



Annex I

Estonia

Improving financial security in the context of the
Environmental Liability Directive

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Prepared by:

Valerie Fogleman, Stevens & Bolton LLP,
Cardiff University School of Law and Politics



UNIVERSITÀ
degli STUDI
di CATANIA



Institute for
European
Environmental
Policy



Maastricht University

Faculty of Law

STEVENS & BOLTON



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1. INTRODUCTION

Financial security for ELD liabilities in the form of stand-alone environmental insurance policies that provide cover for sites and/or operations in Estonia is not generally available.

Environmental extensions to general liability policies are widely available.

Environmental extensions to property policies are available.

Estonia transposed the ELD by Act on Environmental Liability (*Keskkonnastutuse seadus*).¹

Estonia has not introduced mandatory financial security for ELD liabilities.

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

Estonia has also introduced mandatory financial security for liabilities from hazardous waste and radioactive materials, including requirements concerning the storage and/or disposal of waste. The requirements entered into force on 1 January 2020.

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

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

2. ENVIRONMENTAL INSURANCE MARKET

Estonia's 2013 report to the European Commission pursuant to then article 18(1) of the ELD stated as follows:

A prerequisite for imposing the obligation of liability is the existence of the relevant insurance product. For insurers to be able to offer environmental liability insurance services, relevant practice is needed which would permit the costs of damage prevention and remediation to be predicted with accuracy that insurers are able to establish the details of their service on that basis. Current practice is still insufficient and does not allow for relevant insurance products to be developed.

Insurers, while offering a variety of insurance products, including liability insurance for the compensation of damage caused to the property of third parties, currently do not provide liability insurance to compensate for damage caused to the environment.²

The 2017 Environmental Implementation Report for Estonia stated that Estonia 'does not have mandatory financial security (to pay for remediation when an operator cannot) and it is not evident that insurance is either sufficiently available or taken out'. The report suggested that Estonia should, among other things, 'take further steps to ensure an effective system of

¹Keskkonnastutuse seadus; <https://www.riigiteataja.ee/akt/110112015008> (in Estonian). An unofficial English translation is available at <https://www.riigiteataja.ee/en/eli/530112015003/consolide>

² Report from Matti Maasikas, Permanent Representative of the Republic of Estonia to the European Union, to Karl Falkenberg, Director-General, DG ENV (15 April 2013); https://ec.europa.eu/environment/legal/liability/pdf/eld_ms_reports/EE.pdf

financial security for environmental liabilities (so that operators not only have insurance cover available to them but actually take it out').³

The 2019 Environmental Implementation Report stated, among other things, that Estonia should 'Improve financial security for liabilities'.⁴

The situation concerning the availability and demand for insurance for ELD liabilities had not changed when this report was published.

Insurers based in, or with branches in, Estonia do not offer stand-alone environmental insurance policies. On the rare occasion that businesses demand a stand-alone environmental insurance policy, it is sought from multinational insurers that provide such insurance by passporting.

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

Environmental extensions to property policies that provide limited cover for the primary remediation of pollution at an insured's site generally with a sub-limit of liability are available. They do not provide cover for other ELD liabilities. Demand for them is lower than for environmental extensions to general liability policies.

Environmental insurance policies provided by multinational insurers to operators with sites in Estonia and other Member States by passporting are available. Some of these policies provide meaningful cover for legal and licensing requirements under the law of Estonia; others provide limited cover due to the lack of adaptation to legal and licensing requirements in Estonia.

2.1. Commercial insurers

2.1.1. Number of insurers

As indicated in section 2 above, no insurers that are based in or have branches in Estonia offer stand-alone environmental insurance policies.

The Estonian Insurance Association (*Eesti Kindlustusseltside Liit*) has 17 members.⁵

2.1.2. New insurers entering the market since 2009

As indicated in section 2.1.1 above, no insurers based in, or with branches in, Estonia, offer stand-alone environmental insurance policies.

2.1.3. Existing insurers that introduced environmental insurance policies since 2009

See section 2.1.1 above.

2.2. Re/insurance pools

There is no re/insurance pool in Estonia that offers environmental insurance policies.

