Annex I

Poland

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 available in Poland. Their availability has begun increasing.

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

Environmental extensions to property policies are not available.

Poland transposed the ELD by the following pieces of legislation:

- Regulation of the Minister of Environment of 30 April 2008 on the criteria for assessing whether any damage to the environment has occurred, as amended ([Rozporządzenie Ministra Środowiska z dnia 30 kwietnia 2008 r. w sprawie kryteriów oceny wystąpienia szkody w środowisku](https);\(^2\)
- Regulation of the Minister of Environment of 4 June 2008 on the types, conditions and implementation of remedial action, as amended ([Rozporządzenie Ministra Środowiska z dnia 4 czerwca 2008 r. w sprawie rodzajów działań naprawczych oraz warunków i sposobu ich prowadzenia](https));\(^3\) and
- various amendments to other environmental legislation.

Poland has not introduced a mandatory financial security system for ELD liabilities. Mandatory financial security and quasi-mandatory financial security for ELD liabilities have, however, been gradually introduced since 2011 when mandatory financial security for operators of storage facilities for carbon dioxide and related mining facilities was introduced. This was followed in 2012 by mandatory financial security for operators of landfills. In 2018, holders of integrated permits that include authorisations for waste collection and/or waste processing activities have been required to have financial security for those activities. Further, in July 2019, quasi-mandatory financial security was introduced. Operators that have an integrated permit, a permit for gas or dust releases into the ambient air, and/or a permit for generating waste are required to have financial security if the relevant competent authority concludes that there is a particularly important social interest related to environmental protection, in particular the risk of substantial deterioration of the state of the environment.

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2. **ENVIRONMENTAL INSURANCE MARKET**

Insurance for ELD and other environmental liabilities has been available in Poland since the early 2010s but demand for it has been low. The 2017 Environmental Implementation Review for Poland stated that Poland should “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”). Two years later, the 2019 Environmental Implementation Review for Poland stated that the improvement of financial security for liabilities under the ELD should be a priority action.

Stand-alone environmental insurance policies that provide cover for ELD liabilities are available to operators with sites only in Poland from national insurers and multinational insurers with branches in Poland. They tend to provide cover for preventing and remediating environmental damage involving pollution (both sudden and accidental as well as gradual) on-site and off-site, as well as other risks. Some policies limit cover for the costs of remediating on-site environmental damage to damage that begins and ends during a specified period of hours or days, that is, sudden and accidental pollution incidents that take place within a specific time during the policy period. Some policies have sub-limits for the costs of remediating pollution. Demand is moderate but has begun increasing.

The most prevalent insurance cover offered in the Polish insurance market by national insurers and multinational insurers with branches in Poland is an environmental extension to a general liability policy. Whilst cover is not generally provided by them for liabilities under the ELD, it is not possible to generalise due to the variations in available extensions.

Cover for the costs of remediating pollution in the extensions – if at all – is always limited. At most an extension provides cover for bodily injury, property damage and the costs of remediating off-site contamination caused by a sudden and accidental pollution incident that migrates to a third party’s site. Further, depending on individual insurers, cover may be provided only for remediating land/soil and water. Some extensions provide cover only if the insured could not reasonably have foreseen the pollution incident, or if the purpose of any remediation measures is to reduce the bodily injury or property damage caused to third parties by a pollution incident. Some extensions limit the types of remediation measures for which cover is provided and may not provide cover for assessing the damage, monitoring, restoration of the site, etc.

Further, some extensions specify the length of time in which a pollution incident must begin, end and be reported to insurers. A typical length of time is 72 hours for a pollution incident to begin and end, with a maximum of 30 days for the operator to report the incident to insurers.

Some provide cover for emergency measures under environmental legislation other than the ELD. Some are limited to cover for third-party claims for bodily injury and property damage from sudden and accidental pollution that migrates from an insured’s site. No extensions provide cover for complementary or compensatory damage.

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6 See Dorota Masniak, Topic IV – Pollution Insurance – Methods, Coverage and Beneficiaries Questionnaire, AIDA World Congress, Rio de Janeiro, October 2018 (Poland), s 4.1, fn 1; http://www.aida.org.uk/docs/Pollution%20-%20Poland.pdf
Demand for the extensions is greater than demand for stand-alone environmental insurance policies.

The following is an example of the coverage clause from such an extension:

The inclusion of liability for damage resulting directly or indirectly from the emission, leak, release or other form of penetration into the air, water or land of any hazardous substances. Other than provided for in ... the general conditions of insurance under this clause shall be included in the scope of the insurance liability of the Insured in respect of: 1) personal and property injuries arising directly or indirectly from the emission, leak, or other form of penetration into the air, water or land of any hazardous substances; 2) the costs of removal, neutralisation or soil remediation from pollutants incurred by third parties.7

Stand-alone environmental insurance policies from multinational insurers for large businesses with sites in Poland and other Member States are widely available through passporting. Cover is generally not limited to pollution but includes other types of environmental damage under the ELD.

2.1. Commercial insurers

2.1.1. Number of insurers

Three insurers that are based in, or have branches in, Poland offer stand-alone environmental insurance policies. The insurers consist of one national insurance company and two branches of foreign insurers.

