Annex I

Germany

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

Insurance for environmental liabilities has a long history in Germany. As far back as 1965, insurance policies were available to provide cover for civil liability claims for bodily injury and property damage from environmental impairment.

Stand-alone insurance policies that provide cover for public as well as civil law environmental liabilities have been widely available to operators in Germany since the early 2000s. Insurance for ELD liabilities has been widely available since the transposition of the ELD into domestic law by the Environmental Damage Act of 10 May 2007 (Umweltschadensgesetz; USchadG).¹ In that year, the German Insurance Association (Gesamtverband der Deutschen Versicherungswirtschaft; GDV) issued model terms and conditions specifically to provide cover for liabilities under the ELD. Whilst the GDV model terms and conditions are not mandatory, virtually all insurers that offer general liability policies for German risks use them, with some adapting them for individual policies.

The GDV model terms and conditions for environmental damage (Umweltschadensversicherung; USV) are currently available in two alternatives:

- General Insurance Conditions for Environmental Damage Basic Insurance (Allgemeine Versicherungsbedingungen für die Umweltschadens-Basisversicherung; Basic Cover);² and
- General Insurance Conditions for Environmental Damage (Allgemeine Versicherungsbedingungen für die Umweltschadensversicherung) which consists of the baseline wording (I. USV-Grunddeckung), and two optional modules (II. USV-Zusatzbaustein 1, and III. USV-Zusatzbaustein 2; Comprehensive Cover).³

Previously, the Basic Cover and the Comprehensive Cover were optional additions to general liability and other liability policies. The Basic Cover subsequently became a standard section of most if not virtually all commercial general liability policies, with the Comprehensive Cover remaining optional. General liability policies are not mandatory in Germany but the vast majority of operators purchase them.

General liability policies for over one million small and medium sized operations with low environmental risks included the Basic Cover in 2018; general liability policies for nearly 90,000 industrial installations included the Comprehensive Cover, some with one or both of its optional modules, in 2018. Variants of the GDV model terms and conditions have also been added to other policies such as motor policies, directors and officers policies and professional indemnity policies.

In October 2019, the GDV revised the model terms and conditions for environmental damage, combining them with the model terms and conditions for civil law environmental liabilities as well as making other revisions to them. This report describes the February 2016 version of the

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² Allgemeine Versicherungsbedingungen für die Umweltschadens-Basisversicherung (February 2016); https://www.gdv.de/resource/blob/6094/d77e72b4e97fa67be6b4178b9899b6aa/23-allgemeine-versicherungsbedingungen-fuer-die-umweltschadens-basisversicherung--usv-basis--data.pdf (in German)
³ Allgemeine Versicherungsbedingungen für die Umweltschadensversicherung (USV) (February 2016); https://www.gdv.de/resource/blob/6042/c993854e4ceebb25737c149613a655244/22-allgemeine-versicherungsbedingungen-fuer-die-umweltschadensversicherung--usv--data.pdf (in German)
model terms and conditions (see in particular section 3.7.2 below) because this version was used in most general liability policies in Germany when this report was published.

The report then describes the structural revisions and other key revisions in the October 2019 version (A2 Umweltrisikoversicherung; URV)⁴ (see section 3.7.2 below). Due to the new concept established by the URV, it will be some time before it becomes established in the German insurance market in lieu of the 2016 version.

In addition to the model terms and conditions, stand-alone environmental insurance policies that provide cover to operators for liabilities under the ELD and other environmental liabilities are widely available. They are offered by insurers based in Germany as well as based in other Member States by means of passporting. Directors and officers environmental insurance policies and professional indemnity environmental policies are also available.⁵

Germany has not introduced mandatory financial security for liabilities under the ELD. Germany has introduced financial security, including insurance, for mining activities.

In addition, companies that transport waste must have insurance for environmental liabilities as well as standard motor vehicle insurance cover.

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

2. ENVIRONMENTAL INSURANCE MARKET

Most operators in Germany purchase general liability policies that include the GDV model terms and conditions. As described in section 3.7.2 below, these policies are specifically designed to provide cover for ELD liabilities, as well as including an option for cover under the Federal Soil Protection Act of 17 March 1998, as amended (Bundes-Bodenschutzgesetz; BBodSchG).⁶

As also described in section 3.7.2 below, the model terms and conditions have limitations; they do not provide cover for all ELD liabilities nor do they provide cover for all incidents that result in liabilities under the ELD. Conversely, as described in section 3.4, in addition to ELD liabilities, they provide cover for liabilities under the Federal Soil Protection Act as well as other environmental legislation. The background to this is the conceptual distinction between insurance for environmental liabilities that arise from civil law claims (Umwelthaftpflicht) in contrast to public law liability to remedy environmental damage pursuant to proceedings by

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⁴ A2 Umweltrisikoversicherung (URV), Musterbedingungen des GDV; https://www.gdv.de/resource/blob/52210/b51d5125549e3e3d2008bab5c749eb11/12-1-umweltrisikoversicherung-urv-oktober2019-data.pdf (in German)

⁵ See Out-Law.com, ‘Environmental Law in Germany’ (updated in April 2018); https://www.out-law.com/en/topics/property/environment/environmental-law-in-germany/ A directors and officers environmental insurance policy provides personal cover to directors and officers of a company for their environmental liabilities when acting in the capacity of directors and officers. Such a policy is in addition to a policy that provides cover to their company. A professional indemnity environmental policy provides cover to professionals such as surveyors for any errors and omissions in their advice concerning environmental matters.

⁶ Gesetz zum Schutz von schädlichen Bodenveränderungen und zur Sanierung von Altlasten, Bundes-Bodenschutzgesetz, BBodSchG; https://www.gesetze-im-internet.de/bbodschg/
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competent authorities (*Umweltschaden*). The German insurance market strictly distinguishes between these two types of claims.

Variants of the GDV model terms and conditions have been, and continue to be, added to other liability policies including directors and officers policies, professional liability policies (including those for architects), and motor policies. The model terms and conditions are also added to specialist policies such as those for agriculture.  

The GDV publishes specifically-designed terms and conditions for ELD and other environmental liabilities for a number of specialised policy wordings, e.g. motor third-party liability, agriculture/forestry and policies for architects. These are all subtly different from the general wording to reflect these insureds’ specific needs.

Professional indemnity insurance is mandatory for a large number of professions and occupations, with the scope of coverage subject to applicable legislation. The model professional indemnity wordings tend to mirror statutory requirements and tend not to include insurance for environmental liabilities. Where this is the case, insureds usually also purchase a standard commercial liability policy that includes environmental insurance, to cover their general liability risks (i.e. those not specific to the profession/occupation in question and not covered by the professional indemnity wording).

The GDV model wording for directors and officers insurance does not include cover for environmental liabilities. The market for directors and officers insurance in Germany is highly fragmented, with many different wordings issued by insurers and brokers in general use.

A wide range of stand-alone environmental insurance policies is also available. They provide cover for liabilities under the ELD, the Federal Soil Protection Act and other environmental legislation. In addition to providing cover for remediating environmental damage caused by sudden and accidental and gradual incidents during the policy period, they provide cover for remediating contamination that exists at a site before the inception of the policy, claims for bodily injury, property damage and economic loss, transportation, business interruption, disaster response costs, non-owned disposal sites, etc.

2.1. Commercial insurers

2.1.1. Number of insurers

Virtually all insurers in Germany that offer general liability policies include the Basic Cover, or offer the Comprehensive Cover, in their policies.

Many insurers authorised to conduct business in Germany including insurers based in Germany also offer stand-alone environmental insurance policies to operators that require more extensive cover than that provided by the GDV model terms and conditions.

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2.1.2. New insurers entering the market since 2009

The issue of new insurers entering the German insurance market to offer environmental insurance policies since 2009 is not relevant because, as noted in section 2 above, virtually all insurers that offer commercial general liability policies include the Basic Cover, or offer the Comprehensive Cover, in their policies.

2.1.3. Existing insurers that introduced environmental insurance policies since 2009

As indicated above, insurers authorised to conduct business in Germany offer the GDV terms and conditions in general liability policies. Some of these insurers also offer stand-alone environmental insurance policies.

2.2. Re/insurance pools

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

2.2.1. Date of establishment

Not applicable

2.2.2. Descriptions of policies issued

Not applicable

2.3. Mutuals

Approximately 90 large mutuals are registered in Germany; not including another 254 smaller entities that are not under a legal obligation to register. Major German market participants are organised in the legal form of a so-called mutual (Versicherungsverein auf Gegenseitigkeit; VVaG). This legal form is an alternative corporation model available to insurance businesses in Germany with its foundations in the basic civil code partnership (Verein).

Most German mutuals generally provide the same cover as other insurers that operate under a different legal form with the exception of public sector mutuals which do not underwrite on behalf of private clients.

2.3.1. Date of establishment

Not applicable

2.3.2. Descriptions of policies issued

Not applicable

2.4. Other

Several captives have been established in Germany by large commercial business organisations. They are regulated by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht; BaFin).