³ EU Environmental Implementation Review 2017; Country Report – Estonia (SWD(2017) 40 final, 3 February 2017), 23; https://ec.europa.eu/environment/eir/pdf/country-reports-archive/report_ee_en.pdf

⁴ EU Environmental Implementation Review 2019; Country Report – Estonia (SWD(2019) 135 final, 4 April 2019), 30; https://ec.europa.eu/environment/eir/pdf/report_ee_en.pdf

⁵ See 'Eesti Kindlustusseltside Liit'; <https://insuranceeurope.eu/members/estonia-ee>

2.2.1. Date of establishment

Not applicable

2.2.2. Descriptions of policies issued

Not applicable

2.3. Mutuels

No mutual in Estonia 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 or other types of providers of environmental insurance policies in Estonia.

3. VOLUNTARY INSURANCE POLICIES FOR ELD AND OTHER ENVIRONMENTAL LIABILITIES

3.1. Environmental insurance policies

Stand-alone environmental insurance policies are not generally available for businesses that have sites and/or operations only in Estonia.

3.2. Cover for ELD preventive costs

Stand-alone environmental insurance policies offered by way of passporting to businesses with sites and/or operations in other Member States as well as Estonia provide cover for preventive measures under the ELD.

3.3. Cover for ELD primary, complementary and compensatory costs

Stand-alone environmental insurance policies offered by way of passporting to businesses with sites and/or operations in other Member States as well as Estonia provide cover for primary, complementary and compensatory remediation measures under the ELD.

3.4. Cover for non-ELD liabilities

Stand-alone environmental insurance policies offered by way of passporting provide cover for non-ELD liabilities such as the remediation of pollution under other environmental legislation and cover for third-party claims for bodily injury and property damage from environmental damage. Cover is subject to agreement by individual insurers.

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

Stand-alone environmental insurance policies available by passporting 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. The policies also provide cover for third-party claims for bodily injury, property damage and economic loss from environmental damage.

Stand-alone environmental insurance 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.

3.6. Description of policies

3.6.1. Format

Stand-alone environmental insurance policies offered by multinational insurers 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 against the insured during the policy period and reported to insurers during the policy period or, if available, the extended reporting period.

3.6.3. Policies for operators

Depending on the insurer, stand-alone environmental insurance policies offered for operators may 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, in some cases the third, item above are ELD liabilities. The policies are 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.

3.6.4. Policies for contractors and others

Stand-alone environmental insurance policies offered by multinational insurers 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. As indicated in section 2, however, the demand for such policies is negligible.

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 Estonia.

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

As indicated in section 2, stand-alone environmental insurance policies issued by insurers based in, or with branches in, Estonia are not available.

3.9. Environmental assessments and audits

Not applicable

3.10. Average premium

Not applicable

3.11. Average policy limit

Not applicable

3.12. Average deductible or self-insured retention

Not applicable

3.13. Average policy period

Not applicable

3.14. Sizes of typical insured businesses

Not applicable

3.15. Industrial and commercial sectors that typically purchase policies

Not applicable

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

Not applicable

3.17. Number and amount of claims

Not applicable

3.18. Coverage litigation

Not applicable

3.19. Cover for ELD liabilities in general liability policies

Extensions to general liability policies that provide cover for environmental liabilities are widely available in Estonia. Such extensions, however, provide cover only for the primary

remediation of off-site pollution caused by a sudden and accidental incident on the insured's site.

A typical environmental extension to a general liability policy provides as follows:

According to [the insurer's general terms and conditions] compensation is provided for environmental clean-up costs for the remediation of pollution caused as a result of a sudden, unforeseeable and one-off event and unavoidably necessary initial costs for limiting the damage if the insured is responsible for the indemnification of such expenses (... hüvitab If äkilise, ettenägematu ja ühekordse sündmuse tõttu keskkonnale tekkinud kahju puhul kulud reostuse kõrvaldamiseks ning vältimatult vajalikud esmased kahju piiramiskulud, kui nende kulutuste hüvitamise eest vastutab kindlustatu).

