



Annex I

# Italy

Improving financial security in the context of the  
Environmental Liability Directive

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Prepared by:

Valerie Fogleman, Stevens & Bolton LLP,  
Cardiff University School of Law and Politics

Ugo Salantitro, University of Catania  
Department of Law

Grazia Maria Vagliasindi, University of Catania  
Department of Law

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## 1. INTRODUCTION

Environmental insurance for liabilities under the ELD and other environmental legislation is available in Italy. Cover is provided for small and medium sized businesses and large businesses with sites and/or operations only in Italy as well as large businesses with sites and/or operations in other States as well as Italy.

Stand-alone environmental insurance policies that provide cover for liabilities under the ELD and other environmental legislation are widely available. They are underwritten by individual, mainly multinational, insurers and insurers associated with the Environmental Pool (*Pool Ambiente*; Pool).

Environmental extensions to general liability policies are also widely available.

Environmental extensions to property policies are not available.

Italy implements the ELD by Part VI of Legislative Decree 152/2006 (*Decreto Legislativo 3 aprile 2006, No 152*; Legislative Decree 152/2006), as amended<sup>1</sup> (also called the Environmental Code (*Codice dell'ambiente*)). Italy also has legislation for soil protection and remediation in Title V, part IV (provisions on the remediation of contaminated sites) of the Environmental Code.

Whilst Legislative Decree 152/2006 contains mandatory financial security provisions, some of which go beyond those in EU environmental legislation, there are no mandatory financial security provisions for liabilities under the ELD with the exception of the following provisions.

Article 306-bis, paragraphs 1 and 2, state that:

the person, against whom the Ministry of the Environment has initiated the procedures for the reclamation and repair of the environmental damage of National Interest Priority Sites (*Siti di interesse nazionale*)<sup>2</sup> ... or has undertaken the related judicial action, can make a settlement proposal ... the settlement proposal includes an indication of appropriate financial guarantees.

The settlement proposal must, therefore, include 'appropriate financial guarantees'. The intent appears to be that the financial guarantees must include the costs of primary, complementary and compensatory remediation measures. That is, they must guarantee the settlement proposal which should include all three types of remediation measures.

In addition, annex A of Ministerial Decree of 20 June 2011 on Procedure and amounts of financial guarantees that have to be given to the State by traders and brokers of waste without holding the waste itself (*Decreto Ministeriale 20 giugno 2011 - Modalità e importi delle garanzie finanziarie che devono essere prestate a favore dello Stato dai commercianti e intermediari dei rifiuti senza detenzione dei rifiuti stessi*; DM 20 June 2011)<sup>3</sup> requires that the financial surety that such traders and brokers must provide to the Ministry of the Environment (*Ministero dell'ambiente*) includes expenses directly or indirectly inherent in or connected with any transportation and disposal of waste, safety measures (including their

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<sup>1</sup> Decreto legislativo 3 aprile 2006, No 152;

[https://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2006-04-14&atto.codiceRedazionale=006G0171](https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2006-04-14&atto.codiceRedazionale=006G0171) (in Italian). An unofficial and regularly updated version of the Environmental Code is available at [https://www.bosettiegatti.eu/info/norme/statali/2006\\_0152.htm](https://www.bosettiegatti.eu/info/norme/statali/2006_0152.htm) (in Italian)

<sup>2</sup> Siti di interesse nazionale are historically contaminated sites subject to State control.

<sup>3</sup> Decreto Ministeriale 20 giugno 2011 - Modalità e importi delle garanzie finanziarie che devono essere prestate a favore dello Stato dai commercianti e intermediari dei rifiuti senza detenzione dei rifiuti stessi (G.U. 22 settembre 2011, n. 221); <https://www.gazzettaufficiale.it/eli/id/2011/09/22/11A12079/sg> (in Italian)

implementation), remediation, restoration of installations and contaminated areas under Legislative Decree 152/2006. In particular, article 6 of annex A states that the financial guarantees can be used, without prejudice to the overall maximum limit of the guaranteed amount, for the restoration of further damage to the environment pursuant to Legislative Decree 152/2006.

In addition, the Italian legislation that implements the Industrial Emissions Directive (2010/75/EU) also includes mandatory financial security provisions for the restoration of the site of an installation to the state established in the baseline report for it.

Further, the legislation that implements the Seveso III Directive (2012/18/EU) includes mandatory insurance to provide cover for the risk of injury to persons, damage to property and damage to the environment.

Still further, the Veneto Region requires financial security for specified waste operators including operators of landfills to have mandatory insurance for civil liabilities from pollution, in addition to mandatory financial security for preventing and remediating environmental damage which applies throughout the whole of Italy.

## **2. ENVIRONMENTAL INSURANCE MARKET**

The environmental insurance market in Italy is well developed. The market has expanded since the late 1980s and continues to expand as more carriers enter the market and the range of stand-alone environmental insurance policies increases in scope. The Italian environmental insurance market includes national and multinational insurers and a re/insurance pool. All the insurers offer policies for small to medium sized enterprises in addition to large operators with sites and/or operations in Italy. Whilst a wide range of policies is available, demand for them is very low.

Twenty-one insurers offer stand-alone environmental insurance policies for Italian risks but only three of them offer cover for all types of environmental damage under the ELD; all the others offer cover only for pollution.