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9 Bundesamt für Justiz, ‘Geschäftsentwicklung der freiwilligen Gerichtsbarkeit – Amtsgerichte’ (14 November 2014); https://www.bundesjustizamt.de/DE/SharedDocs/Publikationen/Justizstatistik/Geschaeftsentwicklung_Amtsgerichte.pdf?__blob=publicationFile&v=12 (in German)
As a general rule, environmental liability insurance is not a line of business that is excluded from cover that is insured through a captive. Insurance policies underwritten by a captive tend to be bespoke.

3. VOLUNTARY INSURANCE POLICIES FOR ELD AND OTHER ENVIRONMENTAL LIABILITIES

3.1. Environmental insurance policies
A wide range of stand-alone environmental insurance policies are available but there is little demand for them due to the GDV’s model terms and conditions.

3.2. Cover for ELD preventive costs
The GDV model terms and conditions provide cover for the costs of preventive measures under the ELD provided that the measures are carried out to avoid or minimise environmental damage that would otherwise inevitably occur.

Most stand-alone environmental insurance policies provide cover for the costs of preventive measures under the ELD, that is, ‘measures taken in response to an event, act or omission that has created an imminent threat of environmental damage, with a view to preventing or minimising that damage’. The ELD defines an ‘imminent threat of damage’ as ‘a sufficient likelihood that environmental damage will occur in the near future’. Some stand-alone environmental insurance policies, like the GDV model terms and conditions, provide cover for a narrower scope of preventive measures than those specified in the ELD.

3.3. Cover for ELD primary, complementary and compensatory costs
Stand-alone environmental insurance policies provide cover for primary, complementary and compensatory remediation of environmental damage under the ELD. Most provide cover not only for the remediation of pollution but also for other types of environmental damage such as, for example, harm to protected migratory birds by wind farms and crop burning that spreads to and destroys a protected natural habitat, provided in both cases that the acts are lawful and the damage is not intentional or wilful.

The GDV model terms and conditions also provide cover for primary, complementary and compensatory remediation, with a sub-limit of liability for compensatory remediation. That is, they provide cover for compensatory remediation subject to a lower limit of liability than cover for primary and complementary remediation. The focus of the GDV model terms and conditions and stand-alone environmental insurance policies is the remediation of pollution and contamination.

Coverage under the model terms and conditions is limited to damage that results from a disruption to operations carried out by the insured with the caveat that gradual pollution from that disruption is covered. Stand-alone environmental insurance policies provide broader cover, including non-pollution-related damage and damage from gradual incidents as well as gradual pollution from sudden and accidental incidents.

3.4. Cover for non-ELD liabilities
As described in section 3.7.2 below, module 2 of the GDV model terms and conditions provides cover for the costs of remediating contamination under the Federal Soil Protection Act. The

10 ELD art 2(10)
11 Ibid art 2(9)
GDV model terms and conditions also provide cover for the costs of remediating pollution subject to liabilities under other environmental legislation.

That is, although the model terms and conditions are specifically designed to provide cover for liability under the ELD, and indeed refer specifically to damage to protected species and natural habitats under the Birds Directive (2009/147/EC) and the Habitats Directive (92/43/EEC) (called biodiversity damage in this report) and water damage under the ELD, they do not specifically state that cover is provided for such damage only if it is subject to liability under the ELD and the Environmental Damage Act that transposed it in Germany.

If a competent authority bases prevention or remediation obligations on an operator that has caused environmental damage under legislation other than the ELD, the test for coverage is whether such obligations could have been imposed under the ELD. If the competent authority could have done so, the GDV model terms and conditions will provide cover for the environmental damage.

The only exception to the above limitation is cover under module 2 in respect of the obligation to remediate soil under the Federal Soil Protection Act on an insured operator’s own site. This is beyond the scope of the ELD, in particular because the Federal Soil Protection Act does not require a significant risk of an adverse effect on human health.

As a practical matter, therefore, insurers pay claims for measures to prevent and remediate damage to water and biodiversity not only if the liability for remediating it is subject to the ELD but also if it is subject to other environmental legislation provided such legislation is congruent with the ELD.

Insurers, nevertheless, provide cover for claims under the GDV model terms and conditions only if the relevant threshold of environmental damage under the ELD has been reached or exceeded. In order to determine this, insurers investigate a claim including whether any policy exclusions apply. If the competent authority that has initiated proceedings against the insured has invoked other legislation that enables it to impose prevention or remediation measures that go beyond the ELD’s material scope (e.g. because the ELD threshold was not reached), these measures are uninsured. In such a situation, insurers have no obligations towards the insured in respect of such claims. Insurers are, however, obliged to defend against claims brought under the ELD, but which fall outside the ELD’s material scope, e.g. because the damage does not meet the relevant threshold. That is, insurers owe three main contractual duties: to assess the insured’s liability and on that basis, either to defend the insured against unjustified claims, or to pay for justified claims. Whatever legislation the competent authority bases proceedings against the insured on, cover is restricted to measures falling within the material scope of the ELD.

The above may help account for the difference between the number of incidents that Germany reported to the European Commission under then article 18(1) of the ELD in 2013 as ‘ELD incidents’ and the number of incidents for which insurers paid claims under the provisions of the GDV model terms and conditions that apply to the ELD. Whereas Germany reported 60 ELD incidents to the European Commission for the period of 2007 to 2012, the records of the GDV show that there were 110 insured claims for ELD liabilities in 2012 alone.

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13 Karl-Martin Wischott and Karl Ortmann, ‘Environmental damage claims; The insurer’s perspective on adjusting large ELD losses (A case study)’ (presentation at 3rd ELD Stakeholder Workshop, Brussels, 26
Stand-alone environmental insurance policies virtually always provide cover for environmental liabilities under laws other than the ELD as well as the ELD. As stated in section 2 above, they also provide cover for other environmental liabilities.

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

Cover for ELD and other environmental liabilities arising from environmental damage on an insured’s own site, and pollutants that have migrated to third-party property, is provided by both the GDV model terms and conditions and stand-alone environmental insurance policies. In addition, stand-alone insurance policies provide cover for other environmental damage that emanates from the insured’s site; module 1 of the GDV model terms and conditions provides cover for ELD-type damage to land/soil, water and protected species and natural habitats on an insured operator’s own site (see section 3.7.2 below).

Property policies do not provide cover for remediating environmental damage at an insured’s own site; land is not ‘insured property’ under the policies. A GDV model endorsement is available that provides cover for remediating environmental damage at an insured’s own site if the damage is consequential to damage caused by fire, lightning, exploration or aircraft (see section 3.20 below). The endorsement is not specifically designed to provide cover for ELD liabilities.

3.6.  Description of policies

3.6.1.  Format

The GDV model terms and conditions may be added to general liability and various other liability policies as a separate coverage part. As indicated in section 1 above, the Basic Cover is a standard part of most general liability policies, with the Comprehensive Cover being optional. Insurers may adapt the model terms and conditions in individual policies.

Stand-alone environmental insurance policies generally have a menu format so that an insured may select the coverage it requires. The policies tend to have separate insuring agreements for the costs of remediating environmental damage under the ELD and the costs of remediating pollution and contamination under other environmental laws.

3.6.2.  Claims made or occurrence based

Stand-alone environmental insurance policies, with the exception of some policies for contractors that are underwritten on a loss occurrence basis, are underwritten on a claims made and reported basis. That is, a claim must be made against an insured during the policy period and the insured must report the claim to insurers during the policy period or, if available, an extended reporting period.

The GDV model terms and conditions are underwritten on a manifestation basis. That is, the trigger for cover is a verifiable first ascertainment of environmental damage by the insured, competent authority or another third person which can occur up to three years after the termination of the policy (see section 3.7.2 below).

The loss occurrence and manifestation triggers are very different. Under German general liability policies, the loss occurrence (Schadensereignis) that triggers the policy is deemed to be the (last) event directly leading to injury or damage to the third party. The loss occurrence
must therefore precede the injury or damage itself. The loss occurrence often takes place at a later point in time than the event, act or omission that set the first causal link ultimately leading to the injury or damage. By contrast, a manifestation policy is triggered by discovery of the injury/damage, which may be substantially later than the loss occurrence.

As a practical matter, the environmental damage covered by the model terms and conditions virtually always occurs during the same policy period as the claim that is made against the insured and reported by the insured to insurers. This is because the model terms and conditions provide cover only for environmental damage that is a direct consequence of a sudden and accidental disruption of operations during the policy period. The insured must notify the insurer immediately it ascertains that there is such a disruption of operations. Unless, therefore, the disruption results in environmental damage which, although it is a direct consequence of the disruption, is not discovered until later, it is difficult to foresee how the verifiable first ascertainment of environmental damage would occur at a later date.

Although the distinctions between loss occurrence and manifestation triggers may be academic in the case of industrial accidents, they are of practical importance in all cases that involve seepage or gradual pollution. This is because it is the disruption of operations that must be sudden and accidental, not the pollution resulting from the accident. Therefore, damage from gradual pollution can be covered under the GDV model wording. In such a case the loss occurrence may be years before the discovery of damage; it may even be impossible to fix the loss occurrence in time and, accordingly, to allocate the claim to the correct policy period.