2.1.2. New insurers entering the market since 2009

The national insurance company in Poland has offered stand-alone environmental insurance policies for third-party claims since before 2009. The two branches of foreign insurers were established in Poland after this time.

No other insurers have entered the Polish environmental insurance market.

2.1.3. Existing insurers that introduced environmental insurance policies since 2009

Three insurers based in, or with branches in, Poland have introduced stand-alone environmental insurance policies since 2009.

2.2. Re/insurance pools

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

2.2.1. Date of establishment

Not applicable

2.2.2. Descriptions of policies issued

Not applicable

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7 See ibid
2.3. **Mutuals**
No mutual in Poland offers environmental insurance policies.

2.3.1. *Date of establishment*
Not applicable

2.3.2. **Descriptions of policies issued**
Not applicable

2.4. **Other**
There are no captives or other types of providers of environmental insurance policies in Poland.

3. **Voluntary insurance policies for ELD and other environmental liabilities**

3.1. **Environmental insurance policies**
Stand-alone environmental insurance policies are available in Poland.

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

3.3. **Cover for ELD primary, complementary and compensatory costs**
Stand-alone environmental insurance policies for operators with sites and/or operations only in Poland provide cover for the costs of primary, complementary and compensatory remediation but generally only if it involves pollution.

Stand-alone environmental insurance policies by multinational insurers for operators with sites and/or operations in Poland and other Member States provide cover for the costs of primary, complementary and compensatory remediation for all types of environmental damage.

3.4. **Cover for non-ELD liabilities**
In addition to providing cover for preventing and remediating environmental damage under the ELD and other environmental legislation, stand-alone environmental insurance policies offered to operators with sites and/or operations only in Poland, as well as sites and/or operations in Poland and other States, generally provide cover for claims for bodily injury and property damage from environmental damage, as well as other types of risks (see section 2 above).

3.5. **Nature of policies (liability only or liability and on-site remediation)**
Environmental insurance policies offered for sites and/or operations only in Poland provide cover for the costs of preventing and remediating environmental damage from pollution under the ELD on an insured’s own site as well as third-party sites. The policies also provide cover for third-party claims for bodily injury and property damage from off-site pollution.
Stand-alone environmental insurance policies offered for sites and/or operations in Poland and other States provide cover for the costs of preventing and remediating environmental damage including pollution under the ELD on an insured’s own site as well as third-party sites. The policies also provide cover for third-party claims for bodily injury and property damage from off-site environmental damage including pollution.

Neither of the above two types of policies provide cover for damage to on-site property in the form of buildings, other structures and equipment unless, under some policies, the damage results from carrying out remediation measures themselves.

3.6. Description of policies

3.6.1. Format

Stand-alone environmental insurance policies generally have a menu-based format to enable operators to select the insuring agreements they wish (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 and reported basis. That is, the policies provide cover for claims that are made against the insured during the policy period and reported to insurers during the same policy period. Many such policies have an extended reporting period that extends the period for reporting claims to insurers for environmental damage that has occurred during the policy period for a specified period (usually 30 to 90 days) after the termination of the policy period. Some policies have an optional extended reporting period for a specified time for an additional premium.

Extensions to general liability policies that provide cover for environmental liabilities are underwritten on an occurrence basis. That is, the policy that is on the risk when pollution occurs provides cover, not the policy that is on the risk at the time at which the claim is made. As a practical matter, however, the claim must occur during the policy period because such extensions tend to be limited to cover for sudden and accidental pollution. In addition, the policies tend to require an insured to notify the insurer of the pollution within a specified period of time.

3.6.3. Policies for operators

Stand-alone environmental insurance policies offered by national insurers and multinational insurers with branches in Poland to operators with sites only in Poland provide cover for the following, depending on the individual insurer:

- costs of preventive and remediation measures, including preventive measures, under the ELD (including primary, complementary and compensation remediation) for pollution at an insured’s site and pollution emanating from it;
- costs of preventive and remediation measures, including emergency measures, under other environmental legislation for pollution at an insured’s site and emanating from it;
- costs of preventing and remediating pollution caused by the insured’s operations, including transportation (including marine transportation), outside the insured’s site;
- claims for bodily injury and property damage from pollution;
- third-party business interruption;
- first-party business interruption;
- crisis/disaster management costs (to protect an insured’s reputation in the event of a pollution incident);
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- costs of remediating historic pollution at an insured’s site; and
- associated legal expenses.

Only the first and, in some cases the third, item above are 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.

Environmental insurance policies offered by multinational insurers to large operators with sites in other States as well as Poland provide cover for environmental damage including pollution in the categories listed above for operators with sites only in Poland plus, depending on the individual insurer, cover for liabilities from the insured’s waste sent to a non-owned disposal site.

In addition to specimen wordings for each type of policy, multinational insurers have libraries of standard endorsements for each type of policy. Some policies include optional insuring agreements for damage from microbial matter including mould. In addition, as in other Member States, manuscript policies (that is, policies that are drafted specifically for a single insured) are available for large and complex risks.

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

3.6.4. Policies for contractors and others

Insurance is available to contractors as well as operators.