There is also a wide range of extensions to general liability policies. The extensions tend to provide cover only for remediating off-site pollution (not other types of environmental damage) that is caused by a sudden and accidental incident on the insured's site that migrates to third-party property. They do not provide cover for complementary or compensatory remediation. They are also subject to other limitations and have low sub-limits. ELD stakeholders reported that some extensions do not provide cover for any liabilities under the ELD. Other ELD stakeholders reported that some extensions provide cover only for claims for bodily injury and property damage caused by sudden and accidental pollution from an insured's site.

One commentator stated that some extensions provide cover for third-party business interruption as well as bodily injury and property damage from sudden and accidental pollution,<sup>4</sup> but that some extensions provide cover only if the civil liabilities result from specified events listed in the policy such as breakages of equipment or pipelines caused by the insured operator's negligence. The stakeholder further commented that the limit of liability

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<sup>4</sup> Marco Frigessi di Rattalma, Topic IV – Pollution Insurance – Methods, Coverage and Beneficiaries Questionnaire, AIDA World Congress, Rio de Janeiro, October 2018 (Italy), s 4.1, 12-13; <http://www.aida.org.uk/docs/Marco%20Frigessi%20di%20Rattalma%20AIDA%20%20%20ITALY%20re%20POLLUTION.pdf>

for the extensions is often insufficient to cover the loss.<sup>5</sup> Demand is low. The Environmental Pool does not reinsure any environmental extensions to general liability policies.

Multinational insurers also underwrite global programmes that provide cover for environmental risks in Italy and other States by way of passporting.

## **2.1. Commercial insurers**

### *2.1.1. Number of insurers*

As indicated in section 2 above, 21 insurers offer stand-alone environmental insurance policies in Italy. Fifteen of these insurers are members of the Pool (see section 2.2 below).

By way of comparison, approximately 120 insurers based in or with branches in Italy offer non-life policies, with a further 27 carriers offering life and non-life policies. Some of these carriers offer stand-alone environmental insurance policies as well as other types of policies such as general liability, motor insurance, professional indemnity insurance, etc.

### *2.1.2. New insurers entering the market since 2009*

Approximately four insurers have entered the environmental insurance market in Italy since 2009.

### *2.1.3. Existing insurers that introduced environmental insurance policies since 2009*

Multinational insurers that offered environmental insurance policies by passporting including insurers that had branches in Italy increased the range of policies after 2009 to include liabilities under the ELD.

## **2.2. Re/insurance pools**

### *2.2.1. Date of establishment*

The Pool was established in 1979 under the name *Pool Inquinamento* (Pollution Pool) following the environmental disaster in July 1976<sup>6</sup> when a reaction vessel containing trichlorophenol at a facility in Seveso overheated and ruptured the disk of the vessel's safety valve resulting in the escape of a dense cloud of vapour containing dioxin. The creation of the Pool enabled re/insurers in it to subscribe to policies rather than underwriting them individually at a time when the modern era of environmental law, and environmental liabilities under that law, were only just beginning. Its creation also enabled businesses to purchase cover for environmental liabilities.

Before the Pool was created, cover for civil liabilities from pollution were covered by general liability policies only. Cover was limited to claims for bodily injury and property damage from sudden and accidental pollution; it was subject to low limits.

From 1979 until 2007, members of the Pool provided insurance policies only for civil liabilities from pollution. In 2007, the scope of policies was broadened to provide cover for remediating environmental damage. In 2019, the scope was broadened further to provide cover for all liabilities under the ELD. Also in 2019, the name of the pool was changed to *Pool Ambiente*.

The Pool, which is a co-reinsurance consortium, consisted of 15 insurers when this report was published. As with the environmental pools in France and Spain, insurers that are members of

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<sup>5</sup> Ibid s 4.1, 11

<sup>6</sup> See 'Pool Ambiente; About'; <https://www.poolambiente.it/about/> (in Italian)

*Pool Ambiente* individually underwrite stand-alone environmental insurance policies, the general terms and conditions of which are established by the Pool. The insurers then cede liabilities under the policies to the Pool. As indicated in section 2 above, the Pool does not reinsure environmental extensions to general liability policies. This is due to the lack of detailed environmental underwriting for them.

Liabilities underwritten in stand-alone environmental insurance policies are co-reinsured by all members of the Pool. In addition, the Pool provides risk management and claims management support. Membership of the Pool does not prohibit members of it underwriting stand-alone environmental insurance policies that are not co-reinsured by the Pool.

#### *2.2.2. Descriptions of policies issued*

The Pool offers many types of environmental insurance policies for ELD and other environmental liabilities with limits up to EUR 50,000,000 for each policy.

In 2018, members of the Pool launched a new product to cover all types of environmental damage, not only pollution, under the ELD including a ‘measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly’.<sup>7</sup>

### **2.3. Mutuels**

An ELD stakeholder reported that one mutual in Italy offers stand-alone environmental insurance policies.

#### *2.3.1. Date of establishment*

No information was provided.

#### *2.3.2. Descriptions of policies issued*

No information was provided.

### **2.4. Other**

Some large Italian operators, including operators with sites and/or operations in Italy as well as other States, have captive insurance companies. The captives are, as in other Member States, domiciled in countries with low applicable rates of tax. Some of the captives provide cover for liabilities under the ELD.

## **3. VOLUNTARY INSURANCE POLICIES FOR ELD AND OTHER ENVIRONMENTAL LIABILITIES**

### **3.1. Environmental insurance policies**

A wide range of stand-alone environmental insurance policies is available.

