Annex I

Czech Republic

Improving financial security in the context of the Environmental Liability Directive
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Improving financial security in the context of the Environmental Liability Directive

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1. INTRODUCTION

Financial security for the prevention and remediation of environmental damage under the ELD in the form of stand-alone environmental insurance policies is widely available in the Czech Republic with the caveat that only three insurers provide cover for gradual (as opposed to sudden and accidental) environmental damage.

Financial security for the remediation of sudden and accidental off-site pollution from an operator’s activities at its own site in the form of an extension to a general liability policy is widely available.

Environmental extensions to property policies are not available.

Environmental insurance policies that provide more extensive cover for ELD and other environmental liabilities offered by multinational insurers to businesses with sites and/or operations in the Czech Republic and other States, are widely available by passporting.

The Czech Republic transposed the ELD by Act No 167/2008 Coll., on prevention andremedyng environmental damage and amendment to some laws (Zákon č. 167/2008 Sb. o předcházení ekologické újmě a o její nápravě a o změně některých zákonů; Act 167/2008), as amended.1 Act 167/2008 came into force on 17 August 2008.

Mandatory financial security for ELD liabilities was established by section 14 of Act 167/2008 and Order No 295/2011 Coll. of 14 September 2011 (Nařízení vlády č. 295/2011 Sb. o způsobu hodnocení rizik ekologické újmy a bližších podmínkách finančního zajištění; Order 295/2011).2

In order to allow time for the introduction of the mandatory financial security system, the system came into effect on 1 January 2013.

The availability and demand for stand-alone environmental insurance policies has increased with the introduction of mandatory financial security for ELD liabilities. The demand has, however, been affected by the exceptions to the mandatory financial provisions of Act 167/2008 (see section 5.1 below), especially the exception for environmental damage that would cost more than CZK 20,000,000 (EUR 788,600) to remediate if the operator is registered under, or has begun procedures to be registered under, the EU Eco-Management and Audit Scheme (EMAS), or has an environmental management system certified by International Organisation for Standardisation (ISO) 14001 (UNE-EN ISO 14001:1996; ISO 14001), or shows that it has begun procedures for such registration (see section 5.2.9 below). Operators subject to this exception have tended to register for EMAS or ISO 14001 instead of purchasing a stand-alone environmental insurance policy to provide cover for ELD liabilities covered by the mandatory requirements.

The Czech Republic has established mandatory liability insurance for harm to human health and the environment and related harm, plus any damage resulting from closure of the landfill under the Landfill Directive (1999/31/EC).


Further, the Czech Republic has established mandatory liability insurance for damage resulting from a major incident under the Seveso III Directive (2012/18/EU).

2. ENVIRONMENTAL INSURANCE MARKET

The environmental insurance market in the Czech Republic is small but growing. The market began to grow after the transposition of the ELD on 17 August 2008, with the rate of growth increasing in 2013 after the introduction of the mandatory financial security system. The exception to the mandatory financial security system for registration for EMAS and ISO 14001 (see sections 1 above and 5.1 below) as well as the tendency for businesses subject to the system to assess their liabilities at a low level has kept demand for environmental insurance by businesses subject to the mandatory financial security system low. In addition, the low number of claims and low fines for pollution offences have affected demand for voluntary environmental insurance.

Stand-alone environmental insurance policies that provide cover for ELD and other environmental liabilities to businesses with sites and/or operations only in the Czech Republic are widely available but cover under some is limited to sudden and accidental pollution. Some policies limit or do not provide cover for biodiversity damage. Demand is low.

Extensions to general liability policies that provide cover for environmental liabilities are widely available. Cover tends to be limited to sudden and accidental incidents on an insured’s site that cause off-site pollution or bodily injury or property damage. Some extensions further limit cover to the remediation of off-site pollution that occurs within 72 hours after a pollution incident on an insured’s site. Others limit cover to off-site pollution caused by an incident involving a protective or containment device at an insured’s site. Many extensions do not provide cover for any ELD liabilities. No extensions provide cover for complementary or compensatory remediation. Demand is higher than demand for stand-alone environmental insurance policies but is still low.

Stand-alone environmental insurance policies from multinational insurers for large businesses with sites and/or operations in the Czech Republic and other Member States are widely available through passporting.

2.1. Commercial insurers

2.1.1. Number of insurers

Seven insurers based in, or with branches in, the Czech Republic offer stand-alone environmental insurance policies as well as environmental extensions to general liability policies.

In comparison, the Czech Insurance Association (Česká asociace pojišťoven) has 29 members.³

2.1.2. New insurers entering the market since 2009

Insurers in the environmental insurance market in the Czech Republic have tended to have been in the insurance market prior to 2009, with some beginning to offer cover for ELD and other environmental liabilities after 2009.

³ See Česká asociace pojišťoven (ČAP); https://www.insuranceeurope.eu/members/czech-republic-cz
2.1.3. Existing insurers that introduced environmental insurance policies since 2009
See section 2.1.2 above.

2.2. Re/insurance pools
There are no re/insurance pools that provide policies for ELD or other environmental liabilities in the Czech Republic.

2.2.1. Date of establishment
Not applicable

2.2.2. Descriptions of policies issued
Not applicable

2.3. Mutuals
No mutual in the Czech Republic offers environmental insurance policies.

2.3.1. Date of establishment
Not applicable

2.3.2. Descriptions of policies issued
Not applicable

2.4. Other
There are no captives, underwriting agencies, or other types of providers of environmental insurance policies in the Czech Republic.

3. Voluntary insurance policies for ELD and other environmental liabilities

3.1. Environmental insurance policies
Stand-alone environmental insurance policies are widely available in the Czech Republic for ELD and other environmental liabilities as well as other cover such as business interruption, and related legal expenses. The scope of cover depends on the insurer underwriting the policies (see section 3.6.3 below).

