

SCOTTISH ENVIRONMENT PROTECTION AGENCY

A PRESENTATION TO EU4ENVIRONMENT SEMINAR



SEPTEMBER 2022



Financial Provision Tools for Protecting the Environment and the Public Purse



THE PROBLEM

Insolvency can leave large unrestored holes in the ground and big holes in the public purse.

Taxpayers may end up footing the bill for major accident clean-up

The costs range from 10s to 100s of millions EUR.

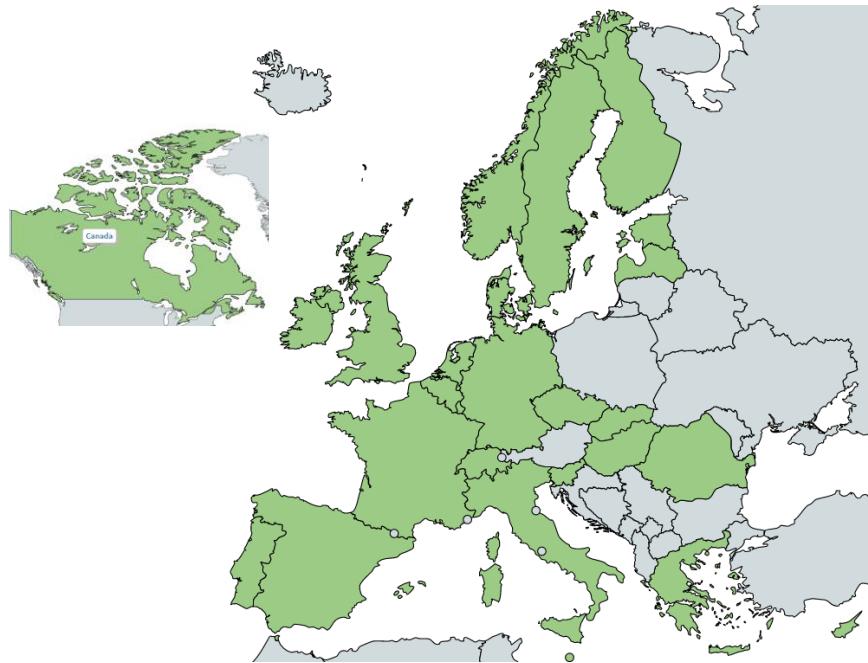


What can we learn from successful claims ?