### **3.2. Cover for ELD preventive costs**

Virtually all stand-alone environmental insurance policies provide cover for preventive measures as well as emergency measures, with the scope of cover for such measures depending on individual insurers. Some policies provide cover for a broad scope of preventive and emergency measures; other policies provide more restrictive cover for them.

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<sup>7</sup> This language is the definition of ‘damage’ under article 2(2) of the ELD



### **3.3. Cover for ELD primary, complementary and compensatory costs**

Most stand-alone environmental insurance policies offered to operators with sites and/or operations only in Italy provide cover for primary, complementary and compensatory remediation under the ELD, with some policies providing cover only for pollution (not other types of environmental damage).

Virtually all stand-alone environmental insurance policies offered to large operators with sites and/or operations in other States as well as Italy provide cover for all three types of remediation.

### **3.4. Cover for non-ELD liabilities**

Stand-alone environmental insurance policies provide cover for non-ELD liabilities (see section 3.6.3 below). For example, they also provide cover for third-party claims for bodily injury and property damage from environmental damage.

### **3.5. Nature of policies (liability only or liability and on-site remediation)**

All stand-alone environmental insurance policies provide cover for the costs of remediating environmental damage, including land/soil, water and biodiversity damage, caused by an insured to third-party sites as well as the costs of remediating such damage on an insured's own site.

In addition, cover is provided for damage from pollution to property owned by an insured and/or third parties such as cleaning pipelines damaged by an oil spill. The cover is subject to a sub-limit of liability.

### **3.6. Description of policies**

#### *3.6.1. Format*

Stand-alone environmental insurance policies generally have a menu format so that an insured may select the insuring agreement(s) it requires. There is a wide range of such policies (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 rather than an occurrence basis. That is, a claim must be made against the insured during the policy period and reported to insurers during the policy period or, if available, the extended reporting period. Depending on the policy, the trigger for the claim may be the incident that caused pollution (or other environmental damage), an order from a competent authority to remediate the damage, or a claim for compensation for loss caused by the damage.

Extensions to general liability policies that provide cover for ELD and other 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 when a claim is made. As a practical matter, however, the claim must occur during the policy period because such extensions cover – at most – sudden and accidental pollution. In addition, the policies tend to require an insured to notify the insurer of the pollution incident within a specified period of time.

### 3.6.3. *Policies for operators*

Stand-alone environmental insurance policies offered by multinational insurers with branches in Italy to small and medium sized enterprises and large enterprises with sites and/or operations only in Italy as well as large enterprises with sites and/or operations in other States as well as Italy provide cover for the following, depending on individual insurers:

- the remediation of on-site and off-site environmental damage under the ELD caused by operations, including transportation, carried out by the insured operator;
- the remediation of pollution under other environmental legislation caused by operations, including transportation, carried out by the insured operator;
- emergency costs and costs of preventive measures pursuant to the ELD under the two above bullet points;
- third-party claims for bodily injury and property damage;
- third-party business interruption;
- the insured's business interruption costs and extra expense caused by environmental damage including pollution;
- historic contamination at the insured's site that was not known to the insured before the inception of the policy or is listed in a disclosed information schedule;
- specific cover for liabilities arising from underground storage tanks;
- disaster/crisis response costs arising from an incident that has caused environmental damage including pollution (that is, costs associated with protecting an insured's reputation); and
- related legal costs.

Only the first and third items 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.

In addition to specimen wordings for each type of policy, multinational insurers have libraries of standard endorsements for each type of policy. 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. Others include optional insuring agreements for damage from microbial matter including mould. In addition, as in other Member States, manuscript policies are available for large and complex risks.

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

### 3.6.4. *Policies for contractors and others*

Stand-alone environmental insurance policies that provide cover for ELD and other environmental liabilities are also available to contractors. The policies tend to provide similar types of cover as the policies for operators, as described in section 3.6.3 above, including liability for remediating environmental damage including pollution at sites at which the contractor is carrying out operations in addition to the insured contractor's own site.

### **3.7. Model terms and conditions**

There are no model terms and conditions for insurance policies for ELD or other environmental liabilities in Italy.

#### *3.7.1. Organisation issuing model terms and conditions*

Not applicable

#### *3.7.2. Description of model terms and conditions*

Not applicable

#### *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**

Environmental insurance for civil liabilities resulting from pollution in Italy has been available since 1979. Environmental insurance that provides cover for remediating pollution has been available since the late 1990s. In 2006, cover in stand-alone environmental insurance policies was broadened to include liability for preventing and remediation environmental damage under the ELD.

The main type of environmental insurance purchased by operators, however, is an extension to general liability policies that provides cover only for remediating off-site damage resulting from pollution that migrates from an insured operator's site.

Further, despite many insurers providing stand-alone environmental insurance policies in the Italian insurance market, there is still a perception, at least among some people, that stand-alone environmental insurance policies are not widely available.<sup>8</sup>

A survey of the environmental insurance market in Italy carried out in 2015/2016 found that there is a 'very low demand' for environmental insurance despite increasing environmental awareness and that this situation had not changed since 2010.