3.6.3. Policies for operators

The predominant insurance cover for operators for ELD liabilities is the GDV model terms and conditions as an addition to general liability and other liability policies. As indicated above, stand-alone policies also provide cover for environmental damage under the ELD and environmental liabilities under other environmental laws. They are, however, much less prevalent than the GDV model terms and conditions and tend to be purchased by operators of industrial facilities that require broader cover than that provided by the model terms and conditions as well as by companies that have sites and/or operations in other States as well as Germany. In such a case, an operator tends to purchase a stand-alone environmental insurance policy that provides cover in all the States under a global programme.

Other types of environmental insurance policies that are available include remediation cost cap policies, that is, policies for losses arising from costs that exceed a buffer above an amount agreed between the operator and insurers following detailed negotiations between them. The agreed amount is the projected cost of the remediation/clean up. The policy thus provides cover if the clean-up costs exceed the agreed amount plus the buffer amount.

A further type of environmental insurance policy provides cover for pre-existing environmental damage including pollution at or emanating from sites owned or occupied by the insured\(^\text{14}\) provided that the damage is disclosed by the insured to insurers or is unknown to the insured before the inception of the policy. This type of policy is often available in a menu format that includes cover for ELD and other environmental liabilities from incidents that occur during the policy period as well as prior to it.

\(^{14}\) See David Elshorst, ‘Clifford Chance Q&A on Environmental Law in Germany’ (2013) s 28
3.6.4. Policies for contractors and others

Stand-alone environmental insurance policies that provide cover for ELD and other environmental liabilities for contractors and others are widely available. The GDV model terms and conditions is also available to contractors and others.

3.7. Model terms and conditions

3.7.1. Organisation issuing model terms and conditions

As indicated above, the GDV, which develops model terms and conditions for many common types of insurance policies for risks in Germany, has issued model terms and conditions for liabilities under the ELD and the Federal Soil Protection Act.\(^{15}\)

3.7.2. Description of model terms and conditions

The model terms and conditions consist of two alternatives; the Basic Cover,\(^ {16}\) and the Comprehensive Cover\(^ {17}\) that includes two optional modules (\textit{Zusatzbaustein 1} and \textit{Zusatzbaustein 2}). The model terms and conditions build on model terms and conditions that the GDV originally developed to provide cover for liabilities under the Environmental Liability Act of 10 December 1990 (\textit{Umwelthaftungsgesetz; UmweltHG}).

Environmental liability insurance, which provides cover for civil law liability caused by environmental impact is as ubiquitous as the GDV model terms and conditions for ELD-related damage to the environment. Although the policy form was created as a reaction to the Environmental Liability Act, it responds to all types of civil law liability.

In order to understand the reference to a disruption of operations (\textit{Betriebsstörung}) in the model terms and conditions and also to understand differences between the Basic Cover and the Comprehensive Cover, it is necessary to understand key provisions of the Environmental Liability Act.

The Act imposes strict liability on the operator of an installation listed in annex 1 of the Act for death, bodily injury and property damage up to a limit of EUR 85,000,000 caused by an environmental impact including damage by substances, vibrations, noise, radiation, gas, vapours and heat. An environmental impact under the Environmental Liability Act differs from environmental damage under the ELD due to the limitation in the Environmental Liability Act to civil liability and the limitation in the ELD to the prevention and remediation of land, water and biodiversity damage.

Annex 1 of the Environmental Liability Act lists 96 types of installations grouped into the following 10 categories:

\(^{15}\) See Nils Hellberg, ‘ELD implementation: Update on German developments’ (presentation, 15 January 2013); http://ec.europa.eu/environment/legal/liability/pdf/eld_meetings/German_insurance_update.pdf


\(^{17}\) The Comprehensive Cover is available at https://www.gdv.de/resource/blob/6204/072c0c9a3b5a3be826f31508b7aa2d80/19-besondere-bedingungen-und-risikobeschreibungen-fuer-die-versicherung-der-haftpflicht-wegen-schaeden-durch-umwelteinwirkung-umweltaetnhaftpflicht-modell-data.pdf (in German)
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(1) mining, energy and heat production;
(2) manufacture of products from stone, earth, glass, ceramic, and other construction materials;
(3) processing and manufacture of steel, iron, and other metals;
(4) manufacture of chemical, pharmaceutical, or petroleum products or their further processing;
(5) treatment with organic materials and the manufacture of artificial materials;
(6) processing of wood and wood pulp;
(7) production of food, feed, and agricultural products;
(8) treatment of waste;
(9) storage and disposal of certain materials; and
(10) other facilities, including paint, printing ink, asphalt, etc. production.\(^\text{18}\)

The Act establishes a rebuttable presumption in that there is a presumption that an installation caused the damage if, taking into account the facts and circumstances of a case, the installation is likely to have caused the damage. The likelihood is assessed by the consideration of various factors including the installation’s operating procedures, the facilities (including machines, vehicles and ancillary structures) that were used, the time and place of the damage, meteorological factors, the type and concentration of substances that were being used and were released, and the type of damage. The operator of the installation may rebut the presumption by showing either that the installation was being operated in accordance with its intended use and that specific operating procedures were complied with and there was no disruption of operations, or that another circumstance was likely to have caused the damage.\(^\text{19}\)

➢ Basic Cover

The Basic Cover provides cover for low risk sites for which detailed underwriting concerning environmental risks is not required. As such, the Basic Cover provides cover to operators, mostly small and medium sized enterprises, that carry out activities (including the operation of installations, operating equipment, activities on own or third-party sites; planning, manufacturing, delivery, assembly, decommissioning, maintenance or servicing of installations and operating equipment other than those specified in sections 2.1 to 2.5 (see below)), as well as the authorised use of motor vehicles that are not subject to compulsory insurance (which excludes among other things, cover for motor vehicles that use public roads).

Cover is designed for liabilities under the ELD; that is, the remediation of land, water (but only surface not ground water) and biodiversity damage.

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\(^{19}\) See Vincent Schreier, Topic IV – Pollution Insurance – Methods, Coverage and Beneficiaries Questionnaire, AIDA World Congress, Rio de Janeiro, October 2018 (prepared 22 November 2017), s 3.1 (discussed in context of Environmental Liability Act); https://www.dvfwv.de/images/pdf/aida_ergebnisse/4b_german%20national%20report%20on%20pollution%20insurance_schreier_aida_2018.pdf
Cover for the remediation of land damage thus refers to land damage as defined in the ELD, namely land/soil that poses a significant risk of an adverse effect on human health. The measures to remediate land damage that are covered by the model terms and conditions also equate to those in the ELD. They are measures to remove, control, contain or diminish the contaminants with the purpose of eliminating the significant risk, taking into account the use of the land or its approved future use at the time of the damage.

Cover is also specifically provided for primary, complementary and compensatory remediation of surface water and biodiversity damage under the ELD, with compensatory remediation subject to a sub-limit of liability. As indicated in section 3.4 above, the Basic Cover provides cover not only for surface water and biodiversity damage under the ELD; it also provides cover for remediating damage that is not subject to the ELD provided that the legislation that imposes the liabilities is congruent with the ELD.

In order to be covered, environmental damage must directly result from a sudden and accidental disruption of operations by the insured or a third party or result from manufactured products or products supplied to the insured.

As indicated above, the trigger for cover is the verifiable first ascertainment of environmental damage by the insured, competent authority or another third person. This trigger is basically a manifestation trigger in that the relevant time is the time at which the insured, the person who suffers damage or another third party discovers environmental damage. As noted in section 3.6.2 above, as a practical matter the damage would typically be discovered at the same time as the disruption of operations that caused it.

The GDV introduced the verifiable first ascertainment trigger for cover under the Environmental Liability Act, in part to avoid difficulties caused by a prior theory called the ‘first drop theory’. The first drop theory had been proposed to determine the insured event for claims involving environmental damage under policies with a loss occurrence trigger. It was used in respect of the so-called water damage insurance (Gewässerschaden-Haftpflichtversicherung) wording created in 1965, which was superseded by the environmental liability insurance wording in 1993, and which was underwritten on a loss occurrence basis. The first drop theory was also used for claims covered by general liability policies with no exclusion for environmental liabilities. The vast difficulties experienced with the loss occurrence trigger in environmental liability claims resulted in the amendment of the trigger to a manifestation in the Environmental Liability Act model wording and was subsequently also adopted for the GDV model terms and conditions for ELD liabilities.

Sites that are not regarded as low risk sites, and for which the Basic Cover is not available, are listed in sections 2.1 to 2.5. The Basic Cover is thus not available to operators of the following installations and certain excluded activities:

2.1 installations subject to the Federal Water Act, as amended (Wasserhaushaltsgesetz);

2.2 installations listed in annex (Anhang) 1 of the Environmental Liability Act;

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20 ELD art 2(1)(c)
21 See ibid annex II(2)
2.3 installations subject to an obligation to obtain a permit or a duty to disclose in addition to those subject to the Federal Water Act or the Environmental Liability Act (under sections 2.1 and 2.2 above) with the exception of sewage works, impacts on surface water and damage caused by waste water;

2.4 sewage works or the dumping or discharging of substances into a body of water such that they change its physical, chemical or biological condition; and

2.5 installations subject to annex 2 of the Environmental Liability Act.

