Annex I

Austria

Improving financial security in the context of the Environmental Liability Directive
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Prepared by:
Valerie Fogleman, Stevens & Bolton LLP
Cardiff University School of Law and Politics
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Improving financial security in the context of the Environmental Liability Directive

1. INTRODUCTION

Financial security for environmental liabilities in the form of insurance has been widely available to operators in Austria since the early 2000s.

Insurance policies that specifically provide cover for ELD liabilities have been available since June 2009 when the Austrian Insurance Association (Versicherungsverband Österreich; VVO) issued model terms and conditions for liabilities under the 55th Federal Act on environmental liability with regard to the prevention andremedying of environmental damage of 19 June 2009 (Bundes-Umwelthaftungsgesetz; B-UHG), which transposed the ELD into federal law.

The VVO model terms and conditions, called ‘Special Conditions ELD Austria (USKV – Insurance for costs of remediation of environmental damage)’ (Umweltsanierungskostenversicherung; USKV), also provide cover for liabilities under legislation enacted by the nine Bundesländer to transpose the ELD into their laws (Landes-Umwelthaftungsgesetze). The legislation enacted by the nine Bundesländer that transposed the ELD is as follows:

- Act of 29 October 2009 on environmental liability with regard to the prevention andremedying of environmental damage (Burgenland) (Burgenländisches Umwelthaftungsgesetz – Bgl. UHG);²
- 9th Act of 26 November 2009 amending the Carinthian 2002 Nature Protection Act (Kärntner Naturschutzgesetz 2002 - K-NSG 2002);³
- 55th Act of 9 July 2009 amending the Carinthian IPPC Installations Act and Plant Protection Act (Gesetz vom 23. Mai 2002 über die integrierte Vermeidung und Verminderung der Umweltverschmutzung (Kärntner IPPC-Anlagengesetz - K-IPPC-AG);⁴
- Environmental Liability Act of Lower Austria (NÖ Umwelthaftungsgesetz (NÖ UHG));⁵
- 45th Act of 5 May 2010 amending the Environmental Protection and Environmental Information Act (Umweltschutz- und Umweltinformationsgesetz) (Gesetz mit dem in Umsetzung bestimmter Richtlinien der Europäischen Union besondere Umweltschutzvorschriften erlassen und die Mitteilung von Umweltinformationen geregelt werden (Umweltschutz- und Umweltinformationsgesetz - UUIG)).⁶

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¹ 55th Federal Act on environmental liability with regard to the prevention andremedying on environmental damage (Bundes-Umwelthaftungsgesetz – B-UHG), Federal Law Gazette for the Republic of Austria, Vol. 2009, Part I, issued on 19 June 2009 (Bundesgesetz über Umwelthaftung zur Vermeidung und Sanierung von Umweltschäden (Bundes-Umwelthaftungsgesetz – B-UHG) (consolidated version); https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20006304
² Burgenländisches Umwelthaftungsgesetz – Bgl. UHG; https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgld&Gesetzesnummer=20000761 (in German)
⁵ Land Law Gazette of Lower Austria, 6200-0, No. 77/2009, issued on 8 May 2009 (NÖ Umwelthaftungsgesetz (NÖ UHG)); https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20000613 (in German)
⁶ Land Law Gazette of Salzburg, issued on 30 June 2010 (Gesetz mit dem in Umsetzung bestimmter Richtlinien der Europäischen Union besondere Umweltschutzvorschriften erlassen und die Mitteilung von
• 10th Act of 17 November 2009 on environmental liability with regard to the prevention and remediing of environmental damage (Styrian Environmental Liability Act (Steiermärkisches Umwelthaftungsgesetz – StUHG) (Gesetz vom 17. November 2009 über Umwelthaftung zur Vermeidung und Sanierung von Umweltschäden (Steiermärkisches Umwelthaftungsgesetz – StUHG)));

• 10th Act of 17 November 2009 on environmental liability with regard to the prevention and remediing of environmental damage (Styrian Environmental Liability Act (Steiermärkisches Umwelthaftungsgesetz – StUHG) (Gesetz vom 17. November 2009 über Umwelthaftung zur Vermeidung und Sanierung von Umweltschäden (Steiermärkisches Umwelthaftungsgesetz – StUHG)));

• 5th Act of 18 November 2009 on liability in the event of damage to protected species and natural habitats and for certain land damage (Tyrol Environmental Liability Act – T-UHG) (Gesetz vom 18. November 2009 über die Haftung bei Schäden an geschützten Arten und natürlichen Lebensräumen sowie für bestimmte Schädigungen des Bodens (Tiroler Umwelthaftungsgesetz – T-UHG));

• 95th Act on environmental liability with regard to the prevention and remediing of environmental damage – Upper Austrian Environmental Liability Act (Oö UHG) (Landesgesetz über Umwelthaftung zur Vermeidung und Sanierung von Umweltschäden - Oö. Umwelthaftungsgesetz (Oö. UHG));

• 38th Act on environmental liability with regard to the prevention and remediing of environmental damage in Vienna (Vienna Environmental Liability Act) (Wiener Umwelthaftungsgesetz - Wr. UHG) (Gesetz über die Umwelthaftung zur Vermeidung und Sanierung von Umweltschäden in Wien (Wiener Umwelthaftungsgesetz – Wr. UHG));

Umweltinformationen geregelt werden (Umweltschutz- und Umweltinformationsgesetz - UUIG));
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=20000403 (in German)


https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000429 (in German)

10 Land Law Gazette for Upper Austria, No. 95/2009, issued on 4 September 2010 (Landesgesetz über Umwelthaftung zur Vermeidung und Sanierung von Umweltschäden - Oö. Umwelthaftungsgesetz (Oö. UHG));
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrOO&Gesetzesnummer=20000580 (in German)

11 Land Law Gazette for Vienna, No. 38/2009, issued on 1 September 2009 (Gesetz über die Umwelthaftung zur Vermeidung und Sanierung von Umweltschäden in Wien (Wiener Umwelthaftungsgesetz – Wr. UHG));
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000402vc (in German)
• Act amending the IPPC Installations and Seveso II Installations Act (Gesetz über Betreiberpflichten zum Schutz der Umwelt).\textsuperscript{12}

The USKV\textsuperscript{13} are drafted as amendments to the General Terms and Conditions of Liability Insurance (AHVB 2005) and the Supplementary General Terms and Conditions of Liability Insurance (EHVB 2005) (Allgemeine und Ergänzende Allgemeine Bedingungen für die Haftpflichtversicherung (AHVB 2005 und EHVB 2005, Version 2012);\textsuperscript{14} collectively AHVB/EHVB). That is, the USKV and the AHVB/EHVB are read together.

