which is first party cover plus cover for third party liabilities, provides cover for ELD liabilities.

Environmental extensions to general liability policies are also widely available. At least three of the main extensions specifically provide cover for liabilities under the ELD but limit it to the remediation of off-site sudden and accidental pollution from an insured's site. The extensions also include the additional limitation that a pollution incident must begin and end within a continuous 24-hour period in order for cover to be provided. Demand for them is good.

Environmental extensions to property policies are not available.

An Environmental Pool (*Milieupool*) which reinsured stand-alone environmental insurance policies issued by its members was established in 2008. The Pool also operated as an environmental knowledge centre, where insurers (including insurers that were not members of the Pool) could obtain advice on insuring environmental risks. As knowledge of environmental insurance grew, the number of members of the Pool decreased, leading to it being dissolved on 31 December 2019.

An earlier pool, called the MAS Pool, had been replaced with an earlier version of the Environmental Pool when the MSV Policy was introduced in 1998.

The Netherlands has not introduced a mandatory financial security system for ELD liabilities.

The Netherlands has imposed mandatory financial security for the costs of remediating soil contamination when the freehold or leasehold of contaminated land is transferred.

The Netherlands has also withdrawn and then re-established mandatory financial security. The prior legislation, which was introduced on 1 June 2008, authorised competent authorities to require operators of specified waste storage facilities and operators that managed waste to have financial security for the costs of remediating soil damage caused by the waste after termination of their activities. Financial security could be established by an insurance policy, a bank guarantee, a mortgage or lien, a fund specifically established for the legislation, and equivalent financial security acceptable to the competent authority. The Decree set out the minimum amounts of financial security for the various facilities subject to it.

On 9 November 2009, the Dutch Government repealed the Decree because of the burden on industry and also because it considered that the risk of public authorities having to remediate environmental damage was low. Following the *Chemie-Pack* disaster at Moerdijk in 2011, the Dutch Government carried out a consultation as to whether to require operators subject to the Dutch legislation that implements the Seveso III Directive to have financial security.

Under the new Environment and Planning Act (*Omgevingswet*) mandatory financial security may be imposed for activities indicated by decree that have an environmental permit for an activity that may have 'significant adverse effects on the physical environment' for the costs of complying with obligations under the environmental permit and liability for damage resulting from adverse effects on the physical environment caused by the activity.

The vast majority of activities will only have to comply with general rules and will not require a permit, as is currently the case. Activities covered by the Seveso III Directive, the Waste Framework Directive, the Water Framework Directive, the Industrial Emissions Directive, and the Offshore Safety Directive as well as some other activities (enacted in the implementation of international treaties) will require a permit pursuant to article 5.2, paragraph 2 of the future Act.

The new Act and its underlying decrees are anticipated to come into force by January 2022.

The Netherlands has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## POLAND

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Financial security for ELD liabilities is available in Poland.

Stand-alone environmental insurance policies are available. They tend to provide cover for preventing and remediating environmental damage involving pollution (both sudden and accidental as well as gradual) on-site and off-site, as well as other risks. Some policies limit cover for the costs of remediating on-site environmental damage to damage that begins and ends during a specified period of hours or days during the policy period. Their availability has begun increasing. Demand is moderate but has also begun increasing.

The most prevalent environmental insurance cover offered in the Polish insurance market by national insurers and multinational insurers with branches in Poland is an environmental extension to a general liability policy. Whilst cover is not generally provided by them for liabilities under the ELD, it is not possible to generalise due to the variations in available extensions.

Cover for the costs of remediating pollution in the extensions – if at all – is always limited. At most an extension provides cover for bodily injury, property damage and the costs of remediating off-site contamination caused by a sudden and accidental pollution incident that migrates to a third party's site. Further, depending on individual insurers, cover may be provided only for remediating land/soil and water. Some extensions provide cover only if the insured could not reasonably have foreseen the pollution incident, or if the purpose of any remediation measures is to reduce bodily injury or property damage caused to third parties by a pollution incident. Some extensions limit the types of remediation measures for which cover is provided and may not provide cover for assessing the damage, monitoring, restoration of the site, etc.

Further, some extensions specify the length of time in which a pollution incident must begin, end and be reported to insurers. A typical length of time is 72 hours for a pollution incident to begin and end, with a maximum of 30 days for the operator to report the incident to insurers.