The general terms and conditions specifically exclude cover for environmental damage except for a sudden, unforeseeable event for which the insured is liable to reimburse the costs of primary remediation (välja arvatud äkilise, ettenägematu ja ühekordse sündmuse tõttu tekkinud kulud reostuse kõrvaldamiseks ning vältimatult vajalikud esmased kahju piiramiskulud, kui nende kulutuste hüvitamise eest vastutab kindlustatu).⁶

3.20. Cover for ELD liabilities in property policies

Extensions to property policies that provide cover for remediating environmental damage caused by a sudden and accidental incident on an insured's site are available in Estonia. Such extensions, however, do not provide cover for preventing or remediating all environmental damage under the ELD. Rather, they tend to provide cover only for remediating damage to soil.

A typical environmental extension to a property policy provides as follows:

Environmental damage – the additional costs incurred by public authorities to remediate soil (as a result of a property insurance event) with a limit of EUR xxx per insured event) shall be reimbursed (Keskkonnakahju - hüvitatakse ametivõimude poolt esitatud nõuete alusel lisakulud kindlustuskoha aluse maapinna puhastamiseks (varakindlustusjuhtumi tagajärjel) limiidiga xxxx eurot kindlustusjuhtumi kohta).

The extensions are generally subject to a sub-limit of liability as indicated in the above example of such an extension.

4. OTHER VOLUNTARY FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS

4.1. Type(s)

Voluntary financial security instruments such as bank guarantees 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 of a landfill, not voluntary financial security for accidental ELD.

4.2. Availability

Not applicable

⁶ See General conditions of IFI liability insurance (Ifi vastutuskindlustuse üldtingimused) TVÜ – 20161; <http://tingimused.if.ee/ViewPDF.aspx?ID=b42e5aa0-3aeb-4420-bf06-918b8aad8097> (in Estonian)

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

Estonia has not established mandatory financial security for liabilities under the ELD.

5.1. Legislative provisions

Not applicable

5.1.1. Name(s) of legislation

5.1.2. Stand-alone requirement or hybrid

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

5.1.4. Reasons for decision not to enact mandatory financial security legislation

5.1.5. Revisions to legislation

5.1.6. ELD liabilities covered by mandatory financial security

5.1.7. Description of mandatory financial security provisions

5.1.8. Exception for low risk sites

5.1.9. Exception for ISO 14001 certification or EMAS registration

5.1.10. Other exceptions

5.2. Environmental licence conditions

Not applicable

5.2.1. Stand-alone requirement or hybrid

5.2.2. Revisions to licensing requirements

5.2.3. ELD liabilities covered by mandatory financial security

5.2.4. Description of mandatory financial security conditions

5.3. Date of introduction

Not applicable

5.4. Effective date

Not applicable

5.5. Key reasons for introduction

Not applicable

5.6. Withdrawal of mandatory financial security

Not applicable

5.7. Guidance

Not applicable

5.8. Operators subject to mandatory financial security

Not applicable

5.9. Amounts and limits of mandatory financial security

Not applicable

5.10. 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))

If the Environmental Board (*Keskkonnaamet*)⁷ carries out measures to prevent an imminent threat of environmental damage or to remediate such damage, it may require the person that caused the damage to submit financial security if the Board allows that person to stagger payment of the Board's costs. The requirements and procedures are set out as follows.

Sections 26(2) and 26(3) of the Act on Environmental Liability provide that the Environmental Board () will bear the costs of preventing or remediating an imminent threat of, or actual, environmental damage if the person that caused the damage does not have a defence to liability and fails to prevent or remediate the environmental damage.

Section 27(1) provides that if the Board bears the costs, as indicated above, it submits a calculation of the costs and issues a payment notice to the person that caused the environmental damage. Section 27(3) states that the person that caused the damage must pay the costs indicated by the payment notice by the deadline indicated for payment. Section 27(4) provides for payment of late interest at the rate of 0.06% per day of the overdue sum if that person fails to pay the costs.