Due to the split in competencies for liabilities under the ELD in Austrian law, the USKV provide cover for the costs of remediating: (1) water damage under the B-UHG (for which the federal Government has exclusive competency); (2) damage to species and natural habitats protected by the Birds Directive (2009/147/EC) and the Habitats Directive (92/43/EEC) plus, in Vienna, species and habitats protected by the Vienna Nature Conservation Act (Wiener Naturschutzgesetz),\textsuperscript{15} and the Vienna Nature Conservation Order (Wiener Naturschutzverordnung)\textsuperscript{16} (biodiversity damage), under the Bundesländer environmental laws (for which they have exclusive competency); and (3) land/soil (for which competency is shared between the federal Government and the Bundesländer).

The USKV are not obligatory. Most operators in Austria, however, purchase them as an extension to general liability policies, which are also not obligatory. They are not underwritten as a separate stand-alone environmental insurance policy.

Environmental extensions to property policies are not available.

In addition, and to a much lesser extent, stand-alone environmental insurance policies that provide cover to operators for liabilities under the ELD and other environmental laws as well as other protection such as business interruption are offered by insurers based in Austria as well as insurers based in other Member States by means of passporting. Due to the popularity of the USKV, these policies 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 liabilities under the ELD.

Austria has introduced mandatory financial security for operators of gene technology laboratories or facilities for bodily injury and environmental impairment caused by their operations.

\textsuperscript{12} Land Law Gazette for Vorarlberg, No. 3/2010, issued on 2 February 2010 (Gesetz über Betreiberpflichten zum Schutz der Umwelt); https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Lrvbg&Gesetzesnummer=20000749 (in German)

\textsuperscript{13} The model terms and conditions are available at https://www.vvo.at/vvo/vvo.nsf/sysPages/xFABFE511A5F4F8D8C1257CE50044E33C/$file/USKV_2012.pdf (in German)


\textsuperscript{15} Wiener Naturschutzgesetz; https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000454 (in German)

\textsuperscript{16} Wiener Naturschutzverordnung; https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000419 (in German)
2. **ENVIRONMENTAL INSURANCE MARKET**

Most operators purchase general liability policies that include the USKV. As described in section 3.7 below, these policies are specifically designed to provide cover for ELD liabilities. A wide range of stand-alone environmental insurance policies that provide cover for ELD liabilities through global insurance programmes is also available but there is little demand for them by businesses with sites and/or facilities only in Austria.

2.1. **Commercial insurers**

2.1.1. **Number of insurers**

Virtually all insurers that offer general liability policies in Austria also offer the USKV as additional cover in their policies. Environmental insurance for ELD liabilities is thus commoditised, subject to the limitations of the USKV.

Some insurers authorised to conduct business in Austria, including insurers based in Austria, also offer stand-alone environmental insurance policies to operators that require more extensive cover than that provided by the USKV. The demand for such policies is, however, very low.

2.1.2. **New insurers entering the market since 2009**

Two insurers that offer the USKV in their general liability policies have entered the Austrian insurance market since 2009. Neither of them entered the market because of the ELD.

2.1.3. **Existing insurers that introduced environmental insurance policies since 2009**

As indicated above, virtually all insurers that are authorised to conduct business in Austria and that underwrite general liability policies offer the USKV as additional cover in them. Some of these insurers also offer stand-alone environmental insurance policies.

2.2. **Re/insurance pools**

There are no re/insurance pools that offer policies that provide cover for ELD, or other environmental, liabilities in Austria.

2.2.1. **Date of establishment**

Not applicable

2.2.2. **Descriptions of policies issued**

Not applicable

2.3. **Mutuals**

Six mutuals, which originate out of the federal structure of Austria offer the USKV, largely on a regional basis. They are:

- Niederösterreichische Versicherung AG;
- Grazer Wechselseitige Versicherung;
- Kärntner Landesversicherung;
- Oberösterreichische Versicherung AG;
- Tiroler Versicherung V.A.G.; and
- Vorarlberger Landes-Versicherung.
2.3.1. Date of establishment

All the mutuals indicated in section 2.3 have been established for long periods of time, some before the 1940s.

2.3.2. Descriptions of policies issued

The mutuals, which are all members of the VVO, offer the USKV in general liability policies offered by them.

2.4. Other

There are no captives or other types of providers of environmental insurance policies in Austria other than commercial insurers and the mutuals indicated in section 2.3 above.

3. Voluntary Insurance Policies for ELD and Other Environmental Liabilities

3.1. Environmental insurance policies

A wide range of stand-alone environmental insurance policies are available but there is little demand for them due to the USKV.

3.2. Cover for ELD preventive costs

The USKV do not provide cover for ELD preventive costs; they are designed to provide cover only for ELD remedial costs, that is, costs incurred in measures to remediate environmental damage that has occurred – not costs to prevent damage that may occur – with the following caveat.

Pursuant to section 62 of the Austrian Insurance Contracts Act (Versicherungsvertragsgesetz; VersVG), an insured has a duty to carry out measures to prevent or mitigate a loss. Section 63 of the VersVG provides that such costs (called ‘rescue costs’ (Rettungskosten)) are covered if the loss would have occurred immediately but for the measures having been carried out.

Accordingly, article 5(5) of the AHVB provides cover for rescue costs according to section 63 of the VersVG. Thus, preventive costs under the ELD are covered by the USKV only if they fall within the context of rescue costs.

Stand-alone environmental insurance policies usually provide cover for preventive costs under the ELD, sometimes with limitations on the types of preventive measures that are covered.

3.3. Cover for ELD primary, complementary and compensatory costs

The USKV provide cover for primary, complementary and compensatory remediation costs under the ELD. They recommend 50% of the limit of liability for primary and complementary remediation measures as the sub-limit of liability for compensatory costs, subject to the limits of liability of the applicable insurance policy.

Insurers that include the USKV in general liability policies offered by them may thus revise the sub-limit for compensatory remediation damage, subject to requirements of their reinsurance treaty. The 50% limit was introduced because, when the VVO began drafting the model terms

\[17\] Versicherungsvertragsgesetz; https://www.jusline.at/gesetz/versvg (in German)
and conditions in 2005, insurers had no experience in providing cover for compensatory remediation costs.

Stand-alone environmental insurance policies nearly always provide cover for ELD primary, complementary and compensatory remediation costs but, as stated above, they are rarely purchased by businesses that have sites and/or operations only in Austria.

3.4. Cover for non-ELD liabilities

The USKV provide cover only for the costs of remediating environmental damage under the ELD. They are included in general liability policies only if article 6 of the AHVB/EHVB, which is also optional, is also included.

That is, the USKV complement article 6 of the AHVB/EHVB by providing cover for public law claims from environmental damage whereas article 6 provides cover for civil law claims from environmental impairment, with the USKV mirroring a substantial number of the provisions of article 6.

Article 6 provides cover for claims for property damage from environmental impairment, that is, pollution of air, soil or water bodies. Despite the language of article 6, general liability insurers traditionally provide cover under it for the costs of remediating water pollution under the Austrian Water Act (Wasserrechtsgesetz; WRG),18 which imposes strict liability for remediating surface and ground water pollution.

When the USKV are included in general liability policies, they are set out as an extension or endorsement that refers to article 6 and other provisions of the AHVB/EHVB.