The survey also found, as indicated above, that the most common type of environmental insurance is an extension to general liability policies. Still further, the survey found that the highest demand for environmental insurance in Italy was in the Veneto Region (*Regione Veneto*), which requires waste operators to have mandatory insurance for civil liabilities from pollution, in addition to mandatory financial security for preventing and remediating environmental damage which applies throughout the whole of Italy. The survey further found that there is a significantly lower demand for environmental insurance in southern Italy.<sup>9</sup>

### **3.9. Environmental assessments and audits**

A business that applies for a stand-alone environmental insurance policy is not required to carry out an environmental assessment or audit of sites to be covered by the policy before the policy is placed. If the prospective insured already has information on the environmental

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<sup>8</sup> See, e.g., *ibid*

<sup>9</sup> Andrea Staccione, Jaroslav Mysiak, Marco Ostoich and Antonio Marcomini, 'Financial liability for environmental damage: insurance market in Italy, focus on Veneto region experience' (2019) 25 *Environmental Science and Pollution Research* 25,749, 25,757

condition of site(s) to be insured, this information is provided to the insurer. The insurer then considers the information as part of the underwriting process.

Environmental insurers may also carry out technical site visits (that is, visits to review the site and any facilities including pollution-control equipment at them) as part of the underwriting process although this is not a frequent occurrence.

### **3.10. Average premium**

The average premium for stand-alone environmental insurance policies depends in large part on whether the insured is a small to medium sized enterprise or a large enterprise, the number of sites covered by the policy, and the nature and number of environmental risks covered by the policy.

ELD stakeholders reported a wide range of premiums for environmental insurance policies as follows:

- EUR 1,000;
- EUR 1,000 to EUR 10,000;
- EUR 1,500 to EUR 2,000;
- EUR 1,500 to EUR 5,000 to EUR 10,000;
- EUR 3,000 to EUR 5,000;
- EUR 5,000; and
- EUR 7,000 to EUR 10,000.

An average premium of EUR 300 per site was also mentioned for environmental insurance policies that provide cover for over 200 sites.

The Association of Italian Insurers (*Associazione Nazionale fra le Imprese Assicuratrici; ANIA*) and the General Confederation of Italian Industry (*Confederazione generale dell'industria italiana*) signed an agreement in 2004 that reduced premiums for stand-alone environmental insurance policies by 20% for businesses that complied with International Organisation for Standardisation (ISO) 14001 (UNE-EN ISO 14001:1996) certification and EU Eco-Management and Audit Scheme (EMAS) certificate.<sup>10</sup>

In September/October 2019 (the latest survey when this report was published), Italy had 4,904 EMAS sites and 985 certified organisations, the highest number of sites in the EU and the second highest number of certified organisations in the EU (after Germany).<sup>11</sup>

The ISO survey of 2018 (the latest survey when this report was published) showed that Italy had 26,978 sites and 15,118 ISO 14000 certifications in 2018, the second highest number in Europe (after Spain).<sup>12</sup>

Italian law also authorises reductions in the amount of financial security required for specified activities by operators that have EMAS or ISO 14001 (see section 13.1.2 below).

Only a small percentage of companies that were certified for EMAS or ISO 14001 (between 1% and 5%) had a stand-alone environmental insurance policy.

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<sup>10</sup> See *ibid*

<sup>11</sup> European Commission, Environment; Eco-Management and Audit Scheme; Statistics & graphs; [https://ec.europa.eu/environment/emas/emas\\_registrations/statistics\\_graphs\\_en.htm](https://ec.europa.eu/environment/emas/emas_registrations/statistics_graphs_en.htm)

<sup>12</sup> See ISO, ISO 14001 – data per country and sector – 1999 to 2018; <https://isotc.iso.org/livelink/livelink?func=ll&objId=18808772&objAction=browse&viewType=1>

It was unclear whether the option to certify for EMAS or ISO 140001 has resulted in operators certifying for them instead of purchasing stand-alone environmental insurance policies. For example, certification may be costly. One reason provided by an ELD stakeholder in the insurance industry was that – as noted above – there is a tendency for businesses to consider that an environmental extension to a general liability policy, despite its limitations, provides adequate cover.

### **3.11. Average policy limit**

The average limit of liability for stand-alone environmental insurance policies depends in large part on whether the insured is a small or medium sized enterprise or a large enterprise, as well as other factors such as the number of sites and/or operations covered by the policy.

ELD stakeholders reported the following averages and ranges of premiums:

- EUR 2,000,000 to EUR 10,000,000;
- EUR 2,500,000;
- EUR 3,200,000; and
- EUR 5,000,000 to EUR 10,000,000 with limits as low as EUR 1,000 and as high as EUR 150,000,000.

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

The average deductible or self-insured retention for stand-alone environmental insurance policies depends in large part on whether the insured is a small or medium sized enterprise or a large enterprise as well as other factors such as the number of sites and/or operations covered by the policy.

ELD stakeholders reported a wide range of deductibles and self-insured retentions as follows:

- EUR 5,000;
- EUR 10,000;
- EUR 15,000;
- EUR 30,000 to EUR 50,000; and
- EUR 25,000 to EUR 75,000.

### **3.13. Average policy period**

The average policy period for a stand-alone environmental insurance policy offered for sites and/or operations in Italy is between one and three years. Insurers may, however, offer policies for 10 years or more on request. For example, stand-alone environmental insurance policies for waste plants with a policy period of 10 years are always requested.

The reason for the 10-year policy period for waste plants is that authorisations for them (other than those falling under the Industrial Emissions Directive) last for 10 years. An operator may request a renewal of the authorisation at least 180 days before its expiration.

### **3.14. Sizes of typical insured businesses**

All sizes of businesses purchase stand-alone environmental insurance policies or, more commonly, environmental extensions to general liability policies.

