



Annex I

Luxembourg

Improving financial security in the context of the
Environmental Liability Directive

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1. INTRODUCTION

Financial security for the prevention and remediation of environmental damage under the ELD in the form of stand-alone environmental insurance policies is widely available in Luxembourg. Environmental extensions to general liability policies are also widely available in Luxembourg. Environmental extensions to property policies are not available.

Luxembourg transposed the ELD by the Law of 20 April 2009 relative to environmental responsibility concerning the prevention and remedying of environmental damage, as amended (*Loi du 20 avril 2009 relative à la responsabilité environnementale en ce qui concerne la prévention et la réparation des dommages environnementaux*; 2009 Law).¹

Luxembourg has not established mandatory financial security for ELD liabilities.

Luxembourg does not impose mandatory financial security under other environmental legislation.

2. ENVIRONMENTAL INSURANCE MARKET

The 2017 Environmental Implementation Review for Luxembourg stated that ‘it is not evident that insurance [for ELD liabilities] is either sufficiently available or taken out’. The report further stated that Luxembourg should ‘[s]tep up efforts in the implementation of the [ELD and that Luxembourg ‘should moreover take further steps to ensure an effective system of financial security for environmental liabilities (so that operators not only have insurance cover available to them but actually take it up)’.² The 2019 Environmental Implementation Review for Luxembourg includes as a priority item ‘Improve financial security for liabilities’ under the ELD.³

When this report was published, stand-alone environmental insurance policies were widely available in Luxembourg. The policies provide cover for all ELD liabilities as well as remediating environmental damage under other legislation, claims for bodily injury and property damage from pollution, and related risks. Demand was very low to rare.

Also when this report was published, environmental extensions to general liability policies were widely available including extensions that specifically provide cover for liabilities under the ELD. Three main extensions, which are also used in Belgium and the Netherlands, provide cover for preventive measures as well as primary, complementary and compensatory remediation of land/soil, water and biodiversity damage under the ELD. Cover is limited to pollution (not other environmental damage) that directly results from a sudden and accidental incident that occurs at the insured’s site during the policy period, with the additional requirement that it must begin and end within a continuous 24-hour period. The incident must be notified to insurers within the policy period. Cover also tends to be subject to a low sub-limit of liability.

¹ Loi du 20 avril 2009 relative à la responsabilité environnementale en ce qui concerne la prévention et la réparation des dommages environnementaux; <http://legilux.public.lu/eli/etat/leg/loi/2009/04/20/n3/jo> (in French)

² EU Environmental Implementation Review 2017; Country Report – Luxembourg (SWD(2017) 49 final, 3 February 2017), 23; https://ec.europa.eu/environment/eir/pdf/country-reports-archive/report_lu_en.pdf

³ EU Environmental Implementation Review 2019; Country Report – Luxembourg (SWD(2019) 126 final, 4 April 2019), 32; https://ec.europa.eu/environment/eir/pdf/report_lu_en.pdf

Cover provided by two of the main extensions for preventive measures includes measures to remediate an imminent threat of pollutants at or migrating from an insured's site if any delay in doing so would result in significantly higher costs of a claim or possible sanctions under the ELD. Cover provided by another extension for preventive measures referred to 'preventive measures' under the ELD.

Demand for environmental extensions to general liability policies is very low to rare, reportedly due to the limited cover provided by them.

Environmental extensions to property policies are not available.

2.1. Commercial insurers

2.1.1. Number of insurers

Approximately five insurers offer stand-alone environmental insurance policies in Luxembourg.

In contrast, 35 non-life insurance companies (and 16 reinsurance companies) are members of the Luxembourg Insurance Association (*L'Association des Compagnies d'Assurances et de Réassurances au Luxembourg*).⁴

2.1.2. New insurers entering the market since 2009

No information was provided on any new insurers entering the environmental insurance market in Luxembourg since 2009.

2.1.3. Existing insurers that introduced environmental insurance policies since 2009

Some of the multinational insurers with branches in Luxembourg introduced environmental insurance policies that specifically include cover for ELD liabilities since 2009.

2.2. Re/insurance pools

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

2.2.1. Date of establishment

Not applicable

2.2.2. Descriptions of policies issued

Not applicable

2.3. Mutuels

No mutual in Luxembourg offers environmental insurance policies.