Section 28 provides for the staggering of payment of the costs for a period of up to 10 years, by consultation and agreement between the Board and the Ministry of Finance. Staggering the payment incurs an interest rate of 0.03% per calendar day, with interest suspended if the person that caused the damage declares bankruptcy.

Section 28(4) provides for potential financial security to be provided by the person that caused environmental damage if staggering the payment is allowed. Other factors that are considered in allowing staggering include the financial situation and economic indicators of the person that caused the damage, prior performance of its obligations to pay costs and environmental charges, and the practicality of staggering the costs. Section 28(4) states that the Board will make a decision on staggering costs within 10 working days of submission of the application or, if additional documents are requested, as of the date of submission of the documents.

Section 28(5) provides various grounds on which the Board may refuse to grant an application for staggering the payment of costs. Section 28(5)(2) provides that the Board may refuse to do so if the person that caused the damage 'fails to provide the required security or the Board does not consider the security provided to be sufficient, trustworthy or easily marketable, or if the formalisation of the security will result in excessive administrative costs' (*kahju tekitaja ei esita nõutavat tagatist või amet ei pea esitatud tagatist küllaldaseks, usaldusväärseks või hõlpsasti realiseeritavaks, või kui tagatise vormistamine toob kaasa ülemääraseid halduskulusid*). Section 28(5)(3) provides that the Board may refuse to grant the application if 'upon consideration of a compromise proposal made by a debtor in bankruptcy proceedings, the Board finds that the financial situation of the debtor does not allow for the performance of the obligations assumed under the compromise either' (*amet leiab pankrotimenetluses võlgniku tehtud kompromissettepanekut kaaludes, et võlgniku varaline seisund ei võimalda ka kompromissi tegemise tulemusel võetud kohustuste täitmist*).

Section 29(1) states that the Board will not request financial security if the person that caused the damage is bankrupt and its debt is staggered for the purpose of making a compromise in bankruptcy proceedings.

⁷ See Keskkonnaamet; <https://www.keskkonnaamet.ee/en> (in English and Estonian)

Section 29(1), as added by an amendment that entered into effect on 1 August 2014, sets out the following instruments that may be used as financial security for staggering the payment of costs:

- 1) a pledge, thereby preference is given to a mortgage of the first ranking or a registered security over movables (*pant, eelistades esimesele järjekohale seatud hüpoteeki või registerpantii*);
- 2) the guarantee of a credit or financial institution or insurer (*krediidi- või finantseerimisasutuse või kindlustusandja garantii*);
- 3) a security deposit (*tagatisraha*); and
- 4) a notarial deposit (*notari deposit*).

Section 29(2) states that if a mortgage is established, the owner of the immovable must agree to immediate compulsory enforcement for settlement of the claim secured by the mortgage, with such agreement being an enforcement title within the meaning of clause 2(1) 19) of the Code of Enforcement Procedure (*Täitemenetluse seadustik*).⁸

Section 29(3) provides that the value of the financial security must be at least 115% of the sum that is payable in instalments. The competent authority may require the financial security to be increased or replaced if it is no longer adequate to ensure repayment.

Section 29(4) provides that the procedure for submitting, using, increasing, replacing or releasing a security will be established by a regulation of the relevant Minister.

Section 30 provides the following priority for the payment of costs: late interest, interest beginning with the earliest payment, and finally the costs to be paid.

Regulation No 33 of the Minister of the Environment, entitled Procedure for submitting, using, increasing, replacing or releasing a financial security (*Tagatise esitamise, kasutamise, suurendamise, asendamise ja vabastamise kord*),⁹ was issued on 17 July 2008. The regulation sets out procedures, including the documents to be presented for a guarantee or mortgage to be used as a financial security, deadlines, and the information to be exchanged between the Environmental Board and the person responsible for the damage.

8.1. Date legislation or policy for mandatory financial security introduced

The provisions specified in section 8 above were introduced on 14 November 2007 except for sections 27(4), 28(2), and 29(1), all of which were introduced on 8 July 2014.

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

The provisions specified in section 8 above came into force on 1 February 2009 except for sections 27(4), 28(2), and 29(1), all of which came into force on 1 August 2014.