The Basic Cover does, however, include an extension of liability as follows. Section 1.1.1 provides cover for products liability for installations, operating equipment and activities on an insured’s own land or third-party land that is not within sections 2.1 to 2.5. Section 1.1.3 provides cover for specified activities concerning land within sections 2.1 to 2.5 that are not owned by the insured. Section 1.1.2 provides cover for the manufacture or delivery of products after they are put into circulation if they are not included in section 1.1.3.

Section 3.2 of the Basic Cover provides that a disruption of activities is not necessary if damage pursuant to section 1.1.2 is caused by products that were manufactured or supplied by the insured, or were manufactured by a third party and stored or used by the insured (pursuant to section 1.1.1) provided that the damage was caused by defective design or manufacture or a failure to warn.

The range of installations covered by sections 2.1 to 2.5 is vast. The definition of installations under the Federal Water Act is broader than installations under the Environmental Liability Act. As indicated above, annex 1 of the Environmental Liability Act lists 96 types of installations. Section 2.3 is a catch-all provision that includes many other installations. Section 2.4 covers a broad range of works. Finally, section 2.5 refers to annex 2 of the Environmental Liability Act, which lists three categories of facilities; those subject to the Accident Law of 1980 (so-called Störfall-Verordnung – 12), waste incineration facilities, and facilities that manufacture paints or printing ink from cellulose nitrate.

Notwithstanding sections 2.1 and 2.4, the Basic Cover states that insurers may agree to provide cover to operators that store small quantities of substances that can pollute water and operators that have oil or grease separators, respectively.

One insurer reported that it provides Basic Cover in its general liability policies for the following risks:

- storage of substances that are harmful to water on an operator’s own site and construction sites;
- storage of pollutants in containers with a double wall or other acceptable protection;
- containers of pollutants with a capacity of up to 240 litres;
- storage of up to 5,000 litres of fuel in tanks with an individual capacity of up to 1,000 litres;
- storage of heating oil in tanks with a total capacity of up to 3,000 litres;
- operation of grease separators; and

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25 Verordnung zur Durchführung des Bundes-Immissionsschutzgesetzes (consolidated version of 15 March 2017); https://www.gesetze-im-internet.de/bimschv_12_2000/12_8BlmSchV.pdf (in German)
other environmental risks subject to individual risk assessment and agreement by insurers.

Section 10 sets out exclusions, including the following:

- environmental damage on sites owned, leased or borrowed by an insured;
- groundwater;
- environmental damage that existed prior to the inception date of the policy;
- asbestos;
- genetically modified organisms;
- unauthorised disposal of waste;
- installations or facilities for the final disposal of waste such as landfills;
- mining operations; and
- nuclear facilities.

As noted throughout this report, however, the GDV model terms and conditions are designed for all types of activities and are not obligatory. Individual insurers may adapt the terms and conditions including, among other things, deleting exclusions in it. Thus, whilst the model terms and conditions exclude, say asbestos or mining, an individual insurer may agree to delete the exclusion.

Sections 6.3 and 25 of the Basic Cover provide that insurance cover is extended if laws or regulations related to the ELD result in an increased risk. This cover is subject to insurers’ right to cancel the policy with one month’s notice. Section 6.3 specifically states that the extension does not include any provisions that mandate compulsory cover.

Comprehensive Cover

The Comprehensive Cover is designed to provide cover for operators listed in sections 2.1 to 2.5 of the Basic Cover, that is, operators of sites other than low risk sites.

In order to be covered for the Comprehensive Cover, the schedule to an individual general liability policy lists sections 2.1 to 2.5 as optional insuring agreements that an insured may select. In addition, sections 2.6 and 2.7 of the Comprehensive Cover, which are also listed in the schedule to an individual policy as optional insuring agreements, provide cover for products liability, that is, products manufactured or put into circulation by the insured, and the installation, decommissioning, maintenance and servicing of equipment, in respect of sections 2.1 to 2.5, respectively. Section 2.8, which again is listed as an option in the schedule to an individual policy, provides cover for installations, facilities and activities on own and third-party land that are not covered by sections 2.1 to 2.7.

As with the Basic Cover, land, surface water and biodiversity damage under the Comprehensive Cover must directly result from a sudden and accidental disruption of operations by the insured or a third party. In addition, the other provisions described above such as the verifiable first ascertainment trigger also apply to the Comprehensive Cover.

Optional modules 1 and/or 2 may be added to the Comprehensive Cover.

Optional module 1

Optional module 1, which is also designed to provide cover for liabilities under the ELD, provides cover for the costs of remediating contaminated soil on the insured’s own site provided that there is a risk to human health, surface water and biodiversity damage. The sites to be covered must be specified in the schedule; further sites may be added by endorsement.
In contrast to the Basic Cover and the Comprehensive Cover, module 1 includes optional cover for the costs of remediating groundwater on the insured’s site and pollution in groundwater that has migrated to third-party property.

In addition to the general exclusions in section 10 of the GDV model terms and conditions, module 1 bars cover for remediating on-site contaminated soil and water caused by the FLEXA perils (fire, lightning, explosion or aircraft). This is because the GDV have a model endorsement to a property policy specifically for such cover (see section 3.20 below).

- **Optional module 2**

Optional module 2 provides cover for liabilities under the Federal Soil Protection Act; it is the only section of the GDV model terms and conditions that provides cover specifically for non-ELD liabilities.

The Federal Soil Protection Act, as amended, imposes strict, joint and several liability to remediate contaminated land on a person who caused the contamination, that person’s legal successor, a former owner that sold the land on or after 1 March 1999 and knew or should have known that the land was contaminated when it sold the land, the current owner, and any occupier of the contaminated land.26

Cover is provided for the costs of remediating contaminated soil on the insured’s site when there is a risk to surface or ground water from the contamination; there is no requirement for an adverse risk to human health. Cover is not provided, however, for remediating the surface or ground water itself or for biodiversity damage. Cover for damage to surface water and ground water under the ELD, as well as for biodiversity damage in the insured operator’s own site(s) is provided by optional module 1. Sites that are covered are specified in the schedule to each policy or added by endorsement.

Cover is limited to the following: the contamination results from a sudden and accidental incident (‘disruption of operations’) during the policy period; remediation is ordered by the competent authority; and insurers consent to the costs of remediation.

- **Revisions to the model terms and conditions**

The URV combines the model terms and conditions for environmental damage (USV) and the model terms and conditions for civil law environmental liability (Umwelthaftpflichtversicherung; UHV) and integrates both into the GDV’s non-binding model terms and conditions for public and products liability insurance (Allgemeine Versicherungsbedingungen für die Betriebs- und Berufshaftpflichtversicherung; AVB BHV) as standard cover under section A2. Section A1 of the AVB BHV covers general (i.e. non-environmental) public/premises liability; section A3 covers general products liability. Each of the three sections is ‘stand-alone’. Therefore, all risks that relate to environmental damage or liability, either under the ELD or under civil law environmental liability, are excluded from sections A1 and A3.

In addition to the above structural changes, the GDV changed some terms to standardise, as far as possible, the material scope of cover provided by section A2. Section A2 thus includes

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uniform definitions (*Begriffsbestimmungen*) for key terms and phrases. In this respect, civil law environmental liability is now called ‘environmental liability risk’ (*Umwelthaftpflicht-Risiko*), and ELD liability is now called ‘environmental damage risk’ (*Umweltschadens-Risiko*).

Other key revisions in respect of cover for environmental liability risks are as follows.

The Basic Cover and the Comprehensive Cover are integrated into a single policy wording. Sections A2-1.4 a) to e) of the URV basically correspond to the Basic Cover in the 2016 version. Section A2-1.4 f) refers to environmental risks that are not included in sections A2-1.4 a) to e) (*Andere im Versicherungsschein oder seinen Nachträgen aufgeführte umweltrelevante Risiken, die nicht bereits nach a) bis e) versichert sind*). These risks can be insured subject to special agreement.

The requirement for an insured to prove that a disruption of operations occurred is no longer generally required except for cover for preventive costs and optional modules 1 and 2. Instead, the exclusion for normal operations (for which the insurer has the burden of proof as with all exclusions) remains. This clause (section A2-8.22) provides, in respect of cover for environmental damage, that obligations caused by unavoidable, necessary or accepted environmental impacts due to normal operations are excluded. Section A2-8.22 may be modified by special agreement so that the exclusion does not apply if the insured proves that it need not have foreseen that the damage could occur based on the state of technology that existed when the environmental impact that led to the damage occurred.

Cover for preventive costs (section A2-7) is simplified. Under section A2-7, the insured must prove that a disruption of operations occurred or that a competent authority issued an order that required the insured to carry out preventive measures. As in the 2016 version, the cost of preventive measures is covered only if the measures were necessary to prevent damage that would otherwise inevitably have occurred (called ‘rescue costs’ (*Rettungskosten*)).

Module 1 remains optional. However, cover for groundwater under it, which used to be an optional extension to module 1, is now standard.

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

As indicated above, stand-alone environmental insurance policies provide more extensive cover than the GDV model terms and conditions but are purchased far less often.

The following are major differences between the GDV model terms and conditions and stand-alone environmental insurance policies.