2.3.1. Date of establishment

Not applicable

2.3.2. Descriptions of policies issued

Not applicable

⁴ See *L'Association des Compagnies d'Assurances et de Réassurances au Luxembourg*, '17 nouveaux membres accueillis par l'ACA' (25 September 2019); https://www.aca.lu/media/5d8c5b91888b1_cp_aca_new_comers.pdf (in French)

2.4. Other

There are no captives or other types of providers of environmental insurance policies in Luxembourg.

3. VOLUNTARY INSURANCE POLICIES FOR ELD AND OTHER ENVIRONMENTAL LIABILITIES

3.1. Environmental insurance policies

Stand-alone environmental insurance policies are widely available in Luxembourg for preventing and remediating environmental damage, including pollution, under the ELD and other environmental legislation.

3.2. Cover for ELD preventive costs

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

3.3. Cover for ELD primary, complementary and compensatory costs

Virtually all stand-alone environmental insurance policies offered for risks in Luxembourg provide cover for primary, complementary and compensatory costs under the ELD.

3.4. Cover for non-ELD liabilities

All environmental insurance policies offered for risks in Luxembourg provide cover for third-party claims for bodily injury and property damage from environmental damage, as well as related losses.

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

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

All environmental insurance policies offered for risks in Luxembourg provide cover for the costs of remediating environmental damage, including soil and water pollution, caused by an insured to third-party sites as well as the costs of remediating such damage on an insured's own site. The policies also provide cover for third-party claims for bodily injury, property damage and economic loss from environmental damage.

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

3.6. Description of policies

3.6.1. Format

Environmental insurance policies for risks in Luxembourg generally have a menu format so that an insured may select the insuring agreement(s) it requires. There is a wide range of such policies (see section 3.6.3 below).

3.6.2. *Claims made or occurrence based*

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

Extensions to general liability policies are occurrence-based, that is, the risks that are covered by the policy must occur during the policy period; claims may be brought after the policy period.

3.6.3. *Policies for operators*

Insuring agreements in many stand-alone environmental insurance policies offered in Luxembourg provide cover for the following:

- the remediation of on-site and off-site environmental damage under the ELD caused by operations, including transportation, carried out by the insured operator during the policy period;
- the remediation of pollution under other environmental legislation caused by operations, including transportation, carried out by the insured operator during the policy period;
- the remediation of pre-existing environmental damage including pollution at or emanating from sites owned or occupied by the insured provided that the damage is disclosed by the insured to insurers, or is unknown to the insured, before the inception of the policy;
- third-party claims for bodily injury and property damage from environmental damage including pollution;
- first party business interruption costs and extra expense caused by environmental damage including pollution;
- third party business interruption costs and extra expense caused by environmental damage including pollution;
- crisis response costs arising from an incident that has caused environmental damage including pollution;
- the remediation of environmental damage arising from the insured's waste at an authorised non-owned disposal site;
- emergency measures to prevent or remediate environmental damage, including pollution, that occurs during the policy period; and
- related legal costs.

Only the first item above provides cover for ELD liabilities. The policies are thus designed to include, not only protection under the ELD but also protection under other public law as well as civil law and non-liability requirements.

Multinational insurers with branches in Luxembourg sometimes use the same broad wordings that they use in other markets such as the London environmental insurance market.

3.6.4. *Policies for contractors and others*

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

3.7. Model terms and conditions

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

3.7.1. Organisation issuing model terms and conditions

Not applicable

3.7.2. Description of model terms and conditions

Not applicable

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

Not applicable

3.8. Date of general availability of environmental insurance policies

Stand-alone environmental insurance policies and environmental extensions to general liability policies became available in Luxembourg after transposition of the ELD by the 2009 Law on 1 May 2009.

3.9. Environmental assessments and audits

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

3.10. Average premium

No information was available on the average premium for stand-alone environmental insurance policies but, as stated in section 2 above, they are rarely issued.

3.11. Average policy limit

No information was available on the average policy limit for stand-alone environmental insurance policies but, as stated in section 2 above, they are rarely issued.