8.3. Financial security instruments and mechanisms accepted

See section 8 above.

8.4. Financial security instruments and mechanisms not acceptable

No financial security instruments or mechanisms are listed as being unacceptable.

⁸ Täitemenetluse seadustik; <https://www.riigiteataja.ee/akt/111042014011> (in Estonian). An unofficial English translation is available at <https://www.riigiteataja.ee/en/eli/516092014002/consolide>

⁹ Tagatise esitamise, kasutamise, suurendamise, asendamise ja vabastamise kord; <https://www.riigiteataja.ee/akt/13132745> (in Estonian)

9. PROVIDERS OF MANDATORY FINANCIAL SECURITY INSTRUMENTS

9.1. Insurers

The Act on Environmental Liability does not require mandatory insurance for preventing or remediating *ex ante* environmental damage.

9.2. Banks and other financial institutions

Banks are *ex post* providers of mandatory financial security instruments in the form of bank guarantees, pledges such as mortgages or registered securities over movables, as well as security deposits. They may also be involved in notarial deposits.

9.3. Sureties

Sureties may be *ex post* providers of mandatory financial security instruments in the form of insurance guarantees.

9.4. Providers outside Member State

There are no prohibitions against a provider of mandatory *ex post* financial security being located outside Estonia.

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

Neither the Ministry of the Environment nor the Environmental Board had taken any measures to develop financial security markets for ELD liabilities when this report was published. No information was provided that any other governmental authority had taken any such measures.

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/EC), which is implemented in Estonia by the Waste Act (*Jäätmeseadus*),¹⁰ is the Environmental Board.

11.1.2. Financial security provisions

Article 91(5) of the Waste Act requires a person that applies for a landfill permit to submit, among other things, ‘an insurance policy or a written confirmation from an Estonian or international credit or financial institution accepted by the issuing authority concerning the existence of a financial security’ (*kindlustuslepingu või loa andja aktsepteeritud Eesti või rahvusvahelise krediidi- või finantseerimisasutuse kirjaliku kinnituse rahalise tagatise olemasolu kohta*). The insurance policy must be valid for the entire period of operation of the landfill including closure and post closure (aftercare). Article 94(1) provides that the authority that issues landfill permits may refuse to grant a permit if, among other things, the applicant does not have the financial security specified in article 91(5).

¹⁰ Jäätmeseadus; <https://www.riigiteataja.ee/akt/102072019004> (in Estonian). An unofficial English translation is available at <https://www.riigiteataja.ee/en/eli/518072019002/consolide>

In 2016, the Ministry of Environment (*Keskkonnaministeerium*) published a report that stated, among other things, that four out of five existing landfills for non-hazardous waste (with the fifth landfill in the closure process) did not have financial security as required by law. The report noted, among other things, that the law did not provide information on the following issues:

- the person that assesses the costs of closure and aftercare;
- the extent to which the security to cover the required costs is assessed;
- the period of time for which the bank guarantee or insurance policy must be in force;
- adjustment of the financial security over time, and criteria for such adjustment;
- instruments that could be suitable for financial security; and
- how the financial security is released.

The report noted that the number of acceptable instruments was very limited and bank guarantees and insurance policies to cover the costs were expensive. The report further noted that, as of the date of the report, no operators of non-hazardous waste landfills had any bank guarantees or insurance policies to satisfy the requirement.¹¹

The report mentioned a State or national government guarantee, a deposit in the National Guarantee Fund, and a real estate mortgage as further potential financial security instruments.¹²

11.1.3. Financial security instruments and mechanisms accepted

An insurance policy and a written confirmation from an Estonian or international credit or financial institution confirming the existence of financial security are acceptable financial security instruments.

11.1.4. Templates

There are no templates for financial security instruments.

11.1.5. Financial security instruments and mechanisms not acceptable

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

11.2. Extractive Waste Directive

11.2.1. Competent authority(ies)

The competent authority for the Extractive Waste Directive (2006/21/EC), which is implemented in Estonia by the Waste Act, is the Environmental Board.