3.2. Cover for ELD preventive costs
Stand-alone environmental insurance policies in the Czech Republic generally provide cover for preventive measures under the ELD. The scope of cover depends on the insurer(s) underwriting the policies. Some policies provide cover for a broad scope of preventive and emergency costs; other policies provide more restrictive cover for such costs.

3.3. Cover for ELD primary, complementary and compensatory costs
Some stand-alone environmental insurance policies offered for risks in the Czech Republic provide cover for primary, complementary and compensatory costs under the ELD. Some policies limit, or do not provide, cover for biodiversity damage under the ELD.
3.4. Cover for non-ELD liabilities

Stand-alone environmental insurance policies in the Czech Republic generally provide cover for third-party claims for bodily injury and property damage from environmental damage in addition to liabilities from the ELD and other environmental legislation.

The policies do not provide cover for damage to on-site property in the form of buildings, other structures and equipment unless, under some policies, the damage results from carrying out remediation measures themselves.

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

Stand-alone environmental insurance policies offered for risks in the Czech Republic provide cover for the costs of remediating environmental damage, including soil and water pollution, caused by an insured to third-party sites as well as the costs of remediating such damage on an insured’s own site. Depending on the insurer, there may be limitations to the policy such as covering only sudden and accidental pollution.

3.6. Description of policies

3.6.1. Format

Stand-alone environmental insurance policies offered by insurers based in, or with branches in, the Czech Republic, as well as multinationals, generally have a menu format so that an insured may select the insuring agreement(s) it requires. There is a range of such policies with some policies providing more cover than others (see section 3.6.3 below).

3.6.2. Claims made or occurrence based

Stand-alone environmental insurance policies are underwritten on a claims made basis rather than an occurrence basis. That is, a claim must be made during the policy period or an extended reporting period, with the environmental damage from which the claim arose having to occur during the policy period.

Environmental extensions to general liability policies are underwritten on an occurrence basis.

3.6.3. Policies for operators

Insurers based in, or with branches in, the Czech Republic offer a range of environmental insurance policies to operators with sites and/or operations in the Czech Republic with the caveat that only three such insurers provide cover for gradual pollution. The policies are available to small to medium sized operators as well as large operators.

Depending on the insurer, the policies include insuring agreements for the following:

- the remediation of on-site and off-site environmental damage under the ELD caused by operations, including transportation, carried out by the insured operator;
- the remediation of pollution under other environmental legislation caused by operations, including transportation, carried out by the insured operator;
- emergency costs and costs of preventive measures under the ELD under the two above bullet points;
- third-party claims for bodily injury and property damage;
- third-party business interruption;
- the insured’s business interruption costs and extra expense caused by environmental damage including pollution; and
- related legal costs.
Only the first and third items are liabilities under the ELD and, thus, covered by the mandatory financial security system. The policies are thus designed to include, not only protection under the ELD but also protection under other public law as well as civil law and non-liability requirements.

In addition to specimen wordings for each type of policy, multinational insurers have libraries of standard endorsements for each type. They also draft manuscript endorsements to supplement the endorsements in their libraries to meet the needs of individual insureds, as necessary.

All environmental insurance policies offered by multinational insurers to operators with sites and/or operations only in the Czech Republic as well as sites and/or operations in the Czech Republic and other States are not necessarily designed for Czech operators. Some policies are specifically designed to reflect – and provide cover for – the legal and licensing situation in the Czech Republic; others are not.

3.6.4. **Policies for contractors and others**

Stand-alone environmental insurance policies that provide cover for ELD and other environmental liabilities are also available for contractors. The policies tend to provide similar types of cover as the policies for operators, as described in section 3.6.3 above, including liability for remediating sudden and accidental pollution at sites at which the contractor is carrying out operations in addition to the insured contractor’s own site.

Cost-cap policies that provide cover for remediating historic pollution (that is, provide cover in excess of an agreed level of remediation costs) are also available, with demand for them due to the remediation of properties owned by State-owned businesses in the communist era.

3.7. **Model terms and conditions**

There are no model terms and conditions for environmental insurance policies, endorsements to other policies, or any other financial security instruments for ELD or other environmental liabilities in the Czech Republic.

3.7.1. **Organisation issuing model terms and conditions**

Not applicable

3.7.2. **Description of model terms and conditions**

Not applicable

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

Not applicable

3.8. **Date of general availability of environmental insurance policies**

Stand-alone environmental insurance policies and environmental extensions to general liability policies have been generally available since the ELD was transposed into Czech law on 17 August 2008. Their availability increased with the introduction of mandatory financial security in 2013.

3.9. **Environmental assessments and audits**

Insurers that offer stand-alone environmental insurance policies tend not to require prospective insureds to carry out environmental assessments and audits for their operations.
If the operators have already carried out such assessments and audits, they provide them to insurers as part of the underwriting due diligence process.

3.10. **Average premium**
No information was available on the average premium for a stand-alone environmental insurance policy.

3.11. **Average policy limit**
No information was available on the average policy limit for a stand-alone environmental insurance policy.

3.12. **Average deductible or self-insured retention**
No information was available on the average deductible (excess) or self-insured retention for a stand-alone environmental insurance policy.

3.13. **Average policy period**
No information was available on the average policy period for a stand-alone environmental insurance policy offered by an insurer based in, or with branches in, the Czech Republic.

The average policy period for a stand-alone environmental insurance policy offered by a multinational environmental insurer ranges from one to three years.

3.14. **Sizes of typical insured businesses**
There is no typical size of purchaser of environmental insurance in the Czech Republic.

3.15. **Industrial and commercial sectors that typically purchase policies**
No information was available on the industrial and commercial sectors that typically purchase stand-alone environmental insurance policies or environmental extensions to general liability policies.

3.16. **Industrial and commercial sectors with limited or no accessibility to policies**
No information was available on whether there are industrial or commercial sectors that have limited or no access to stand-alone environmental insurance policies or environmental extensions to general liability policies.

3.17. **Number and amount of claims**
No information was available on the number and amount of claims against environmental insurance policies and environmental extensions to general liability policies with the caveat that the number is low.