- **Cover is provided by the model terms and conditions only for environmental damage that is a direct consequence of a sudden and accidental disruption of operations, with the caveat that cover is provided for gradual pollution resulting from such a disruption; cover is provided by stand-alone environmental insurance policies for environmental damage that is caused by gradual as well as by sudden and accidental incidents including sudden and gradual pollution from the incident.**
- **Cover is provided by the model terms and conditions only for environmental damage that is caused during the policy period; cover is provided by stand-alone environmental insurance policies for environmental damage that exists at a covered site prior to the inception date of the policy as well as damage caused during the policy period.**
- **The Basic Cover does not provide cover for remediating groundwater; such cover is provided only as an option to optional module 1 under the Comprehensive Cover (or as part of optional module 1 in the URV). Stand-alone environmental insurance policies provide cover for remediating groundwater.**
• The model terms and conditions provide cover for environmental damage from an insured’s products; stand-alone environmental insurance policies tend to bar cover for products liability.

• The model terms and conditions do not provide cover for all preventive measures under the ELD; cover is limited to measures to avoid or minimise environmental damage that would otherwise inevitably occur. Most stand-alone environmental insurance policies provide cover for measures to prevent an imminent threat of environmental damage under the ELD.

• The model terms and conditions include a sub-limit of liability for compensatory remediation; stand-alone environmental insurance policies do not tend to have a sub-limit of liability for compensatory remediation.

• The model terms and conditions provide cover if, and only if, the environmental damage results from a disruption of operations (albeit with the burden being on the insurer in the form of an exclusion in the URV). Their scope, therefore, is focused on pollution or contamination and not, say, on damage to a protected species from a wind turbine, damage to a protected habitat from the extraction of water, or other activities that do not involve pollution or contamination. Most stand-alone environmental insurance policies are focused on pollution but generally provide cover for all types of environmental damage under the ELD.

• Stand-alone environmental insurance policies tend to provide cover for ELD liabilities and other environmental liabilities as separate insuring agreements. The model terms and conditions appear to provide cover for environmental liabilities that are subject to legislation that is congruent with the ELD without specifically stating they do so.

3.8. Date of general availability of environmental insurance policies

The GDV issued the model terms and conditions applicable to ELD liabilities in April 2007; they are specifically designed to apply to the ELD.27 The currently used versions of the Basic Cover and Comprehensive Cover, including the two optional modules, when this report was published were issued in February 2016.28 The URV, which will succeed the February 2016 version, was issued in October 2019.

The number of policies that include the model terms and conditions has increased greatly since their introduction in 2007. The number of policies covered by the Comprehensive Cover and the Basic Cover (in parentheses below) up to 2017 is as follows:

• 2007: 130 (12,991);
• 2008: 13,464 (179,930);
• 2009: 31,015 (409,709);
• 2010: 44,017 (705,353);
• 2011: 74,982 (850,578);

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28 Allgemeine Versicherungsbedingungen für die Umweltschadens-Basisversicherung (February 2016); https://www.gdv.de/resource/blob/6094/d77e72b4e97fa67be6b4178b989996aa/23-allgemeine-versicherungsbedingungen-fuer-die-umweltschadens-basisversicherung--usv-basis--data.pdf (in German); Allgemeine Versicherungsbedingungen für die Umweltschadensversicherung (USV) (February 2016); https://www.gdv.de/resource/blob/6042/c993854e4cebb25737c149613a655244/22-allgemeine-versicherungsbedingungen-fuer-die-umweltschadensversicherung--usv--data.pdf (in German)
• 2012: 82,151 (970,334);
• 2013: 83,245 (1,026,253);
• 2014: 82,705 (954,568);
• 2015: 83,298 (968,690);
• 2016: 68,668 (794,986); 29 and
• 2017: 68,131 (809,350).

Figures for 2018 will be available about the middle of 2020.

As indicated above, the number of policies covered by the Comprehensive Cover and the Basic Cover have declined since 2013. A major reason for the decline is that insurers have increasingly integrated ELD cover into their commercial general liability policies in the form of a standard section. Where ELD cover is no longer a facultative extension subject to special agreement, many insurers do not capture this cover statistically.

In addition, stand-alone environmental insurance policies that provide cover for ELD and other environmental liabilities have been generally available in Germany since the late 1990s. Whilst far fewer are purchased than the model terms and conditions, the environmental insurance market in Germany is mature.

A key reason for the large number of policies that provide cover for ELD and other environmental liabilities in Germany is reportedly the fact that brokers can be held liable if an operator causes environmental damage and the broker did not advise the operator to purchase a policy to provide cover for the damage. 30 It is not clear, however, why this should be a key reason because such liability for a broker exists in other Member States in which there is a significantly lower number of policies that provide cover for ELD and other environmental liabilities. Another reason could be differences in risk aversion and cultural norms.

3.9. Environmental assessments and audits

The GDV developed the Basic Cover for operators with low environmental risk exposure with the intention, among other things, of requiring minimal underwriting for each policy in which the Basic Cover is included.

Environmental insurance policies and general liability policies that include the Comprehensive Cover are subject to more detailed environmental underwriting.

An operator that applies for a stand-alone environmental insurance policy or a policy that includes the GDV model terms and conditions is not required to carry out an environmental assessment or audit of sites to be covered by them before they are placed. If the prospective insured already has information on the environmental condition of the site(s) to be insured, this information is provided to the insurer.

Each insurer has its own underwriting policy that includes risk assessment and that depends on a variety of factors including the type and size of operations, the location of sites, previous on-site activities, the requested scope of cover, and loss experience.


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One ELD stakeholder in the insurance industry reported that it carries out a risk assessment as part of the underwriting process. Depending on the risk, this may be followed by a questionnaire, geo-information and site inspections.

3.10. Average premium

There is no average premium. Premium amounts vary according to the type and size of the insured operations, scope of cover, amount of policy limits, amount of the deductible or self-insured retention, etc.

3.11. Average policy limit

In 2014, the limits of indemnity for the GDV model terms and conditions ranged from EUR 2,000,000 to EUR 5,000,000 for smaller operations and from EUR 10,000,000 to EUR 12,000,000 for large operations.31

When this report was published, policy limits of up to EUR 50,000,000 for the model terms and conditions were widely available. Small commercial and crafts and trade operators typically had a policy limit of between EUR 3,000,000 and EUR 5,000,000. Larger industrial operators typically had a policy limit of between EUR 10,000,000 and EUR 25,000,000.

There is no average policy limit for stand-alone environmental insurance policies. The policy limit depends on many factors such as type and size of operations, their location in various States, the number of sites, etc.

3.12. Average deductible or self-insured retention

Deductibles for the GDV model terms and conditions are typically in the three to low four figure range. Deductibles and self-insured retentions for stand-alone environmental insurance policies depend on the factors indicated in section 3.11 above.

One ELD stakeholder in the insurance industry stated that the average deductible for sites in Germany was between EUR 250 and 2,500. Another ELD stakeholder that was a large operator stated that its deductible was EUR 50,000.

3.13. Average policy period

The policy period for the GDV model terms and conditions is the period of time specified in the general liability policy of which they are a part. One ELD stakeholder in the insurance industry stated that the average policy period is one to three years.

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

3.14. Sizes of typical insured businesses

Although in practice most enterprises that have the Basic Cover are small and medium sized enterprises, the relevant criterion is the type, and not the size, of operations. The Basic Cover is aimed at the retail market, that is, operators with a low environmental risk exposure. It is designed so that an in-depth individual environmental risk assessment is not required before placement of the policy that contains it. Consequently, operations that are deemed to be particularly exposed to environmental damage are excluded from the Basic Cover.

31 Ibid 4
Operators with risks excluded from the Basic Cover may purchase the Comprehensive Cover. Whereas the Basic Cover is now automatically included as part of many if not most general liability insurance policies, Comprehensive Cover is subject to individual agreement with insurers.

Stand-alone environmental insurance policies are designed for all sizes of businesses that carry out polluting activities, developers, companies with property portfolios, contractors, environmental consultants, and so on. In practice, large polluting operators tend to purchase environmental insurance policies by passporting, with cover for their sites and facilities in Germany tailored to them.

3.15. Industrial and commercial sectors that typically purchase policies

The GDV model terms and conditions are typically purchased by industrial installations; middle market business; transport and agriculture as well as businesses indicated in section 3.14 above.

As indicated in section 3.14, stand-alone environmental insurance policies are designed for all businesses with polluting activities, developers of contaminated sites, companies with property portfolios, contractors, environmental consultants, and so on. In practice, they tend to be purchased by international businesses that require, by virtue of their nature and geographical locations, cover that goes beyond the model terms and conditions.

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

The model terms and conditions bar cover for operators that carry out activities involving genetically modified organisms although an individual insurer may decide to delete the exclusion.

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

One ELD stakeholder in the insurance industry stated that their insurer would not typically provide cover for waste disposal sites, offshore oil and gas platforms, nuclear facilities and asbestos.

3.17. Number and amount of claims

Most claims under the model terms and conditions are for activities other than those listed in annex III of the ELD.

Further, most claims under the model terms and conditions include claims under other sections of the policy, resulting in most claims including a mix of third-party liability, ELD liabilities, other environmental liabilities, bodily injury and property damage.