Estonia has one extractive waste facility that was being closed in 2016.¹³

¹¹ Ministry of Environment, 'Prügilate rahalise tagatise1 suuruse arvutamise, kogumise ja säilitamise analüüs' (14 November 2016), 5; https://www.envir.ee/sites/default/files/prugilate_rahalise_tagatise_suuruse_arvutamise_kogumise_ja_sailitamine_analuus.pdf (in Estonian)

¹² Ibid 7

¹³ See BIPRO GmbH and Oakdene Hollins, 'Provision and elaboration of information for the preparation of the "Implementation report of Directive 2006/21/EC on the management of waste from extractive industries" (070201/2015/711399/Env.A.2)' (12 April 2016), s 3.2.9; https://ec.europa.eu/environment/waste/studies/mining/waste_extractive_industries.pdf

11.2.2. Financial security provisions

Section 94 of the Waste Act sets out the requirements for an application for a permit for an extractive waste facility. These are, in large part, the same as those for an application for a landfill permit (see section 11.1.2 above).

11.2.3. Financial security instruments and mechanisms accepted

By reference to section 91 of the Waste Act in respect of landfill permits, acceptable financial security instruments for an extractive waste facility are an insurance policy and a written confirmation from an Estonian or international credit or financial institution confirming the existence of financial security.

11.2.4. Templates

There are no templates for financial security instruments.

11.2.5. Financial security instruments not acceptable

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

11.3. Carbon Capture and Storage Directive

11.3.1. Status of implementation

Section 105(1) of the Earth's Crust Act (*Maapõueseadus*)¹⁴ prohibits the geological storage of carbon dioxide in Estonia and its continental shelf. Section 105(2) provides an exception if the total volume of geologically stored carbon dioxide is less than 100,000 tons and the storage is carried out for research, development or testing of new products and processes.

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 Estonia by the Earth's Crust Act and the Atmospheric Air Protection Act (*Atmosfääriõhu kaitse seadus*),¹⁵ is the Environmental Board.

11.3.3. Financial security provisions

Neither the Earth's Crust Act nor the Atmospheric Air Protection Act contain any provisions that mandate financial security.

11.3.4. Financial security instruments and mechanisms accepted

Not applicable

11.3.5. Templates

Not applicable

11.3.6. Financial security instruments and mechanisms not acceptable

Not applicable

¹⁴ Maapõueseadus; <https://www.riigiteataja.ee/akt/112122018053> (in Estonian). An unofficial English translation is available at <https://www.riigiteataja.ee/en/eli/507012019007/consolide>

¹⁵ Atmosfääriõhu kaitse seadus; <https://www.riigiteataja.ee/akt/113032019035> (in Estonian). An unofficial English translation is available at <https://www.riigiteataja.ee/en/eli/515052019001/consolide>

12. EU RECOMMENDATION ON HYDRAULIC FRACTURING

12.1. Status

Oil shale has been the primary mineral resource in Estonia for over 100 years. Estonia accounts for about 70% of the world's oil shale production.¹⁶

Estonian oil shale, however, differs from other shale formations in that it produces oil as well as gas. Neither the oil nor the gas are produced using hydraulic fracturing (fracking).

No exploration using fracking had been carried out in Croatia when this report was published.

12.2. Competent authority(ies)

The Energy Department of the Ministry of Economic Affairs and Communications (*Majandus- ja Kommunikat-siooniministeeriumi*) is the relevant authority for oil and gas operations.

12.3. Financial security provisions

There are no financial security requirements for ELD liabilities because there is no legislation on fracking in Estonia.

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 Estonia by the Industrial Emissions Act (*Tööstusheite seadus*),¹⁷ is the Environmental Board.

13.1.2. Financial security provisions

The Industrial Emissions Act does not contain any financial security provisions for ELD or other environmental liabilities.