3.5. Nature of policies (liability only or liability and on-site remediation)

Cover for ELD and other environmental liabilities arising from pollutants that have migrated to third-party property is provided by both the USKV and stand-alone environmental insurance policies. In addition, stand-alone environmental insurance policies provide cover for the costs of remediating pollution caused by an operator at its own site as well as other causes of environmental damage that are at, or that emanate from, the insured’s site.

The USKV provide cover for remediating environmental damage under the ELD at the insured’s own site provided that the operator did not cause the damage intentionally or was not grossly negligent. Such cover, however, applies only if the competent authority requires the operator to remediate its own site to prevent pollutants at the site emanating to a Natura 2000 site or a similarly protected area or to prevent an adverse effect on a water body.

For example, if the insured’s own site is located in an area within the Natura 2000 network or a similarly protected area, the USKV cover the costs of preventing pollutants from the insured’s own site migrating to other parts of the protected area. If pollutants from the insured’s site could adversely affect a groundwater body, the USKV provide cover for the costs of preventing the pollutants from seeping or migrating into the groundwater body. The USKV do not cover the costs to refill an excavation that results from the remedial works at the insured’s site or other means of restoring the surface of the insured’s site unless the

18 Wasserrechtsgesetz 1959;
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010290 (in German)
competent authority specifically orders such works to protect the Natura 2000 network, a similarly protected area or the groundwater body.

In respect of the above, article 6 of the AHVB/EHVB provides cover for the costs of excavating to prevent the migration of pollutants from the insured’s own site provided there is a claim for bodily injury, property damage or economic loss (see section 3.4 above).

Property policies in Austria do not provide cover for remediating environmental damage at an insured’s own site; land is not ‘insured property’ under the policies. Some insurers offer an extension for remediating pollution caused by fire and fire-fighting water on the insured’s site.

3.6. Description of policies

3.6.1. Format

The USKV are integrated into general liability policies as an extension or an endorsement. They amend the AHVB/EHVB model terms and conditions (see section 1 above). As indicated above, insurers offer them only if they agree also to provide cover under article 6 of the AHVB/EHVB (see section 3.4 above).

Stand-alone environmental insurance policies for global insurance programmes tend to have a menu-type format so that the insured may select the insuring agreements it wishes to purchase.

3.6.2. Claims made or occurrence based

Stand-alone environmental insurance policies, with the exception of some policies for contractors that are underwritten on an occurrence basis, are underwritten on a claims made and reported basis. That is, a claim must be made against an insured during the policy period and the insured must report the claim to insurers during the policy period or any extended reporting period. Under an occurrence based policy, the environmental damage must occur during the policy period; the claim may occur after it.

The AHVB/EHVB are occurrence based with the exception of article 6, the trigger for which is the first verifiable discovery/detection of environmental damage that results in a potential or actual requirement to remediate the damage (Als Versicherungsfall wird die erste nachprüfbare Feststellung eines Umweltschadens aus dem Sanierungsverpflichtungen erwachsen oder erwachsen könnten) (see section 3.7.3 below).

The trigger for cover under the USKV mirrors the trigger for article 6. Under both the USKV and article 6, the first verifiable discovery/detection may occur up to two years after the termination of the policy. The incident that caused the environmental damage must occur during the policy period; the claim may occur after it.

In addition, the USKV provide cover for incidents that occurred before the inception of a policy that includes them provided that the incident occurred after the ELD had been transposed into the relevant Austrian law (see section 8.1 below) and the insured did not know and could not have known when the policy incepted that either the incident or the environmental damage had occurred.

As a practical matter, the USKV nearly always provide cover only for the costs of remediating environmental damage that occurs during the same policy period as the claim that is made against the insured and reported by the insured to insurers. This is because they provide cover only for environmental damage that results from a single, sudden and unforeseeable incident that disrupts the insured’s operations during the policy period and also because the insured must notify the insurer no later than one week after the insured becomes aware of the first
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verifiable discovery/detection of environmental damage that results, or may result, in a requirement to remediate the damage (see section 3.7.2 below).

3.6.3. Policies for operators

The predominant insurance cover for operators for ELD liabilities in Austria is the USKV that may be added to general liability policies provided the policy also includes article 6 of the AHVB/EHVB. As indicated above, stand-alone environmental insurance policies also provide cover for environmental damage under the ELD and environmental liabilities under other laws as well as other protection such as cover for business interruption. They are purchased much less commonly than the model terms and conditions and tend to be purchased by operators of industrial facilities that have operations in other States as well as Austria.

The USKV are added only to general liability policies. Insurers of motor policies may, however, agree to provide cover for claims for remediating environmental damage as well as civil liability claims despite the wording not specifically providing such cover. This obviously depends on the insurer that offers such a policy.

3.6.4. Policies for contractors and others

Contractors tend to purchase general liability policies that include the AHVB/UHVB and the USKV.

3.7. Model terms and conditions

3.7.1. Organisation issuing model terms and conditions

The VVO, which develops model terms and conditions for many common types of insurance policies for risks in Austria, issued the USKV in June 2009 at the same time that the ELD was transposed into Austrian federal law by the B-UHG.

3.7.2. Description of model terms and conditions

The VVO established a working group on the model terms and conditions in autumn 2005 before the deadline for Member States to transpose the ELD. Within a year, the main terms and conditions, which were based on the draft B-UHG, had been completed. The working group decided not to offer the terms and conditions as a stand-alone policy but, rather, to integrate them with the AHVB/EHVB.19

The USKV are thus based on the draft B-UHG and not drafts of the legislation that transposed the ELD into the law of the nine Bundesländer because drafts of the latter existed only for a few of them at that time. As indicated in section 1 above, the USKV nevertheless provide cover for the costs of remediating water, land and protected species and natural habitats under all the legislation that implements the ELD in Austrian law.

The USKV provide cover for the costs of remediation measures regardless of whether the insured carries out the remedial measures itself, reimburses a public authority or a third party for carrying out such measures, or whether the claim is made on the basis of public or civil law (see section 3.4 above).

19 See Robert Placr, Umweltsanierungskostenversicherung (USKV) auf Grundlage des Bundes-Umwelthaftungsgesetzes (B-UHG vom 19.6.2009); Vorstellung der Lösungsansätze (presentation); http://skiaudit.info/media/files/pdf/Placr.pdf (in German)
As indicated in section 3.6.2 above, the insured event (trigger for coverage) is the first verifiable discovery/detection of environmental damage that results in a potential or actual requirement to remediate the damage. The cause of the environmental damage must be a single, sudden and unforeseeable incident that disrupts (deviates from) the normal operations of the insured’s business. Cover is not provided if the environmental damage is caused by more than one incident such as spillages over a period of time. Cover is thus not provided for ‘gradual’ environmental damage.

