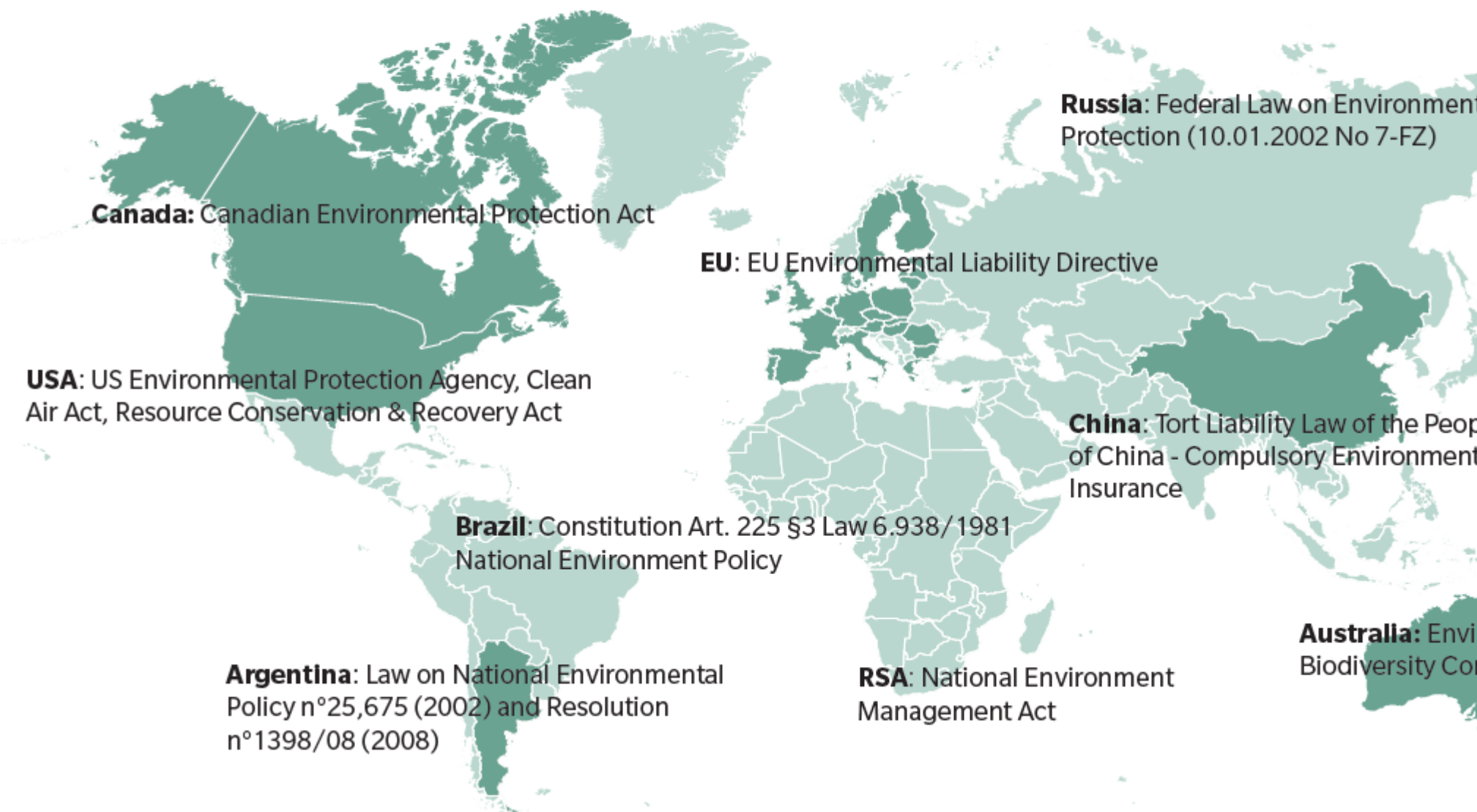


International perspective on **INSURANCE FOR ELD LIABILITIES**

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Koenraad De Stickere
Environmental Practice Leader

LEGAL LANDSCAPE



Environmental Liability worldwide

- Emersion legislation worldwide
- Growing public awareness
- new and increased environmental liabilities and indemnifications

Environmental Liability worldwide

- USA, 1980, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous waste clean-up with recourse provision
- USA, 1993 – 1996, Erin Brokovich versus Pacific Gas & Electric Company (PG&E) involving groundwater chromium contamination in Hinkley, California, USA, USD 333M settlement, largest ever, insured in General Liability
- USA, Nineties:
 - General Liability insurers enter the pollution exclusion except Named Perils and Time Element buy-back, via R/I to global markets
 - Insurers and brokers develop Pollution Legal Liability insurance
- EU, 21 April 2004, 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage
 - Biodiversity Damage concept adds to Pollution Liability format
 - Insurers and brokers deliver Environmental Liability Insurance, EU style

EU Directive on Environmental Liability

EU Directive 2004/35 on environmental liability with regard to the prevention and remedying of environmental damage effective 30/4/2007* i.e.

