

FINANCIAL SECURITY FOR ENVIRONMENTAL RESPONSIBILITIES
AND LIABILITIES, ESPECIALLY THE ENVIRONMENTAL LIABILITY
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TOPICS

- Voluntary financial security
- Environmental insurance in the EU
- Awareness of environmental liabilities and insurance
- Mandatory financial security
 - Environmental responsibilities
 - Environmental liabilities
 - EU legislative requirements
 - EU legislation with national requirements
 - Environmental Liability Directive
 - National legislative requirements

VOLUNTARY FINANCIAL SECURITY

- Voluntary financial security
 - Insurance is the only applicable financial security instrument
 - Operators do not set money aside in dedicated bank accounts, trust funds, etc., or obtain bank guarantees or bonds if they not required to do so
 - No benefit; would suffer only a financial detriment
 - Insurance and reinsurance providers
 - Difference between insurance and reinsurance
 - Commercial companies
 - Re/insurance environmental pools
 - France, Italy, Spain
 - Captives

ENVIRONMENTAL INSURANCE IN THE EU

- Developments in environmental insurance in the EU
 - ELD led more insurers to enter the environmental insurance market in the EU
 - Note: small market compared to market for general/public liability and many other types of insurance
 - Insurance for environmental liabilities
 - Stand-alone environmental insurance policies
 - Environmental extensions to general liability policies
 - Environmental extensions to property policies

ENVIRONMENTAL INSURANCE IN THE EU

- Stand-alone environmental insurance policies
 - Types
 - General menu-style policies
 - Sections of combined policies offering many types of insurance
 - Bespoke policies or sections of bespoke policies
 - Never limited to ELD liabilities
 - Provide cover for third-party bodily injury and property damage claims, measures to remediate environmental damage (especially pollution under other environmental laws), business interruption, disaster representation, non-owned disposal sites, etc. depending on the insurer
 - May provide cover for remediating pre-existing environmental damage as well as operational risks
 - May be adapted for mandatory financial security requirements

ENVIRONMENTAL INSURANCE IN THE EU

- Stand-alone environmental insurance policies (continued)
 - Widely available for ELD liabilities for large operators with sites and/or operations in more than one Member State
 - Large variation in availability for operators with sites and/or operations in a single Member State
 - Widely available in some Member States
 - Not available in other Member States
 - Even when available, cover is sometimes limited to sudden and accidental pollution

ENVIRONMENTAL INSURANCE IN THE EU

- Cover for environmental risks in general liability policies
 - General liability policies provide cover for third-party claims for bodily injury, property damage and related economic loss (pure economic loss in some Member States, and sometimes other harm) caused by an insured's acts and omissions
 - Do not provide cover for remediating on-site environmental damage
 - Do not provide cover for any ELD liabilities
 - Almost always have a pollution exclusion that bars cover for third-party claims from pollution with the exception of sudden and accidental pollution (qualified pollution exclusion)

ENVIRONMENTAL INSURANCE IN THE EU

- Environmental extensions (except Austria and Germany)
 - Nearly always provide cover only for remediating pollution that has migrated off-site from a sudden and accidental incident on an insured's site and only if legislation other than the ELD requires its remediation
 - Nearly never provide cover for ELD liabilities except as above
 - Generally have low – or very low – sub-limits of liability
 - May have time element clauses

ENVIRONMENTAL INSURANCE IN THE EU

- **Property policies**
 - Provide cover for loss of or damage to on-site property (e.g., buildings, other structures) covered by the policy (generally called ‘insured property’; does not include land)
 - Do not provide cover for off-site pollution or other environmental damage
 - Often have an absolute or qualified pollution exclusion
- **Environmental extensions**
 - Not available in many Member States
 - Even if available, nearly never provide cover for ELD liabilities

AWARENESS OF ENVIRONMENTAL LIABILITIES AND INSURANCE

- Environmental teams in large (and some medium-sized) brokers
- Widespread lack of knowledge by operators, other brokers and many other ELD stakeholders about
 - ELD and/or other environmental liabilities and how they interact with each other
 - How the ELD or other environmental liabilities can apply to a business' operations
 - Scope of cover provided by environmental insurance, especially general liability and property policies and extensions to them
 - Tendency to consider that their scope is much broader than it actually is
 - Availability may depress demand for stand-alone environmental insurance policies even if a business recognises that its operations may cause environmental damage