13.1.3. Financial security instruments and mechanisms accepted

Not applicable

¹⁶ See 'Giving up oil shale would cost Estonia EUR1 billion per year', ERR (5 November 2018); <https://news.err.ee/874659/giving-up-oil-shale-would-cost-estonia-1-billion-per-year>

¹⁷ Tööstusheite seadus; <https://www.riigiteataja.ee/akt/115032019018> (in Estonian). An unofficial English translation is available at <https://www.riigiteataja.ee/en/eli/522032019012/consolide>

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 (2012/18/EU), which is implemented in Estonia by the Chemicals Act (*Kemikaaliseadus*),¹⁸ is the Consumer Protection and Technical Regulatory Authority (*Tarbikaitse ja Tehnilise Järelevalve Amet*).

13.2.2. Financial security provisions

Section 25(1) of the Chemicals Act requires the operator of a facility subject to the Seveso III Directive to have 'liability insurance for indemnifying non-contractual and unlawful damage that may be caused to a third party' (*ettevõttes kemikaali käitlemisest kolmandale isikule tekkida võiva lepinguvälise ja õigusvastase kahju hüvitamiseks olema vastutuskindlustus*).

13.2.3. Financial security instruments and mechanisms accepted

Section 25(1) states that the only acceptable financial security instrument is an insurance policy.

Section 25 provides that the insurance policy must satisfy the following criteria:

- it must be issued by an insurer that is authorised to carry out insurance business in Estonia (section 25(2));
- it must cover, at a minimum, direct property damage and, if there is damage to human health, bodily injury or death, the loss of profit unless otherwise provided by law (section 25(2));
- the insured event must be an 'unexpected occurrence relating to the handling of a chemical that the operator is in charge of, which arises from the properties of the handled chemical' (*kindlustusjuhtum on käitaja vastutusel toimuv kemikaali käitlemisega seotud ootamatu sündmus, mis tuleneb käideldava kemikaali omadustest*) and which results in the property damage or bodily injury (section 25(3)); and
- the limit of liability must be 'reasonable, considering the place of business relating to handling chemicals, the quantity and the manner of handling of chemicals, the scope of the operations and possible damage arising from it, and other circumstances', with a minimum of EUR 400,000 (section 25(3)).

Section 25(4) states that the insurance policy is not required to cover the following:

- deterioration of the quality of the environment by the operator except for reasonable costs related to first rescue operations to eliminate the initial damage and prevent further damage (*käitaja poolt keskkonna kvaliteedi halvendamisest, välja arvatud esmaste päästetoimingutega seotud mõistlikud kulutused esmase kahju likvideerimiseks ja kahju suurenemise ärahoidmiseks*);

¹⁸ Kemikaaliseadus; <https://www.riigiteataja.ee/akt/110112015002?leiaKehtiv> (in Estonian). An unofficial English translation is available at <https://www.riigiteataja.ee/en/eli/522012019006/consolide>

- property in the possession of the operator;
- damage caused by a defective product in the possession of the injured party; and
- an insured event wilfully caused by the injured party.

Note that section 25(4) specifically excludes any requirement for insurance for environmental damage.

Section 25(5) provides that the insurer may refuse to issue an insurance policy if the operator refuses to provide a risk analysis and other evidence that would enable the insurer to assess the insurable risk.

13.2.4. Templates

There are no templates for acceptable insurance policies but, as indicated in section 13.2.2 above, the legislation sets out specific requirements.

13.2.5. Financial security instruments and mechanisms not acceptable

The only acceptable financial security instruments is an insurance policy.

13.3. Other legislation

Section 100(3) of the Waste Act requires an applicant for a hazardous waste management licence to have insurance ‘to cover the costs of eliminating environmental pollution caused by an accident’ (*kindlustus õnnetusjuhtumitest tekkinud keskkonnareostuse likvideerimise kulude katmiseks*). Section 100 also sets out provisions for calculating the amount of financial security. Calculations are based on the annual tonnage of hazardous waste that is treated.

Section 101 provides that the competent authority shall refuse to grant a waste management licence unless such an insurance policy is in place. The scope of the requirement is wide and includes, for example, the demolition of end of life vehicles.¹⁹

In addition, as of 1 January 2020, section 98 of the Waste Act requires an applicant for a permit or registration for the storage and/or disposal of waste to submit to the competent authority, a financial guarantee from a credit or financial institution to cover the costs of organising and handling the waste.