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

The main commercial sector that purchases environmental insurance policies in Italy is the waste sector. This is due in large part to the application of mandatory financial security to waste operators (see section 13.3 below).

Other sectors that purchase stand-alone environmental insurance policies, in descending order, are transportation, contractors, oil, iron and steel, chemicals, food, plastic and rubber, wood and paper, construction, energy, and textiles sectors.

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

Some ELD stakeholders mentioned industrial and commercial sectors that have limited or no accessibility to environmental insurance policies as mining, oil and gas operations, and hydraulic fracturing. Other ELD stakeholders stated that policies are available for the above risks including offshore oil and gas operations.

Some stand-alone environmental insurance policies and extensions to general liability policies do not provide cover for environmental damage caused by authorised emissions. Others do not provide cover for fires due to an increase in the number of fires in the waste sector.

### **3.17. Number and amount of claims**

There is no overall average number and amount of claims against insurers that offer stand-alone environmental insurance policies in Italy.

One ELD insurer stakeholder reported that it received about one claim each year, with a typical amount of EUR 1,000,000 but that this was variable.

Another ELD stakeholder reported that there were about 100 claims each year.

An average of 50 new claims are made against the 15 insurers that are members of the Pool each year. The approximate amount of each claim is EUR 200,000.

The major causes of claims reported by ELD stakeholders in Italy were leakages from underground storage tanks and systems. They also stated that other causes included leakages of dangerous materials in storage areas, a fire that spread an ash cloud resulting in the stoppage of industrial activities in the area affected by the cloud, loading and unloading materials, leakages in waste storage areas, fire, malfunctions in waste treatment and disposal, and breakages of exhaust treatment systems.

Insurer ELD stakeholders reported that the cause in about 90% of the claims was a lack of maintenance that could have been avoided by regular structural checks.

### **3.18. Coverage litigation**

Two ELD stakeholders stated that insurers had been involved in litigation about the scope of environmental insurance policies issued by them, with one ELD stakeholder stating that there were many cases of this. No information was provided about specific cases.

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

Environmental extensions to general liability policies are available to provide cover for remediating sudden and accidental off-site pollution in general liability policies but not for preventing and remediating environmental damage under the ELD. Some extensions/endorsements provide cover only for claims for bodily injury or property damage from pollution.

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

Extensions to property policies preventing and remediating environmental damage at an insured's own site 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 of a landfill, not voluntary financial security for accidental ELD.

##### **4.2. Availability**

Not applicable

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

There is no national mandatory financial security system for ELD liabilities in Italy although some ELD liabilities are subject to financial security requirements (see section 13.3 below).

Article 318(3) of Legislative Decree 152/2006 provides that the President of the Council of Ministers (*Presidente del Consiglio dei Ministri*) shall adopt a Decree for ELD liabilities following a proposal by the Minister for Environment and the Protection of the Territory and the Sea (*Ministro dell'ambiente e della tutela del territorio e del mare*) in agreement with the Minister for Economic Affairs and Finance (*Ministro dell'economia e delle finanze*) and the Minister for Production Activities (*Ministro delle attività produttive*) to adopt measures for appropriate forms of guarantee and to develop relevant financial security instruments so they may be used by operators to carry out their responsibilities under the ELD. The Decree had not been made when this report was published.

##### **5.1. Competent authority(ies)**

Not applicable

##### **5.2. Legislative provisions**

###### *5.2.1. Name(s) of legislation*

Not applicable

###### *5.2.2. Stand-alone requirement or hybrid*

Not applicable

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

No information was provided that the Italian Government had considered adopting mandatory financial security for ELD liabilities.

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

No reasons were provided for any decision by the Italian Government to enact (or not to enact) mandatory financial security for ELD liabilities.

###### *5.2.5. Revisions to legislation*

Not applicable

*5.2.6. ELD liabilities covered by mandatory financial security*

Not applicable

*5.2.7. Description of mandatory financial security provisions*

Not applicable

*5.2.8. Exception for low risk sites*

Not applicable

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

Not applicable

*5.2.10. Other exceptions*

Not applicable

**5.3. Environmental licence conditions**

Italy has not established mandatory financial security for preventing and remediating environmental damage under the ELD by conditions to licences or other authorisations other than those indicated pursuant to legislation specifying such conditions.

*5.3.1. Stand-alone requirement or hybrid*

Not applicable

*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**

Not applicable

**5.7. Withdrawal of mandatory financial security**

Not applicable

**5.8. Guidance**

Not applicable



**5.9. Operators subject to mandatory financial security**

Not applicable

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

Not applicable

**5.11. Growth of mandatory financial security**

Not applicable

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

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

Not applicable

**6.2. Financial security instruments and mechanisms accepted**

Not applicable

*6.2.1. Templates*

*6.2.2. Requirements for environmental insurance policies*

*6.2.3. Form of mandatory environmental insurance policy*

**6.3. Financial security instruments and mechanisms not acceptable**

Not applicable

**6.4. Time of review**

Not applicable

**6.5. Regulatory costs of review**

Not applicable

**6.6. Requirements for operator to review**

Not applicable

**7. ENFORCEMENT OF FINANCIAL SECURITY REQUIREMENTS**

Not applicable

**8. EX POST ENVIRONMENTAL DAMAGE MANDATORY FINANCIAL SECURITY (ARTICLE 8(2))**

Legislative Decree 152/2006 does not contain any provisions that specifically require an operator that has caused environmental damage under the ELD to have financial security for the costs of preventing or remediating the damage.