3.12. Average deductible or self-insured retention

No information was available on the average deductible or self-insured retention for stand-alone environmental insurance policies, but, as stated in section 2 above, they are rarely issued.

3.13. Average policy period

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

3.14. Sizes of typical insured businesses

No information was available on the sizes of typical insured businesses to which stand-alone environmental insurance policies are issued but, as stated in section 2 above, they are rarely issued.

3.15. Industrial and commercial sectors that typically purchase policies

Industrial and commercial sectors in Luxembourg do not typically purchase stand-alone environmental insurance policies.

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

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

Two of the main environmental extensions to general liability policies specifically exclude liabilities from genetically modified organisms.

3.17. Number and amount of claims

There have been no claims under stand-alone environmental insurance policies.

3.18. Coverage litigation

There is no coverage litigation concerning stand-alone environmental insurance policies.

3.19. Cover for ELD liabilities in general liability policies

Cover is specifically provided for ELD liabilities in general liability policies subject in some extensions to a 24-hour limitation in which a pollution incident must occur (see section 2 above).

3.20. Cover for ELD liabilities in property policies

Extensions to property policies that provide cover for ELD liabilities are not available.

4. OTHER VOLUNTARY FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS

4.1. Type(s)

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

4.2. Availability

Not applicable

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

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

5.1. Competent authority(ies)

Not applicable

5.2. Legislative provisions

Not applicable

5.2.1. *Name(s) of legislation*

5.2.2. *Stand-alone requirement or hybrid*

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

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

5.2.5. *Revisions to legislation*

5.2.6. *ELD liabilities covered by mandatory financial security*

5.2.7. *Description of mandatory financial security provisions*

5.2.8. *Exception for low risk sites*

5.2.9. *Exception for ISO 14001 certification or EMAS registration*

5.2.10. *Other exceptions*

5.3. Environmental licence conditions

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

Not applicable

5.8. Guidance

Not applicable

5.9. Operators subject to mandatory financial security

Not applicable

5.10. Amounts and limits of mandatory financial security

Not applicable

5.11. Growth of mandatory financial security

Not applicable

6. REGULATORY OVERSIGHT OF FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS

6.1. Review of financial security instruments or mechanisms

Not applicable

6.2. Financial security instruments and mechanisms accepted

Not applicable

6.2.1. Templates

6.2.2. Requirements for environmental insurance policies

6.2.3. Form of mandatory environmental insurance policy

6.3. Financial security instruments and mechanisms not acceptable

Not applicable

6.4. Time of review

Not applicable

6.5. Regulatory costs of review

Not applicable

6.6. Requirements for operator to review

Not applicable

7. ENFORCEMENT OF FINANCIAL SECURITY REQUIREMENTS

Not applicable

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

Section 9(2) of the 2009 Law states that subject to mandatory and optional defences:

the competent authority shall recover, inter alia, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under these regulations.

Section 9(2) is materially the same as then article 8(2) of the ELD.

8.1. Date legislation or policy for mandatory financial security introduced

Financial security for *ex post* environmental damage was introduced on the same date as the 2009 Law, that is, 1 May 2009.

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

See section 8.1 above.

8.3. Financial security instruments and mechanisms accepted

The legislation does not indicate which financial security instruments and mechanisms are acceptable.

8.4. Financial security instruments and mechanisms not acceptable

See section 8.3 above.

9. PROVIDERS OF MANDATORY FINANCIAL SECURITY INSTRUMENTS

9.1. Insurers

Not applicable

9.2. Banks and other financial institutions

Not applicable

9.3. Sureties

Not applicable

9.4. Providers outside Member State

Not applicable

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

No information was provided on any measures taken by Luxembourg to develop financial security markets including an environmental insurance market.