As in other jurisdictions, such as the US, many interpretations of the words ‘gradual’ and ‘sudden’ exist. Under general Austrian insurance practice, the word ‘gradual’ tends to be understood as damage caused by ‘side effects’ of normal operations such as the emission of pollutants that occur and accumulate over time such as small spillages at a petrol filling station. Conversely, the rupture of an underground pipeline at the insured’s site that begins as a very small leakage and does not result in a visible leakage until months later tends to be understood as a ‘sudden’ incident.

An incident that results in a series of environmental damage is deemed to be a single incident. A single insured event includes the discovery of environmental damage caused by the same type of incidents that are linked within a temporal context provided that there is a legal, economic or technical context between the incidents.

Cover is provided, not only for the costs of remediating environmental damage to third-party land, but also for the costs of remediating damage to land, water and protected species and natural habitats that are owned, possessed (including rented or leased) or under the control of the insured, its dependents, or its shareholders or affiliated companies, provided the insured or persons acting on behalf of the insured have not caused the damage intentionally or by gross negligence. As indicated in section 3.5 above, however, the costs of remediating environmental damage on such a site are covered only to the extent that they are necessary to prevent pollutants emanating from the site to an area within the Natura 2000 network or a similarly protected area or a water body. They do not cover the costs of infilling excavations at the insured’s site or the restoration of the insured’s site following the measures to prevent the migration of the pollutants.

An exception to the requirement for an incident that disturbs the insured’s normal operations exists for environmental damage that is caused by an insured’s product provided that the damage does not result from the intended use of the product and would have occurred despite the intended use. An example of such a products liability case is an operator that purchased a filter that malfunctioned resulting in the release of toxic pollutants. In such a case, the operator would have recourse against the insured manufacturer.

Cover is specifically provided for the costs of primary, complementary and compensatory remediation of water and biodiversity damage, with the definitions tracking those of the ELD. The limits of liability for primary and complementary remediation are the costs of measures that are necessary to restore a damaged natural resource and/or its impaired services to baseline conditions, subject to the limits of liability of the applicable insurance policy. As indicated in section 3.3 above, the sub-limit of liability for compensatory remediation is recommended at 50% of the costs of the primary and complementary remediation, again subject to the limits of liability of the applicable insurance policy.

Cover for the costs of remediating land damage also tracks the ELD, especially in that the measures that are covered are specified as those that remove, control, contain or diminish the damage so that the land no longer poses a significant risk of adversely affecting human health pursuant to the current or approved future use of the land.
The USKV also provide cover for costs incurred by an insured operator in bringing a claim for reimbursement against a competent authority for the costs of carrying out remedial measures on the basis that a mandatory defence under the ELD applies, that is, on the basis that the environmental damage was caused by a third party or pursuant to an instruction from a public authority.

In order to be covered by the USKV, an insured must satisfy the following conditions:

- comply with applicable laws and standards including ISO (International Organisation for Standardisation) and CEN (Comité Européen de Normalisation; European Committee for Standardisation), and as applicable the guidelines of the Austrian Water and Waste Management Association (Österreichischer Wasser- und Abfallwirtschaftsverband; ÖWAV);
- comply with appropriate safety standards to prevent damage by a third party;
- carry out or arrange for expert maintenance of environmentally hazardous facilities or equipment; and
- carry out necessary repair and maintenance without delay.

In addition, the facilities and equipment covered by the USKV must be inspected by experts at least once every five years unless a shorter time period is prescribed by law. The five-year time period runs from the date on which the facility was commissioned or its most recent inspection by a competent authority regardless of when the policy containing the USKV incepted.

The USKV thus encourage an insured to carry out measures to prevent environmental damage. If the insured does not do so; cover is not available.

Exclusions in the AHVB that apply include the following:

- nuclear and radioactivity damage;
- the insured’s wilful and intentional acts and omissions including damage that the insured should have expected but for which the insured accepted the probability in order to save time or expense;
- the use of motor vehicles or trailers that are required to have an official licence plate except for their use as a power source;
- genetically modified organisms;
- electromagnetic fields; and
- asbestos.

The USKV also exclude cover for the following in addition to the above exclusions in the AHVB:

- environmental damage caused by hunting, fishing, nature conservation or water-related measures carried out under a permit;
- compliance with an order of a public authority, with a write back of cover20 for orders consequent on an imminent threat of, or actual, environmental damage;
- an emission or activity or any manner of using a product in the course of an activity that was not considered likely to cause environmental damage;
- environmental damage due to the design, construction, operation, maintenance, repair or abandonment of facilities for:

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20 That is, the USKV exclude cover for compliance with an order of a public authority with the exception of orders that are consequent on an imminent threat of, or actual, environmental damage. In other words, a ‘write back’ is an exception to an exclusion.
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- the interim storage of hazardous waste or the landfilling of any type of waste;
- underground pipelines and containers that do not have leak controls, and facilities for the treatment of effluent, sewage and waste; and
- facilities used for offshore exploration;
  - the alteration of a groundwater aquifer or the flow of water related to it;
  - the transfer of diseases to protected species; and
  - the costs of improvements, maintenance, repairs, retrofitting or refurbishing the insured’s facilities or other installations.

In respect of the first bullet point, cover would be excluded for water damage under the ELD caused by a hydro-electric power plant’s periodic shutting of its turbines pursuant to its pre Water Framework Directive (2000/60/EC) authorisation that resulted in significant adverse effects to the ecological status of the river downstream of the plant.\footnote{See Case C-529/15 Gert Folk v Unabhängiger Verwaltungssenat für die Steiermark [2017] ECLI:EU:C:2017:419. It is arguable whether an environmental insurance policy would provide cover for such damage due to the shutting of the turbines being intentional. An insured could make an argument that the death of fish caused by fluctuations in the river level, that is, the significant adverse effects on the ecological status of the river, was unintentional. Cover would not be provided, however, if the trigger of coverage under the policy for costs under the ELD had to arise from pollution.}

3.7.3. Relationship between policies with model terms and conditions and environmental insurance policies

As indicated above, stand-alone environmental insurance policies provide more extensive cover than the USKV but are purchased far less often. For example, environmental insurance policies purchased for global insurance programmes, which typically also provide cover for remediating pollution on an insured’s own site(s) may, depending on the individual policy, also provide cover for business interruption, transportation, claims arising out of the insured’s deposit of waste at a non-owned disposal site, claims for bodily injury and property damage, disaster response costs, etc.

The following are major differences between the USKV and stand-alone environmental insurance policies for liabilities under the ELD in Austria.

- Cover is provided by the USKV only for environmental damage that is caused by a single, sudden and unforeseeable incident that disrupts the normal operations of the insured’s business; cover is provided by stand-alone environmental insurance policies for environmental damage that is caused by gradual as well as by sudden incidents (but note the broad understanding of the meaning of the word ‘sudden’; see section 3.7.2 above).
- The USKV do not provide cover for remediating environmental damage at an insured’s own site unless measures at the insured’s site must be carried out to prevent contaminants from the insured’s site causing water damage or biodiversity damage at a third-party site – and only to that extent; stand-alone environmental insurance policies tend specifically to provide cover for remediating environmental damage at an insured’s own site.
- The USKV do not provide cover for preventive measures under the ELD; these are covered only if the costs of the measures fall within the term ‘rescue costs’ according to section 63 of the VersVG (see section 3.2 above); stand-alone environmental insurance policies virtually always provide such cover.