Environmental insurance was formerly available to transporters of hazardous substances. A policy that has been withdrawn filled the gap in cover resulting from the exclusion in motor policies for liability involving pollution of the environment (polegające na zanieczyszczeniu lub skażeniu środowiska) by article 38(1)(4) of the Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers’ Bureau (Ubezpieczenia obowiązkowe, Ubezpieczeniowy Fundusz Gwarancyjny i Polskie Biuro Ubezpieczycieli Komunikacyjnych).²

3.7. Model terms and conditions

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

3.7.1. Organisation issuing model terms and conditions

Not applicable

3.7.2. Description of model terms and conditions

Not applicable

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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 policies that provide cover for preventing and remediating environmental damage under the ELD and other environmental legislation have been available in Poland since the mid-2010s. The main impetus for their introduction was the 2007 Act and the Act of 14 December 2012 on Waste *(Ustawa z dnia 14 grudnia 2012 r. o odpadach; Waste Act)*\(^9\) (see section 11.1 below).\(^{11}\)

3.9. **Environmental assessments and audits**

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

Prospective insureds must generally fill out a proposal form concerning their operations and any previous pollution incidents, etc.

3.10. **Average premium**

The average premium for a stand-alone environmental insurance policy varies depending on factors such as whether the insured is a large business or a small or medium sized business. Other factors include the number and type of facilities operated by the insured.

3.11. **Average policy limit**

The average policy limit for a stand-alone environmental insurance policy varies between 500,000 PLN and 1,000,000 PLN (EUR 114,050 and EUR 228,100). Some policies may have a sub-limit for the costs of remediating pollution.

There is generally not a sub-limit of liability for an environmental extension to a general liability policy.

3.12. **Average deductible or self-insured retention**

An average deductible or self-insured retention for a stand-alone environmental insurance policy is approximately 20,000 PLN (EUR 4,562).

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\(^{11}\) See Dorota Masniak, Topic IV – Pollution Insurance – Methods, Coverage and Beneficiaries Questionnaire, AIDA World Congress, Rio de Janeiro, October 2018 (Poland), s 2.2; http://www.aida.org.uk/docs/Pollution%20-%20Poland.pdf
An average deductible or self-insured retention for an environmental extension to a general liability policy is approximately 3,000 PLN (EUR 684).

3.13. **Average policy period**

The average policy period for a stand-alone environmental insurance policy for an operator that has sites and/or operations only in Poland is one year.

3.14. **Sizes of typical insured businesses**

Typically, large businesses purchase stand-alone environmental insurance policies; small and medium sized businesses tend to purchase environmental extensions to general liability policies. If a small or medium sized business is subject to mandatory financial security for the 2007 Act/ELD liabilities, the business tends to purchase a stand-alone environmental insurance policy because an environmental extension does not provide sufficient cover.

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

Industrial and commercial sectors that typically purchase environmental insurance are as follows:

- heavy industry including the petrochemical industry;
- energy suppliers;
- waste industry;
- construction industry;
- water and sewage industry;
- warehousing and retail trade facilities;
- transportation;
- property industry including developers;
- environmental consultants and contractors; and
- oil and gas industry.\(^\text{12}\)

Other sectors that typically purchase stand-alone environmental insurance include manufacturers of chemicals, pharmaceuticals, pesticides, etc., and bulk storage terminals and warehouses especially for chemicals and oil or oil-based products.

Sectors subject to mandatory financial security requirements for the 2007 Act/ELD liabilities must typically purchase environmental insurance policies in order to have adequate cover to comply with the requirements.

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

No industrial or commercial sectors have limited or no accessibility to environmental insurance.

3.17. **Number and amount of claims**

There have been claims against stand-alone environmental insurance policies and environmental extensions to general liability policies but no information was publicly available on their number when this report was published.

\(^{12}\) See ibid s 6.2
3.18. **Coverage litigation**

There had not been any reported coverage litigation in Poland concerning environmental insurance policies when this report was published.

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

As indicated in section 2 above, the most common type of insurance for environmental liabilities is an extension to a general liability policy. The extensions do not generally provide cover for ELD liabilities.

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

Extensions to property policies to provide cover for preventing and remediating environmental damage under the ELD are not available.

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

4.1. **Type(s)**

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

4.2. **Availability**

Not applicable

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

Poland has not established a mandatory financial security system for liabilities under the ELD. Mandatory and quasi-mandatory financial security for liabilities under the 2007 Act/ELD have, however, been introduced by the legislation indicated in sections 5.2 and 5.2.7 below.

5.1. **Competent authority(ies)**

The competent authorities for ELD liabilities in Poland differ depending on the legislation that mandates financial security.

Article 376 of the Environmental Protection Act (Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska),¹³ which is the main environmental law in Poland, lists the competent authorities for the financial security provisions described in section 5.2.7 below as:

1. a commune head, a mayor or a town mayor (wójt, burmistrz lub prezydent miasta);
2. a starost (starosta);

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(2a) Voivodship Sejmik (Sejmik Województwa);  
(2b) Voivodship Marshal (Marszałek Województwa);  
(3) a voivode (wojewoda);  
(4) Minister of Environment (Minister właściwy do spraw środowiska);  
(5) General Director for Environmental Protection (Generalny Dyrektor Ochrony Środowiska); and  
(6) Regional Director for Environmental Protection (Regionalny Dyrektor Ochrony Środowiska).

The competent authority under the Waste Act in respect of landfills is the Voivodship Marshall.