11. EU ENVIRONMENTAL LEGISLATION WITH MANDATORY FINANCIAL SECURITY PROVISIONS

11.1. Landfill Directive

11.1.1. Competent authority(ies)

The Landfill Directive (1999/31/EC) is implemented in Luxembourg by the following legislation:

- Grand-Ducal Regulation of 24 February 2003 on the landfill of waste (*Règlement grand-ducal du 24 février 2003 concernant la mise en décharge des déchets*; Regulation on the landfill of waste),⁵ as amended by Grand-Ducal Regulation of 17 February 2006 amending the Grand-Ducal Regulation of 24 February 2003 on the landfill of waste (*Règlement grand-ducal du 17 février 2006 modifiant le règlement grand-ducal du 24 février 2003 concernant la mise en décharge des déchets*);⁶ and

⁵ Règlement grand-ducal du 24 février 2003 concernant la mise en décharge des déchets; <http://legilux.public.lu/eli/etat/leg/rgd/2003/02/24/n2/jo> (in French)

⁶ Règlement grand-ducal du 17 février 2006 modifiant le règlement grand-ducal du 24 février 2003 concernant la mise en décharge des déchets; <http://legilux.public.lu/eli/etat/leg/rgd/2006/02/17/n1/jo> (in French)

- Corrigendum to the Grand-Ducal Regulation of 17 February 2006 amending the Council Directive 1999/31/EC of 26 April 1999 on the ... Grand-Ducal Regulation of 24 February 2003 on the landfill of waste (*Rectificatif du règlement grand-ducal du 17 février 2006 modifiant le règlement grand-ducal du 24 février 2003 concernant la mise en décharge des déchets*).⁷

The competent authority is the Ministry of the Environment, Climate and Sustainable Development (*Ministère de l'Environnement, du Climat et du Développement durable*).

11.1.2. Financial security provisions

Article 8(g) of the Regulation on the landfill of waste requires an applicant for operation of a landfill to submit 'a financial guarantee or other equivalent' (*la garantie financière ou tout autre moyen équivalent*).

Article 9(3) requires the financial guarantee or other equivalent to be submitted before waste is deposited in the landfill. The financial security covers obligations under the licence for the landfill including provisions related to its management after decommissioning (aftercare/post closure). The financial security must be maintained until maintenance and management of the decommissioned site are completed.

11.1.3. Financial security instruments and mechanisms accepted

As indicated in section 11.1.2 above, the Regulation on the landfill of waste refers only to a financial guarantee or other equivalent.

11.1.4. Templates

There are no templates for acceptable financial security instruments.

11.1.5. Financial security instruments and mechanisms not acceptable

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

11.2. Extractive Waste Directive

11.2.1. Competent authority(ies)

The Extractive Waste Directive (2006/21/EC) is implemented in Luxembourg by the following legislation:

- Law of 26 November 2008 on the management of waste from the extractive industry (*Loi du 26 novembre 2008 concernant la gestion des déchets de l'industrie extractive; Law on the management of waste from the extractive industry*);⁸ and
- Grand-Ducal Regulation of 26 November 2008, (a) amending the amended Grand-Ducal Regulation of 16 July 1999 on the classification and classification of classified establishments, (b) amending Schedule III to the amended Act of 10 June 1999 relating to classified establishments, (c) amending Annexes I and II to the amended Grand-Ducal Regulation of 7 March 2003 on the assessment of the effects of certain public and private projects on the environment, (d) amending Annex I to the Grand-Ducal

⁷ Rectificatif du règlement grand-ducal du 17 février 2006 modifiant le règlement grand-ducal du 24 février 2003 concernant la mise en décharge des déchets; <http://legilux.public.lu/eli/etat/leg/rect/2006/03/20/n1/jo> (in French)

⁸ Loi du 26 novembre 2008 concernant la gestion des déchets de l'industrie extractive; <http://legilux.public.lu/eli/etat/leg/loi/2008/11/26/n1/jo> (in French)

Regulation of 14 September 2000 concerning risk studies and safety reports, and (e) laying down certain implementing rules for waste management establishments in the extractive industry (*Règlement grand-ducal du 26 novembre 2008, a) modifiant le règlement grand-ducal modifié du 16 juillet 1999 portant nomenclature et classification des établissements classés, b) modifiant l'annexe III de la loi modifiée du 10 juin 1999 relative aux établissements classés, c) modifiant les annexes I et II du règlement grand-ducal modifié du 7 mars 2003 concernant l'évaluation des incidences de certains projets publics et privés sur l'environnement, d) modifiant l'annexe I du règlement grand-ducal du 14 septembre 2000 concernant les études des risques et les rapports de sécurité, et e) portant certaines modalités d'application des établissements de gestion des déchets de l'industrie extractive*).⁹

The competent authority is the Ministry of the Environment, Climate and Sustainable Development.