3.18. **Coverage litigation**
There is no reported litigation on whether an environmental insurance policy or extension provides cover for ELD liabilities.

3.19. **Cover for ELD liabilities in general liability policies**
Extensions to general liability policies that provide limited cover for environmental liabilities are available (see section 2 above).
3.20. **Cover for ELD liabilities in property policies**

Extensions to property policies to provide cover for environmental, including ELD, liabilities are not available.

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

4.1. **Type(s)**

Voluntary financial security instruments such as bank guarantees, bonds, etc. are not generally available for liabilities under the ELD or other environmental legislation. There is no demand for them because they are geared towards mandatory financial security requirements for known responsibilities such as closure and post closure (aftercare) of a landfill, not voluntary financial security for accidental ELD incidents.

4.2. **Availability**

Not applicable

5. **Mandatory financial security for ELD liabilities (Article 14(1))**

5.1. **Competent authority(ies)**

The Ministry of the Environment (*Ministerstvo životního prostředí*) is the competent authority for mandatory financial security for ELD liabilities.

The competent authorities for implementing other ELD requirements are:

- Environmental Inspectorate (*Inspekce životního prostředí*);
- administrations of national parks and protected landscapes; and
- military district authorities for areas under military control.

5.2. **Legislative provisions**

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

Section 14 of Act 167/2008 sets out mandatory financial security requirements.

Order 295/2011 sets out the methodology for self-assessment by businesses to determine whether they are subject to the mandatory financial security system.

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

Mandatory financial security for ELD liabilities is a stand-alone requirement. It is not combined with financial security for environmental responsibilities such as the closure of a landfill or an extractive waste facility.

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

Not applicable

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

Not applicable

5.2.5. **Revisions to legislation**

Neither Section 14 of Act 167/2008 nor Order 295/2011 have been revised.
5.2.6. **ELD liabilities covered by mandatory financial security**

All ELD liabilities (that is, preventive measures and primary, complementary and compensatory remediation) are subject to mandatory financial security.

5.2.7. **Description of mandatory financial security provisions**

The following describes the mandatory financial security system with the caveat that exceptions to the system exist, as described in sections 5.2.8 to 5.2.10 below.

Section 14(1) of Act 167/2008 provides that an operator that carries out activities under annex 1 of the Act must have financial security (finanční zajištění) during the entire period of such activities. Annex 1 is not identical to, but correlates with, annex III of the ELD.

The scope of financial security corresponds to the potential costs and severity of the risk of environmental damage that may be caused by the activities. In order to determine the extent, the operator must carry out a risk assessment. If there are significant changes in the activities, the operator must revise the assessment.

Section 14(2) prohibits any activities under annex 1 of Act 167/2008 being carried out in the absence of financial security for them.

Section 14(5) states that the methodology for risk assessments and the criteria for assessing sufficient financial security for measures to prevent and remediate environmental damage will be determined by a government regulation.

That government regulation is Order 295/2011, section 3 of which requires a risk assessment to be carried out for each activity carried out by an annex 1 operator. Each assessment is based on the likelihood of the occurrence of environmental damage from the activity and the potential seriousness of its environmental effects.

Risk assessments for activities set out in items 11 to 13 of annex 1 are carried out only for objects and equipment intended for temporary storage or for the loading and unloading of owned and leased materials during transportation. Item 11 is the transportation of dangerous chemical substances and products by pipeline or rail, road, inland waterway, air or sea. Item 12 is the disposal of genetically modified organisms and genetically modified products. Item 13 is the cross-border transportation of waste to, from, and through the Czech Republic.

An operator that is subject to mandatory financial security requirements must carry out a basic assessment of the risks of environmental damage (základní hodnocení rizika). Control points (kontrolní body) are applied to rank the risks. If the total number of control points is less than 50, the costs of remediating environmental damage are deemed to be less than CZK 20,000,000 (EUR 783,800). That is, numeric values from a set scale are calculated to reflect the various risks. The final ‘score’ for the site reflects whether the cost of remediating environmental damage is less than, or exceeds, CZK 20,000,000.

If the total number of control points from the basic risk assessment exceeds 50, the operator must carry out a detailed risk assessment (podrobné hodnocení rizika).

If an operator that is registered under, or has begun procedures to be registered under EMAS, or has an environmental management system certified by ISO 14001, or shows that it has begun procedures for such registration, section 3(5) of Order 295/2011 provides that the operator is required only to carry out a basic risk assessment.

Section 4 of Order 295/2011 specifies the following items to be included in a basic risk assessment:
• a summary of basic information on the operator and the location of the activity for which the risk assessment is carried out;
• identification and description of the activities or equipment, indicating the type and quantity of substances that may cause environmental damage at the location for which the risk assessment is carried out, taking into account cumulative effects of the activities;
• a description of the environment surrounding the location of the activities in terms of its potential for environmental damage, including distances from the activities and equipment to it;
• the foreseeable likelihood of environmental damage and an estimate of its consequences;
• data concerning any previous accidents and environmental damage; and
• the total number of control points for the basic risk assessment after assessing the above factors.

Section 5 of Order 295/2011 specifies the following items to be included in a detailed risk assessment:

• a summary of basic information on the operator and the location of the activity for which the risk assessment is carried out (as in the basic risk assessment);
• the total number of control points from the basic risk assessment;
• identification and description of the activities or equipment, indicating the type and quantity of substances that may cause environmental damage at the location where the relevant activities are carried out, taking into account their cumulative effects (again as in the basic risk assessment);
• a description of the environment surrounding the location of the activities in terms of its potential for environmental damage, including distances from the activities and equipment to it (again as in the basic risk assessment);
• the foreseeable likelihood of other events that may cause environmental damage, an estimate of their frequency and the degree of environmental damage including existing and proposed corrective measures; and
• a proposal for ways to eliminate emergency situations of environmental damage including the implementation of corrective measures and an evaluation of them.