The competent authorities under the Waste Act in respect of other waste operations are the Voivodship Marshal and the Poviat Governor (Starosta).

The competent authorities under the Geological and Mining Act (Ustawa z dnia 9 czerwca 2011 – Prawo geologiczne i górnicze)\(^\text{14}\) in respect of carbon capture and storage facilities are:

- Minister of Environment;  
- Voivodship Marshall; and  
- Poviat Governor.

5.2. Legislative provisions

5.2.1. Name(s) of legislation

The legislation that introduced mandatory and quasi-mandatory financial security for liabilities under the 2007 Act/ELD is the Waste Act and the Environmental Protection Act.

The Geological and Mining Act of 9 June 2011 also specifically imposes mandatory financial security for liabilities under the 2007 Act/ELD (see section 11.3.3 below).

5.2.2. Stand-alone requirement or hybrid

The legislative provisions that impose mandatory and quasi-mandatory financial security for liabilities under the 2007 Act/ELD are stand-alone requirements. They are not combined with other financial security requirements although some of the legislation (as described in sections 5.2.7, 11.1.3 and 11.3.3 below) includes other financial security requirements.

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

Not applicable

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

Not applicable

5.2.5. Revisions to legislation

Article 187 of the Environmental Protection Act was revised to broaden the provisions for quasi-mandatory financial security. Article 187 previously provided that a competent

\(^{14}\) Ustawa z dnia 9 czerwca 2011 – Prawo geologiczne i górnicze (consolidated version);  
and  
authority may require an operator to obtain financial security when the operator made an application for the following permits, in particular, when there was ‘a threat of deterioration of the condition of the environment’ (zagrożeniem pogorszenia stanu środowiska). The permits were: integrated permits, permits for emissions into the air, permits for discharge of wastewater, and permits for the generation of waste.

The Minister of Environment had authority to issue an Ordinance to list categories of installations that were required to have financial security as well as the methods of determining the amount of financial security. That power remains under the amendments described in section 5.2.7 below.

The other legislation that introduced mandatory and quasi-mandatory financial security requirements has not been revised. As indicated in section 5.2.7 below, however, legislation has been amended to incorporate the requirements into it.

5.2.6. ELD liabilities covered by mandatory financial security

The mandatory and quasi-mandatory financial security provisions do not specify the types of liabilities under the 2007 Act/ELD for which financial security is required. They thus appear to require financial security for all liabilities under the 2007 Act/ELD, that is, preventive measures and primary, complementary and compensatory remediation.

5.2.7. Description of mandatory financial security provisions

The mandatory and quasi-mandatory financial security provisions for preventing and remediating environmental damage under the 2007 Act/ELD in Poland are as follows.

➢ Waste Act

The Waste Act includes two sets of provisions for mandatory financial security; article 125 concerning landfills, and article 48a concerning permits for waste collection and/or waste processing.

Article 125 requires the operator of a landfill to have financial security for liabilities under the 2007 Act/ELD.

Article 125 states that acceptable financial security instruments for ELD liabilities for a landfill are:

- a bank deposit in a dedicated account indicated by the competent authority;
- a bank guarantee;
- an insurance guarantee; and
- an insurance policy.

The bank guarantee, insurance guarantee and insurance policy must be submitted to the competent authority for approval. If financial security is in the form of a bank guarantee, insurance guarantee or an insurance policy, the relevant instruments must also state that the bank or insurance company must provide the funds to remediate any environmental damage that is not remediated by the operator of the landfill.

Article 48a, which was added to the Waste Act on 20 July 2018, established mandatory financial security for liabilities under the 2007 Act/ELD in an integrated permit that includes

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waste collection and/or waste processing. Acceptable financial security instruments are a bank guarantee, an insurance guarantee, an insurance policy, and a dedicated deposit.

- **Environmental Protection Act**

On 19 July 2019, article 187 and various other provisions of the Environmental Protection Act were revised. The revised version\(^\text{16}\) provides as follows:

1. Where it is supported by a particularly important social interest related to environmental protection, in particular a threat of deterioration of the condition of the environment, the permit referred to in Article 181, paragraph 1, points 1, 2 and 4, may include a security for claims related to the occurrence of adverse effects in the environment and environmental damage within the meaning of the Act of 13 April 2007 on the prevention and remediation of environmental damage.

1a. In establishing the security for claims, the environmental protection authority referred to in Article 376, points 2 and 2b, competent to issue the permit referred to in Article 181, paragraph 1, points 1, 2 and 4, shall agree the amount of the security with the regional director for environmental protection.

1b. The agreement referred to in section 1a shall be in the form of a decision against which a complaint may be lodged.

2. The security referred to in section 1 may take the form of a deposit, bank guarantee, insurance guarantee or insurance policy.

3. The security in the form of a deposit shall be paid into a separate bank account indicated by the authority issuing the permit, and the security in the form of a bank guarantee or insurance policy shall be submitted to the authority issuing the permit.

4. The bank guarantee or insurance policy should state that in the event of negative environmental effects as a result of the entity's failure to fulfil the obligations specified in the permit referred to in Article 181, section 1, items 1, 2 and 4, the bank or insurance company shall settle its obligations for the benefit of the authority issuing the permit.