Article 308(2) of Legislative Decree 152/2006 authorises the Minister for Environment and the Protection of the Territory and the Sea to recover, among other things 'security over property or bank guarantees payable on first demand and excluding the benefit of prior enforcement' (*'garanzie reali o fidejussioni bancarie a prima richiesta e con esclusione del beneficio della*

*preventiva escussione*') from an operator that has caused an imminent threat of, or actual, environmental damage.

Article 311(2) of Legislative Decree 152/2006 authorises the Minister for Environment and the Protection of the Territory and the Sea to require a person that has caused environmental damage to pay the financial equivalent of the expected costs of preventive or remedial measures before carrying them out. This provision applies:

only when the adoption of the remedial measures is wholly or partially omitted, or in any case incomplete or inconsistent with the prescribed terms and conditions. [In such a case] the Minister of the Environment determines the costs of the activities necessary to achieve complete and correct implementation and takes action against the [liable person] to obtain payment of the corresponding amounts.

Article 306-bis, paragraphs 1 and 2 of Legislative Decree 152/2006 state that:

the person, against whom the Ministry of the Environment has initiated the procedures for the reclamation and repair of the environmental damage of National Interest Priority Sites (*Siti di interesse nazionale*) ... or has undertaken the related judicial action, can make a settlement proposal ... the settlement proposal includes an indication of appropriate financial guarantees.

**8.1. Date legislation or policy for mandatory financial security introduced**

Not applicable

**8.2. Effective date for *ex post* mandatory financial security**

Not applicable

**8.3. Financial security instruments and mechanisms accepted**

Not applicable

**8.4. Financial security instruments and mechanisms not acceptable**

Not applicable

**9. PROVIDERS OF MANDATORY FINANCIAL SECURITY INSTRUMENTS**

**9.1. Insurers**

Not applicable

**9.2. Banks and other financial institutions**

Not applicable

**9.3. Sureties**

Not applicable

**9.4. Providers outside Member State**

Not applicable

## **10. MEASURES TAKEN BY MEMBER STATE TO DEVELOP FINANCIAL SECURITY MARKETS**

The Veneto Region developed an insurance market for liabilities caused by waste operations before the ELD was transposed into Italian law. The mandatory insurance is for civil liabilities; it is not for preventing and remediating environmental damage (see section 13.3 below).

No information was provided to indicate that the Italian Government has taken any measures to develop the environmental insurance, or other financial security, market.

## **11. EU ENVIRONMENTAL LEGISLATION WITH MANDATORY FINANCIAL SECURITY PROVISIONS**

### **11.1. Landfill Directive**

#### *11.1.1. Competent authority(ies)*

The competent authorities for implementing the Landfill Directive (1999/31/EC), which is implemented in Italy by Legislative Decree 36/2003, as amended (*Decreto Legislativo 13 gennaio 2003, No 36*),<sup>13</sup> are the Regions and local authorities.

#### *11.1.2. Financial security provisions*

Article 14 of Legislative Decree 36/2003 provides that financial security is required for the operation of a landfill as well as its closure and post-closure phases. The amount of financial security depends on the capacity and classification of the landfill, with the amount being revised in accordance with measures carried out at it. The financial security for post closure (aftercare) must be retained for 30 years following the date on which the competent authority approved the closure. The 30-year time period may be extended if the authority considers that environmental risks still exist after that time.

Article 14 has an exception for landfills that contain inert waste. In addition, it provides for a reduction of 40% of the required financial security amount for landfills that had reached 80% of their capacity when the Legislative Decree entered into effect.

#### *11.1.3. Financial security instruments and mechanisms accepted*

Article 14 of Legislative Decree 36/2003 states that financial security instruments or mechanisms that may be accepted by the State or another public body are those specified in article 1 of the Law of 10 June 1982, No 348 (*Legge 10 giugno 1982, No 348*).<sup>14</sup>

Article 1 of the Law of 10 June 1982 provides as follows:

In all cases in which a security is required for the benefit of the State or any other public body, this can be constituted in one of the following ways:

- a) an actual and valid security, pursuant to Article 54 of regulation for the administration of the heritage and for the General State Accounting, approved by Royal Decree 23 May 1924, No 827, as amended;
- b) a bank guarantee issued by credit institutions referred to in Article 5 of Royal Decree-Law of 12 March 1936, No 375, and subsequent amendments and additions;
- c) a surety bond issued by an insurance company authorised to conduct bonding.

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<sup>13</sup> Decreto Legislativo 13 gennaio 2003, No 36; <https://www.gazzettaufficiale.it/eli/id/2003/03/12/003G0053/sg> (in Italian)

<sup>14</sup> Legge 10 giugno 1982, No 348; <https://www.gazzettaufficiale.it/eli/id/1982/06/14/082U0348/sg> (in Italian)

An ELD stakeholder stated, in respect of bonds for the post-closure phase of landfills, that surety companies normally do not provide bonds for periods as long as 30 years. The ELD stakeholder further stated that sureties may be willing to offer bonds for periods of five years provided that renewal is not automatic, the competent authority (beneficiary) cannot require payment of the bond after its expiration, and the only reason that the competent authority can require such payment is its non-renewal.

#### *11.1.4. Templates*

There are no national templates for acceptable financial security instruments.