IMPEL PROJECT



■ Participating Countries



SECURE

Ring fenced to the
environmental
liability for its
duration

**PRINCIPLES
FOR
SUCCESSFUL
FINANCIAL
PROVISION**

SUFFICIENT

To cover the
costs of the
potential liability

AVAILABLE

When required
to pay for
restoration or
clean up

<https://www.mapchart.net/>

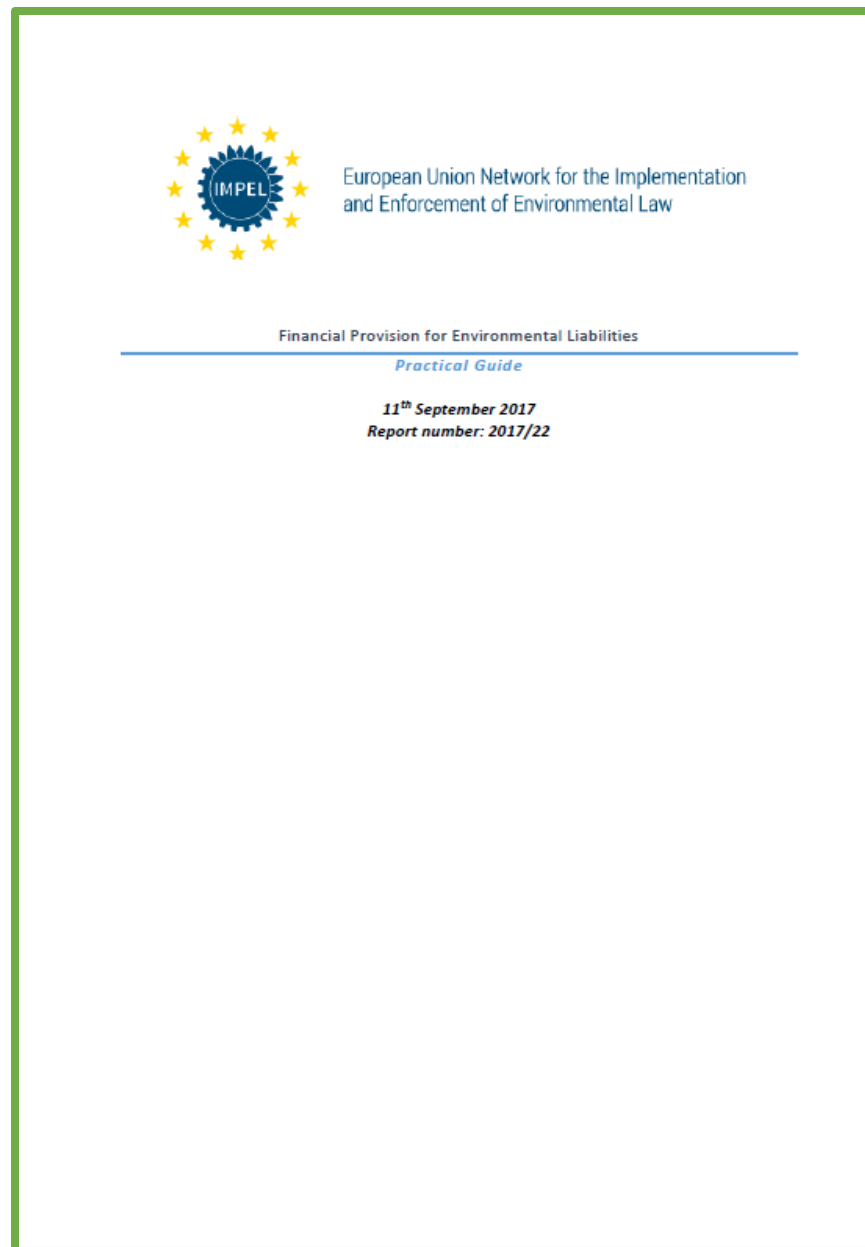


ADDRESSING THE NEEDS OF REGULATED BUSINESS





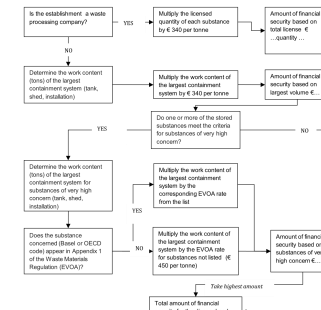
“The Gold
Standard”



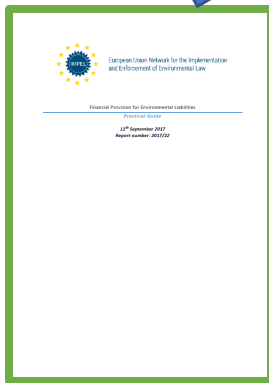


SECURE
Ring fenced to the environmental liability for its duration

Calculating the amount of provision



SUFFICIENT
To cover the costs of the potential liability



Monitoring and Enforcement

AVAILABLE
When required to pay for restoration or clean up

ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE

An insurance policy is a contract that transfers liability for the risk of the loss specified in the policy from the insured (policyholder) to the insurer on payment of a premium. It is important to be aware of the differences between insurance policies. Traditional general third party liability policies typically provide no, or limited, cover for environmental liabilities, beyond cover for liability injuries and property damage from sudden and accidental pollution incidents. Endorsements that provide cover for remediation costs may be added but they tend to be much more limited than environmental insurance policies.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> Does not require collateral so may be more accessible to small and medium businesses and does not tie up capital. Should not be affected by regime changes in the operator's financial strength or its dissolution provided the policy provides that it is payable in the event of the operator's insolvency or dissolution. 	<ul style="list-style-type: none"> Must be renewed annually or at some other interval. Cover may be invalidated by non-disclosure or misrepresentation. Limits/sub-limits, co-insurance, deductibles, conditions, exclusions, specific policy periods and triggers may restrict which environmental liabilities may be covered.

Documentation	In addition to the standard documentation the following may be required: insurance policy or certificate of insurance, evidence of financial strength and payment of premiums.
Reporting and monitoring	In addition to the standard requirements the following may be required: notification of cancellation, expiration, intent to renew, renewal or non-renewal and expiry dates.
Enforcement	In addition to the standard requirements the regulator will need to make sure that the financial provision is maintained/renewed/acceptable or require a replacement provision.