Some provide cover for emergency measures under environmental legislation other than the ELD. Some are limited to cover for third-party claims for bodily injury and property damage from sudden and accidental pollution that migrates from an insured's site. No extensions provide cover for complementary or compensatory damage.

Demand for the extensions is low but greater than demand for stand-alone environmental insurance policies.

Environmental extensions to property policies are not available

Poland has not introduced a mandatory financial security system for ELD liabilities.

Poland has, however, gradually introduced mandatory financial security and quasi-mandatory financial security for ELD liabilities as follows.

Operators of landfills must have financial security, not only for measures under the Landfill Directive, but also for the costs of remediating any environmental damage under the legislation that implements the ELD. Acceptable financial security instruments for ELD liabilities are a bank deposit in a dedicated account indicated by the competent authority, a bank guarantee, an insurance guarantee, and an insurance policy.

Persons that have a concession for the underground storage of carbon dioxide pursuant to the Directive on the geological storage of carbon dioxide must also have financial security for ELD liabilities.

Further, holders of permits that authorise waste collection and/or waste processing activities must have financial security for remediating environmental damage. Acceptable financial security instruments are a bank guarantee, an insurance guarantee, an insurance policy, and a dedicated deposit.

In addition, holders of integrated permit and permits for gas or dust releases into the ambient air, and/or permits for generating waste must have financial security if the relevant competent authority concludes that there is a particularly important social interest related to environmental protection. Acceptable financial security instruments are a deposit, a bank guarantee, an insurance guarantee, and an insurance policy.

Poland has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## PORTUGAL

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Financial security for ELD liabilities is widely available in Portugal.

A wide range of stand-alone environmental insurance policies are available in Portugal. Many policies are underwritten with basic cover plus optional insuring agreements so that operators may select the insuring agreements they wish. Depending on the insurer, the basic cover is for ELD liabilities, both for remediating off-site and on-site environmental damage, third-party claims for bodily injury, property damage and economic loss, and related defence costs. The optional insuring agreements provide cover for claims for bodily injury and property damage, harm to employees for occupational accidents involving pollution, transportation, etc. Some policies limit cover for the costs of remediating on-site environmental damage to damage that begins and ends during a specified period of hours or days, that is, sudden and accidental pollution incidents that take place within a specific time during the policy period. Some policies have sub-limits for the costs of remediating pollution. Demand is good.

Environmental extensions to general liability policies are not generally available. They were available in the past but their use has largely disappeared.

Environmental extensions to property policies are not available.

Portugal introduced mandatory financial security (called financial guarantees) for ELD liabilities, effective on 1 January 2010. The system applies to all annex III operators under the ELD.

The mandatory financial security system provides for a risk assessment to be carried out by operators subject to the system to determine the amount of financial security. The competent authority has suggested a detailed methodology for carrying out the risk assessment whilst stating that an operator may select another methodology if it is more appropriate to the activities carried out by it and the damage that may be caused by those activities to land, water, and protected species and natural habitats. The risk assessment may be carried out by the operator or persons instructed by them.

The amount of financial security is based on the estimated costs of the measures to prevent or remediate potential environmental damage according to risks posed by the operator's activities. The amount of required financial security may be reduced if the operator minimises the risks of environmental damage by carrying out measures to reduce them.

There are no exemptions from the mandatory financial security system.

In addition to the above mandatory financial security requirements, Portugal requires a person that holds a licence or concession under its regime for the use of water resources to have a guarantee for environmental recovery. The guarantee may be provided by a cash deposit, at the order of the competent authority, or by a bank guarantee. If the operator is also subject to the mandatory financial security system for ELD liabilities, an exemption applies upon confirmation by the competent water authority.

Operators of waste incineration and co-incineration plants are also required to have financial security for civil liabilities from their operations.

Portugal extended an existing fund, the Environmental Intervention Fund, to provide funding to public authorities to carry out preventive and remedial measures under the ELD. Prior to the ELD being transposed, the Environmental Intervention Fund had provided funding for emergency measures and the timely remediation of environmental damage when funding was not available from other private or public sources. Funding was provided for environmental damage from man-made incidents as well as natural disasters. In extending the Fund to

include funding for the costs of preventing and remediating environmental damage under the ELD, the Portuguese Government decided that it was more effective to extend an existing fund so that there is a single environmental fund with increased funding that can adapt to various situations instead of creating more than one fund. The Environmental Intervention Fund has subsequently been superseded by the Environmental Fund.