For the period of 2010 to 2016, member companies of the GDV reported a total of 2,652 claims under the Basic Cover and Comprehensive Cover, an average of 442 claims per year. Figures

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33 Ibid
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for 2017 were not available when this report was published. Claims varied from four figure sums to over EUR 50,000, with a few claims in seven figures. Most claims were below EUR 50,000.

The above figures, however, are subject to the following caveats:

- claims are recorded on a reporting year basis and, therefore, may be adjusted upwards if a matter progresses over a single reporting year and the amount of the claim increases;
- claims based on the ELD that include a claim for civil liability are reported under general liability policies and, thus, do not appear as an ELD claim;
- commercial liability claims such as an ELD claim for remediating water damage may include a claim for financial loss to the insured (e.g. loss to an insured brewery or water works); in such a case, the loss may be reported as a commercial liability claim and not an ELD claim; and
- in line with GDV recommendations, the Basic Cover is increasingly becoming a standard section of general liability policies, in which case it is usually reported as a non-specific ‘liability claim’.

Figures for claims against stand-alone environmental insurance policies for sites and facilities in Germany were not provided.

3.18. Coverage litigation

There is one reported case on the extent of cover under the GDV model terms and conditions.

On 18 December 2018, the Regional Court of Dusseldorf (Landgericht Düsseldorf) concluded that the GDV terms and conditions provide cover for a claim that is based on legislation other than the ELD when the claim also falls within the scope of the ELD.\(^{35}\)

3.19. Cover for ELD liabilities in general liability policies

Insurers have included the Basic Cover in many general liability policies with it now becoming an integral part of such policies.

Other model terms and conditions drafted by the GDV and based on the model terms and conditions for ELD liabilities may be added to professional indemnity insurance policies, such as those for architects.\(^{36}\)

For example, in 2009 and 2010, the ERGO Insurance Group, part of the Munich Re Group and a leading global re/insurer, offered the Basic Cover to its insureds as part of its employers’ liability policies, particularly those for commercial risks, to encourage its use. By 2009, over 16,000 liability policies issued by ERGO included the Basic Cover.\(^{37}\)

3.20. Cover for ELD liabilities in property policies

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

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\(^{35}\) Verfahrensgang: Az. 235 C 108/17 (LG Düsseldorf, Urteil vom 18.12.2018 - 9 S 1/18); [https://openjur.de/u/2156856.html](https://openjur.de/u/2156856.html) (in German)


\(^{37}\) See ERGO Insurance Group Annual Report 2009, 67
A soil decontamination costs (Kosten für die Dekontamination von Erdreich) endorsement to property policies is available. The endorsement provides cover for remediating contamination when the contamination is consequential to damage caused by fire, lightning, explosion or aircraft (called FLEXA perils) to insured property.

Due to cover for remediating on-site contaminated soil caused by the FLEXA perils being available as an endorsement to a property policy, the GDV model terms and conditions exclude such cover (see section 3.7.2 above).

One insurer reported that it does not offer environmental insurance cover as an extension to property policies.

4. OTHER VOLUNTARY FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS

4.1. Type(s)
No other types of voluntary financial security instruments or mechanisms were reported.

4.2. Availability
No other types of voluntary financial security instruments or mechanisms were reported.

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

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

The original draft of the Environmental Damage Act included a provision for mandatory financial security similar to section 19 of the Environmental Liability Act (see section 5.7 below). The Bundesrat withdrew the provision, however, after concluding that introducing mandatory financial security could complicate the development of insurance for environmental liabilities.38

Environmental permits do not require operators (or anyone else) to have financial security for ELD liabilities.

Section 9 of the Environmental Damage Act provides that the Länder have the power to decide all cost matters (Kostenregelung). Conflicting information was provided on whether this power includes – or does not include – the power to introduce mandatory financial security.

5.1. Competent authority(ies)
Not applicable

5.2. Legislative provisions
Not applicable

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38 See Vincent Schreier, Topic IV – Pollution Insurance – Methods, Coverage and Beneficiaries Questionnaire, AIDA World Congress, Rio de Janeiro, October 2018 (prepared 22 November 2017), s 2.3.1 (referring to statement by German Bundesrat, BT-Drucksache 16/3806, 35); https://www.dvfwv.de/images/pdf/aida_ergebnisse/4b_german%20national%20report%20on%20pollution%20insurance_schreier_aida_2018.pdf
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**

   Not applicable

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

5.3.2. **Revisions to licensing requirements**

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

5.3.4. **Description of mandatory financial security conditions**

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**

   Germany has not withdrawn mandatory financial security for environmental liabilities. The German Government has not, however, issued orders, as specified in provisions of the Environmental Liability Act and the Genetic Engineering Act of 16 December 1993 (*Gentechnikgesetz*),\(^39\) to require operators to have mandatory financial security.

   As briefly described in section 3.7.2 above, the Environmental Liability Act imposes strict liability for death, personal injury and property damage caused by an environmental impact

\(^{39}\) *Gentechnikgesetz*: [https://www.gesetze-im-internet.de/gentg/](https://www.gesetze-im-internet.de/gentg/) (in German)
(including damage by substances, vibrations, noise, radiation, gas, vapours and heat) from a disruption of operations at facilities listed in annex 1 of the Act.

Section 19 of the Act provides that facilities listed in annex 2 of the Act must have evidence of financial security in the form of an insurance policy issued by a company licensed to do business in the relevant area, an indemnity agreement or guarantee from the federal or state government comparable to the cover provided by liability insurance, or an indemnity agreement or guarantee from a credit institution licensed to do business in the relevant area, again comparable to the cover provided by liability insurance.40

Annex 2 of the Act lists three categories of facilities; those subject to the Major Accident Ordinance of 1980 (so-called Störfall-Verordnung), waste incineration facilities, and facilities that manufacture paints or printing ink from cellulose nitrate.

The German Government has never issued the order to bring section 19 into force and the potential for it to do so in the future is highly unlikely if not unforeseeable.

Section 32 of the Genetic Engineering Act 1993 imposes liability on persons who carry out genetic engineering operations for death, injury to health and property damage caused by the operations. Section 36(1) authorises the German Government to issue an order to require the operator of a genetic engineering installation with a safety classification of between two and four, or that carries out releases of genetically modified organisms, to have cover for damages or injuries caused by the operations. Section 36(2) provides that such cover shall be made available, in particular, by a third-party liability insurance policy with an insurance company authorised to conduct business in Germany or an exemption or guarantee issued by the federal or state government. The order may also specify other allowable types of financial security such as indemnity and guarantee obligations issued by credit institutions provided that they are comparable to the above financial security instruments.41

As with the Environmental Liability Act, the German Government has not issued the order to bring the mandatory financial security into force.42

5.8. Guidance
Not applicable

5.9. Operators subject to mandatory financial security
Not applicable


41 Genetic Engineering Act of 16 December 1993 (unauthorised English translation), University of Frankfurt; http://web.uni-frankfurt.de/si/gentech/GenTGengl10-95c.pdf

42 See Jens Gal and Manfred Wandt, German National Report on Mandatory Insurance (Response to the questionnaire on mandatory insurance by the AIDA German chapter, 2010), 7; https://www.dvfvw.de/images/pdf/aida_ergebnisse/10b_german%20national%20report%20on%20mandatory%20insurance_gal_wandt_aida_2010.pdf
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**  
Not applicable

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))**  
There are no legislative provisions for *ex post* mandatory financial security for remediating environmental damage under the ELD in Germany.

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
Not applicable

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

The German Government has not been proactive in developing a financial security market for ELD liabilities. The Government proposed introducing mandatory financial security for ELD liabilities but withdrew the proposal from the Environmental Damage Act after concluding that it could complicate the development of insurance for environmental liabilities (see section 5 above).

In contrast, the GDV has been proactive (which may of course have led the German Government to conclude that it did not need to be proactive itself). The GDV was able to draw on its long history of developing model terms and conditions for environmental liabilities (see section 3.7.2 above). In particular, the GDV’s introduction in 2007 of the model terms and conditions that provide cover for ELD liabilities in general liability policies has resulted in the now ubiquitous use of Basic Cover in most general liability policies, together with a substantial number of general liability policies that include Comprehensive Cover. As a result, Germany has a higher percentage of operators that have financial security for ELD liabilities than any other Member State except perhaps Austria in which model terms and conditions for ELD liabilities also exist.

This does not mean that operators in Germany have financial security for all ELD liabilities. As described in section 3.7.2 above, neither the Basic Cover nor the Comprehensive Cover provide cover for all such liabilities. Stand-alone environmental insurance policies that provide cover for ELD liabilities not covered by the model terms and conditions exist, but the popularity of the model terms and conditions has resulted in a subdued demand for these.

Further, the German Government has not introduced legislative provisions to provide for ex post mandatory financial security pursuant to article 8(2) of the ELD.
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 Germany by the Landfill Ordinance of 27 April 2009, as amended (Deponieverordnung), is the federal Ministry for the Environment, Nature Conservation and Nuclear Safety (Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit), which is the highest national authority for environmental legislation. Each of the 16 Länder has environmental authorities.