The USKV provide cover for environmental damage from the insured’s products; stand-alone environmental insurance policies tend to bar cover for products liability.

The USKV recommend a sub-limit of liability for compensatory remediation of 50% of the costs of primary and complementary remediation; stand-alone environmental insurance policies do not tend to have a sub-limit of liability for compensatory remediation but provide the limit of liability of the policy for it subject to an aggregate limit of liability.

As indicated in the first bullet point above, the USKV provide cover if, and only if, the environmental damage results from a single, sudden and unforeseeable incident that disrupts – or deviates from – the normal operations of the insured’s business. Together with their focus on changes in the status of water, air or land due to emissions (Umweltstörung ist die Beeinträchtigung der Beschaffenheit von Luft, Erdreich oder Gewässern durch Immissionen), this means that their main focus is on pollution. They would, however, provide cover for example for the costs of remediating damage to a protected habitat from an uncontrolled fire by a farmer burning crop stubble nearby because the fire would change the status of the air or soil. Most stand-alone environmental insurance policies also focus on pollution but also provide cover for all types of environmental damage under the ELD. Some stand-alone environmental insurance policies limit cover under the ELD to environmental damage caused by pollution.

3.8. Date of general availability of environmental insurance policies

Insurance cover for liabilities under the ELD has been widely available in Austria since transposition of the ELD into Austrian law. By that time, the VVO had issued the USKV to provide cover for ELD liabilities as an optional extension or endorsement to general liability policies. Stand-alone environmental insurance policies, especially issued via passporting, were also widely available by that time.

3.9. Environmental assessments and audits

It is not necessary for a prospective insured to carry out an environmental assessment or audit before being offered a policy that includes the USKV or a stand-alone environmental insurance policy.

The USKV, however, require an insured to have sites covered by them inspected by experts at least once every five years unless a shorter time period is prescribed by law (see section 3.7.2 above).

The premiums for stand-alone environmental insurance policies are affected by the insured’s environmental management systems and other measures to avoid or mitigate environmental damage.

3.10. Average premium

The USKV have become commoditised in Austria. Insurers do not charge a separate premium for their inclusion in a general liability policy – as they do for inclusion of article 6 of the AHVB/EHVB in the policy – unless the insured business has a high risk of causing environmental damage or the insured requires high limits of liability.

Due to the relative rarity of stand-alone environmental insurance policies for businesses based only in Austria and policies in global insurance programmes including sites outside Austria as well as in it, there is no average premium.
3.11. **Average policy limit**

The average sub-limit for an extension to a general liability policy for the USKV is EUR 1,000,000. The policy limit for them for a high risk insured may be the same as the limits of the general liability policy.

Due to the relative rarity of stand-alone environmental insurance policies for businesses with sites and/or operations only in Austria and policies in global insurance programmes including sites and/or facilities outside Austria as well as in it, there is no average policy limit.

3.12. **Average deductible or self-insured retention**

Depending on the type and size of operations carried out by the insured, the deductible may be less than EUR 10,000, or 10% of the limit of liability with a cap of EUR 50,000 or EUR 100,000.

Due again to the relative rarity of stand-alone environmental insurance policies for businesses with sites and/or operations only in Austria and policies in global insurance programmes including sites and/or operations outside Austria as well as in it, there is no average deductible or self-insured retention.

3.13. **Average policy period**

The policy period for the USKV is the period of time specified in the general liability policy of which they are a part.

The average policy period for stand-alone environmental insurance policies is one to three years.

3.14. **Sizes of typical insured businesses**

There is no typical size of insured business for the USKV. All types and sizes of businesses purchase them ranging from small to medium sized enterprises to large industrial facilities such as oil refineries.

Stand-alone environmental insurance policies in Austria tend to be purchased only by large operators as part of a global insurance programme.

3.15. **Industrial and commercial sectors that typically purchase policies**

The USKV are purchased by operators in many different types of industrial and commercial sectors.

Stand-alone environmental insurance policies are designed for all sizes of businesses that carry out polluting activities with the caveat that they tend to be purchased only by large operators as part of a global insurance programme.

3.16. **Industrial and commercial sectors with limited or no accessibility to policies**

The USKV bar cover for operators that carry out activities involving genetically modified organisms.

Stand-alone environmental insurance policies tend not to be offered to operators that carry out activities involving genetically modified organisms.

3.17. **Number and amount of claims**

There are no public reports of claims under the USKV or stand-alone environmental insurance policies in Austria.
3.18. **Coverage litigation**

There is no reported coverage litigation for the USKV or stand-alone environmental insurance policies in Austria.

3.19. **Cover for ELD liabilities in general liability policies**

The USKV are designed as an extension or endorsement to a general liability policy; they are not offered as a stand-alone environmental insurance policy.

3.20. **Cover for ELD liabilities in property policies**

Property policies in Austria do not provide cover for the costs of preventing or remediating environmental damage, including pollution, under the ELD or other legislation. The policies provide cover for damage to ‘insured property’; land is not classified as ‘insured property’ covered by the policies.

The USKV provide cover for ELD liabilities on an insured’s own site provided that the insured does not intentionally cause environmental damage or causes it by gross negligence. Such cover is available, however, only as described in sections 3.5 and 3.7.2 above.

4. **OTHER VOLUNTARY FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS**

4.1. **Type(s)**

Not applicable

4.2. **Availability**

Not applicable

5. **MANDATORY FINANCIAL SECURITY FOR ELD LIABILITIES (ARTICLE 14(1))**

There are no legislative provisions for mandatory financial security for ELD liabilities in Austria.

5.1. **Competent authority(ies)**

Not applicable

5.2. **Legislative provisions**

Not applicable

5.2.1. **Name(s) of legislation**

5.2.2. **Stand-alone requirement or hybrid**

5.2.3. **Consideration of mandatory financial security legislation (if not enacted)**

5.2.4. **Reasons for decision not to enact mandatory financial security legislation**

5.2.5. **Revisions to legislation**

5.2.6. **ELD liabilities covered by mandatory financial security**

5.2.7. **Description of mandatory financial security provisions**
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5.2.8. Exception for low risk sites

5.2.9. Exception for ISO 14001 certification or EMAS registration

5.2.10. Other exceptions

5.3. Environmental licence conditions

Environmental licences in Austria do not require operators to have evidence of financial security for ELD liabilities.