Luxembourg did not have any facilities subject to the Extractive Waste Directive when this report was published.¹⁰

11.2.2. Financial security provisions

Article 13(1) of the Law on the management of waste from the extractive industry directs the Ministry of the Environment, Climate and Sustainable Development to require 'a financial guarantee in the form of a surety bond, or in an equivalent' (*d'une garantie financière sous la forme d'une caution, ou sous une forme équivalente*) to cover obligations in the authorisation for the extractive waste facility including the costs of post-closure monitoring and rehabilitation of the site damaged by the facility.

Article 13(2) states that the financial guarantee shall be calculated on the basis of the potential environmental impact of the facility, taking into account in particular the category to which the facility belongs, the characteristics of the waste and the future land use after restoration. The amount is calculated on the assumption that independent and qualified third parties will evaluate and carry out the necessary work.

Article 13(3) states that the amount of the guarantee may be adjusted periodically in view of the remedial work required.

Article 13(4) states that after the Ministry of the Environment, Climate and Sustainable Development has agreed to the closure of the extractive waste facility, it shall issue a written declaration to the operator relieving the financial guarantee with the exception of obligations relating to post-closure monitoring.

⁹ Règlement grand-ducal du 26 novembre 2008, a) modifiant le règlement grand-ducal modifié du 16 juillet 1999 portant nomenclature et classification des établissements classés, b) modifiant l'annexe III de la loi modifiée du 10 juin 1999 relative aux établissements classés, c) modifiant les annexes I et II du règlement grand-ducal modifié du 7 mars 2003 concernant l'évaluation des incidences de certains projets publics et privés sur l'environnement, d) modifiant l'annexe I du règlement grand-ducal du 14 septembre 2000 concernant les études des risques et les rapports de sécurité, et e) portant certaines modalités d'application des établissements de gestion des déchets de l'industrie extractive; <http://legilux.public.lu/eli/etat/leg/rgd/2008/11/26/n2/jo> (in French)

¹⁰ See BIPRO GmbH and Oakdene Hollins, 'Provision and elaboration of information for the preparation of the "Implementation report of Directive 2006/21/EC on the management of waste from extractive industries" (070201/2015/711399/Env.A.2)' (12 April 2016), s 3.2.19; https://ec.europa.eu/environment/waste/studies/mining/waste_extractive_industries.pdf

11.2.3. *Financial security instruments and mechanisms accepted*

Acceptable financial security instruments are a bank guarantee or an equivalent instrument.

11.2.4. *Templates*

There are no templates for the financial security instruments for extractive waste facilities.

11.2.5. *Financial security instruments not acceptable*

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

11.3. **Carbon Capture and Storage Directive**

11.3.1. *Status of implementation*

Luxembourg does not have any storage facilities for carbon dioxide.

11.3.2. *Competent authority(ies)*

The Directive on the geological storage of carbon dioxide (2009/31/EC) is implemented in Luxembourg by the following legislation:

- Law of August 27, 2012 (a) on the geological storage of carbon dioxide, (b) amending the amended law of 19 December 2008 on water, and c) amending the law of 20 April 2009 on environmental liability (*Loi du 27 août 2012 a) relative au stockage géologique du dioxyde de carbone, b) modifiant la loi modifiée du 19 décembre 2008 relative à l'eau, et c) modifiant la loi du 20 avril 2009 relative à la responsabilité environnementale*; Law of August 27, 2012);¹¹
- Grand-Ducal Regulation of 27 August 2012 laying down, with regard to the geological storage of carbon dioxide, (a) the criteria for characterization and evaluation of the potential storage complex and the surrounding area, and (b) the criteria for establishing and updating the monitoring plan and for post-closure monitoring (*Règlement grand-ducal du 27 août 2012 fixant, en matière de stockage géologique du dioxyde de carbone, a) les critères de caractérisation et d'évaluation du complexe de stockage potentiel et des environs, et b) les critères pour l'établissement et la mise à jour du plan de surveillance et pour la surveillance postfermeture*);¹² and
- Grand-Ducal Regulation of 15 October 2010 amending the Grand-Ducal Regulation of 9 May 2003 implementing Directive 2001/80 / EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants in the world atmosphere from large combustion plants (*Règlement grand-ducal du 15 octobre 2010 modifiant le règlement grand-ducal du 9 mai 2003 portant application de la directive 2001/80/CE du Parlement Européen et du Conseil du 23 octobre 2001 relative à la limitation des émissions de certains polluants dans l'atmosphère en provenance des grandes installations de combustion*).¹³

