Annex I

Denmark

Improving financial security in the context of the Environmental Liability Directive
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1. INTRODUCTION

Financial security for ELD liabilities in the form of insurance for companies with sites and/or operations based only in Denmark is widely available.

Stand-alone environmental insurance policies that provide cover for ELD liabilities from a limited number of insurers including multinational insurers are widely available.

Environmental extensions to general liability policies are widely available from a limited number of insurers including multinational insurers.

Environmental extensions to property policies from a limited number of insurers including multinational insurers are available.

Denmark transposed the ELD by Act No 466 on the investigation, prevention and remediying of environmental damage, as amended (Lov om undersøgelse, forebyggelse og afhjælpning af miljøskader (miljøskadeloven); Environmental Damage Act)\(^1\) and various Orders. The Environmental Damage Act, which amended various existing Acts, does not apply to the Faroe Islands or Greenland.

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

Denmark has introduced mandatory financial security for some businesses, mainly waste businesses including installations, under the Environmental Protection Act as well as installations covered by the national permit regime.

In addition, operators of landfills must have a bank guarantee, the amount of which depends on the amount of waste deposited at the landfill. The purpose of the bank guarantee is to ensure that there is funding for closure and aftercare if the operator ceases to exist or becomes bankrupt. This financial security is in addition to financial security required under the Landfill Directive (1999/31/EC).

2. ENVIRONMENTAL INSURANCE MARKET

The environmental insurance market in Denmark is well developed although overall demand is low.

Stand-alone environmental insurance policies for risks in Denmark are widely available. The policies, which are generally called environmental protection (Miljøforsikring) policies, provide cover for all types of environmental damage under the ELD, that is, land/soil, water and biodiversity damage. They also provide cover for preventive and remediation measures under the ELD including primary, complementary and compensatory remediation. Some policies provide cover for gradual as well as sudden and accidental pollution; others provide cover only for sudden and accidental pollution. Some policies provide cover for environmental damage other than pollution as well as cover for pollution; others do not do so. Demand is low.

Environmental extensions to general liability policies that provide cover for preventing and remediating pollution are widely available. Insurers have not taken a uniform approach in providing the extensions, resulting in a variety of them. Some extensions provide cover for gradual as well as sudden and accidental pollution on an insured’s site; others provide cover only for pollution from a sudden and accidental incident on the insured’s site. Some extensions provide cover for remediating pollution at an insured’s site in addition to remediating off-site pollution. Some extensions provide cover for preventive measures and primary remediation

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\(^1\) Lov nr. 277 af 27. marts 2017 om undersøgelse, forebyggelse og afhjælpning af miljøskader (miljøskadeloven); [https://www.retsinformation.dk/Forms/R0710.aspx?id=188403](https://www.retsinformation.dk/Forms/R0710.aspx?id=188403) (in Danish)
under the ELD. None of the extensions provide cover for complementary and compensatory remediation under the ELD. Overall, the extensions tend to have low limits with corresponding low premiums. Demand is low.

Environmental extensions to property policies are available. They are mainly driven by brokers wishing to offer them to clients rather than insurers wishing to do so. Cover provided by them is primarily limited to preventing and remediating pollution from a sudden and accidental incident on an insured’s site. They do not provide cover for ELD liabilities. Demand is low.

Multinational insurers offer stand-alone environmental insurance policies that cover all ELD liabilities under global programmes for businesses with sites and/or operations in Denmark and other States by way of passporting.

2.1. Commercial insurers

2.1.1. Number of insurers

A limited number of insurers, including multinational insurers, offer environmental insurance in Denmark.

In comparison, Insurance & Pension Denmark (Forsikring & Pension) represents 92 insurance companies and pension funds.²

2.1.2. New insurers entering the market since 2009

No information was available on the number of new insurers entering the environmental insurance market in Denmark since 2009.

2.1.3. Existing insurers that introduced environmental insurance policies since 2009

No information was available on the number of existing insurers that introduced environmental insurance policies since 2009. Some insurers offered stand-alone environmental insurance policies before 2009.

2.2. Re/insurance pools

There are no re/insurance pools that provide policies for ELD or other environmental liabilities in Denmark.

2.2.1. Date of establishment

Not applicable

2.2.2. Descriptions of policies issued

Not applicable

2.3. Mutuals

Gjensidige, a Norwegian mutual company that carries out insurance business in Denmark offers pollution liability insurance policy.