5.3.1. Stand-alone requirement or hybrid
Not applicable

5.3.2. Revisions to licensing requirements
Not applicable

5.3.3. ELD liabilities covered by mandatory financial security
Not applicable

5.3.4. Description of mandatory financial security conditions
Not applicable

5.4. Date of introduction
Not applicable

5.5. Effective date
Not applicable

5.6. Key reasons for introduction
Not applicable

5.7. Withdrawal of mandatory financial security
Not applicable

5.8. Guidance
Not applicable

5.9. Operators subject to mandatory financial security
Not applicable

5.10. Amounts and limits of mandatory financial security
Not applicable

5.11. Growth of mandatory financial security
Not applicable
6. **REGULATORY OVERSIGHT OF FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS**

6.1. **Review of financial security instruments or mechanisms**
Not applicable

6.2. **Financial security instruments and mechanisms accepted**
Not applicable

6.2.1. **Templates**

6.2.2. **Requirements for environmental insurance policies**

6.2.3. **Form of mandatory environmental insurance policy**

6.3. **Financial security instruments and mechanisms not acceptable**
Not applicable

6.4. **Time of review**
Not applicable

6.5. **Regulatory costs of review**
Not applicable

6.6. **Requirements for operator to review**
Not applicable

7. **ENFORCEMENT OF FINANCIAL SECURITY REQUIREMENTS**
Not applicable

8. **EX POST ENVIRONMENTAL DAMAGE MANDATORY FINANCIAL SECURITY (ARTICLE 8(2))**

Austrian law requires an operator that has caused environmental damage under the ELD to provide evidence of financial security for the costs of measures to remediate the damage if a competent authority carries out such measures. Austrian law does not require an operator that has caused environmental damage to provide evidence of financial security to ensure that the measures to remediate it are carried out by the operator.

The requirements concerning financial security for reimbursement of a competent authority differ between the federal State and the Bundesländer. As indicated in section 1 above, the reason for the nine Bundesländer having adopted legislation transposing the ELD as well as the federal Government is that the federal Government has exclusive competency for water, the Bundesländer have exclusive competency for nature conservation, and competency for land/soil is shared between them. The differences in the legislation are as follows.

**Federal State**: The B-UHG provides that if an authority carries out preventive or remedial measures that are subject to reimbursement by the operator, the authority shall, at the same time that it carries out the measures, order the operator to have financial security or other appropriate guarantee in the amount of the estimated cost of the measures. When the measures are completed, the financial security is offset against the order for costs. If the operator proves that either of the mandatory defences under the ELD apply (environmental
damage caused by a third party or compliance with an order from a public authority), the order for the costs is lifted.

**Burgenland, Carinthia, Styria, Tyrol, Upper Austria, Vienna:** The preventive and remediation costs provisions of the transposing legislation are the same as those of the federal Government in material part except that the provisions for each Land state that the financial guarantee must be in rem, that is, it must relate to real, not personal, property. If the operator proves that either of the mandatory defences under the ELD apply (environmental damage caused by a third party or compliance with an order from a public authority), the order for the costs is lifted.

**Lower Austria:** The provisions of the transposing legislation also state that the financial security shall be in the form of an in rem security or other appropriate guarantee. In addition, the provisions state that it may also be in cash or a deposit account that is not subject to transfer restrictions with a financial institution registered in the EU or in a manner that requires the institution to pay the security in the event of default. If the operator proves that either of the mandatory defences under the ELD apply (environmental damage caused by a third party or compliance with an order from a public authority), the order for the costs is lifted.

**Salzburg:** The provisions in the transposing legislation provide that the financial security may be in the form of an in rem security, cash or a deposit account not subject to transfer restrictions with a financial institution with a registered office or branch in Austria, another Member State, or a contracting State of the European Economic Area Agreement. In addition, the above financial security instruments may be in an institution that undertakes, as a guarantor and payor, to pay the costs. The costs of the remedial measures must be a priority of the security in all the above financial security instruments. If the operator proves that the second mandatory defence under the ELD applies (compliance with an order from a public authority), the order for the costs is lifted.

**Vorarlberg:** The transposing legislation does not mention financial security.

**8.1. Date legislation or policy for mandatory financial security introduced**

The *ex post* mandatory financial security for environmental damage was introduced on the same date as the transposition of the ELD into Austrian federal law and the law of each of the Bundesländer. That is, it was introduced on the following dates:

- Federal Government: 19 June 2009
- Burgenland: 11 January 2010
- Carinthia: 30 September 2009 and 19 February 2010
- Lower Austria: 5 August 2009
- Salzburg: 30 June 2010
- Styria: 10 February 2010
- Tyrol: 21 January 2010
- Upper Austria: 4 September 2009
- Vienna: 1 September 2009
- Vorarlberg: 2 February 2010

**8.2. Effective date for ex post mandatory financial security**

The effective dates for *ex post* mandatory financial security are the dates in section 8.1 above.
8.3. Financial security instruments and mechanisms accepted

Other than Lower Austria and Salzburg, acceptable financial security instruments and mechanisms are not specified in the legislation. No guidance or other specifications exist.

8.4. Financial security instruments and mechanisms not acceptable

Financial security instruments and mechanisms are not specified in the legislation. No guidance or other specifications exist.

9. Providers of mandatory financial security instruments

As indicated in section 5 above, there are no requirements for mandatory financial security under section 14(1) of the ELD. There are mandatory financial security requirements for ex post financial security provided a competent authority remedies environmental damage subject to reimbursement by the operator who caused the damage.

9.1. Insurers

Not applicable

9.2. Banks and other financial institutions

Not applicable

9.3. Sureties

Not applicable

9.4. Providers outside Member State

Not applicable

10. Measures taken by Member State to develop financial security markets

Austria has been active in raising awareness of the ELD but not specifically financial security for ELD liabilities.

The submission of Austria to the European Commission pursuant to then article 18(1) of the ELD in 2013 noted the availability of the USKV for ELD liabilities and also stand-alone environmental insurance policies.22

As indicated above, the VVO has been proactive. In particular, its introduction in 2009 of the USKV in general liability policies has resulted in most operators in Austria now having voluntary financial security for ELD liabilities either under the USKV or to a lesser extent under a stand-alone environmental insurance policy. As a result, Austria has a higher percentage of operators that have financial security for ELD liabilities than any other Member State except Germany in which model terms and conditions for ELD liabilities also exist.

This does not mean that operators in Austria have financial security for all ELD liabilities. As described in section 17 below, the USKV do not provide cover for gradual environmental damage (with the proviso that the word ‘sudden’ is given a broad meaning), the remediation of environmental damage on an insured’s own site that does not cause an off-site risk, preventive measures that are not ‘rescue costs’, and environmental damage that does not result from a deviation from normal operations. In addition, the USKV recommend a sub-limit of liability for compensatory remediation. Stand-alone environmental insurance policies that provide for ELD liabilities not covered by the USKV do not have such exceptions, but as indicated above the popularity of the USKV has resulted in a subdued demand for these.

11. EU ENVIRONMENTAL LEGISLATION WITH MANDATORY FINANCIAL SECURITY PROVISIONS

11.1. Landfill Directive

11.1.1. Competent authority(ies)

The competent authorities for the Landfill Directive, which is implemented in Austria by the Waste Management Act 2002 (Abfallwirtschaftsgesetz; AWG), are the Governors of the Bundesländer and the relevant District Administrative Authority (Landeshauptmann; Bezirksverwaltungsbehörde).