The legislation that transposed the ELD stated that financial security instruments under the ELD may include a fee of up to 1% of their value with the purpose of financing the costs of public intervention for the costs of measures to prevent and remediate environmental damage. The fees, which will represent the full and exclusive revenue of the Environmental Fund, are to be collected by insurers, banking and other financial entities. The specific amount of the fees, as well as their settlement and payment rules, are to be fixed by an order to be approved by entities of the government responsible for the areas of finance, environment and economy. The order had not been issued when this report was published.

## ROMANIA

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Financial security for ELD liabilities is not generally available in Romania.

Stand-alone environmental insurance policies that provide cover for sites and/or operations in Romania are not generally available. On the rare occasion that a business based in Romania requests a stand-alone environmental insurance policy, the insurer must obtain agreement from its reinsurer to provide it. The policy is then obtained by passporting. Demand for the policies is extremely low.

Environmental extensions to general liability policies are not generally available. When they are available, cover tends to be limited to claims for bodily injury or property damage from sudden and accidental pollution caused by the insured. They do not provide cover for preventing and remediating environmental damage under the ELD and often do not provide cover for remediating pollution under other environmental legislation. Demand is very low.

Environmental extensions to property policies are not available.

The law that implements the ELD in Romania includes provisions for the introduction of mandatory financial security for ELD liabilities. Romania had not, however, issued the Government Decision to introduce it when this report was published.

Romania has not introduced mandatory financial security requirements under other environmental legislation.

Romania has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## SLOVAKIA

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Financial security for ELD liabilities is available in Slovakia.

Stand-alone environmental insurance policies that provide cover for ELD and other environmental liabilities to businesses with sites and/or operations only in Slovakia are available from seven insurers based in, or with branches in, Slovakia. The policies provide cover for all liabilities under the ELD. Demand is moderate but growing slowly.

Environmental extensions to general liability policies are widely available. Some extensions provide cover only for remediating off-site pollution from a sudden and accidental incident on an insured's site; other extensions also provide cover for gradual pollution. The extensions are limited to pollution. They do not provide cover for liabilities under the ELD. They also tend to have low sub-limits of liability. Demand is moderate.

Environmental extensions to property policies are not available.

Slovakia has introduced a mandatory financial security system for ELD liabilities. The system, which came into force on 1 July 2012, applies to all operators subject to annex III of the ELD. The amount of financial security must correspond to the estimated costs of remedial measures plus the costs of preparing an analysis of the risks and costs of remedying environmental damage that could be caused by the operator's activity.

The Ministry of Environment has published a methodological manual for operators and state administrations on a risk assessment system for environmental damage. The methodology includes a determination of the amount of financial security as well as criteria for financial security instruments. A methodological tool, which can be used online as well as offline, is available to calculate the risk. Three annexes to the manual set out examples of an initial environmental risk assessment, selected parts of a detailed environmental risk assessment, and calculations to indicate whether a detailed environmental risk assessment must be carried out.

The first stage is preparation of an initial risk assessment. For each scenario that is assessed, the operator must make a determination whether the 'EAI index' for it is greater than 100. If a scenario has an EIA index that exceeds 100, the operator must carry out a detailed risk assessment. If a scenario has an EIA index that is less than or equal to 100, the operator does not need to carry out a detailed risk assessment. If an operator must prepare a detailed environmental risk assessment, it must instruct appropriate experts to carry it out.

The detailed risk assessment must also include draft precautionary measures in the event of an incident that causes environmental damage. Further, it must include interim corrective measures with the purpose of creating appropriate measures to identify the risks, determine their degree and acceptability, and to estimate the degree of probable environmental damage. After the detailed risk assessment has been prepared, the above factors are used to determine the level of risk and to quantify it.

The next stage is determination of short and long-term consequences of the risk including the severity of damage to land/soil, water and Natura 2000 sites, quantification of such damage, causal links between an operator's activity and environmental damage, assessment of the damage, and temporary and permanent losses of natural resources. In all cases, the operator must identify the worst case scenario for environmental damage from an incident. The manual notes that an operator can reduce the potential risk by, for example, installing an early warning system.

The final stage is determination of the amount and method of financial security.

There are no exceptions to the mandatory financial security system.

Slovakia has also imposed mandatory financial security for damage from major industrial accidents caused by Seveso III facilities that pose a high risk of environmental damage. The financial security appears to be for civil liabilities and the prevention and remediation of environmental damage but this is not clear. The financial security is in the form of insurance policies for civil liabilities and bank guarantees. The amount of financial security corresponds to expected consequences of a major industrial accident taking into account the results of the risk assessment carried out for the facility for such an accident.