2.3.1. Date of establishment

Gjensidige is a long-established company.

² See Forsikring & Pension; https://www.forsikringogpension.dk/ (in Danish)
2.3.2. *Descriptions of policies issued*

Details of the policy were not available.

2.4. *Other*

There are no captives, underwriting agencies, or other types of providers of environmental insurance policies in Denmark.

3. **VOLUNTARY INSURANCE POLICIES FOR ELD AND OTHER ENVIRONMENTAL LIABILITIES**

3.1. *Environmental insurance policies*

A range of stand-alone environmental insurance policies provide cover for ELD liabilities with some providing only limited cover.

3.2. *Cover for ELD preventive costs*

Stand-alone environmental insurance policies 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*

All stand-alone environmental insurance policies offered for risks in Denmark provide cover for primary, complementary and compensatory remediation under the ELD although some provide only limited cover.

3.4. *Cover for non-ELD liabilities*

Virtually all stand-alone environmental insurance policies offered for risks in Denmark provide cover for costs arising from environmental damage under other environmental legislation as well as the ELD. They also provide cover for other non-ELD liabilities such as third-party claims for bodily injury and property damage (see section 3.6.3 below).

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

All stand-alone environmental insurance policies offered for risks in Denmark 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.

3.6. *Description of policies*

3.6.1. *Format*

Environmental insurance policies offered by multinationals for risks in Denmark generally have a menu format so that an insured may select the insuring agreement(s) it requires. There is a wide range of such policies (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. 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 occurrence based, that is, the risks covered by the policy must occur during the policy period; claims may be brought after the policy period.

Environmental extensions to property policies are occurrence based with the caveat that an insured must generally notify its insurer of a claim within a specified period after a risk covered by the policy occurs.

3.6.3. **Policies for operators**

Insurers based in, or with branches in, Denmark as well as multinational insurers offer a wide range of environmental insurance policies to operators with sites and/or operations in Denmark. 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 the third items are liabilities under the ELD. 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 Denmark as well as sites and/or operations in Denmark and other States are not necessarily designed for Danish operators. Some policies are specifically designed to reflect – and provide cover for – the legal and licensing situation in Denmark; 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 environmental damage including pollution at sites at which the contractor is carrying out operations in addition to the insured contractor’s own site. Most of the policies are underwritten on a claims made basis, with some being underwritten on an occurrence basis.
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 Denmark.

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 for risks in Denmark have been available since the early 2000s. Their scope was increased to include liabilities under the ELD when it was transposed into Danish law on 1 July 2008.

A special insurance scheme was introduced in Denmark when the Environmental Damage Act was introduced. Demand for the scheme was however very limited.3

As indicated in section 2 above, the environmental insurance market in Denmark had become well developed when this report was published although demand is low.

3.9. Environmental assessments and audits

Insurers that offer stand-alone environmental insurance policies for sites and/or operations in Denmark may require prospective insureds to carry out environmental assessments and audits for their operations depending on the types of risks and the exposure.

3.10. Average premium

No information was provided about the average premium for a stand-alone environmental insurance policy. As noted in section 2 above, the premium for an environmental extension to a general liability policy tends to be low, which is reflected in the limited cover provided by the extension.

3.11. Average policy limit

No information was provided about the average policy limit for a stand-alone environmental insurance policy. The sub-limit for an environmental extension in a general liability policy tends to be low.

3.12. Average deductible or self-insured retention

No information was provided on the average deductible or self-insured retention for a stand-alone environmental insurance policy.

3 Håkun Djurhuus, Per Hemmer, Anne Sophie K. Vilsbøll and Jacob Brandt, ‘Environmental law and practice in Denmark: overview’ (Bech-Bruun, 2013); https://uk.practicallaw.thomsonreuters.com/0-522-0619?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a382082
3.13. **Average policy period**

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

3.14. **Sizes of typical insured businesses**

Stand-alone environmental insurance policies are designed for all sizes of insured businesses in Denmark, with the caveat that demand for them is low.

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

No information was provided on the industrial and commercial sectors that typically purchase stand-alone environmental insurance policies.

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

No information was provided on any industrial and commercial sectors that have limited or no accessibility to stand-alone environmental insurance policies.