Section 5(3) of Order 295/2011 provides that if the operator is in Group A of Act No 59/2006 Coll., on the prevention of major accidents caused by selected hazardous chemicals or chemical products (Zákon č. 59/2006 Sb. Zákon o prevenci závažných havárií způsobených vybranými nebezpečnými chemickými látkami nebo chemickými přípravky; Act on the prevention of major accidents), the detailed risk assessment shall include only parts D and F of annex 2 to the Order. If the operator is in Group B of the Act on the prevention of major accidents, the detailed risk assessment shall include only part F of annex 2 to the Order.

Part D of annex 2 concerns: protected species and natural habitats; residential buildings and facilities that would be affected in terms of risks to human health; meteorological, water, geological and hydrogeological conditions; topography including the source and receptor of

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pollutants; and data on land use and demographics in respect of a serious risk of adverse effects on human health from land contamination.

Part F of annex 2 concerns the determination of corrective actions; their appropriateness and feasibility; the cost of implementing measures to remEDIATE environmental damage; an assessment of benefits from such corrective actions; and an assessment of inherent uncertainties.

Section 6 of Order 295/2011 sets out criteria for the assessment of financial security for preventive and corrective measures.

The criterion for assessing the basic risk assessment submitted by an operator is the evaluated number of control points in accordance with annex 1 of the Order.

The criteria for assessing the detailed risk assessment submitted by an operator are set out in annex 2 to the Order. They also include whether the assessment corresponds to the current situation at the location of the activity and its location.

The criteria for assessing sufficient financial security are:

- proof of the security provided by the financial security instrument;
- the amount of financial security in view of the assessed risk of environmental damage;
- the types of environmental damage to which the financial security relates; and
- any restrictions in the financial security instrument that are incompatible with the assessed risk.

Annex 3 to the Order sets out control points for a basic risk assessment and control points for a detailed risk assessment. Factors that must be considered in assessing whether financial security is sufficient include whether all relevant scenarios that could lead to environmental damage have been identified, whether the scenarios are realistic, whether all circumstances such as human error, floods, forest fires, etc. have been identified, etc.

Annex 4 to the Order sets out factors for an evaluation of the financial security instrument in relation to proposed preventive and remedial measures. Annex 4 refers to activities not listed in annex 1 of Act 167/2008 as well as activities listed in annex 1. It states that the financial security must cover the cost of preventive and remedial measures for environmental damage to soil and water as well as protected species and natural habitats.

5.2.8. Exception for low risk sites

As indicated in section 5.2.7 above, if the total number of control points for the basic risk assessment is less than 50, the costs of remediating environmental damage are deemed to be less than CZK 20,000,000 (EUR 783,800). In this is the case, section 14(3) of Act 167/2008 excludes the activity from the mandatory financial security requirements.

Due to businesses having tended to assess their potential liabilities under the ELD at a low level, this exception excludes many businesses from the mandatory financial security system.

5.2.9. Exception for ISO 14001 certification or EMAS registration

If a risk assessment indicates that environmental damage caused by the activity for which the risk assessment is carried out would cost more than CZK 20,000,000 to remEDIATE, section 14(3) excludes the activity from the mandatory financial security requirements provided that the operator is registered, or shows that it has begun procedures to be registered, under EMAS or is certified, or has begun procedures for certification, under ISO 14001.

This exception has further depressed the demand for environmental insurance to meet financial security requirements.
In April 2019, the Czech Republic had 46 EMAS sites, the 12th highest number in the EU. The Czech Republic also had 20 EMAS certified organisations, the 13th highest number in the EU.\(^5\) The ISO survey of 2018 (the latest survey when this report was published) showed that the Czech Republic had 4,624 sites and 4,266 ISO 14001 certifications in 2018,\(^6\) the 11th highest number of sites in Europe and the 7th highest number of certifications in Europe.

5.2.10. Other exceptions

If an operator discharges wastewater that does not contain hazardous substances or particularly hazardous substances (nebezpečné závodné látky nebo zvlášť nebezpečné závodné látky), section 14(4) of Act 167/2008 excludes the operator from the mandatory financial security requirements.

5.3. Environmental licence conditions

As indicated in section 5.2 above, mandatory financial security for ELD liabilities in the Czech Republic is established by legislation and not by conditions in environmental licences.

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

Order 295/2011, which established the mandatory financial security system, was enacted on 12 October 2011.

5.5. Effective date

Order 295/2011 became effective on 1 January 2012.

Section 29 of Act 167/2008 states that section 14(5) of that Act was to be effective on 30 April 2011 and sections 14(1) to (4) were to be effective on 1 January 2013. That is, the procedures for issuing the methodology for self-assessment came into effect on 30 April 2011, with all other financial security provisions coming into effect on 1 January 2013.

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5.6. **Key reasons for introduction**
The key reason for the introduction of mandatory financial security was to comply with the polluter pays principle in the event of ‘major’ environmental damage.

5.7. **Withdrawal of mandatory financial security**
Not applicable

5.8. **Guidance**
The Ministry of the Environment has published two sets of guidance for assessing risks of environmental damage:

- Methodological guidance of the Ministry of the Environment for the implementation of the basic risk assessment for environmental damage (*Metodický pokyn MŽP pro provádění základního hodnocení rizika ekologické újmy*);\(^7\) and
- Methodological instruction of the Department of Environmental Risks and Environmental Damage of the Ministry of the Environment for carrying out a detailed assessment of the risk of environmental damage (*Metodický pokyn odboru environmentálních rizik a ekologických škod Ministerstva životního prostředí pro provádění podrobného hodnocení rizika ekologické újmy*).\(^8\)

The Methodological instruction has two annexes. Annex 1 (*Příloha č. 1*) sets out the framework guidance for the costs of remedying environmental damage to soil.\(^9\) Annex 2 (*Příloha č. 2*)\(^10\) sets out basic methodological guidance for protected species and natural habitats, including complementary and compensatory remediation as well as primary remediation. In doing so, annex 2 refers to the Resource Equivalency Methods for Assessing Environmental Damage in the EU (REMEDE).