The Region of Piemonte has published criteria and methods of submitting and using financial guarantees for waste disposal and recovery operations on its website. The criteria include a template for a bank guarantee and general conditions for insurance.<sup>15</sup>

#### *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**

#### *11.2.1. Competent authority(ies)*

The competent authorities for the Extractive Waste Directive (2006/21/EC), which is implemented in Italy by Legislative Decree 117/2008 (*Decreto Legislativo 30 maggio 2008, No 117*),<sup>16</sup> are the Regions.

#### *11.2.2. Financial security provisions*

Article 14 of Legislative Decree 117/2008 provides that financial security is required for the operational management of an extractive waste facility and its closure and post-closure phases including restoration of the land affected by it.

The amount of financial security is calculated to cover obligations under the authorisation including provisions for carrying out post-closure measures, and ensuring that funds for restoring land affected by the extractive waste facility are readily available at any time.

The amount subject to financial security is calculated on the basis of the likely environmental impact of the extractive waste facility taking into account, in particular, the category of the facility under the Extractive Waste Directive, characteristics of the extractive waste, measures necessary to restore the land affected by the facility and its future use, and taking into account necessary restoration measures by authorised independent third parties that are qualified to carry out specific restoration measures.

The amount of financial security is periodically adjusted as the operator carries out monitoring and other controls set out in the waste management plan. If there are substantial changes to

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<sup>15</sup> See Deliberazione della Giunta Regionale 12 giugno 2000, No 20 – 192, Criteri e modalità di presentazione e di utilizzo delle garanzie finanziarie previste per le operazioni di smaltimento e recupero dei rifiuti di cui al D.Lgs. No 22/97; <http://www.regione.piemonte.it/governo/bollettino/abbonati/2000/26/siste/00000315.htm> (in Italian). The Determination of the Piedmont Region refers to legislation which was in force before enactment of the Environmental Code (i.e., to Legislative Decree No 22 of 1997 on waste) as well as before enactment of Legislative Decree No 36/2003 on landfill. The provisions contained in the Determination also refer to other forms of waste management (e.g., waste incineration), not only to landfill.

<sup>16</sup> Decreto Legislativo 30 maggio 2008, No 117; <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2008;117> (in Italian)

the plan, the amount of financial security is adjusted. The operator of the extractive waste facility must retain financial security until the competent authority certifies that closure and post-closure measures have been satisfactorily completed.

#### *11.2.3. Financial security instruments and mechanisms accepted*

Article 14 of Legislative Decree 117/2008 provides that financial security shall be established in favour of the competent authority in accordance with article 1 of Law of 10 June 1982, No 348 (see section 11.1.3 above).

#### *11.2.4. Templates*

There are no templates for acceptable financial security instruments.

#### *11.2.5. Financial security instruments not acceptable*

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

### **11.3. Carbon Capture and Storage Directive**

#### *11.3.1. Status of implementation*

A storage site for carbon dioxide is under construction in Italy.

#### *11.3.2. Competent authority(ies)*

The competent authorities for sites for the storage of carbon dioxide under the Directive on the geological storage of carbon dioxide (2009/31/EC), which is implemented in Italy by Legislative Decree 162/2011 (*Decreto Legislativo del 14 settembre 2011, No 162*),<sup>17</sup> are the Ministry of Economic Development (*Ministero dello sviluppo economico*) and the Ministry of the Environment.

#### *11.3.3. Financial security provisions*

Article 25 of Legislative Decree 162/2011 provides that financial security is required to ensure that the operator complies with all obligations under the authorisation for a storage site for carbon dioxide including closure and post-closure measures. The criteria for financial security are to be established by a Decree of the Ministry of Economic Development and the Ministry of the Environment in agreement with the Ministry of the Economy and Finance (*Ministero dell'economia e delle finanze*) and after consulting the State-Regions Conference (*Conferenza Stato-Regioni*), to be issued within 180 days after entry into force of the Legislative Decree.

Financial security must be made available within 15 days of the written request of the Ministry of Economic Development regardless of whether financial security is necessary at that time to pay the amount guaranteed by it. The provider of financial security may not raise any exceptions to such payment. Accordingly, the second paragraph of article 1944 of the Civil Code (*Codice Civile*)<sup>18</sup> is waived.<sup>19</sup>

At the direction of the Ministry of Economic Development and the Ministry of the Environment, the operator must periodically adjust the amount of financial security to take

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<sup>17</sup> Decreto legislativo de 14 settembre 2011, No 162; <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2011;162> (in Italian)

<sup>18</sup> Codice Civile; <https://www.gazzettaufficiale.it/dettaglio/codici/codiceCivile> (in Italian)

<sup>19</sup> The second paragraph of article 1944 provides in pertinent part that the parties may agree that the guarantor is not required to pay before the exclusion of the principal debtor.

account of any changes in the assessed amount of leakage from the storage site and the estimated cost of carrying out obligations under the authorisation. The financial security must be retained until the storage site is closed, responsibility for the site is transferred to the State, or the authorisation is revoked because the site has been closed, all in compliance with applicable legislation.

#### *11.3.4. Financial security instruments and mechanisms accepted*

Article 25 of Legislative Decree 162/2011 states that financial security shall be established in favour of the competent authority in accordance with article 1 of Law of 10 June 1982, No 348 (see section 11.1.3 above). The legislation does not indicate acceptable financial security instruments and mechanisms.

#### *11.3.5. Templates*

There are no templates for acceptable financial security instruments.