4a. The integrated permit, including waste collection or processing, provides for the insurance of claims pursuant to Article 48a of the Act of 14 December 2012 on Waste.

5. The Minister of Environment, taking into account the type and scale of operations carried out in installations and the related probability and magnitude of potential environmental damage and guided by the need to ensure coverage of the costs of remedial actions in the event of environmental damage, may specify, by regulation, the types of installations in which the security referred to in paragraph 1 should be established.

6. The Minister of Environment, taking into account the probability and magnitude of potential environmental damage and the need to ensure coverage of the costs of remedial actions in the event of environmental damage, may determine, by way of a regulation, the methods of determining the amount of compensation for claims, depending on the type of business conducted by the entity using the

\(^{16}\) Dz. U. 2001 Nr 62 poz. 627 t.j. Dz. U. 2019 poz. 1396; 
environment, the amount of production and the technical parameters of the installation.

The permits referred to in article 181(1)(1), (2) and (4) are integrated permits, permits for gas or dust releases into the ambient air, and permits for waste generation, respectively.

Article 187 imposes quasi-mandatory financial security rather than mandatory financial security. This is because article 187(1) has the word ‘may’ (może) and not the word ‘shall’. The competent authority, therefore, has discretion whether to impose the requirement depending on whether the authority concludes that there is ‘a particularly important social interest related to environmental protection, in particular a threat of deterioration of the condition of the environment’ (szczególnie ważny interes społeczny związany z ochroną środowiska, a w szczególności z zagrożeniem pogorszeniem stanu środowiska).

Article 351 of the Environmental Protection Act provides, among other things, that the operation of an installation without the requisite financial security set out in article 187, as required by a competent authority, is subject to a penalty of arrest, imprisonment or a fine.

In summary, financial security for preventing and remediating environmental damage under the 2007 Act/ELD is mandatory for holders of:

- an integrated permit that includes authorisation for waste collection and/or waste processing, in respect of those two activities;
- a permit to operate a landfill; and
- a concession for the underground storage of carbon dioxide (see section 11.3.1 below).

Financial security for preventing and remediating environmental damage under the 2007 Act/ELD is mandatory for holders of the following permits but only if the relevant competent authority concludes that there is a particularly important social interest related to environmental protection, in particular the risk of substantial deterioration of the state of the environment:

- an integrated permit;
- a permit for gas or dust releases into the ambient air; and
- a permit for waste generation.

5.2.8. **Exception for low risk sites**

Not applicable. The amendments refer specifically to specified environmental permits in specified circumstances.

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

Not applicable. The amendments refer specifically to specified environmental permits in specified circumstances.

5.2.10. **Other exceptions**

There are no other exceptions to the requirement for mandatory financial security for liabilities under the 2007 Act.

5.3. **Environmental licence conditions**

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

Mandatory financial security for ELD liabilities in Poland is established by legislation. It is not established by conditions in environmental permits although, as indicated throughout this
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5.3.2. Revisions to licensing requirements
Not applicable

5.3.3. ELD liabilities covered by mandatory financial security
Not applicable

5.3.4. Description of mandatory financial security conditions
Not applicable

5.4. Date of introduction
Not applicable

5.5. Effective date
Not applicable

5.6. Key reasons for introduction
A key reason for the introduction of mandatory financial security for waste sites was the illegal storage of waste. Municipalities often had to pay to remove waste stored on non-permitted sites. The expectation is that mandatory financial security, especially under section 48a will pay not only to remediate ELD-related environmental damage but to remove and properly dispose of waste even if it is not related to an imminent threat of, or actual, environmental damage.

5.7. Withdrawal of mandatory financial security
Not applicable

5.8. Guidance
No guidance has been issued but article 187(5) of the Environmental Protection Act states that the Minister of Environment may specify the types of installations to which the financial security requirement applies (see section 5.2.7 above).

5.9. Operators subject to mandatory financial security
Operators that carry out the following activities are subject to mandatory financial security requirements under the 2007 Act/ELD:

- operation of a landfill;
- waste collection;
- waste processing; and
- operation of an underground storage site for carbon dioxide and decommissioning of the related mining facility (see section 11.3 below).

The above activities equate to those under the following items in annex III of the ELD:

- operation of landfills, waste management (item 2); and
Operators that have the following permits are subject to mandatory financial security if the relevant competent authority concludes that there is a particularly important social interest related to environmental protection, in particular a threat of deterioration of the condition of the environment:

- integrated permits;
- permits to emit gases or dust into the air; and
- permits for the generation of waste.

The above articles roughly equate to the following items in annex III of the ELD:

- Industrial Emissions Directive (item 1); and
- waste management operations (item 2).

5.10. **Amounts and limits of mandatory financial security**

The amounts and limits of mandatory and quasi-mandatory financial security are not specified in the Waste Act or article 187 of the Environmental Protection Act but there is a formula in the Waste Act to calculate the required amount.

On 7 February 2019, the Regulation of the Minister of the Environment on the level of the security rates for claims (Rozporządzenie Ministra Środowiska z dnia 7 lutego 2019 r. w sprawie wysokości stawek zabezpieczenia roszczeń) was issued. The Regulation/Ordinance, which is based on article 48a(22) of the Waste Act, specifies the amount of financial security for claims for 1mg of stored waste.