5.9. **Operators subject to mandatory financial security**
All operators that carry out activities listed in annex 1 to Act 167/2008 are subject to self-assessment for mandatory financial security requirements with the exception of specified operators under Act No 254/2001 Coll., on waters and amending certain laws (*254/2001 Sb.*

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Zákon ze dne 28. června 2001 o vodách a o změně některých zákonů (vodní zákon); Water Act).¹¹
Section 3(6) of Order 295/2011 provides that an operator that treats harmful substances, hazardous substances or particularly hazardous substances under the Water Act in total quantities below the limits set out in part B of annex 1 to the Order is not required to carry out a risk assessment.

5.10. Amounts and limits of mandatory financial security
The amounts and limits of mandatory financial security are calculated according to a basic risk assessment or a detailed risk assessment (see section 5.2.7 above).

5.11. Growth of mandatory financial security
During 1999 and 2004, the development of environmental insurance was a priority task under the National Policy for the Natural Environment of the Czech Republic.¹² Its development continued after that time.
The scope of the mandatory financial security system has not changed since its introduction on 1 January 2013.

6. REGULATORY OVERSIGHT OF FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS

6.1. Review of financial security instruments or mechanisms
Section 14(2) of Act 167/2008 prohibits any activities under annex 1 of the Act being carried out in the absence of financial security for them.
Environmental insurance policies are not subject to approval by the competent authority.

6.2. Financial security instruments and mechanisms accepted
Annex 4 of Order 295/2011 states that financial security shall consist of a combination of insurance and banking products (kumulace pojistných a bankovních produktů) or a combination of insurance and other products (kumulace pojistných a jiných produktů).
Environmental insurance policies and bank guarantees are acceptable financial security instruments. In practice, stand-alone environmental insurance policies are used rather than bank guarantees.

6.2.1. Templates
There are no templates for mandatory financial security instruments.

6.2.2. Requirements for environmental insurance policies
There are no specific requirements for the contents of environmental insurance policies. Order 295/2011 does not specify the type of environmental insurance (whether a stand-alone

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6.2.3. Form of mandatory environmental insurance policy
There are no specific requirements for the format of an environmental insurance policy that satisfies mandatory financial security requirements.

6.3. Financial security instruments and mechanisms not acceptable
There is no list of financial security instruments and mechanisms that are not acceptable. Instead, Annex 4 of Order 295/2011 specifies instruments and combinations that are acceptable.

6.4. Time of review
The competent authorities have established a system to review financial security instruments and mechanisms for obligations with the mandatory financial security system for ELD liabilities.

The Environmental Inspectorate carries out reviews to check that operators subject to the mandatory financial security system have financial security. The Inspectorate also reviews self-assessments.

6.5. Regulatory costs of review
The competent authority does not charge an operator for reviewing the risk assessments or the financial security instruments submitted to it.

6.6. Requirements for operator to review
An operator must review the financial security instrument whenever there are any significant changes to its operations by variations to a permit or its renewal.

7. Enforcement of financial security requirements
There are no cases in the Czech Republic in which an operator that has failed to comply with the mandatory financial security system has been prohibited from carrying out its operations or has been subject to any other sanctions.

8. Ex post environmental damage mandatory financial security (Article 8(2))
There are no requirements for ex post financial security for ELD liabilities in the Czech Republic. Such requirements are, however, covered by the mandatory financial security system provided the system applies to an operator that has caused an imminent threat of, or actual, environmental damage, and further provided that the operator is not exempt from the system.

8.1. Date legislation or policy for mandatory financial security introduced
Not applicable

8.2. Effective date for ex post mandatory financial security
Not applicable
8.3. Financial security instruments and mechanisms accepted
Not applicable

8.4. Financial security instruments and mechanisms not acceptable
Not applicable

9. PROVIDERS OF MANDATORY FINANCIAL SECURITY INSTRUMENTS

9.1. Insurers
Stand-alone environmental insurance policies underwritten for ELD risks in the Czech Republic include provisions to satisfy the mandatory financial security requirements for ELD liabilities with the caveat that some policies have limitations such as providing cover only for sudden and accidental pollution.

9.2. Banks and other financial institutions
Banks and other financial institutions may offer financial security instruments for the mandatory financial security system under the ELD, although environmental insurance is used in practice. Banks and other financial institutions also offer financial security instruments for responsibilities under the Landfill Directive and Extractive Waste Directive (see sections 11.1.2 and 12.1.2 below).

9.3. Sureties
Sureties do not offer bonds for liabilities under the ELD. They may offer bonds for financial security instruments for responsibilities under the Landfill Directive and Extractive Waste Directive (see sections 11.1.2 and 12.1.2 below).

9.4. Providers outside Member State
Multinational insurers based in Member States other than the Czech Republic offer insurance policies to provide cover for ELD and other environmental risks in the Czech Republic through passporting.

10. MEASURES TAKEN BY MEMBER STATE TO DEVELOP FINANCIAL SECURITY MARKETS

The introduction of mandatory financial security for ELD liabilities in the Czech Republic encouraged the development of a financial security market albeit subject to wide exceptions.

11. EU ENVIRONMENTAL LEGISLATION WITH MANDATORY FINANCIAL SECURITY PROVISIONS

11.1. Landfill Directive

11.1.1. Competent authority(ies)
The competent authority for the Landfill Directive, which is implemented in the Czech Republic by Act No 185/2001 Coll. on Waste and on amendments to certain other acts, as amended (Zákon č. 185/2001 Sb. o odpadech a o změně některých dalších zákonů; Act 185/2001), is

the Ministry of the Environment, Regional Office (Ministerstvo životního prostředí; Krajský úřad).