¹¹ Loi du 27 août 2012 a) relative au stockage géologique du dioxyde de carbone, b) modifiant la loi modifiée du 19 décembre 2008 relative à l'eau, et c) modifiant la loi du 20 avril 2009 relative à la responsabilité environnementale; <http://legilux.public.lu/eli/etat/leg/loi/2012/08/27/n1/jo> (in French)

¹² Règlement grand-ducal du 27 août 2012 fixant, en matière de stockage géologique du dioxyde de carbone, a) les critères de caractérisation et d'évaluation du complexe de stockage potentiel et des environs, et b) les critères pour l'établissement et la mise à jour du plan de surveillance et pour la surveillance postfermeture; <http://legilux.public.lu/eli/etat/leg/rgd/2012/08/27/n4/jo> (in French)

¹³ Règlement grand-ducal du 15 octobre 2010 modifiant le règlement grand-ducal du 9 mai 2003 portant application de la directive 2001/80/CE du Parlement Européen et du Conseil du 23 octobre 2001 relative à la

The competent authority is the Ministry of the Environment, Climate and Sustainable Development.

11.3.3. Financial security provisions

Article 10 of the Law of 27 August 2012 requires an applicant for an authorisation to operate a storage facility for carbon dioxide to establish and maintain ‘a financial guarantee or other equivalent provision’ (*la garantie financière ou toute autre disposition équivalente*) in accordance with article 20.

Article 20(1) states that the financial guarantee or other equivalent provision shall provide funding to ensure that the operator meets the obligations of the authorisation including closure and post-closure requirements and obligations resulting from inclusion of the site under the legislation establishing a system for greenhouse gases. The guarantee must be valid and effective before injection of carbon dioxide begins.

Article 20(2) states that the financial guarantee may be adjusted periodically to take account of revisions to the estimated risk of leakage, the estimated costs of complying with the obligations of the authorisation, and obligations resulting from inclusion of the site under the legislation establishing a system for greenhouse gases.

Article 20(3) states that the financial guarantee or other equivalent provision shall remain valid and effective after closure of the storage site until responsibility for it is transferred, after withdrawal of the site until a new authorisation has been issued, or in the event of its closure, until the transfer of liability has been effected.

11.3.4. Financial security instruments and mechanisms accepted

The implementing legislation simply refers to a financial guarantee or other equivalent provision.

11.3.5. Templates

There are no templates for the financial security instruments for storage facilities for carbon dioxide.

11.3.6. Financial security instruments and mechanisms not acceptable

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

12. EU RECOMMENDATION ON HYDRAULIC FRACTURING

12.1. Status

Luxembourg does not have any known oil and gas reserves subject to hydraulic fracturing (fracking).¹⁴

limitation des émissions de certains polluants dans l'atmosphère en provenance des grandes installations de combustion; <http://legilux.public.lu/eli/etat/leg/rgd/2010/10/15/n2/jo> (in French)

¹⁴ See K.L. Anthonsen, S. Schovsbo and P. Britze, ‘Overview of the current status and development of shale gas and shale oil in Europe’ (Report T3b of the EUOGA study (EU Unconventional Oil and Gas Assessment) commissioned by JRC-IET to GEUS, 2016), 5; https://openecho.jrc.ec.europa.eu/sites/default/files/t3_overview_of_the_current_status_and_development_of_shale_gas_and_shale_oil_in_europe.pdf

12.2. Competent authority(ies)

Not applicable

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 Industrial Emissions Directive (2010/75/EU) is implemented in Luxembourg by the following legislation:

- Law of August 2, 2017, as amended (*Loi du 2 août 2017*);¹⁵
- Law of May 9, 2014 relating to industrial emissions, as amended (*Loi du 9 mai 2014 relative aux émissions industrielles*);¹⁶ and
- Grand-Ducal Regulation of 9 May 2014, repealing various prior regulations (*Règlement grand-ducal du 9 mai 2014*).¹⁷

The competent authority is the Ministry of the Environment, Climate and Sustainable Development.