5.11. **Growth of mandatory financial security**


Mandatory financial security for liabilities under the 2007 Act/ELD was first introduced for operators of landfills by article 125 of the Waste Act, adopted in 2012.

On 20 July 2018, article 48a was added to the Waste Act to impose mandatory financial security for liabilities under the 2007 Act/ELD for persons that hold an integrated permit that included authorisation for waste collection and/or waste processing activities.

On 19 July 2019, article 187 of the Environmental Protection Act was modified to impose mandatory financial security for liabilities under the 2007 Act/ELD for holders of an integrated permit, a permit for gas or dust releases into the ambient air, and a permit for waste generation provided that the relevant competent authority concludes that there is a particularly important social interest related to environmental protection, in particular the risk of substantial deterioration of the state of the environment.

6. **REGULATORY OVERSIGHT OF FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS**

6.1. **Review of financial security instruments or mechanisms**

The time at which the operator of a landfill must provide evidence of financial security is before any waste is accepted at the landfill.

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The time at which the holder of an integrated permit that includes authorisation for waste collection and/or waste processing must provide evidence of financial security is two weeks after a decision from the competent authority that determines the form and amount of the financial security, or a decision by the authority for a change in that amount.

The time at which financial security is required pursuant to article 187 of the Environmental Protection Act is not specified.

6.2. Financial security instruments and mechanisms accepted

See section 5.2.7 above for acceptable financial security instruments and mechanisms under the Waste Act.

The form of financial security instruments and mechanisms accepted pursuant to article 187 of the Environmental Protection Act is not specified.

6.2.1. Templates

There are no templates for the form of acceptable financial security instruments.

6.2.2. Requirements for environmental insurance policies

Neither the Waste Act nor article 187 of the Environmental Protection Act specify any specific requirements for environmental insurance policies to satisfy mandatory financial security requirements.

6.2.3. Form of mandatory environmental insurance policy

Neither the Waste Act nor article 187 of the Environmental Protection Act specify any specific requirements for the form of environmental insurance policies to satisfy mandatory financial security requirements.

6.3. Financial security instruments and mechanisms not acceptable

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

6.4. Time of review

Neither the Waste Act nor article 187 of the Environmental Protection Act indicate the time at which the relevant competent authority will review mandatory financial security instruments other than stated in section 6.1 above.

6.5. Regulatory costs of review

There is no charge to an operator for a review by a competent authority of a financial security instrument or mechanism.

6.6. Requirements for operator to review

There are no requirements for an operator periodically to review the mandatory financial security instrument or mechanism submitted to a competent authority for liabilities under the 2007 Act/ELD.

7. ENFORCEMENT OF FINANCIAL SECURITY REQUIREMENTS

No information was provided of any enforcement actions against persons who must have mandatory financial security for liabilities under the 2007 Act but who did not have them.
8. EX POST ENVIRONMENTAL DAMAGE MANDATORY FINANCIAL SECURITY (ARTICLE 8(2))

Article 23(1) of the 2007 Act provides that a competent authority may carry out preventive or remedial measures when it cannot identify the person that caused the environmental damage or the responsible person does not otherwise carry them out adequately, and it is necessary to carry them out due to the risk of harm to human health or the environment.

Article 23(5) of the 2007 Act provides that:

The provisions of Section III of the [Tax Act] shall apply accordingly to receivables arising out of the obligation to pay costs of preventive or remedial actions, however the environmental protection authority shall have the rights of tax authorities.

In this respect, article 116(1) of the Tax Act (Ustawa z dnia 29 sierpnia 1997 r. Ordynacja podatkowa)18 provides that members of the management board of a limited liability company, a limited liability company in organisation, a joint stock company or a joint stock company in organisation are jointly and severally liable for tax arrears under specified circumstances.

That is, a competent authority may seek reimbursement from a responsible operator of the costs of preventive and remedial measures carried out by it in the same manner as tax obligations.

Further, in certain cases this may include the relevant authority being able to pursue a successor company and/or the directors and officers of the company that caused environmental damage for the costs of such measures and interest. If there is a potential that the costs and interest will not be paid, the authority may require the operator to submit evidence of financial security for the costs and interest by an insurance guarantee, a bank guarantee, or a charge on land owned by the responsible operator.

8.1. Date legislation or policy for mandatory financial security introduced

The 2007 Act was introduced on 13 April 2007.

8.2. Effective date for ex post mandatory financial security

The 2007 Act, including article 23 (see section 8 above), came into force on 30 April 2007.

8.3. Financial security instruments and mechanisms accepted

See section 8 above.

8.4. Financial security instruments and mechanisms not acceptable

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

9. PROVIDERS OF MANDATORY FINANCIAL SECURITY INSTRUMENTS

9.1. Insurers

National and multinational insurers provide mandatory financial security instruments in the form of stand-alone environmental insurance policies that provide cover for liabilities under the 2007 Act/ELD.