11.1.2. Financial security provisions

Section 48a of Act 185/2001 requires the operator of a landfill to have the following financial security instruments before it may begin operations:

a) liability insurance for damage to human health and the environment and related harm caused by the operation of part or all of the landfill, and any damage resulting from its closure during the operational phase (odpovědnosti za škodu na životním prostředí na zdraví a na věci způsobenou provozem skládky nebo její části v první fázi provozu skládky a za škodu vzniklou z důvodu ukončení provozu během první fáze provozu skládky);

b) a dedicated bank account into which funds necessary to remedy the damage in a) above are deposited; or

c) a guarantee issued by a legal person authorised to provide guarantees to ensure the cost of remedying the damage under a) above, with the guarantee remaining in effect for the entire operational phase of the landfill.

Although section 48a.c) does not specifically state that the guarantee must be issued by a bank, Act 185/2001 refers to the Banking Act. Accordingly, section 48a.c) limits the type of guarantee specified in it to a guarantee issued by a bank.

The amount of funds for potential damage, their extent and their amount, indicated in a) above, must be provided by an authorised expert. Interest on the funds in the bank account indicated in b) above are retained in the account. Further, funds may be withdrawn from the bank account only for the purpose stated in the account and only with the consent of the relevant Regional Office. The account may be cancelled after the first phase of part or all of the operation of the landfill with the consent of the Regional Office after any damages have been paid or there is no potential for such damage.

Section 48a thus goes beyond the mandatory financial security requirements in the Landfill Directive in that financial security in the form of an insurance policy, a dedicated bank account or a bank guarantee, is required, not only for closure and post-closure costs, but also for harm to human health and the environment and related harm, and any damage resulting from closure of the landfill during the operational phase.

Section 49 of Act 185/2001 requires the operator of the landfill to create a financial reserve into which to deposit funds for the costs of closure, post closure and restoration of the site of each landfill.

Section 50 provides among other things that on the last day of each month the operator must transfer the funds in the financial reserve to a dedicated bank account for each landfill.

Section 51 provides among other things that if the operator of the landfill ceases to exist before termination of post-closure care for the landfill, the bank shall transfer the unused part of the financial reserve to the State Environmental Fund and notify the Regional Office. The State Environmental Fund then places the funds in a dedicated bank account for the use of the person who will ensure post-closure measures and restoration. Any unused part of the financial reserve is released to the operator of the landfill or its legal successor following post closure. If the legal successor is unknown or does not exist, the funds are transferred to the municipality in the district in which the landfill is located or, if the landfill is located in more than one municipality, divided proportionately between them.

Section 51(4) sets out the amount of the financial reserve as follows:
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- CZK 100 (EUR 3.91) per ton of deposited hazardous waste or waste listed in Group 20 of the Waste Catalogue with the exception of asbestos waste; and
- CZK 35 (EUR 1.37) per ton of deposited other waste and asbestos waste, waste deposited to secure the landfill, and asbestos waste.

Section 51(5) states that the Ministry shall issue a Decree to set out the method for creating and drawing on the financial reserve. This Decree is Decree 294/2005 Coll. of 11 July 2005 on the conditions of dumping and the use of waste on the ground surface and amending Decree No 383/2001 Coll. on the details of waste management (294/2005 Sb. Vyhláška ze dne 11. července 2005 o podmínkách ukládání odpadů na skládky a jejich využívání na povrchu terénu a změně vyhlášky č. 383/2001 Sb., o podrobnostech nakládání s odpady).

Section 52 of Act 185/2001 provides among other things that the post-closure phase of the landfill shall be not less than 30 years.

11.1.3. Financial security instruments and mechanisms accepted
Acceptable financial security instruments are liability insurance, a dedicated bank account or a guarantee and a financial reserve as described in section 11.1.2 above.

11.1.4. Templates
There are no applicable templates.

11.1.5. Financial security instruments and mechanisms not acceptable
There is no list of financial security instruments or 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 the Czech Republic by Act No 157/2009 Coll. on the management of extractive waste and on amendments to certain acts (Zákon č. 157/2009 Sb. o nakládání s těžebním odpadem a o změně některých zákonů; Act 157/2009), is the Czech Mining Office; District Mining Office (Český báňský úřad; Obvodní báňský úřad).

11.2.2. Financial security provisions
Section 13 of Act 157/2009 provides that the operator of an extractive waste facility must create a dedicated financial reserve before commencing the management of extractive waste. The amount of the reserve must be in accordance with the activities related to the management of extractive waste, with the amount to be calculated based on the evaluation of necessary restoration measures carried out by an independent and qualified third party.

The amount of the financial reserve is adjusted every five years with the consent of the District Mining Authority so that it complies with the remediation and restoration work to be carried out.

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out in the area affected by the operation of the waste storage site as described in the plan and operating permit for the storage site.

Section 3 of Ordinance No 428/2009 Coll. on implementation of certain provisions of the Act on the management of extractive waste (Vyhláška č. 428/2009 Sb. Vyhláška o provedení některých ustanovení zákona o nakládání s těžebním odpadem)\(^{16}\) sets out the method for calculating and using the financial reserve.

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

The only acceptable financial security instrument is a financial reserve with funds to be transferred to a dedicated bank account each month.

Section 3, part 2.b. of Ordinance 428/2009 Coll. states that the funds must be available in a special tied (dedicated) account within a specified period of time as determined by the plan and authorisation for the storage site.

11.2.4. **Templates**

There are no applicable templates.

11.2.5. **Financial security instruments not acceptable**

There is no list of financial security instruments or mechanisms that are not acceptable; the only acceptable financial security instrument is a financial reserve with funds to be transferred to a dedicated bank account each month.

11.3. **Carbon Capture and Storage Directive**

11.3.1. **Status of implementation**

The Czech Republic has been investigating the technical and economic feasibility of applying carbon capture and storage in its territory with funding from EEA Grants and Norway Grants.\(^{17}\)

11.3.2. **Competent authority(ies)**

The competent authority for the Directive on the geological storage of carbon dioxide (2009/31/EC), which is implemented in the Czech Republic by Act No 85/2012 Coll., on the storage of carbon dioxide in natural rock structures and on amendments to certain acts (Zákon č. 85/2012 Sb., o ukládání oxidu uhličitého do přírodních horninových struktur a o změně některých zákonů; Act 85/2012),\(^{18}\) is the Czech Mining Office; District Mining Office.