Factsheets

Key things to check	Insurance	Financial Institution	Guarantee Company	Self-Provision	Mutual Fund/Pool	Charge on Asset
Basic considerations						
The provision provides for the estimated environmental liability	•	•	•	•	•	•
Certainty of amount to be received and immediacy of access	•	•	•	•	•	•
Payable on demand	•	•	•	•	•	•
Provider is authorised to provide that provision in the jurisdiction	•	•	•	•	•	•
Provider has sufficient financial strength	•	•	•	•	•	•
Supplementary cover for intentional acts or excess	•					
Supplementary cover due to illiquidity of the asset					•	
Supplementary cover while the provision is being accumulated						•
Protection against insolvency or dissolution of the operator – first ranking charge						•

SUCCESSFUL IMPLEMENTATION OF THE ELD



Successful implementation of the ELD

Compensatory remediation for a large fish kill.

Fish barrier mitigation measures to open up 10s of kms of river to migratory trout and salmon

Competent authority was able to recover their costs



CALCULATION TOOLS - SUMMARY

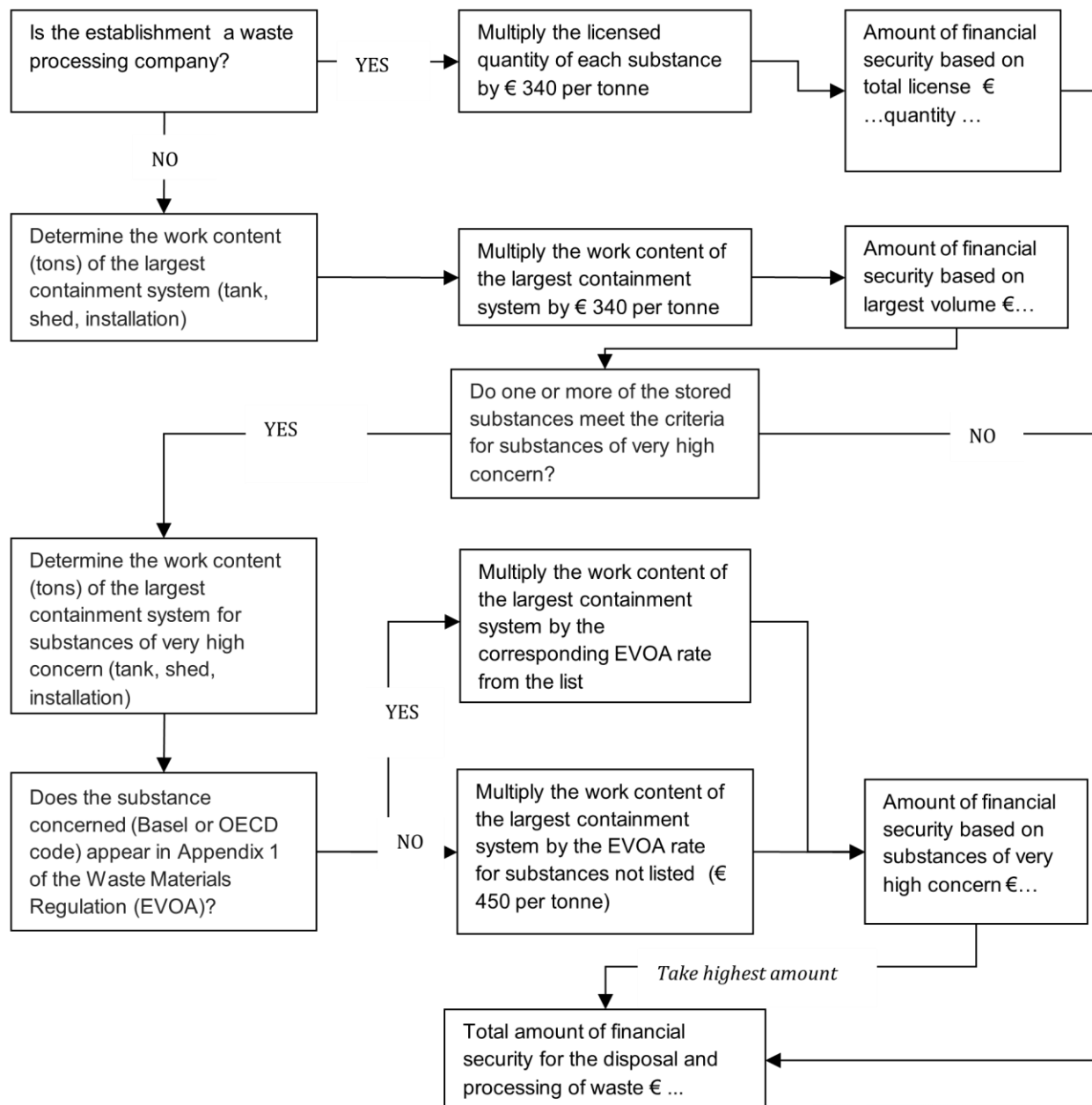


	Ireland	Netherlands	Spain
Media	Soil, water, habitats, species, air	Soil, water	Soil, water, habitats, species
Activities covered	All licensable activities	Seveso, chemicals industry	ELD activities
Basis	Risk	Consequence	Risk
Type of liability	Incidents and closure/restoration	Incidents and disposal of chemicals/ waste at closure	Incidents
Language	English	Dutch, English translation available	English, Spanish
Includes unit remediation costs	Yes	Yes	Yes
Type of remediation	Primary, compensatory	Primary	Primary, compensatory
Cost	Free	Free	Free
Format	Paper based	Paper based Flowcharts	Software package



TOOLS

Netherlands





ARM	IDM	MORA
<p>Based on UNE 150.008 on environmental risk analysis and evaluation Standard. Helps in the elaboration of the environmental risk analysis, allowing operators building the “events trees” in which they should be based on, and calculate the financial security according to the environmental liability legislation</p>	<p>Allows the calculation of the Environmental Damage Index or Índice del Daño Medioambiental (IDM), foreseen in article 33 of the Regulation of partial development of Law 26/2007, of one or several accidental scenarios identified within the environmental risk analysis.