13.1.2. Financial security provisions

The legislation implementing the Industrial Emissions Directive in Luxembourg does not contain any financial security provisions.

13.1.3. Financial security instruments and mechanisms accepted

Not applicable

13.1.4. Templates

Not applicable

¹⁵ Loi du 2 août 2017; <http://legilux.public.lu/eli/etat/leg/loi/2017/08/02/a713/jo> (in French)

¹⁶ Loi du 9 mai 2014 relative aux émissions industrielles; <http://legilux.public.lu/eli/etat/leg/loi/2014/05/09/n1/jo> (in French)

¹⁷ Règlement grand-ducal du 9 mai 2014; <http://legilux.public.lu/eli/etat/leg/rgd/2014/05/09/n1/jo> (in French)

13.1.5. *Financial security instruments and mechanisms not acceptable*

Not applicable

13.2. **Seveso III Directive**

13.2.1. *Competent authority(ies)*

The Seveso III Directive (2012/18/EU) is implemented in Luxembourg by the following:

- Act of 28 April 2017 on the control of major-accident hazards involving dangerous substances and amending the amended law of 10 June 1999 relating to classified establishments (*Loi du 28 avril 2017 concernant la maîtrise des dangers liés aux accidents majeurs impliquant des substances dangereuses et portant modification de la loi modifiée du 10 juin 1999 relative aux établissements classes*);¹⁸ and
- Grand-Ducal Regulation of 27 August 2014 amending the amended Grand-Ducal Regulation of 17 July 2000 on the control of major-accident hazards involving dangerous substances (*Règlement grand-ducal du 27 août 2014 modifiant le règlement grand-ducal modifié du 17 juillet 2000 concernant la maîtrise des dangers liés aux accidents majeurs impliquant des substances dangereuses*).¹⁹

The competent authority is the Ministry of the Environment, Climate and Sustainable Development.

13.2.2. *Financial security provisions*

The laws that implement the Seveso III Directive in Luxembourg do not contain any financial security provisions.

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**

Luxembourg does not impose mandatory financial security under other environmental legislation.

14. **MANDATORY FINANCIAL SECURITY FOR OFFSHORE OIL AND GAS OPERATIONS**

Luxembourg is land locked.

¹⁸ Loi du 28 avril 2017 concernant la maîtrise des dangers liés aux accidents majeurs impliquant des substances dangereuses et portant modification de la loi modifiée du 10 juin 1999 relative aux établissements classes; <http://legilux.public.lu/eli/etat/leg/loi/2017/04/28/a459/jo> (in French)

¹⁹ Règlement grand-ducal du 27 août 2014 modifiant le règlement grand-ducal modifié du 17 juillet 2000 concernant la maîtrise des dangers liés aux accidents majeurs impliquant des substances dangereuses; <http://legilux.public.lu/eli/etat/leg/rgd/2014/08/27/n6/jo> (in French)

14.1. Competent authority(ies)

Not applicable

14.2. Status of offshore oil and gas operations

Not applicable

14.3. Requirements for financial security

Not applicable

14.4. Requirement for financial security for ELD liabilities

Not applicable

15. FAILURE OF FINANCIAL SECURITY

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

There are no reported ELD or other environmental incidents in which a financial security instrument or mechanism has been inadequate to pay claims.

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

There are no reported cases of any operator failing to prevent or remediate pollution or any other type of environmental damage due to becoming insolvent.

15.3. Other

There were no other publicly reported instances of the failure of financial security in Luxembourg.

16. FUNDS

Luxembourg has not established a fund for the costs of preventing or remediating environmental damage under the 2009 Law.

16.1. Name(s)

Not applicable

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

Not applicable

16.3. Purpose

Not applicable

16.4. Type

Not applicable

16.5. Source(s) of funding

Not applicable

16.6. Number and amount of claims

Not applicable

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des émissions de certains polluants dans l'atmosphère en provenance des grandes installations de combustion); <http://legilux.public.lu/eli/etat/leg/rgd/2010/10/15/n2/jo>

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