11.1.2. Financial security provisions

Section 48(2) of the Waste Management Act 2002 provides that when a competent authority issues an authorisation for the operation of a landfill, it must ensure that adequate financial security or the equivalent, such as a declaration of liability by a local authority or a water or waste association, is made to cover the costs of closure and post closure (aftercare) in the event that the operator cannot pay or becomes insolvent. Sections 48(2a) to 2(c) of the Act state that the amount of financial security is calculated on a case-by-case basis and is subject to adjustment every five years during the operational phase of the landfill.

If the operator fails to provide financial security, the competent authority may order the landfill to be closed. In such a case, the operator remains liable for the costs of closure and post closure.24

11.1.3. Financial security instruments and mechanisms accepted

Bank guarantees are acceptable financial security instruments. If the operator is a local authority or a water or waste association, a declaration of liability is also acceptable (see section 11.1.2 above).

11.1.4. Templates

There are no templates for the provision of financial security.


11.1.5. Financial security instruments and mechanisms not acceptable

There are no stated provisions of financial security instruments and mechanisms that are not acceptable.

11.2. Extractive Waste Directive

11.2.1. Competent authority(ies)

The competent authority for the Extractive Waste Directive (2006/21/EC), which is implemented in Austria at the federal level by the Mineral Raw Materials Act (Mineralrohstoffgesetz),\(^{25}\) is the Ministry of Economics and Labour (Bundesministerium für Wirtschaft und Arbeit). The competent authorities at regional level are the Governors of the Bundesländer and the relevant District Administrative Authority (Landeshauptmann; Bezirksverwaltungsbehörde).

11.2.2. Financial security provisions

Section 119a of the Mineral Raw Materials Act sets out, among other things, financial security provisions. Financial security is required for category A extractive waste disposal facilities. The security must be provided before the waste disposal facility is commissioned and must apply to decommissioning and restoration of the land used for the facility.

Section 119a(6) states that if the operator of the waste disposal facility does not carry out the measures to which the financial security applies, the financial security must be available to the competent authority as an asset to implement such measures, including the insolvency of the holder of the licence for the facility.

Section 119a further provides that the competent authority shall regularly verify the real value of the guarantee (den realen Wert der Sicherheitsleistung) and shall re-assess it if the relationship between it and its intended purpose has significantly changed. If the amount of the financial security needs to be increased, the holder of the licence for the waste disposal facility has a maximum of six months to provide the increased amount. If the amount is reduced, the competent authority shall immediately release the amount that exceeds the reduced amount. The financial security shall be released when it exceeds post-closure measures. Further, the financial security that is still available for mining damage (that is, bodily injury or property damage from the exploration and extraction of mineral raw materials) shall be released when mining damage is no longer expected.

11.2.3. Financial security instruments and mechanisms accepted

Section 119a(5) provides the following examples of financial security or their equivalent (eine finanzielle Sicherheitsleistung oder etwas Gleichwertiges):

- guarantee (Garantie);
- insurance (Versicherung);
- land register security (Grundbücherliche Sicherstellung);
- provision to be established under commercial law (Handelsrechtlich zu bildende Rückstellung); and

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\(^{25}\) Mineralrohstoffgesetz; https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008040 (in German)
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- the like (und dgl).

The usual instrument for financial security under the Mineral Raw Materials Act for extractive waste facilities in Austria is a bank guarantee followed by a deposit, an insurance policy, a frozen bank account, and a registration in the Land Register. In addition, a governmental authority may issue a declaration of liability.26

Further information concerning financial security is provided in Guidance on Extractive Waste (Leitfaden, Bergbauabfall).27 The Guidance states, among other things, that financial security shall be provided for measures to carry out conditions in the licence, and decommissioning and restoration of the land used by the waste disposal facility.

The Guidance refers to technical guidelines issued by the European Commission in establishing financial guarantees to manage waste from extractive industries.28 In addition, it reiterates the categories of acceptable financial security instruments and mechanisms set out in section 119a(5) of the Mineral Raw Materials Act.

11.2.4. Templates

There are no templates for financial security instruments.

11.2.5. Financial security instruments not acceptable

There are no stated provisions of financial security instruments and mechanisms that are not acceptable.

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27 Leitfaden, Bergbauabfall; https://www.wko.at/branchen/gewerbe-handwerk/bauhilfsgewerbe/Leitfaden-Bergbauabfallrecht.pdf (in German)

11.3. Carbon Capture and Storage Directive

11.3.1. Status of implementation

Austria banned the geological storage of carbon dioxide\(^{29}\) until 2018.\(^ {30}\) The ban is still in place with the exception of permitting for research.\(^ {31}\)

11.3.2. Competent authority(ies)

Not applicable

11.3.3. Financial security provisions

Not applicable

11.3.4. Financial security instruments and mechanisms accepted

Not applicable

11.3.5. Templates

Not applicable

11.3.6. Financial security instruments and mechanisms not acceptable

Not applicable

12. EU RECOMMENDATION ON HYDRAULIC FRACTURING

12.1. Status

Hydraulic fracturing (fracking) is permitted in Austria. The Mineral Resources Act (Mineralrohstoffgesetz), which governs licences for the exploration and production of unconventional, as well as conventional, oil and gas does not include any specific differences that apply to the exploration and production of unconventional oil and gas.\(^ {32}\)

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\(^{30}\) See H. Rütters and CGS Europe partners, ‘State of play on CO2 geological storage in 28 European countries’ (CGS Europe report No. D2.10, June 2013), 24; http://www.cgseurope.net/UserFiles/file/News/CGS%20Europe%20report%20_D2_10_State%20of%20play%20on%20CO2%20storage%20in%2028%20European%20countries(1).pdf


In 2012, the Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz*) was amended to require the preparation of an environmental impact assessment for the hydraulic fracturing of rock formations for unconventional oil and gas.\(^{33}\)

Before the amendment, the Ministry of Sustainability and Tourism (*Bundesministerium für Nachhaltigkeit und Tourismus*) had granted a licence for the exploration and production of hydrocarbons using ‘clean fracking’, that is, fracking for shale gas using only water, corn starch and quartz sands, in the Weinviertel area of Lower Austria to OMV Austria Exploration & Production GmbH. Following the amendment, the company decided not to progress its plans after deciding that the project was not economically feasible.\(^{34}\)

The Ministry had not granted any further permits for the exploration or production of unconventional oil and gas when this report was published. Further, there were no apparent plans for future production permits for shale gas when this report was published.\(^{35}\)

12.2. **Competent authority(ies)**

The competent authority for the exploration and production of oil and gas is the federal Ministry of Sustainability and Tourism. The government of the relevant Land (*Landesregierung*) is the competent authority for the requirement for an environmental impact assessment under the Environmental Impact Assessment Act.