3.17. **Number and amount of claims**

The number of claims is low. No information was provided on the amount of them.

3.18. **Coverage litigation**

One ELD stakeholder in the insurance industry stated that there had only been one ruling on cover provided by environmental insurance in over 10 years. No information was provided on the claim.

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

Environmental extensions to general liability policies are widely available; see section 2 above. Most extensions do not, however, provide cover for ELD liabilities. None provide cover for complementary and compensatory remediation.

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

Environmental extensions to property policies are available; see section 2 above. They do not, however, provide cover for ELD liabilities.

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 liabilities under the ELD.

4.2. **Availability**

Not applicable

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

Denmark has not imposed mandatory financial security for ELD liabilities.
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*

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**
Denmark has not established mandatory financial security for ELD liabilities by conditions in environmental licences or permits.

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))
Section 19 of the Environmental Damage Act provides that an operator that is responsible for an imminent threat of, or actual, environmental damage must provide financial security to the Ministry of Environment and Food (Miljø- og Fødevareministeriet) to cover the operator’s
obligations under the Environmental Damage Act. The amount of the security, which is decided by the Ministry, includes the authority’s costs of administering the Environmental Damage Act, and carrying out any preventive and remedial measures under the Act as well as carrying out any investigations pursuant to section 10 of the Act on legal certainty in connection with the use by authorities of coercive measures and disclosure obligations, as amended (Lov om retssikkerhed ved forvaltningens anvendelse af tvangsindgreb og oplysningspligter).  

Section 19 further provides that the Ministry shall issue rules on the provision of security, including apportionment of the obligation to provide it when several persons are responsible for the environmental damage, the calculation of, and subsequent adjustment of the amount of the security, and its release. The Ministry had not issued the rules when this report was published.

Section 51 of the Environmental Damage Act provides that an operator may appeal a notice or decision requiring the provision of security. Section 51 further provides that such an appeal suspends the notice or decision unless the Minister for Environment (Miljøministeren) or the appeals body decides otherwise.

If, during proceedings, the responsible party cannot provide all of the financial security, the case is dealt with under the rules of the legislation under which the decision that an imminent threat of, or actual, environmental damage was made.

If, during proceedings, the responsible party can provide only part of the financial security, the case shall be dealt with under the rules of the legislation under which the decision that an imminent threat of, or actual, environment damage was made, to the extent that the security cannot be provided.

8.1. Date legislation or policy for mandatory financial security introduced

Section 19 came into effect on 1 July 2008, the same date as other provisions in the Environmental Damage Act.

8.2. Effective date for ex post mandatory financial security

See section 8.1 above.

8.3. Financial security instruments and mechanisms accepted

The types of financial security instruments and mechanisms that are acceptable are not specified in section 19 or any other provisions of the final version of the Act. However comments to section 19(1) in the proposed law, issued on 12 March 2008 state, in essence, that ‘the security must be provided as a sort of security over property or other appropriate guarantees. Insurance will after a concrete assessment be able to be an appropriate instrument for security.’ These comments track article 8(2) of the ELD.

8.4. Financial security instruments and mechanisms not acceptable

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

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4 Lov om retssikkerhed ved forvaltningens anvendelse af tvangsindgreb og oplysningspligter; https://www.retsinformation.dk/Forms/R0710.aspx?id=1834& (in Danish)
9. Providers of mandatory financial security instruments

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

When the ELD was implemented, the Danish Government began a dialogue with Insurance & Pension Denmark about an insurance model due to some Member States having made insurance mandatory for potentially environmentally harmful operators. The model was abandoned, however, as there was reportedly little interest in developing it. The Danish Government has not taken new measures to develop an environmental insurance market since that time.

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 (1999/31/EU), which is implemented in Denmark by the Environmental Protection Act (Lov om miljøbeskyttelse)⁵ and the Order on Landfills (Bekendtgørelse om deponeringsanlæg; Landfill Order),⁶ is the Ministry of Environment and Food.

11.1.2. Financial security provisions

Section 50a of the Environmental Protection Act requires the operator of a landfill to have financial security for the costs of establishing and operating the landfill including closure costs and aftercare costs for a period of at least 30 years. Section 50(a) also applies to waste incineration plants.

The Minister for Climate, Energy and Utilities (Energi-, forsynings- og klimaministeren) may request an operator to provide evidence of financial security. The Minister may also issue rules on detailed requirements on financial security.