Further, section 98 of the Radiation Act (*Kiirgusseadus*)²⁰ requires an applicant for a licence to carry out operations involving radiation, to provide a financial guarantee for the safety of the radioactive material, equipment containing it, and radioactive waste. The financial security is for the costs of recovering radioactive substances, equipment containing it, and/or radioactive waste. The provider of the financial security must be an Estonian or international credit or financial institution. The competent authority may refuse to accept the financial security if there are doubts about its reliability due to the economic status of reputation of the institution granting it.

¹⁹ See J. Veemaa, P. Mardiste, M. Kiisel, M. Aksen, E. Trumm, H. Hõrak, S. Vahaste-Pruul, T. Puolokainen, A. Karlõševa, S. Pajupuu, M. Vipp, ‘Finantsgarantii vahendid kui keskkonnastutuse tööriistad’ (commissioned by the Ministry of Environment, 2018), 74; https://www.envir.ee/sites/default/files/news-related-files/finantsgarantiid_lopparuanne.pdf (in Estonian)

²⁰ Kiirgusseadus; <https://www.riigiteataja.ee/akt/121122019010> (in Estonian). An unofficial, but not up to date, translation is available at <https://www.riigiteataja.ee/en/eli/ee/507092016001/consolide/current>

Still further, section 14 of the Railways Act (*Raudteeseadus*)²¹ states that an undertaking that wishes to apply for an operating licence or an operational safety certificate must have a liability insurance policy that provides compensation for environmental damage caused by unexpected or unforeseen events, including the removal of pollution, as well as claims for bodily injury and property damage. The minimum amount of cover for environmental damage must be 10% of the sum insured. The policy must be submitted to the authority, and must be valid during the entire period of the licence or certificate.

14. MANDATORY FINANCIAL SECURITY FOR OFFSHORE OIL AND GAS OPERATIONS

14.1. Competent authority(ies)

Not applicable

14.2. Status of offshore oil and gas operations

Estonia did not have, and was not proposing, any offshore oil and gas operations when this report was published.²²

14.3. Requirements for financial security

Not applicable

14.4. Requirement for financial security for ELD liabilities

Not applicable

15. FAILURE OF FINANCIAL SECURITY

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

There had not been any cases in Estonia in which a financial security instrument or mechanism was inadequate to pay the costs to remediate environmental damage under the ELD when this report was published.

No information was available as to whether there were any other cases in which a financial security instrument or mechanism was inadequate to pay the costs of preventing or remediation pollution under any other legislation.

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

There had not been any cases in Estonia in which the insolvency of an operator led to the failure of a financial security instrument involving the prevention or remediation of environmental damage including pollution when this report was published.

²¹ Raudteeseadus; <https://www.riigiteataja.ee/akt/129112019003> (in Estonian). An unofficial English translation is available at <https://www.riigiteataja.ee/en/eli/502122019002/consolide#para14>

²² See Bio by Deloitte and Stevens & Bolton LLP, 'Civil liability, financial security and compensation claims for offshore oil and gas activities in the European Economic Area, Final Report', 19; https://ec.europa.eu/energy/sites/ener/files/documents/BIO_Offshore%20Civil%20Liability_Revised%20Final%20Report%20%2831102014%29.pdf

15.3. Other

There were no public reports of other failures of voluntary or mandatory financial security in Estonia when this report was published.

16. FUNDS

Estonia has not established a fund to pay for the costs of preventive or remediation measures under the ELD.

The Environmental Investment Centre (*Keskkonnainvesteeringute Keskus*; EIC)²³ is a state-owned institution that provides funding to improve and preserve the environment in Estonia. The EIC has funded the remediation of polluted soil and dangerous infrastructure in respect of which legal owners ceased to exist due to the collapse of the Soviet Union. When this report was published, the EIC was financing, among other things, the construction of waste, water and other facilities to help reduce the rate of pollution or to increase re-use.

The EIC does not provide funding to companies for measures to prevent or remediate environmental damage under the ELD.

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

²³ Keskkonnainvesteeringute Keskus; <https://kik.ee/en> (available in Estonian and English)

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