11.3.3. **Financial security provisions**

Section 15 of Act 85/2012 provides that an applicant for a permit to operate a storage site for carbon dioxide must show that it is able to provide appropriate financial security to cover:

- risks during the operation and aftercare of the storage site; and

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• expected costs of carrying out obligations under the permit during the closure and post-closure phases and the transfer of obligations.

Section 16(3) provides that financial security must be effective before injection of carbon dioxide commences and must remain valid and effective after closure of the site until the decision to transfer obligations is approved and becomes effective, or before the permit for operation of the site is cancelled and a new permit comes into force. Section 16(4) provides that any changes in the financial security including adjustments to them must be approved by the District Mining Office.

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

Section 16(1) states that the following are acceptable financial security instruments:

• insurance;
• dedicated bank account;
• bank guarantee; and
• financial reinsurance.

Section 16(5) provides that multiple financial security instruments for multiple storage sites may be merged provided their effectiveness is not jeopardised.

Section 16(6) provides for the withdrawal of funds by the District Mining Office for specified purposes.

Section 16(7) provides that funds deposited in a dedicated bank account must not be subject to reinsurance and must not be included in the operator’s assets, or be subject to enforcement or execution.

11.3.5. **Templates**

There are no templates for financial security instruments.

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

There is no list of financial security instruments or mechanisms that are not acceptable.

12. **EU Recommendation on Hydraulic Fracturing**

12.1. **Status**

In 2013, the Upper Chamber of the Czech Republic proposed a draft Bill to prohibit hydraulic fracturing (fracking). In addition, the Ministry of the Environment considered imposing a moratorium. Although both of these failed, the Ministry of the Environment subsequently rejected applications for permission to carry out surveys for fracking from several companies.19

In 2017, the Czech Government published its new raw materials policy (*Surovinova politika ČR v oblasti nerostných surovin a jejich zdrojů - MPO 2017*). The policy states, among other things, that until the potential environmental risks of unconventional exploration and production of

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19 See Václav Rovenský and Tomáš Sequens, ‘Environmental law and practice in Czech Republic: overview’ (Practical law, 1 April 2015); [https://uk.practicallaw.thomsonreuters.com/0-376-3637?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a152256](https://uk.practicallaw.thomsonreuters.com/0-376-3637?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a152256)
raw materials are known, the Government does not envisage the unconventional exploration and production of shale gas in the Czech Republic.20

12.2. Competent authority(ies)
The competent authority for oil and gas licensing is the Ministry of Industry and Trade (Ministerstvo průmyslu a obchodu).

12.3. Financial security provisions
Not applicable

12.4. Financial security instruments and mechanisms accepted
Not applicable

12.5. Templates
Not applicable

12.6. Financial security instruments and mechanisms not acceptable
Not applicable

13. EU ENVIRONMENTAL LEGISLATION WITH NO MANDATORY FINANCIAL SECURITY PROVISIONS

13.1. Industrial Emissions Directive

13.1.1. Competent authority(ies)
The competent authority for the Industrial Emissions Directive (2010/75/EU), which is implemented in the Czech Republic by Act No 201/2012 Coll., on air protection (Zákon č. 201/2012 Sb., o ochraně ovzduší),21 and Act No 76/2002 Coll., on Integrated Pollution Prevention and Control, on the Integrated Pollution Register and on amendments to certain acts (the Integrated Pollution Prevention Act) (Zákon č. 76/2002 Sb., o integrované prevenci a omezování znečištění, o integrovaném registru znečišťování a o změně některých zákonů (zákon o integrované prevenci)),22 is the Ministry of the Environment.

13.1.2. Financial security provisions
Neither Act No 20/2012 Coll. nor Act No 76/2002 contain any financial security provisions.

13.1.3. Financial security instruments and mechanisms accepted
Not applicable


22 Zákon č. 76/2002 Sb., o integrované prevenci a omezování znečištění, o integrovaném registru znečišťování a o změně některých zákonů (zákon o integrované prevenci); https://www.zakonyprolidci.cz/cs/2002-76 (in Czech)
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 authority for the Seveso III Directive, which is implemented in the Czech Republic by Act No 224/2015 Coll. on prevention of major accidents caused by selected dangerous chemical substances or chemical mixtures and on amendment to Act No 634/2004 Coll., on Administrative Fees, as amended (Act on prevention of major accidents) (Zákon č. 224/2015 Sb. o prevenci závažných havárií způsobených vybranými nebezpečnými chemickými látkami nebo chemickými směsami a o změně zákona č. 634/2004 Sb., o správních poplatcích, ve znění pozdějších předpisů, (zákon o prevenci závažných havárií); Act 224/2015)\(^2\) is the Regional Office (Krajský úřad).

#### 13.2.2. Financial security provisions

Section 33(1) of Act 224/2015 provides that the operator of a facility subject to the Act shall have liability insurance (pojištění odpovědnosti) for damage resulting from a major incident issued by an insurer authorised to conduct insurance business in the Czech Republic.

Section 33(2) provides that the operator must arrange for liability insurance within 60 days after the Regional Office issues a decision to approve the major accident prevention policy (MAPP) or safety report or before trial operations commence at a new facility.

Section 33(3) provides that the indemnity limit of the insurance policy shall correspond to the extent of the possible consequences of a major accident as specified in the MAPP or safety report, based on an assessment of major accident risks submitted to the Regional Office.

Section 33(4) provides that the operator shall submit the following to the Regional Office within 30 days of placing the insurance policy:

- a certified copy of the liability insurance policy; and
- a certificate showing the existence of insurance cover for registration and storage.

The certificates are submitted to, and deposited with, the Regional Office.

Section 33(5) provides that the operator shall immediately notify the Regional Office in writing of any change in the liability insurance policy or its termination.