Section 39b requires the operator of a landfill to submit financial security for any costs incurred by the competent authority in enforcing the obligations of a permit for the landfill. Section 39b further provides that the Minister may issue detailed rules on the types of

⁵ Lov om miljøbeskyttelse; https://www.retsinformation.dk/Forms/R0710.aspx?id=209531 (in Danish)

financial security, in particular, the calculation and revisions of the amount of financial security, its transfer, and facilities at which no financial security is required.

Section 8(2) of the Landfill Order states that the amount of financial security shall be determined on the basis of the estimated total cost of carrying out the conditions of the permit for closure and aftercare. Aftercare costs shall include, among other things, the costs of monitoring groundwater and leachate and collecting, transporting and treating leachate.

Section 8(5) provides for a reduction in the amount of financial security for a facility that is subject to clause 10 of the Raw Materials Act (Lov om råstoffer). Section 10 provides detailed conditions for the abstraction of minerals.

Financial security is not required for preventing or remediating environmental damage under article 19 of the Environmental Damage Act.

The Ministry of Environment and Food has published guidance on the Environmental Protection Act. Section 5.12.5 of the guidance provides information on financial security provisions for specific businesses and landfills.

11.1.3. Financial security instruments and mechanisms accepted

Section 10(3) of the Landfill Order provides that the following financial security instruments are acceptable for submission to the competent authority for approval:

- bank guarantee by a financial institution (bankgaranti stillet af et pengeinstitut);
- insurance policy issued by a surety (kautionsforsikringspolice); and
- a deposit of cash in a dedicated bank account (deponering af kontanter på en spærret konto i et pengeinstitut).

A municipality that operates a landfill may provide a guarantee of its current status, subject to approval by the competent authority.

In addition to the above instruments and mechanisms, a competent authority may authorise other types of financial security instruments and mechanisms including the deposit of valuables other than cash (such as securities and a mortgage on real property). If the authority accepts such instruments, it may include conditions for its acceptance of them.

Section 10(7) provides that the competent authority shall ensure that the financial security is protected against any other creditors of the operator before landfilling may commence. Section 10(8) requires the provider of the financial security to transfer documentation concerning it to the competent authority.

Section 11 provides that the operator must submit documentation concerning the financial security at least once a year.

Section 12 provides that up to one year before landfilling is expected to end, the competent authority must revise the amount of financial security (1) if the basis of the calculation changes significantly, e.g. because of an increase in price or changed measures for closure or aftercare,

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8 Ministry of Environment and Food, Section 5.12.5 Sikkerhedstillelse; https://miljogodkendelsesvejledningen.dk/opslag/512-saerlige-problemstillinger/5125-sikkerhedstillelse/ (in Danish)
9 Ibid
or (2) the competent authority carries out specified actions related to commitments covered by the financial security.

Section 13(2) provides that when the landfill has been closed, which must be in compliance with the Landfill Order and other applicable laws, the competent authority may reduce the amount of financial security and must then decide whether to reduce it on an annual basis.

Section 14 provides that if a landfill is transferred, the transferee must provide the same financial security as the transferor was required to provide. In such a case, the competent authority may decide not to release the financial security for the transferring operator until the new operator lodges financial security.

11.1.4. Templates

There are no templates for financial security instruments or mechanisms.

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 Denmark by the Executive Order on the Management of Extractive Waste (Bekendtgørelse om håndtering af udvindingsaffald; Extractive Waste Order),¹⁰ is the Ministry of Environment and Food.

There are no companies in Denmark that are subject to the Extractive Waste Directive.

11.2.2. Financial security provisions

Section 9 of the Extractive Waste Order requires the operator of an extractive waste facility to submit financial security in the amount necessary to comply with obligations of its permit including measures for closure of the facility. The amount of financial security is determined on the basis of the estimated total costs of complying with the conditions of the permit. Section 9(3) provides for a reduction in the amount of financial security for a facility that is subject to section 10 of the Raw Materials Act (see section 11.1.2 above).

Section 10 provides that the amount of financial security may be revised according to the carrying out of measures to restore the area affected by the extractive waste facility, as described in the waste management plan. When the facility has been closed in accordance with the Extractive Waste Order, the financial security may be reduced accordingly.