At least one insurer provides mandatory financial security instruments for responsibilities under environmental legislation such as the Waste Act (see section 11.1 below) and the Extractive Waste Act (see section 12.1 below), by insurance guarantees. The insurance guarantee is secured by the operator’s future receivables payable to the State Treasury, represented by the relevant environmental competent authority. If the operator fails to comply with an order to remediate environmental damage caused by it or fails to pay part or all of the amount ordered by the relevant competent authority within the time specified in the order, the authority may access the guarantee.19

9.2. Banks and other financial institutions
Banks and other financial institutions do not issue financial security instruments for accidental environmental damage under the ELD because operators would not tend to pay for such instruments for a liability that may not occur.

9.3. Sureties
See section 9.1 above.

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

10. Measures taken by Member State to develop financial security markets
The Polish Government has encouraged the development of financial security markets by phasing in requirements for mandatory financial security (see section 5.11 above).

11. EU environmental legislation with mandatory financial security provisions

11.1. Landfill Directive
The Landfill Directive (1999/31/EC) is implemented in Poland by the Waste Act.

11.1.1. Competent authority(ies)
The Waste Act established various competent authorities for activities under it.
The competent authority for landfills is the Voivodship Marshall.

11.1.2. Financial security provisions
Article 137 of the Waste Act provides that prior to accepting waste at a landfill, the operator of the landfill must establish a fund for the costs of closure, reclamation, and supervision including monitoring (post closure/aftercare).

19 See Dorota Masniak, Topic IV – Pollution Insurance – Methods, Coverage and Beneficiaries Questionnaire, AIDA World Congress, Rio de Janeiro, October 2018 (Poland), § 4.2; http://www.aida.org.uk/docs/Pollution%20-%20Poland.pdf
11.1.3. Financial security instruments and mechanisms accepted

Article 137 of the Waste Act specifies acceptable financial security for closure and post-closure costs as a rehabilitation fund in the form of a separate bank account, a reserve or a bank guarantee.

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 and mechanisms that are not acceptable.

11.2. Extractive Waste Directive

The Extractive Waste Directive is implemented in Poland by the Extractive Waste Act of 10 July 2008 (Ustawa z dnia 10 lipca 2008r. o odpadach wydobywczych).

11.2.1. Competent authority(ies)

The competent authorities for the Extractive Waste Act are as follows:

- Regional Environmental Protection Director (Regionalny Dyrektor Ochrony Środowiska) for projects in closed areas;
- Voivodship Marshall for:
  - projects for which concessions for exploration, prospecting and extraction of minerals from deposits are granted by the minister competent for environmental issues or by the Voivodship Marshall; and
  - projects that may always have a significant impact on the environment within the meaning of the Act of October 3, 2008 on access to information on the environment and its protection, public participation in environmental protection and environmental impact assessments; and
- Poviat Governor for all other cases.

11.2.2. Financial security provisions

Article 32 of the Extractive Waste Act sets out the requirements for financial security for the obligations of the operator including closure and post closure.

More detailed specifications for financial security are set out in the Regulation of the Minister of the Environment of 11 February 2015 on financial security and its equivalent for an extractive waste facility (Rozporządzenie Ministra Środowiska z dnia 11 lutego 2015 r. w sprawie gwarancji finansowej i jej ekwiwalentu dla obiektu unieszkodliwiania odpadów wydobywczych).

Section 2.2 of the Regulation specifies costs that must be covered by the financial security or its equivalent and the means of calculating the amount.

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11.2.3. *Financial security instruments and mechanisms accepted*

Section 4.1 of the Regulation on financial security and its equivalent for an extractive waste facility states that the following instruments are acceptable:

- dedicated bank deposit in an institution indicated by the relevant competent authority;
- segregated funds in a dedicated bank account of the operator of the mining facility reserved for the relevant competent authority;
- bank guarantee;
- insurance guarantee; and
- insurance policy.

The bank guarantee, insurance guarantee or insurance policy must state that if the operator of the waste facility fails to carry out its obligations under the Extractive Waste Act, the instrument shall provide funds to fulfil those obligations.

11.2.4. *Templates*

There are no templates for acceptable financial security instruments.

11.2.5. *Financial security instruments not acceptable*

No financial security instruments are listed as not being acceptable.

11.3. *Carbon Capture and Storage Directive*

The Directive on the geological storage of carbon dioxide is implemented in Poland by the Geological and Mining Act.

11.3.1. *Status of implementation*

No storage facilities for carbon dioxide have been constructed in Poland.

A pilot installation that converts carbon dioxide into synthetic natural gas, using electricity from renewable sources, is in operation at the Łaziska Power Plant which is owned by the Tauron group.

Tauron Wytwarzanie, which includes the power plant in Łaziska Górne, is the leader of the CO2-SNG consortium. Members of the consortium, which include Polish and French entities, are jointly implementing a project to develop a technology for converting carbon dioxide that results from the combustion of fuels in industrial installations, into synthetic natural gas (SNG) – almost pure methane.

11.3.2. *Competent authority(ies)*

The competent authorities under the Geological and Mining Act in respect of carbon capture and storage facilities are as follows:

- Minister of Environment;
- Voivodship Marshall; and
- Poviat Governor.

11.3.3. *Financial security provisions*

Article 28a of the Geological and Mining Act sets out the financial security provisions for the operation of an underground storage site for carbon dioxide and the decommissioning of the related mining facility.
Article 28a 3. provides that financial security must be provided to satisfy the conditions in the concession for the underground storage of carbon dioxide including monitoring costs, costs of corrective measures, accounting for the escape of carbon dioxide emissions from the facility (under the EU Emissions Trading System), preventive and remediation measures under the 2007 Act/ELD, and compensation of losses (from third-party claims for bodily injury and property damage).