</p> <p>It allows estimating an order of magnitude of the environmental damage caused of each accident scenario, and selecting the reference scenario for calculating the financial security</p>	<p>Calculates the economic value of the primary, compensatory and complementary remediation costs of environmental damages that operators may cause in the context of Law 26/2007 in the different accidental scenarios.</p> <p>It also provides the best available remediation techniques to restore the resources damaged (and their services) to their baseline condition.</p> <p>The primary remediation costs of the reference scenario will be the amount of the financial security, adding to it the costs of prevention and avoidance measures</p>



[ARM-IDM-MORA \(mapama.gob.es\)](https://servicio.mapama.gob.es/mora/idm/editarSelecc)

ARM-IDM-MORA

https://servicio.mapama.gob.es/mora/idm/editarSelecc

GOBIERNO DE ESPAÑA MINISTERIO PARA LA TRANSICIÓN ECOLÓGICA Y EL RETO DEMOGRÁFICO y Reparación Medioambiental

Environmental Damage Index (IDM) estimation

ARM Reports

- Create a New Report
- Recording Reports
- Bibliography

IDM Reports

- Create a New Report
- Recording Reports

MORA Reports

- Create a New Report
- Recording Reports

My Profile

- Personal Data
- Change Password
- Cancel account

Damaging agents

The damaging agents are the elements of t

Agents

- Chemical
 - Halogenated VOCs (Volati
 - Non-halogenated VOCs (\
 - Halogenated SVOCs (Sen
 - Non-halogenated SVOCs
 - Fuels and Non-volatile Org
 - Inorganic substances
 - Explosives
- Physical
 - Extraction/Disappearance
 - Inert waste discharge
 - Temperature
- Fire
 - Fire
- Biological
 - Genetically Modified Organisms (GMO)
 - Invasive alien species
 - Virus and bacteria
 - Fungi and insects

Modifiers

B

Degradability of the substance
High

Soil permeability
Medium (silty sands, clayey sands, silts)

Solubility of the substance
Little soluble (Solubility in water at 20 °C 0.1 - 10 mg/l)

Viscosity of the substance
Moderately viscous substance

Volatility of the substance
High (BP < 100 °C)

C

Estimated duration of damage
Low (< 3 años)