12.3. **Financial security provisions**

The holder of a licence for the exploration or production of oil and gas must show that it is financially viable to carry out the obligations of the licence. The type of financial security and its scope is set out in a civil contract that is not publicly available.\(^{36}\)

The licence holder is not required to provide evidence of financial security for ELD liabilities.

12.4. **Financial security instruments and mechanisms accepted**

The Ministry determines the provision, and if so the type, of financial security that is required based on the financial standing of the applicant.\(^{37}\)

12.5. **Templates**

There are no templates for financial security instruments.

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\(^{34}\) See Milieu, ‘Study on the application in relevant member states of the Commission recommendation on minimum principles for the exploration and production of hydrocarbons (such as shale gas) using high-volume hydraulic fracturing; National Report: Austria’, 5; [https://www.fracrisk.eu/sites/default/files/Austria-2016-Milieu%26Ricardo.pdf](https://www.fracrisk.eu/sites/default/files/Austria-2016-Milieu%26Ricardo.pdf)


12.6. **Financial security instruments and mechanisms not acceptable**

See section 12.4 above.

13. **EU ENVIRONMENTAL LEGISLATION WITH NO MANDATORY FINANCIAL SECURITY PROVISIONS**

13.1. **Industrial Emissions Directive**

13.1.1. *Competent authority(ies)*

The competent authorities for the Industrial Emissions Directive (2010/75/EU), which is implemented in Austria by the AWG and the Emissions Control Act – Air (*Immissionsschutzgesetz – Luft*),\(^{38}\) are district authorities (*Bezirksverwaltungsbehörden*).

13.1.2. *Financial security provisions*

Neither of the Acts that implement the Industrial Emissions Directive in Austria contain mandatory financial security provisions.

13.1.3. *Financial security instruments and mechanisms accepted*

Not applicable

13.1.4. *Templates*

Not applicable

13.1.5. *Financial security instruments and mechanisms not acceptable*

Not applicable

13.2. **Seveso III Directive**

13.2.1. *Competent authority(ies)*

The competent authorities for the Seveso III Directive (2012/18/EU), which is implemented in Austria by various pieces of legislation including the Trade Regulation Act (*Gewerbeordnung*),\(^{39}\) the Mineral Raw Materials Act, the Emission Protection Law for Boiler Systems 2013 (*Emissionsschutzgesetz für Kesselanlagen 2013*),\(^{40}\) and the Waste Management Act 2002, are district authorities (*Bezirksverwaltungsbehörden*).

13.2.2. *Financial security provisions*

None of the pieces of legislation that implement the Seveso III Directive in Austria contain mandatory financial security provisions.

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\(^{38}\) *Immissionsschutzgesetz – Luft*; [https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011027](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10011027) (in German)

\(^{39}\) *Gewerbeordnung*; [https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10007517](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10007517) (in German)

\(^{40}\) *Emissionsschutzgesetz für Kesselanlagen 2013*; [https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008506](https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008506) (in German)
13.2.3. **Financial security instruments and mechanisms accepted**
Not applicable

13.2.4. **Templates**
Not applicable

13.2.5. **Financial security instruments and mechanisms not acceptable**
Not applicable

13.3. **Other legislation**
Whilst it is not required by EU legislation, section 79j of the Austrian Gene Technology Act (Österreichisches Gentechnikgesetz) provides that operators of gene technology laboratories or facilities must have financial security for their operations.\(^{41}\) Section 79a of the Act covers liability for bodily injury; section 79b covers liability for environmental impairment.\(^{42}\)

The competent authorities for activities associated with genetically modified organisms in Austria are as follows:

- Federal Ministry of Agriculture, Forestry, Environment and Water Management (now the Federal Ministry for Sustainability and Tourism), which is the competent authority for environmental aspects of deliberate release and the placing on the market of genetically modified products;
- Federal Ministry of Health and Women, which is responsible for the contained use and deliberate release of genetically modified organisms carried out by industry and research institutions except universities, plus genetically modified food and feed applications; and
- Federal Ministry of Science, Research and Economy, which is responsible for the contained use and deliberate release of genetically modified organisms carried out by universities and federal research institutions.\(^{43}\)

Article 79j provides that financial security may be in the form of liability insurance with an insurer authorised to carry out business in Austria or other appropriate instrument. The amount of financial security ranges from EUR 712,200 to EUR 4,069,700 depending on the type of operations. If the operator is the federal Government or another State, there is no requirement for financial security.

14. **Mandatory financial security for offshore oil and gas operations**

Austria does not have any offshore oil and gas operations because it is landlocked.


\(^{42}\) Austrian Gene Technology Act (consolidated version September 2018); [https://www.umweltbundesamt.at/umweltsituation/gentechnik/gentechnikgesetze/nationalegvogesetze/](https://www.umweltbundesamt.at/umweltsituation/gentechnik/gentechnikgesetze/nationalegvogesetze/) (in German)

\(^{43}\) Biosafety Clearing-House Austria; competent authorities in Austria; [https://www.biosafety.at/ms/biosafety/en/enbiosafety_authorities/](https://www.biosafety.at/ms/biosafety/en/enbiosafety_authorities/)
This does not mean that Austrian companies do not carry out offshore oil and gas operations. For example, OMV Aktiengesellschaft, an Austria energy company carries out drilling in Romanian offshore waters for oil and gas.

14.1. Competent authority(ies)
Not applicable

14.2. Status of offshore oil and gas operations
Not applicable

14.3. Requirements for financial security
Not applicable

14.4. Requirement for financial security for ELD liabilities
Not applicable

15. Failure of financial security

15.1. Inadequate level of financial security instrument or mechanism to pay claims
There were no reported incidents or cases of an inadequate level of financial security instrument or mechanism to pay claims when this report was published.

15.2. Insolvency of operator leading to failure of financial security instrument or mechanism
The legislation that transposed the ELD into law in Lower Austria provides that if the competent authority cannot recover its costs from a corporate entity that is an operator, the following persons are liable:

- a person who is distinct from the operator and who, on the basis of laws, articles of association or contractual arrangements, is assigned a certain influence on the occupational activity of the operator and ... who holds a significant participating interest in [the] company at the time of the event triggering the threat or the damage, if he or she has infringed the duties of care incumbent upon him or her as shareholder, especially if the operator at the time of the occurrence of the threat or damage does not possess the capital endowment to be deemed necessary according to economic principles for the occupational activity concerned.

Similar provisions are included in the legislation that transposed the ELD in the law of the other Bundesländer and the B-UHG.

15.3. Other
No reports of any other types of failures of financial security were available or provided.

16. Funds
Austria does not have a fund that provides funding for preventing and remediating environmental damage if the operator cannot be located or is not sufficiently financially viable.
16.1. Name(s)
Not applicable

16.2. Extension of existing fund to cover remedial costs under the ELD
Not applicable

16.3. Purpose
Not applicable

16.4. Type
Not applicable

16.5. Source(s) of funding
Not applicable

16.6. Number and amount of claims
Not applicable
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