Slovakia has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## SLOVENIA

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Financial security for ELD liabilities in Slovenia is almost non-existent.

No insurers based in, or with branches in, Slovenia offer stand-alone environmental insurance policies except on demand and by agreement with reinsurers. Such policies are, if offered, limited to providing cover only for sudden and accidental pollution (not gradual).

Stand-alone environmental insurance policies offered by multinationals provide cover only for sudden and accidental pollution to businesses with sites and/or operations only in Slovenia.

In 2018 and 2019, a large Slovenian insurer carried out an assessment to determine whether to develop a stand-alone environmental insurance policy. The insurer decided to postpone its development until demand increased.

Some insurers may offer limited environmental extensions to general liability policies by agreement with their reinsurers. The extensions provide cover only for remediating off-site pollution from a sudden and accidental incident on an insured's site. They do not provide cover for ELD liabilities. Further, they are subject to low sub-limits of liability. Demand is low.

Environmental extensions to property policies are not available.

Due to the lack of environmental insurance, small and medium size enterprises have difficulty in obtaining insurance for ELD and other environmental liabilities even when they are aware of the liabilities, which many are not.

Slovenia has not introduced mandatory financial security for ELD liabilities.

No other legislation in Slovenia imposes mandatory financial security for environmental liabilities.

Slovenia has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## SPAIN

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Financial security for ELD liabilities is widely available in Spain.

Stand-alone environmental insurance policies are widely available. They provide cover for all ELD liabilities. They are underwritten by individual, mainly multinational, insurers and insurers associated with the Environmental Risks Pool (*Pool Español de Riesgos Medioambientales*). Demand is moderate but growing, having been assisted by the preparations for, and the introduction of, mandatory financial security, both of which have raised awareness of liabilities under the ELD.

Extensions to general liability policies that provide cover for environmental liabilities are available only on a limited basis. They do not provide cover for complementary or compensatory remediation. Demand is moderate.

Environmental extensions to property policies are not available.

Spain led the EU in the introduction of a mandatory financial security system for ELD liabilities. Operators subject to the system must carry out an environmental risk assessment and submit a report based on it to the relevant competent authority. If specified criteria exceed thresholds, the operator must have financial security in an amount not less than the minimal amount specified in the report. The Spanish Government has published a detailed methodology for the risk assessment and has provided online tools for it.

The detailed methodology consists of the following:

- identification of risk scenarios and their probability;
- calculation of the cost of primary remediation by estimating an Environmental Damage Index (IDM) for each risk scenario;
- ranking of the scenario in terms of the IDM and probability of damage;
- selection of the scenarios with the lowest environmental damage that account for 95% of the total;
- quantification of the primary remediation costs of the environmental damage associated with the scenarios with the highest IDM selected in; and
- addition of the costs of preventive measures, which must be at least 10% of the primary remediation costs.

The figure obtained by the methodology is the amount of the mandatory financial security.

Exemptions to the system exist for the following operators:

- operators of sites for which the cost of any primary remediation does not exceed EUR 300,000 pursuant to a verified environmental risk assessment that has been carried out according to the guidelines in UNE Standard 150,008 or equivalent rules;
- operators for which a verified environmental risk assessment shows that the cost of any remedial works would be between EUR 300,000 and EUR 2,000,000 and the operator has an EMAS or ISO 14001 certification; and
- operators that use specified plant protection products and biocides for agricultural and forestry purposes.

In addition, the following public bodies are exempt from the mandatory financial security requirements: General State Administration and public bodies linked to or dependent on it; local governments and any public law bodies dependent on them; and regional bodies and any public law bodies dependent on them.

The requirements originally applied to all annex III operators under the ELD. On 13 March 2015, the Spanish Government reduced the categories to the following (item number of annex III of the ELD in parentheses):

- all activities subject to the Industrial Emissions Directive (item 1);
- the storage of chemicals subject to the Seveso III Directive but not all other activities listed under item 7 (item 7); and
- the management of mining/extractive waste but only if the mining waste is classified as category A (item 13).

Before the amendment, approximately 300,000 operators would have been required to comply with the mandatory financial security requirements.