- Biodiversity damage:
 - damage to habitats / protected species protected by EC / national law
 - damage to water resources
- Pollution incident:
 - land contamination which presents an important threat to human health

EU Directive on Environmental Liability – challenges

Challenges to insurers with ELD introduction

- Biodiversity Damage trigger:
‘significant adverse change’ vs ‘physical injury or destruction’ in intl. policy wordings
- Strict liability operator with Annex III activities,
limited defence sources but operator must prevent or remedy before recourse
- Joint and several liability failing recourse with multiple liable operators
- Compensatory remediation: absence of common and clear financial formulation for
loss of ecological function
- Public participation to request Authorities to act
 - Non-governmental environmental protection organisations (NGO);
 - Members of the Public having sustained damage

Result: initial years Biodiversity Damage was sub-limited, often down to EUR 1M

EU Directive on Environmental Liability – limitations

ELD opportunities

- Directive does not affect rights of compensation for traditional damage - civil liability.
- Damage caused before the expiry of the deadline for implementation of this Directive should not be covered by its provisions

Environmental Liability Insurance (ELI) – international wording

- In meeting with ELD Environmental Liability Insurance solutions available, covering:
 - Operations: insured locations, transported cargo, NODS
 - Transactions: item, occurrences prior to closing date
 - Contractor's liability: works at Third Party locations
 - Professional liability: consultant services

Or combinations of the above

Environmental Liability Insurance (ELI) – international wording

- International ELI wording coverages meet and go beyond ELD
 - New pollution conditions (Sudden and Gradual)
 - Pre-existing unknown pollution conditions (beyond ELD)
 - Environmental damage (Biodiversity)
 - When applicable: Contractor, Transport and Waste liability

Environmental Liability Insurance (ELI) – international wording

- Losses covered exceed ELD
 - First party cleanup costs
 - Third party cleanup costs (beyond ELD)
 - Third party claims for bodily injury & property damage (beyond ELD)
 - Third party Business Interruption (beyond ELD)
 - Prevention costs
 - Compensatory remediation expense
 - Complementary remediation expense
 - Legal expense and defence costs
 - Investigation costs

Environmental Liability Insurance (ELI) – Buyer markets

Observations:

- Massive higher presence of Environmental Liability Insurance with companies headquartered in West EU Members growing less moving East
- Major and multinational companies with staffed insurance departments have analyzed these changes and filled the newly uncovered liability areas of their activities by subscribing to specialist environmental insurance,
- SME not having that same structure to analyze and adapt to the quickly changing legal landscape are exposed without neither well recognizing their new liabilities nor being insured.

Environmental Liability Insurance (ELI) – Buyer markets

- Buyer markets: General situation
 - Recognizing that only probably less than 5% of SME businesses are sufficiently insured with respect to environmental
 - That most business get accidental Environmental third party exposure cover through their General Liability (GL) programme believing they are sufficiently covered
 - Germany and Austria General Liability insurance offering is much more extended through UHV and USV provisions but not for on-site issues
 - Pool markets in France, Italy and Spain responding specifically today to Middle Size and SME business- good adaptation of premium/coverage
 - Specific Environmental Liability Facilities have been developed by some insurers as well as some brokers. Optimized premium-coverage can be found here.

Environmental Liability Insurance (ELI) – Insurance Markets

- Insurance Markets:
 - International Insurance Companies with Environmental Practices
 - Based in various EU-countries or UK markets via Lloyds Brussels
 - Accessible to all EU-intermediaries (for Lloyds special certification needed)
 - Environmental Liability wordings encompassing the ELD liabilities (Pollution Clean-up and Biodiversity Damage) and associated losses
 - Potential for New Conditions and Legacy Risk (information allowing)
 - Insured Limits from €1.000.000 to € 50.000.000
 - SME's downside: Min. premium mostly € 10.000, for some € 5.000
 - Local Markets and Funds:
 - restricted coverages, often specific purpose, not responding to ELD
 - Often low insured limits
 - Small premium

Environmental Liability Insurance (ELI) – build market

- Insurers and insurance intermediaries can help meet ELD financial security objective:
 - Create awareness, in particular with SME's and their professional federations
 - Appoint / train specialist intermediary, with access to environmental markets and solutions
 - Build market, start with high profiles (cfr ELD Annex III)
 - Connect local insurers with international specialist companies or,
 - Convince local insurers to move into the market with small Insured Limits
 - Create facilities sharing Insured Limit amongst a multitude of SME peers

Marsh Environmental Practice

Koenraad De Stickere
Practice Leader

Environmental Practice
Marsh Belgium

Tel: +32 3 286 64 77

GSM: +32 486 132 708

koenraad.destickere@marsh.com

Uitbreidingstraat 72
B-2600 Antwerpen
Belgium