#### 13.2.3. Financial security instruments and mechanisms accepted

The only financial security instrument that is specified or accepted is a liability insurance policy.

13.2.4. **Templates**

There are no applicable templates.

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

There is no list of financial security instruments or mechanisms that are not acceptable because the only acceptable financial security instrument is a liability insurance policy.

13.3. **Other legislation**

No other legislation in the Czech Republic imposes mandatory financial security requirements for environmental liabilities or responsibilities.

As indicated in section 11.1.2 above, however, financial security is required for losses from environmental damage at a landfill. Such financial security is not required by the Landfill Directive.

Further, as indicated in section 13.2 above, liability insurance is required for damage resulting from a major incident under the Seveso III Directive.

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

The Czech Republic is landlocked.

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**

No incidents of an inadequate level of financial security instruments or mechanisms were reported. The Czech Government may agree to pay for remediating environmental damage but if it does so, it seeks reimbursement from the person that caused the damage.

15.2. **Insolvency of operator leading to failure of financial security instrument or mechanism**

No reports concerning the insolvency of an operator that led to failure of a financial security instrument or mechanism had been identified when this report was published, with the caveat that such reports are not necessarily made public.
15.3. Other

There are no public reports of other failures of voluntary or mandatory financial security in the Czech Republic.

16. FUNDS

The Czech Republic has not established a fund for the costs of preventing or remediating environmental damage if the liable operator becomes insolvent or cannot otherwise pay the costs.

The Czech Government has however established funding mechanisms for preventing and remediating environmental damage under Act 167/2008. For example, section 42(4) of the Water Act provides that the region in which a serious threat or pollution of surface or ground water has occurred may establish a special account to be supplemented annually up to CZK 10,000,000 (EUR 391,800) within the budget of the region.

Section 42(5) of the Water Act provides that the special account may also be used to cover reimbursement of the costs of measures to remedy environmental damage under Act 167/2008. The region transmits the funds to the competent authority at the request of the authority.

The Water Act therefore specifically establishes funding for preventing and remediating environmental damage under the ELD.

16.1. Name(s)

See section 16 above.

16.2. Extension of existing fund to cover remedial costs under the ELD

See section 16 above.

16.3. Purpose

See section 16 above.

16.4. Type

See section 16 above.

16.5. Source(s) of funding

See section 16 above.

16.6. Number and amount of claims

No claims on the mechanisms for funding preventive and remedial measures under Act 167/2008 had been reported when this report was published.
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https://www.zakonyprolidi.cz/cs/2015-224

Act No 85/2012 Coll., on the storage of carbon dioxide in natural rock structures and on amendments to certain acts (Zákon č. 85/2012 Sb., o ukládání oxidu uhličitého do přírodních horninových struktur a o změně některých zákonů); https://www.zakonyprolidi.cz/cs/2012-85

Act No 201/2012 Coll., on air protection (Zákon č. 201/2012 Sb., o ochraně ovzduší);
https://www.zakonyprolidi.cz/cs/2012-201

Act No 167/2008 Coll., on prevention and remediying environmental damage and amendment to some laws (Zákon č. 167/2008 Sb. o předcházení ekologické újmě a o její nápravě a o změně některých zákonů); https://www.zakonyprolidi.cz/cs/2008-167

Act No 59/2006 Coll., on the prevention of major accidents caused by selected hazardous chemicals or chemical products (Zákon č. 59/2006 Sb. Zákon o prevenci závažných havárií způsobených vybranými nebezpečnými chemickými látkami nebo chemickými přípravky);

https://www.zakonyprolidi.cz/cs/2001-254 and

Act No 185/2001 Coll. on Waste and on amendments to certain other acts (Zákon č. 185/2001 Sb. o odpadech a o změně některých dalších zákonů);
https://www.zakonyprolidi.cz/cs/2001-185

Act on the management of extractive waste (Vyhláška č. 428/2009 Sb. Vyhláška o provedení některých ustanovení zákona o nakládání s těžebním odpadem);

Act No 157/2009 Coll. on the management of extractive waste and on amendments to certain acts (Zákon č. 157/2009 Sb. o nakládání s těžebním odpadem a o změně některých zákon); https://www.zakonyprolidi.cz/cs/2009-157

Act No 76/2002 Coll., on Integrated Pollution Prevention and Control, on the Integrated Pollution Register and on amendments to certain acts (the Integrated Pollution Prevention Act) (Zákon č. 76/2002 Sb., o integrované prevenci a omezování znečištění, o integrovaném registru znečišťování a o změně některých zákonů (zákon o integrované prevenci));
https://www.zakonyprolidi.cz/cs/2002-76


Order No 295/2011 Coll. of 14 September 2011 (Nařízení vlády č. 295/2011 Sb. o způsobu hodnocení rizik ekologické újmy a bližších podmínkách finančního zajištění);

Guidance and instructions

Methodological guidance of the Ministry of the Environment for the implementation of the basic risk assessment for environmental damage (Metodický pokyn MŽP pro provádění základního hodnocení rizika ekologické újmy);

Methodological instruction of the Department of Environmental Risks and Environmental Damage of the Ministry of the Environment for carrying out a detailed assessment of the risk of environmental damage (Metodický pokyn odboru environmentálních rizik a ekologických škod Ministerstva životního prostředí pro provádění podrobného hodnocení rizika ekologické újmy);

Annex 1 (Příloha č. 1) to the Methodological instruction (Příloha č. 1 k metodickému pokynu odboru environmentálních risk a ekologických škod Ministerstva životního prostředí pro provádění podrobného hodnocení rizika ekologické újmy Rámcové náklady na nápravu ekologické újmy na půdě);

Annex 2 (Příloha č. 2) to the Methodological instruction (Příloha č. 2 k metodickému pokynu odboru environmentálních rizik a ekologických škod Ministerstva životního prostředí pro provádění podrobného hodnocení rizika ekologické újmy);
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Policy


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