Windows taskbar: Type here to search, 15:59, 21/06/2021



environmentanalyst



Environmental Evaluators Network
Réseau des Évaluateurs Environnementaux



KESKKONNAMINISTERIUM



Building Expertise



WORLD ENERGY COUNCIL





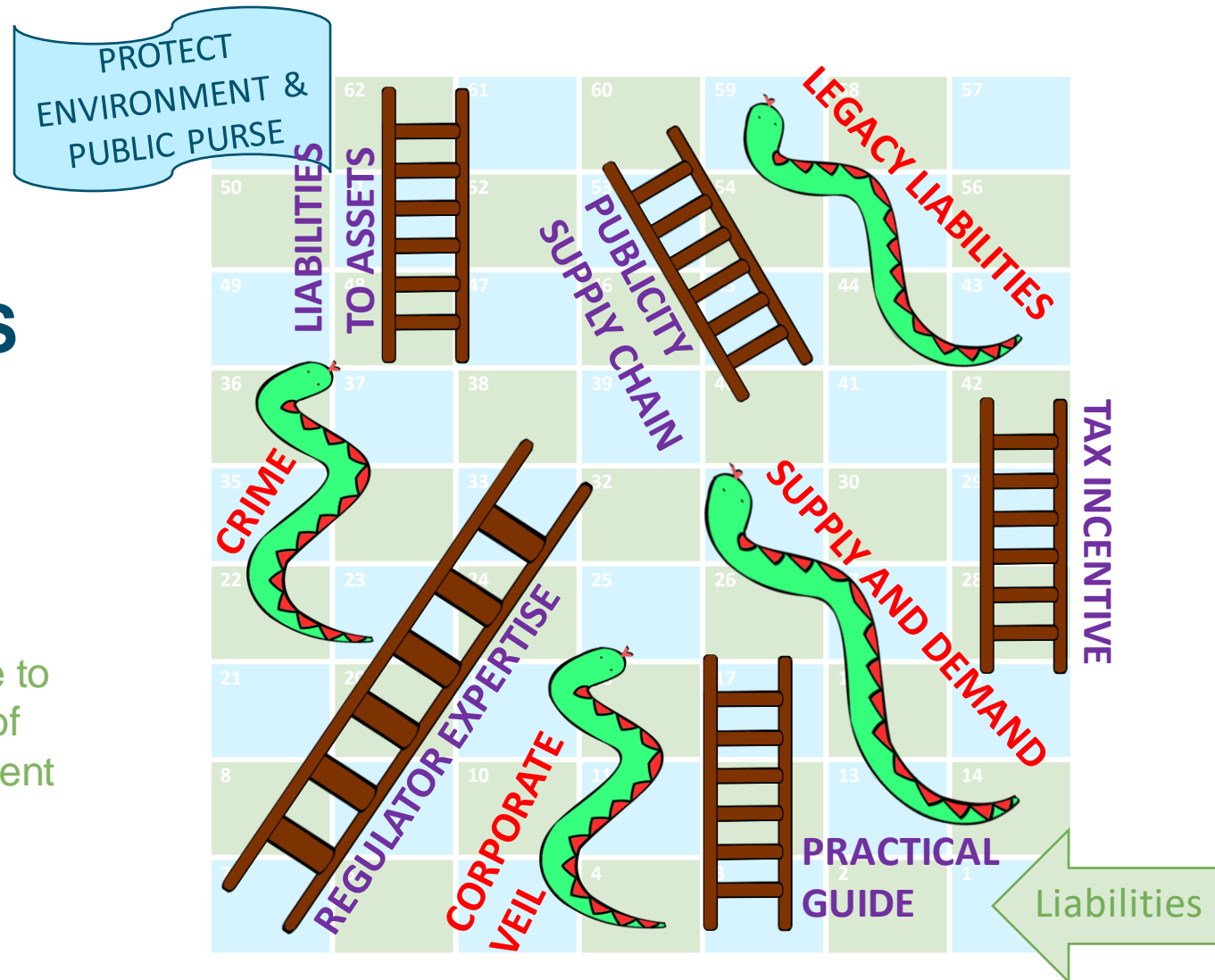
CURRENT STATE OF PLAY

- Increased operator demand for financial security
 - Financial security for waste chain – on the increase
 - Financial security for IED and SEVESO - on the increase
 - Financial security for return to satisfactory state (IED)
 - Move away from unsecured provision e.g. self provision
 - Move away from reliance on financial viability health checks
 - Move towards extending liability to directors and others
-
- United National Environment Programme (UNEP)/Alberta Energy Regulator (AER)/EU network on environmental liabilities
 - EU LIFE project on “Promoting financial instruments for liability on environment”.
 - EU Environmental Liability Directive (ELD) Multi Annual Work Programme (https://ec.europa.eu/environment/legal/liability/pdf/ELD_MAWP-approved.pdf)
 - PILLAR 3 – Ensure secure, sufficient, available financial security
 - Tools and trainings
 - Identify and publish best practice on financial provision and insolvency
 - Encourage MS to require mandatory financial provision for Seveso (COMAH), PPC and waste activities phased in according to risk
 - Encourage extension of secondary liability so public purse is protected on insolvency



FINANCIAL PROVISION IS NOT A PANACEA

What other tools and approaches can we use to address the challenge of protecting the environment and the public purse?





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