Annex 6 to the Waste Management Order sets out factors to calculate the amount of financial security including expected environmental impacts, restoration, applicable legislation, and technical measures to ensure the stability of the facility, limit its adverse environmental effects, closure measures, and the expected time period for environmental effects and protective measures. Section 7 of annex 6 requires an assessment by an independent third party of the costs of measures to restore the land, closure and post-closure including any monitoring and treatment of pollutants and any unforeseen or early closure.

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

The Extractive Waste Order does not specify any acceptable financial security instruments or mechanisms. Annex 4.9 states that the applicant must provide the competent authority with information on the proposed amount of financial security for each tonne of deposited waste, duration and type of financial security to be used.

11.2.4. **Templates**

There are no templates for financial security instruments or mechanisms.

11.2.5. **Financial security instruments not acceptable**

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

11.3. **Carbon Capture and Storage Directive**

11.3.1. **Status of implementation**

There are no underground facilities for the storage of carbon dioxide in Denmark.

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 Denmark by the Executive Order on Geological Storage of CO2, etc. (*Bekendtgørelse om geologisk lagring af CO2 m.v.*),\(^{11}\) and the Danish Subsoil Act (*Undergrundsloven*),\(^{12}\) is the Ministry of Climate, Energy and Utilities (*Klima, Energi- og Forsyningsministeriet*).

11.3.3. **Financial security provisions**

Section 16 of the Executive Order on Geological Storage of CO2, etc. provides that the licensee of a storage facility for carbon dioxide must provide financial security to carry out its obligations under section 23q of the Danish Subsoil Act. The permit for the facility sets out detailed requirements to calculate the amount of financial security. The amount may be revised to take into account changes in the risk of leakage and the estimated costs of obligations arising from the permit. Section 17 states that the financial security must also cover monitoring costs for at least 30 years.

Section 23q of the Danish Subsoil Act requires the licensee for a carbon dioxide storage facility to have financial security for the estimated costs of obligations under the permit. The amount of financial security may be revised to take into account changes in the assessed risk of leakage and obligations under the permit.

Section 23q(2) requires the financial security to remain effective until the storage facility is closed and responsibility for it is transferred to the Minister of Climate, Energy and Utilities, or in the case of revocation of the permit, until a permit is issued to another licensee or the facility is closed and responsibility for it transferred to the Minister of Climate, Energy and Utilities. Section 23q(3) provides that the Minister will issue detailed rules for the

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\(^{11}\) *Bekendtgørelse nr. 1425 af 30. november 2016 om geologisk lagring af CO2 m.v.; https://www.retsinformation.dk/Forms/R0710.aspx?id=185094* (in Danish)

establishment, adjusting and maintaining of the financial security or its equivalent and calculation of the amount.

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

Section 16 of the Executive Order on Geological Storage of CO2, etc. provides that the licensee of a storage site for carbon dioxide may provide financial security in the form of a parent company guarantee, insurance policy, bank guarantee or similar financial security.

11.3.5. **Templates**

There are no templates for financial security instruments or mechanisms.

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**

Denmark issued licences for unconventional oil and gas exploration in 2010. In 2012, it imposed a moratorium on new licences. In 2015, Total began exploration pursuant to a previously issued licence but after failing to discover economic deposits, it ceased exploration at the site. The moratorium on fracking continued to apply when this report was published.

12.2. **Competent authority(ies)**

The competent authority for unconventional (and conventional) oil and gas exploration is the Danish Energy Agency.

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

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13 Vinson & Elkins, ‘Shale & Fracking Tracker; Denmark’ (September 2016); [https://www.velaw.com/Shale---Fracking-Tracker/Global-Fracking-Resources/Denmark/](https://www.velaw.com/Shale---Fracking-Tracker/Global-Fracking-Resources/Denmark/)

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, which is implemented in Denmark by the Environmental Protection Act and the Notice on approval of listed businesses issued by the Ministry of Environment and Food (Bekendtgørelse om godkendelse af listevirksomhed)\(^\text{15}\) is divided between the Ministry of Environment and Food, where the issuing of permits and inspections are delegated to the Environmental Protection Agency (Miljøstyrelsen) under the Ministry of Environment and Food and to local authorities. Whilst the State authority is the competent authority for the heaviest polluting industrial activities covered by annex I of the Directive, the local authorities cover the remaining industrial activities and the agro-industrial activities under it.