11.1.2. Financial security provisions

Section 18 of the Landfill Ordinance requires the operator of a landfill to provide financial security for its closure and post closure (aftercare). The financial security instrument may be in the form of an irrevocable corporate guarantee, an irrevocable guarantee from a financial institution (bank guarantee), or an equivalent instrument.

The competent authority may require an operator to provide details about the entity that provided the guarantee, require the amount of financial security to be revised to ensure that it is sufficient, and require the funds to be held in a dedicated account. If the competent authority requires the financial security to be increased, it provides the operator with up to six months to increase it. In the event of a decrease, the authority should release the amount subject to the reduction immediately.

Section 18(4) provides that a governmental authority that operates a landfill may obtain an exemption or guarantee issued by the federal or state government in lieu of other financial security. The exemption or guarantee is somewhat similar to a performance bond. As a practical matter, the option for an exemption or guarantee by the federal or state government is only available to regional or local authorities.

In respect of landfills, section 36(3) of the Law to promote the circular economy and ensure environmentally sound management of waste of 24 February 2012 (Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen - Kreislaufwirtschaftsgesetz; KrWG) requires operators responsible for the closure and after care of landfills to have the necessary specialist and technical knowledge.

Only one percent of waste in Germany is sent to landfill. Thus, financial security for landfill sites is relatively minor.


45 See ibid

46 See Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen; https://www.gesetze-im-internet.de/krwg/ (in German)

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

Section 11.1.2 above describes the types of financial security instruments that are acceptable under the Landfill Ordinance.

Guarantees under section 232 of the Civil Code (Bürgerliches Gesetzbuch; BGB)\(^{48}\) are also acceptable. Section 232 provides, in pertinent part, as follows:

1) A person who is required to provide security may do so: by the deposit of money or securities, by the pledge of claims that are registered in the Federal Debt Register [Bundesschuldbuch] or the Land Debt Register [Landesschuldbuch] of a Land, by the pledge of movable things, by the creation of ship mortgages on ships or ships under construction which are recorded in a German ship register or a ship construction register, by the creation of mortgages on land within the country, by the pledge of claims for which there is a mortgage on land within the country, or by the pledge of land charges or annuity land charges on land within the country.

2) If security cannot be provided in this manner, it is admissible to furnish a reasonable surety.

That is, cash, securities, a pledge of assets, a pledge of officially registered receivables, real estate and registered vessel mortgages, a pledge of mortgages, and an appropriate guarantor are acceptable financial security instruments and mechanisms.

In addition, self-insurance, corporate guarantee, and a bank guarantee or bond are acceptable. \(^{49}\)

Article 18(4) of the Landfill Ordinance (Verordnung über Deponien und Langzeitlager, Deponieverordnung; DepV)\(^{50}\) states that the following entities do not need to provide financial security: an enterprise or company wholly owned by a public corporation, a consortium of municipalities, or a public institution provided that ‘it is ensured, by way of guarantee obligations entered into by the German Federal Government, the Länder or municipalities, that the desired purpose of the security is guaranteed at all times’. \(^{51}\)

A report on financial guarantees for the European Commission, dated 2008, includes a case study in which the waste management authority requested an operator to provide an irrevocable bank guarantee payable to the Free State of Saxony (the location of the hazardous waste landfill) due to the need for sufficient security in the event of the operator becoming bankrupt. \(^{52}\)


The competent authority has the final decision whether to accept the financial security instrument offered by the operator of a landfill.

11.1.4. Templates

No templates for acceptable financial security instruments or mechanisms were provided.

11.1.5. Financial security instruments and mechanisms not acceptable

The legislation does not list any 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 Germany by the Management of Waste from Extractive Industries Law of 27 April 2009 (so-called Gewinnungsabfallverordnung; GewinnungsAbfV), as amended, is the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. In addition, each of the 16 Länder has environmental authorities. Different regional or local authorities within the Länder may be involved with permitting and enforcement pursuant to the GewinnungsAbfV.

The GewinnungsAbfV is based on the federal framework of the Waste Management Act (Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen; KrWG).

The Extractive Waste Directive amended the ELD and added the management of extractive waste pursuant to the Directive to the list in annex III of the ELD. The ELD as transposed by the Environmental Damage Act thus extends to waste management from extractive industries. Section 1(2) of the GewinnungsAbfV extends the scope of the law to producers of waste from extractive industries and operators of installations for the disposal of waste from extractive industries.

11.2.2. Financial security provisions

Section 7 of the GewinnungsAbfV requires the operator of a Category A waste facility to provide financial security to satisfy all obligations and conditions included in the individual operating permit issued by the competent authority.

The competent authority may, at its due discretion, require the operator of any other waste facility to provide adequate financial security for the restoration of the site of the waste facility provided that there is a reasonable concern that such obligation could ultimately not be performed by the operator. Financial security for other compliance aspects in relation to the facility’s permit can only be required from an operator of a Category A waste facility.


54 Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen; http://www.gesetze-im-internet.de/krwg/index.html (in German)
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11.2.3. Financial security instruments and mechanisms accepted

Section 7 of the GewinnungsAbfV refers to section 18 of the Landfill Ordinance of 27 April 2009, as amended for the purposes of the implementation of mandatory financial security. The applicable provisions for such financial security are the same as those set out in section 11.1.2 above.

11.2.4. Templates

No templates for acceptable financial security instruments or mechanisms were provided.

11.2.5. Financial security instruments not acceptable

The legislation does not list any financial security instruments or mechanisms that are not acceptable.

11.3. Carbon Capture and Storage Directive

11.3.1. Status of implementation

Germany was not carrying out carbon capture and storage measures when this report was published. A pilot project for the Ketzin plant, near Berlin, that stored 67,000 tons of carbon dioxide emitted from a coal-fired power plant over 13 years closed in 2017 due to public protests. Further projects have not been carried out since that time.

11.3.2. Competent authority(ies)

The competent authorities for the Directive on the geological storage of carbon dioxide (2009/31/EC), which is implemented in Germany by the Law for the demonstration of permanent storage of carbon dioxide (Law on Carbon Dioxide Storage) (Gesetz zur Demonstration der dauerhaften Speicherung von Kohlendioxid (Kohlendioxid-Speicherungsgesetz - KSpG)), are determined by each of the 16 Länder.

11.3.3. Financial security provisions

Section 13(7) of the Law on Carbon Dioxide Storage states that an applicant for a permit for a facility for storing carbon dioxide must provide the financial security set by the competent authority for the first year of operation in accordance with section 30(2).

Section 30(2) states that the competent authority shall determine the type and amount of financial security, evidence of its submission to the authority, and the time for its submission. The authority’s determination must ensure that the financial security is always available in the type and amount determined by the authority and that it is available to meet the operator’s obligations under the Act, that is, obligations for decommissioning and post closure.

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57 Gesetz zur Demonstration der dauerhaften Speicherung von Kohlendioxid (Kohlendioxid-Speicherungsgesetz - KSpG); http://www.gesetze-im-internet.de/kspg/ (in German)
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(aftercare), claims for damages, obligations under the Greenhouse Gas Emissions Trading Act, and liabilities under the Environmental Damage Act.

Section 30(2) further provides that the benchmark for financial security for the Greenhouse Gas Emissions Trading Act is the storage quantity forecast for the following operating year, taking into account the forecast risk of possible leakages of carbon dioxide.

Section 32(1) authorises the Ministry for the Environment, Nature Conservation and Nuclear Safety, in agreement with the Ministry of Economics and Energy, to issue more detailed provisions by statutory order with the consent of the Bundesrat on the following:

- the time at which the operator must provide financial security in accordance with section 30;
- the scope, permissible types, amount and adjustment of the financial security;
- requirements for individual collateral, in particular the provision of a guarantor and an indemnity and guarantee obligation of a credit institution;
- procedures and powers of the authority for setting and monitoring the financial security; and
- obligations of the operator, the insurer, the guarantor, and the person that has assumed an indemnity or guarantee obligations towards the authority responsible for monitoring the financial security.

The ordinance had not been issued when this report was published.

11.3.4. Financial security instruments and mechanisms accepted

Section 30(3) of the Law on Carbon Dioxide Storage states that financial security may be provided by liability insurance with an insurer authorised to conduct business within the scope of the Law, or the provision of financial security in accordance with section 232 of the German Civil Code (see section 11.1.2 above), the provision of a suitable guarantor in accordance with section 239 of the German Civil Code, or another equivalent means of security.

The operator must provide the competent authority with evidence of the financial security on request, and at least annually.

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 and mechanisms that are not acceptable.

12. EU Recommendation on Hydraulic Fracturing

12.1. Status

In 2017, the German Government banned unconventional fracking (the extraction of natural gas from clay, shale, marl and coal formations) until 2021. The German Parliament (Bundestag) will then decide whether to extend the prohibition. In the meantime, Germany has passed legislation with tighter restrictions for unconventional drilling than conventional methods in order, among other things, to protect human health and the environment.58

12.2. Competent authority(ies)

The competent authorities for oil and gas licensing are the State Authorities for Mining, Energy and Geology in the Land or Länder in which the oil or gas field(s) is located.

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 Germany by the Federal Immission Control Act (Bundes-Immissionsschutzgesetz; BImSchG), is the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. In addition, each of the 16 Länder has environmental authorities.