The mandatory financial security system is being phased in as follows:

- Priority 1: 31 October 2018;
- Priority 2: 31 October 2019; and
- Priority 3: 16 October 2021 except for the intensive rearing of poultry or pigs, for which the effective date is 16 October 2022.

Priority 1 includes activities under the Seveso III Directive and specified activities under the Industrial Emissions Directive. Priority 2 includes additional activities under the Industrial Emissions Directive. Priority 3 includes the remaining activities subject to the system including the operation of facilities containing mining waste classified as category A.

The system requires mandatory financial security only for the costs of preventive measures and primary remediation under the ELD. It does not require financial security for complementary or compensatory remediation.

In addition to mandatory financial security under the ELD, financial security for compensation for bodily injury, property damage, and the remediation of environmental damage from hazardous waste sites and sites for the management of specific waste is required. Further, permits for waste disposal operations may include a requirement for a bond or other financial guarantee in addition to the above financial security instruments.

Further, some Autonomous Communities have extended mandatory financial security requirements for waste producers to include, for example, automobile repair facilities and end-of-use vehicle facilities in respect of waste oil from such operations.

The legislation that transposed the ELD in Spain created two funds.

The Compensation Fund for Environmental Damage, which is located within the Insurance Clearing Consortium, provides funding for the prevention and remediation of environmental damage from authorised activities during the policy period of an environmental insurance policy when the environmental damage did not materialise, or for which a claim was not brought, during the policy period. The total amount to be paid by the fund is the amount of the financial security requirement that the policy would have covered subject to the total amount of money in the fund.

A State fund, managed by the Ministry for the Ecological Transition and the Demographic Challenge, has also been established to pay the costs of preventing or remedying environmental damage when an operator is required to carry out such measures and the operator proves that it followed the compulsory order of a public authority, or the state-of-the-art defence applies. The Autonomous Communities may participate in the funding and management of the State fund, in which case its scope is extended.

## SWEDEN

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Financial security for ELD liabilities is available in Sweden.

Stand-alone environmental insurance policies that provide cover for all liabilities under the ELD including environmental damage other than, as well as, pollution and including gradual as well as sudden and accidental environmental damage are available in Sweden. Demand for the policies is moderate.

Environmental extensions that provide cover for the remediation of off-site pollution from a sudden and accidental incident on an insured's site are also available. The extensions tend to be limited to pollution and not other types of environmental damage although they may provide cover for the costs of preventing environmental damage. They do not provide cover for liabilities under the ELD. Many simply refer to liabilities under the Swedish Environmental Code. Some provide cover for claims for bodily injury and property damage from construction activities that cause water or soil pollution. Demand for the extensions is moderate.

Environmental extensions to property policies are not available.

Sweden has not introduced mandatory financial security for ELD liabilities.

The Swedish Environmental Code provides that all permits, approvals and exemptions issued under the Code are subject to a general rule that the permitting authority may make the validity of the permit, approval or exemption subject to the requirement of a financial guarantee. The rule applies to a wide scope of permits, approvals and exemptions including those issued under the Industrial Emissions Directive and the Seveso III Directive although, as a practical matter, financial security is not usually required for permits under these two Directives. When the general rule applies, general considerations for the adequacy of financial security set out in case law apply.

Sweden has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.

## UNITED KINGDOM

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Financial security for ELD liabilities is widely available in the UK.

Stand-alone environmental insurance policies for businesses with sites and/or operations only in the UK are widely available. Demand for them is good and increasing as more insurers continue to enter the market.

Environmental extensions to general liability policies range from extensions for small to medium sized businesses to standardised 'add ins' for general liability policies issued to large businesses. Due to the 'add ins', a much larger volume of environmental extensions to general liability policies exists compared to stand-alone environmental insurance policies.

The extensions do not necessarily provide cover for ELD liabilities; many provide only limited cover for remediating pollution under environmental legislation other than the ELD. Some require a claim for bodily injury or property damage under the general liability policy before cover under the extension is triggered. Others limit cover to the remediation of off-site pollution from a sudden and accidental incident on an insured's site. Demand for the extensions is good, especially due to their standardisation in general liability policies for large operators.

Environmental extensions to property policies are not generally available.

None of the jurisdictions in the UK has introduced mandatory financial security for ELD liabilities.

None of the jurisdictions in the UK imposes mandatory financial security for other environmental responsibilities and/or liabilities other than those mandated by EU legislation.

The UK has not established a fund for the costs of preventing or remediating environmental damage under the ELD if the responsible operator cannot pay or cannot be found.