The Notice on approval of listed businesses sets out rules on the authorisation of operations listed in chapter 5 of the Environmental Protection Act and contains the list of activities and businesses which are required to have an environmental permit in accordance with chapter 5.

13.1.2. Financial security provisions
The legislation that implements the Industrial Emissions Directive in Denmark does not specifically include financial security provisions (but see section 13.3 below).

13.1.3. Financial security instruments and mechanisms accepted
Not applicable

13.1.4. Templates
There are no templates for the above financial security instruments.

13.1.5. Financial security instruments and mechanisms not acceptable
There is no list of financial security instruments that are not acceptable.

13.2. Seveso III Directive

13.2.1. Competent authority(ies)
The Ministry of Environment and Food is the competent authority for the Regulation on the Control of Major Accident Hazardous involving Dangerous Substances (Bekendtgørelse om kontrol med risikoen for større uheld med farlige stoffer),\(^\text{16}\) also called the Risk Executive Order,\(^\text{17}\) that implements the Seveso III Directive (2012/18/EU) in Denmark.

Other competent authorities are:

\(^{15}\) Bekendtgørelse nr. 1534 af 9. december 2019 om godkendelse af listevirksomhed; https://www.retsinformation.dk/Forms/R0710.aspx?id=209898 (in Danish)

\(^{16}\) Bekendtgørelse nr. 372 af 25. april 2016 om kontrol med risikoen for større uheld med farlige stoffer; https://www.retsinformation.dk/Forms/R0710.aspx?id=179901 (in Danish)

\(^{17}\) See The Seveso Directive: Danish rules and guidelines; https://eng.mst.dk/trade/industry/seveso-sites/danish-rules-and-guidelines/ (in Danish)
• local authorities municipal environmental and planning departments and the Environmental Protection Agency under the Ministry of Environment and Food;
• the Danish Environmental Protection Agency (Arbejdstilsynet) under the Ministry of Employment;
• municipal fire and rescue departments and the Danish Emergency Management Agency (Beredskabsstyrelsen) under the Ministry of Defence; and
• police.

13.2.2. Financial security provisions
The Risk Executive Order does not contain any mandatory financial security requirements for preventing and remediating environmental damage.

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
Section 34 of the Environmental Protection Act provides that a competent authority may require an operator to submit evidence of financial security according to sections 39a and 39b of the Environmental Protection Act.

In addition to its application to landfills (see section 11.1.2 above), section 39a of the Environmental Protection Act requires the following businesses to have financial security: businesses that extract metals from cables, rinse or clean drums for storing chemicals and chemical waste, dismantle and recycle vehicles such as cars, renovate appliances, machines, motors and other equipment for resale, and reclaim metal waste.¹⁸ There are exceptions for businesses that process construction waste and those that remove refrigerants from refrigerators discarded by private households.

Section 39a(6) states that the Minister for the Environment and Food may approve proposals for collective financial security for companies, or categories of companies, as well as deciding to cancel requirements concerning the conditions for financial security.

The financial security must cover the competent authority’s cost of transporting and destroying or otherwise handling waste. The Ministry of Environment and Food guidance on the Environmental Protection Act states that financial security is not required for the removal and final disposal of materials that have value and can, therefore, be sold. By comparison, materials that have no value necessitate a cost for their removal and final disposal.¹⁹

¹⁸ See Ministry of Environment and Food, Section 5.12.5 Sikkerhedstillelse; https://miljogodkendelsesvejledningen.dk/opslag/512-saerlige-problemstillinger/5125-sikkerhedsstillelse/ (in Danish) (in Danish)
¹⁹ See ibid
Acceptable financial security instruments, which must be submitted to the competent authority for approval, are the same as those under the Environmental Protection Act for implementation of the Landfill Directive namely:

- a bank guarantee by a financial institution;
- an insurance policy issued by a surety; and
- a deposit of cash in a dedicated bank account.

In addition to the above instruments, a competent authority may authorise other types of financial security instruments including the deposit of valuables other than cash (such as securities and a mortgage on real property). If the authority accepts such instruments, it may include conditions for its acceptance.

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

14.1. **Competent authority(ies)**

The competent authority for oil and gas licensing in Denmark is the Danish Energy Agency under the Ministry of Climate, Energy and Utilities (Energistyrelsen er en del af Klima-, Energi- og Forsyningsministeriet).