13.1.2. Financial security provisions

There is a direct and an indirect requirement for mandatory financial security under the BImSchG except for specified landfills that are subject to the Landfill Directive (see section 11.1 above).

First, section 12(1) of the BImSchG provides that permits for the installation and operation of waste storage and treatment facilities must have financial security for decommissioning and restoration of the site of the facilities following the termination of operations.

Second, financial security is required for specified landfills that are subject to the Landfill Directive as well as the Federal Immission Control Act (see section 11.1 above).

13.1.3. Financial security instruments and mechanisms accepted

The Federal Immission Control Act does not contain provisions on the type of financial security that is acceptable. Any type of security, in particular a guarantee under section 232 of the Civil Code is deemed acceptable (see section 11.1.3 above).


59 Gesetz zum Schutz vor schädlichen Umwelteinwirkungen durch Luftverunreinigungen, Geräusche, Erschütterungen und ähnliche Vorgänge; https://www.gesetze-im-internet.de/bimschg/ (in German)
13.1.4. **Templates**

No templates for acceptable financial security instruments or mechanisms were provided.

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

The legislation does not specify any financial security instruments or mechanisms that are not acceptable.

13.2. **Seveso III Directive**

13.2.1. **Competent authority(ies)**

The competent authorities for the Seveso III Directive (2012/18/EU), which is implemented in Germany by the Major Accident Ordinance, on the federal level are the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and the Federal Environment Agency (Umweltbundesamt; UBA). The competent authorities for the enforcement of the Seveso III Directive lay within the responsibilities of the 16 Länder, with local authorities of approximately 290 counties.

13.2.2. **Financial security provisions**

The Major Accident Ordinance does not specifically require mandatory financial security for activities that fall within its scope.

This does not mean that activities that are subject to the Seveso III Directive and the Ordinance are not required to have mandatory financial security however. Whilst article 2(2)(h) of the Directive provides that it does not apply to landfills including underground waste storage facilities (Abfalldeponien, einschliesslich unterirdischer Abfalllager), other waste activities subject to the Directive and the Ordinance such as ‘operational tailings disposal facilities, including tailing ponds or dams, containing dangerous substances’ (Bergebeseitigungeinrichtungen einschliesslich Bergeteichen oder Absetzbecken, die gefährliche Stoffe enthalten) require mandatory financial security under the Extractive Waste Directive (see section 11.2 above).

Further, section 12(1) of the Federal Immission Control Act provides that permits for the installation and operation of waste storage and treatment facilities must have financial security for decommissioning and restoring the site following the termination of the operations.

Section 19 of the Environmental Liability Act applies to the Major Accident Ordinance due to annex 2 specifically listing activities subject to the Ordinance as activities that require mandatory financial security. As indicated in section 5.7 above, however, section 19 has not entered into force.

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 56(2) of the Federal Mining Act (Bundesberggesetz; BBergG) states that the competent authority may require an applicant for an authorisation to carry out mining activities to have financial security including insurance by an insurer authorised to conduct insurance business in Germany.60

Section 9 of the Ordinance on notification and authorisation for waste collectors, carriers, dealers and brokers (Verordnung über das Anzeige- und Erlaubnisverfahren für Sammler, Beförderer, Händler und Makler von Abfällen) requires companies that transport waste to have insurance for environmental liabilities as well as standard motor vehicle insurance cover.61

Section 25 of the Federal Soil Protection Act provides that if public funds are used to remediate a contaminated site owned by a person that is not liable under the Act and as a result the market value of the site increases by an amount that is not insignificant, the owner of the site must pay compensation to the competent authority for the increase in the amount that results from the remediation by public funds unless an exemption applies. In such a case, the compensation is a public burden on the property (öffentliche Last auf dem Grundstück) and is indicated in the Land Register (Grundbuch).

Mandatory financial security exists for various other activities including wind farms and nuclear facilities. These are not described, however, because they are outside the remit of the Member State reports.

14. MANDATORY FINANCIAL SECURITY FOR OFFSHORE OIL AND GAS OPERATIONS

14.1. Competent authority(ies)

The competent authorities for offshore oil and gas licensing are the State Authorities for Mining, Energy and Geology in the Land or Länder in which the oil or gas field(s) is located.

14.2. Status of offshore oil and gas operations

Germany has one oil field that produces oil commercially; the Mittelplate oil field, located in the tidal flats of the Wadden Sea (Wattenmeer).62 Most oil and gas used in Germany is imported.

60 Bundesberggesetz; http://www.gesetze-im-internet.de/bbergg/ (in German)
14.3. Requirements for financial security

The main law for regulating oil and gas operations is the Federal Mining Act, as amended, together with related ordinances.\textsuperscript{63} The financial security required for a mining permit may include a bank guarantee, an assignment, a pledge, a savings account, or insurance. As a practical matter, most companies provide guarantees.\textsuperscript{64} The financial security instrument for compensation for bodily injury, property damage and economic loss in the event of a pollution incident, if required, is insurance.

14.4. Requirement for financial security for ELD liabilities

There is no requirement for financial security for ELD liabilities.

15. Failure of financial security

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

No reports of inadequate levels of financial security instruments or mechanisms to pay claims were provided.

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

Under German law, a company cannot avoid environmental liabilities by dissolving the company.\textsuperscript{65} The following is the majority legal position, with the caveat that this position is very controversial.

If a company becomes insolvent, the administrator of the insolvency estate becomes responsible for fulfilling the company’s public law obligations concerning environmental issues. The government’s claims and costs concerning the obligations have priority status, that is, they rank above claims by unsecured creditors but after various other claims against the insolvency estate.

The administrator may release contaminated land and other assets from which the public law obligations arise from the insolvency estate. If the administrator does so, the assets become the debtor’s assets; they are no longer in the insolvency estate.

If the assets are released from the insolvency estate, the government – depending on the type of contamination and the degree of risk from it – may instruct a third party (a specialist service provider) to resolve the environmental issues.

The government’s expenses will be secured by a priority claim that can be registered in the land register and can be satisfied by foreclosure of the decontaminated property, aiming at

\textsuperscript{63} An unofficial English translation of the Federal Mining Act, published by the Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz) is available at http://www.gesetze-im-internet.de/englisch_bberg/


the government’s reimbursement of the clean-up costs (for decontamination based on the Federal Soil Protection Act only, which is the most relevant type).

If the owner of a contaminated site or other asset that is in breach of legislation exercises actual or legal control over it the government has a priority claim due to the liability arising from the status of the site or other asset. If the operator of a facility is liable, the government also has a priority claim.

If the debtor caused a site to be contaminated before the insolvency proceedings commenced, the government has an unsecured claim due to liability arising from the behaviour of the debtor.66

15.3. Other

No information was available on other instances of the failure of financial security for environmental liabilities.

16. FUNDS

16.1. Name(s)

There is no fund in Germany for remediating environmental damage under the ELD or for remediating contamination or pollution under any other environmental laws.

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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Environmental Damage Act of 10 May 2007 (Umweltschadensgesetz; USchadG); https://www.gesetze-im-internet.de/uschadg/
Extractive Waste Ordinance (Verordnung zur Umsetzung der Richtlinie 2006/21/EG des Europäischen Parlaments und des Rates vom 15. März 2006 über die Bewirtschaftung von Abfällen aus der mineralgewinnenden Industrie und zur Änderung der Richtlinie 2004/35/EG, Gewinnungsabfallverordnung; GewinnungsAbfV);
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Law to promote the circular economy and ensure environmentally sound management of waste of 24 February 2012 (Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen - Kreislaufwirtschaftsgesetz; KrWG);
https://www.gesetze-im-internet.de/krwg/


Mineral Raw Materials Act (Mineralrohstoffgesetz);
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008040

Ordinance on notification and authorisation for waste collectors, carriers, dealers and brokers (Verordnung über das Anzeige- und Erlaubnisverfahren für Sammler, Beförderer, Händler und Makler von Abfällen);

Waste Management Act (Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen; KrWG);

Waste Management Act 2002 (Bundesgesetz über eine nachhaltige Abfallwirtschaft (Abfallwirtschaftsgesetz 2002 – AWG 2002);

Guidance

Guidance on Extractive Waste (Leitfaden, Bergbauabfall);

German Insurance Association (Gesamtverband der Deutschen Versicherungswirtschaft)
Model Terms and Conditions

A2 Umweltrisikoversicherung (URV), Musterbedingungen des GDV;

General Insurance Conditions for Environmental Damage Basic Insurance (Allgemeine Versicherungsbedingungen für die Umweltschadens-Basisversicherung; Basic Cover);
https://www.gdv.de/resource/blob/6094/d77e72b4e97fa67be6b4178b9899b6aa/23-allgemeine-versicherungsbedingungen-fuer-die-umweltschadens-basisversicherung--usv-basis--data.pdf nAND

General Insurance Conditions for Environmental Damage (Allgemeine Versicherungsbedingungen für die Umweltschadensversicherung);
https://www.gdv.de/resource/blob/6042/c993854e4ceebb25737c149613a655244/22-allgemeine-versicherungsbedingungen-fuer-die-umweltschadensversicherung--usv--data.pdf anD
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Report

Articles, reports and presentations
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