

## STATUS OF FINANCIAL SECURITY FOR ELD LIABILITIES ACROSS THE EU

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## ELD ARTICLE 14(1)

- Article 14(1) of the ELD provides as follows

‘Member States shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive’

## FINANCIAL SECURITY FOR ENVIRONMENTAL RESPONSIBILITIES

- Two main types of environmental-related financial security instruments and mechanisms
  - Environmental responsibilities
    - Mandatory financial security is not controversial because environmental responsibilities inevitably occur
      - E.g., closure and post-closure of a landfill
    - Typical financial security instruments and mechanisms
      - Bank guarantees, bonds, reserves in accounts (large companies only)
    - Insurance is not appropriate because it covers fortuities not certainties
      - Only applicable to related risks such as the timing of closure and costs exceeding estimates for them

## FINANCIAL SECURITY FOR ENVIRONMENTAL LIABILITIES

- Two main types of environmental-related financial security instruments and mechanisms (continued)
  - Environmental liabilities including ELD liabilities
    - Three main types
      - Environmental extensions to general liability policies
      - Environmental extensions to property policies
      - Environmental insurance policies
    - Insurance is the only type of voluntary financial security
      - Operators do not set aside money in bank guarantees, trust funds, etc. or purchase bonds unless required to do so
  - Mandatory financial security is controversial because accident or other event may never occur

## VOLUNTARY FINANCIAL SECURITY

- General liability policies
  - Provide cover for third-party claims for bodily injury, property damage and other specified harms
    - Virtually always include a qualified pollution exclusion
  - Do not provide cover for
    - Property damage at an insured's site
    - Preventing or remediating pollution
    - Preventing or remediating environmental damage under the ELD

## VOLUNTARY FINANCIAL SECURITY

- Property policies
  - Provide cover for damage to, or destruction of, 'insured property' by specified risks at an insured's site
  - Land is virtually never insured property
  - Typically include an absolute pollution exclusion
  - Do not provide cover for
    - Preventing or remediating pollution
    - Preventing or remediating environmental damage under the ELD

## VOLUNTARY FINANCIAL SECURITY

- Environmental extensions to general liability policies
  - Widely available in most Member States; demand varies
  - BUT substantial limitations for ELD liabilities (except for Austria and Germany) even when cover is provided for remediating pollution
    - Tend to provide cover for ELD liabilities for remediating off-site land/soil pollution from a sudden and accidental incident on an insured's site only if liability for such remediation is imposed by other environmental legislation and overlaps with liability for land damage under the ELD
- Environmental extensions to property policies
  - Available in a few Member States but even when available, demand is low
    - Tend to provide cover only for remediating pollution or other environmental damage that results from a risk for which the policy provides cover
    - Do not tend to provide cover for ELD liabilities

## VOLUNTARY FINANCIAL SECURITY

- Environmental insurance policies
  - Widely available for large businesses that have sites and/or operations in multiple Member States
  - Widely available for businesses that have sites and/or operations in only one Member State in some Member States (e.g., France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain) but not in other Member States
  - Even when available, provide limited cover in many Member States (e.g., Bulgaria, Croatia, Cyprus, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Romania)



## MANDATORY FINANCIAL SECURITY

- ELD liabilities
  - Mandatory financial security systems in Czechia, Portugal, Slovakia, Spain
  - Hybrid financial security system in Ireland
  - Limited mandatory financial security provisions in legislation in Italy and Poland
  - Most common financial security instruments
    - Insurance, bank guarantees
  - Note: insurance policies that provide evidence of mandatory financial security for ELD liabilities typically provide cover for risks not subject to mandatory financial security requirements
    - Insurance for ELD liabilities is ring-fenced

## ENVIRONMENTAL INSURANCE POLICIES

- Clear and ever increasing trend towards the introduction of legislation that imposes financial security for liabilities from the following
  - Waste management activities
  - Facilities subject to the Industrial Emissions Directive and the Seveso III Directive
  - Facilities subject to national environmental permitting regimes
- First two activities are ELD annex III activities
- Thus, financial security for some ELD liabilities has been and is continuing to be introduced in many Member States