14.2. **Status of offshore oil and gas operations**

Offshore oil and gas exploration and production in Denmark began in the early 1960s. On 1 February 2019, the eighth round of licensing concluded with five applications from four companies.\(^\text{20}\)

In October 2019, Denmark was reportedly assessing whether to proceed with the eighth round in view of its commitment to reduce carbon emissions from Denmark by 70% in 2030 compared with 1990 levels.\(^\text{21}\)

14.3. **Requirements for financial security**

Section 30 of the Model licence for the eighth round of licensing requires the licensee to have financial security in the form of insurance. Section 32 requires the licensee to have financial security to cover its compliance with the obligations of the licence. The financial security must be provided no later than 30 days after the licence is granted. A parent company guarantee is acceptable subject to approval (as with all financial security) by the Danish Energy Agency, which may require financial security to be revised or supplemented subject to 30 days’ notice.\(^\text{22}\)


14.4. Requirement for financial security for ELD liabilities

The model licence for the eighth round of licensing does not specify any requirements for financial security for ELD liabilities.

15. Failure of financial security

15.1. Inadequate level of financial security instrument or mechanism to pay claims

When this report was published, there had not been any finalised cases of environmental damage under the ELD in Denmark. Therefore, there is no empirical data to indicate whether the financial security instruments including insurance are adequate to prevent or remediate environmental damage.

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

When this report was published, there had not been any finalised cases of environmental damage under the ELD in Denmark. Therefore, there is no empirical data to indicate whether the insolvency of an operator led to the failure of a financial security instrument or mechanism.

15.3. Other

Denmark has a mandatory insurance scheme, set out in sections 48 and 29 of the Law on Soil Pollution (jordforureningsloven). Section 49(1) states that the owner of a home oil tank must be included in the insurance scheme that covers public environmental authorities’ requirements concerning terms of checks and clean up according to section 48.

The aim of the mandatory insurance scheme is to provide funding for the liability of tank owners. Oil companies that sell fuel oil in Denmark established an insurance scheme, beginning on 1 March 2000, which in accordance with the Minister’s declaration in a Parliamentary report, establishes a service from them without extra costs for homeowners.

The scheme, as approved by the Competition Council, is established so that Driving Force Denmark (then called Oliebranchens Fællesrepræsentation; now Drivkraft Danmark) entered into an agreement with Topdanmark about insurance coverage on behalf of the 10 oil companies that sell home heating oil in Denmark. Owners of home oil tanks that receive oil from these companies are covered by this agreement, which is financed by the companies. Ultimately, this means that the consumers themselves finance the scheme.

The agreement does not state that it applies to oil tank owners that do not receive oil from these companies, but section 88(1), paragraph 8 states that failure to comply with the mandatory insurance requirement results in criminal liability.

In addition to this scheme, oil companies have an environment fund (Oliebranchens Miljøpulje). This fund is not insurance as such. However, it was a voluntary initiative by the nine oil companies that sold oil in Denmark in 1993, together with Local Government Denmark (Kommunernes Landsforening), Danish Regions (then Amtsrådsforeningen; now Danske Regioner), the City of Copenhagen (Københavns Kommune), Frederiksberg Municipality (Frederiksberg Kommune) and the Danish Environmental Protection Agency. The aim was to inspect and clean up spills on closed petrol stations and other places that sold retail petrol and

23 Lov nr. 282 af 27. marts 2017 om forurenet jord; : https://www.retsinformation.dk/Forms/R0710.aspx?id=188394 (in Danish)
diesel. The reason for the fund was the difficulties concerning establishing who was responsible for cleaning up spills that had occurred before it was possible to issue an order under section 48(1) of the Law on Soil Pollution. Only spills that occurred after 1 March 2000 can be ordered restored to their original state with funding by the authorities.

Almost 10,000 closed petrol stations and other sites have been inspected and approximately 3,500 of them have been cleaned up due to the Oil Companies’ Environment Fund, in the 23 years since the programme was established in 1993.

All new storage tanks in petrol stations furthermore must have double skins and leak detection to prevent new spills affecting soil and groundwater.24

16. **Funds**

Denmark has not established a fund to pay the costs of preventing or remediating environmental damage if the liable operator becomes insolvent or cannot otherwise pay them.

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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