MANDATORY FINANCIAL SECURITY

- Mandatory financial security for environmental responsibilities
 - May be required for specified obligations under an environmental permit
 - Generally not controversial because measures required by permit conditions will inevitably occur
 - Many types of acceptable financial security instruments
 - Bank guarantees, dedicated bank accounts, and bonds are the most popular
 - Insurance is generally not applicable
 - Covers fortuities, not certainties
 - Limited exceptions include the following costs associated with the closure of a landfill
 - Amount: costs exceeding estimated costs
 - Timing: closure occurring before sufficient funds have been accumulated

MANDATORY FINANCIAL SECURITY

- Mandatory financial security for environmental liabilities (continued)
 - Liabilities include accidental pollution resulting in third-party claims and remedial measures
 - Often controversial because an accident may not occur
 - Many types of financial security instruments and combinations of them
 - Insurance and bank guarantees are the most popular
 - Other instruments and mechanisms
 - Charges over property (may be limited due to time needed to sell property)
 - Dedicated bank accounts
 - Pools, e.g., Protection & Indemnity (P&I) Clubs
 - International Group of P&I Clubs: 13 members provide liability cover to approximately 90% of the world's ocean-going tonnage
 - Self insurance and parent company guarantees (tend to be controversial)

MANDATORY FINANCIAL SECURITY

- EU legislative requirements include
 - Landfill Directive (1999/31/EC)
 - Closure and post closure measures
 - Extractive Waste Directive (2006/21/EC)
 - Closure, post closure and rehabilitation/restoration measures
 - Directive on the geological storage of carbon dioxide (2009/31/EC)
 - Closure and post closure measures, EU Emissions Trading System obligations
 - Many types of acceptable financial security instruments
 - Bank guarantees are the most popular followed by dedicated bank accounts
 - Other financial security instruments and mechanisms are also acceptable depending on the Member State

MANDATORY FINANCIAL SECURITY

- EU mandatory financial security requirements are not a driver for environmental insurance
 - Require financial security only for environmental responsibilities, not environmental liabilities

MANDATORY FINANCIAL SECURITY

- EU legislation with national financial security requirements
 - Integrated pollution and prevention permits including permits under the Industrial Emissions Directive (2010/75/EU)
 - May include mandatory financial security for third-party claims for bodily injury and property damage as well as remediation measures during the pendency of a permit and remediating a site to a ‘satisfactory state’
 - Cyprus, Finland (compensation), France, Ireland, Italy, Malta, the Netherlands (being introduced), Poland (some permits), Sweden
 - Seveso III Directive (2012/18/EU)
 - May include mandatory financial security for third-party claims for bodily injury and property damage as well as remediation measures
 - Finland (compensation), France, Ireland, Italy, the Netherlands (being introduced), Slovakia, Sweden

MANDATORY FINANCIAL SECURITY

- Mandatory financial security systems for ELD liabilities
 - Czechia
 - Portugal
 - Slovakia
 - Spain
- Differences in systems
 - Phase-in period based on risk from polluting operations or all at the same time
 - Scope: all operators or only higher risk operators
 - Amount of financial security is based on risk assessments
 - Exceptions
 - Covered ELD liabilities: primary, complementary and compensatory remediation – or only primary remediation

MANDATORY FINANCIAL SECURITY

- Mandatory financial security systems for ELD liabilities (continued)
 - Hybrid system of ELD liabilities and environmental responsibilities
 - Ireland
 - Provisions in national legislation requiring mandatory financial security for ELD liabilities
 - Italy
 - Poland
- Mandatory financial security for ELD liabilities in Member States that have introduced it is a driver for environmental insurance

MANDATORY FINANCIAL SECURITY

- National mandatory financial security requirements for environmental liabilities and responsibilities
 - Waste activities
 - Belgium (soil pollution), Croatia, Cyprus, Czechia, Denmark (pollution from oil tanks), Estonia, Finland (compensation), France, Germany, Greece (hazardous waste), Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Spain
- Increasing trend towards mandatory financial security for environmental liabilities and responsibilities

QUESTIONS

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