11.3.4. Financial security instruments and mechanisms accepted

Article 28a 5.-7. of the Geological and Mining Act states that the acceptable financial security instruments are as follows:

- cash in a separate bank account of the National Fund for Environmental Protection and Water Management (Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej);
- bank guarantee;
- insurance guarantee; and
- civil liability insurance policy.

Article 28a 11. states that financial security established in cash shall not form part of a bankruptcy estate.

11.3.5. Templates

There are no templates for acceptable financial security instruments.

11.3.6. Financial security instruments and mechanisms not acceptable

No financial security instruments are listed as not being acceptable.

12. EU Recommendation on Hydraulic Fracturing

12.1. Status

Hydraulic fracturing (fracking) in Poland was actively pursued beginning in 2007 due, in large part, to estimates of substantial shale gas reserves. By 2012, 111 exploration concessions were in force. By 2015, however, foreign companies began to withdraw, followed by national companies, as investigations indicated difficulties in extracting shale gas. 22 The Ministry of Environment (Ministerstwo Środowiska) reported that test results from some of the wells suggested that only 10% to 30% of the level of shale gas that was commercially sustainable could be extracted. 23

In 2017, an Irish company returned the last two licences to explore for shale gas in Poland to the Ministry of Environment due to its inability to find partners to finance further exploration measures. 24


24 See ‘The End of Poland’s Shale Gas Eldorado’, Emerging Europe (1 December 2017); https://emerging-europe.com/news/the-end-of-polands-shale-gas-eldorado/
12.2. Competent authority(ies)
The competent authority for issuing unconventional (as well as conventional) oil and gas licences in Poland is the Ministry of Environment.

12.3. Financial security provisions
There are no specific financial security provisions specifically for fracking.

12.4. Financial security instruments and mechanisms accepted
See section 12.3 above.

A case study of an exploration well for shale gas in the Łeba region of Poland in 2014 indicated that the operator did not have financial security for liabilities under the ELD. ²⁵

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
The Industrial Emissions Directive (2010/75/EU) is implemented in Poland by the Environmental Protection Act.

13.1.1. Competent authority(ies)
See section 5.2.7 above.

13.1.2. Financial security provisions
Some but not all installations subject to the Industrial Emissions Directive are subject to mandatory or quasi-mandatory financial security (see section 5.2.7 above).

13.1.3. Financial security instruments and mechanisms accepted
See section 5.2.7 above.

13.1.4. Templates
There are no templates for acceptable financial security instruments and mechanisms.

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

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13.2. **Seveso III Directive**

The Seveso III Directive (2012/18/EU) is implemented in Poland by the Environmental Protection Act.

13.2.1. **Competent authority(ies)**

The competent authority for the Environmental Protection Act is the Ministry of Environment.

13.2.2. **Financial security provisions**

There are no mandatory financial security requirements for the implementation of the Seveso III Directive in Poland.

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**

See sections 5.2.7 and 5.9 above.

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

14.1. **Competent authority(ies)**

The competent authority for licences for offshore oil and gas operations in Poland is the Ministry of Environment.

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

Poland has commercial production of offshore oil and gas operations on the Baltic Sea Shelf.26

14.3. **Requirements for financial security**

The Geological and Mining Act, which was amended in 2015 among other things to transpose the Offshore Safety Directive (2013/30/EU), requires financial security for the decommissioning costs of offshore oil and gas facilities.

14.4. **Requirement for financial security for ELD liabilities**

There are no mandatory financial security provisions for ELD liabilities for offshore oil and gas operations with the exception of conditional financial security under article 28.a) of the Geological and Mining Act.

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15. **Failure of financial security**

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

No incidents of the inadequate level of financial security instruments or mechanisms to pay claims for ELD incidents were reported.

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

Article 198 of the Environmental Protection Act provides that when a permit that is subject to the Act has expired, been revoked or has had a limitation placed on it and the operator of the installation has removed adverse environmental effects from the activities carried out at it, the competent authority shall, on request of the operator, order the release of the financial security. If any adverse environmental effects have not been rectified by the date specified by the competent authority, the authority shall decide on the allocation of necessary precautionary measures to remedy the effects.

Article 199 of the Environmental Protection Act provides that the procedure set out in article 198 may be initiated *ex officio* or on request of the operator of the installation.

Article 200 of the Environmental Protection Act provides that if a ‘user of the environment’ enters into liquidation or bankruptcy, article 198 applies in respect of the return of the financial security or its allocation for the remediation of the damage.

15.3. **Other**

No reports of other types of failures of financial security were provided.

16. **Funds**

Poland does not have a fund that provides funds to prevent or remediate environmental damage under the ELD.

Poland has an environmental fund, the National Fund for Environmental Protection and Water Management (*Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej*), which was established in 1989 following regime transformation. The purpose of the fund is, however, to support environmental action effectively and efficiently; it is not to fund measures to remediate or prevent further environmental damage under the ELD.\(^{27}\)

Funding to prevent or remediate environmental damage under the ELD is financed from the State budget or a local budget.

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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