#### *11.3.6. Financial security instruments and mechanisms not acceptable*

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

## **12. EU RECOMMENDATION ON HYDRAULIC FRACTURING**

### **12.1. Status**

Part III of Legislative Decree 152/2006 prohibits hydraulic fracturing in Italy.

Article 38 of Decree Law No 133/2014 (*Decreto Legge, testo coordinato 12/09/2014 n° 133, G.U. 11/11/2014*)<sup>20</sup> prohibits 'underground pressure injection techniques of liquid or gaseous fluids, including any additives, aimed at producing or promoting fracturing of rock formations in which shale gas and shale oil are trapped' (*A tal fine e' vietata qualunque tecnica di iniezione in pressione nel sottosuolo di fluidi liquidi o gassosi, compresi eventuali additivi, finalizzata a produrre o favorire la fratturazione delle formazioni rocciose in cui sono intrappolati lo shale gas e lo shale oil*).

### **12.2. Competent authority(ies)**

Not applicable

### **12.3. Financial security provisions**

Not applicable

### **12.4. Financial security instruments and mechanisms accepted**

Not applicable

### **12.5. Templates**

Not applicable

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<sup>20</sup> Decreto Legge, testo coordinato 12/09/2014 n° 133, G.U. 11/11/2014; <https://www.altalex.com/documents/leggi/2014/11/14/sblocca-italia-il-testo-coordinato-del-decreto-legge-in-gazzetta> (in Italian). The legislation is now at Legge 11 novembre 2014, No 164; [https://www.bosettiegatti.eu/info/norme/statali/2014\\_0164.htm](https://www.bosettiegatti.eu/info/norme/statali/2014_0164.htm) (in Italian)

## 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

#### 13.1.1. Competent authority(ies)

The competent authorities for the Industrial Emissions Directive, which is implemented in Italy by Legislative Decree 152/2006, and the Decree of the Ministry of the Environment 141/2016 (*Decreto No 141 del 26 maggio 2016 recante criteri da tenere in conto nel determinare l'importo delle garanzie finanziarie*)<sup>21</sup> as amended by the Decree of the Ministry of the Environment 2017 (*Decreto ministeriale 28 aprile 2017*),<sup>22</sup> are the Ministry of the Environment and Protection of the Territory and the Sea for installations subject to State competence, and the Regions for installations subject to Regional competence.

#### 13.1.2. Financial security provisions

Article 22(2) of the Industrial Emissions Directive requires operators of installations that use, produce or release specified hazardous substances and which are subject to that Directive, to prepare and submit to the competent authority a baseline report on the possibility of soil and groundwater contamination at the site of the installation before operations begin at it or before a permit is first updated after 7 January 2013. Article 22(3) requires such operators to carry out an assessment of soil and groundwater contamination at the site of the installation upon the definitive cessation of activities at it. If the assessment shows that the installation has caused significant pollution of soil or groundwater by such hazardous substances compared to the state established in the baseline report, the operator of the installation must ensure that necessary measures are taken to restore the site to the state established in the baseline report.

In this respect, paragraph 9-septies of article 29-sexies of Decree 152/06 requires holders of integrated pollution and prevention permits (*autorizzazione integrata ambientale*) to have financial security for the restoration of the site of an installation to the state established in the baseline report for it. The operator of the installation must submit evidence of such financial security to the competent authority no later than 12 months after the release of the baseline report as validated by the competent authority.

The amount of financial security is established by the State. For installations other than very large installations, the amount of the guarantee is proportionate to the amount of dangerous substances relevant to the operation of each category of activities carried out at the installation. The amount of the guarantee for very large installations may be replaced by the values per hectare (or a fraction of that amount) for the area covered by the installation.

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<sup>21</sup> Decreto No 141 del 26 maggio 2016 recante criteri da tenere in conto nel determinare l'importo delle garanzie finanziarie, di cui all'art 29-sexies, comma 9-septies, del decreto legislativo 3 aprile 2006, No 152; <https://www.minambiente.it/notizie/decreto-n-141-del-26-maggio-2016-recante-criteri-da-tenere-conto-nel-determinare-limporto> (in Italian)

<sup>22</sup> Decreto ministeriale 28 aprile 2017; <https://www.studiocerbone.com/ministero-ambiente-decreto-ministeriale-28-aprile-2017-modifiche-al-decreto-n-141-del-26-maggio-2016-recante-criteri-tenere-conto-nel-determinare-limporto-delle-garanzie-finanziarie/> (in Italian)

Pursuant to article 4(1) of Ministerial Decree 141/2016, there is a 50% discount in the amount of the financial guarantee for companies that are registered under EMAS. There is a 40% discount for companies that are certified under ISO 14001. The discount does not apply to the minimum amounts of the guarantees.

The liabilities that must be covered by the financial guarantees are measures to remediate soil and/or groundwater at the installation (that is, obligations referred to in subparagraph c) of paragraph 9-quinquies, art. 29-sexies of Decree 152/2006).

Financial security is not required for installations that were not subject to the requirement in the Industrial Emissions Directive to carry out a baseline report for the installation.

#### *13.1.3. Financial security instruments and mechanisms accepted*

The acceptable financial security instrument to satisfy the requirement to restore the site of an installation to a satisfactory state is a performance bond (*garanzie finanziarie* or *cauzioni*) issued by a bank or surety.<sup>23</sup>

The Ministerial Decree states that, in respect of the method for calculating financial guarantees, the amount of financial security must take account of the effectiveness of the selected financial security instrument, noting that some instruments introduce a significant risk concerning timing and their effective enforcement. It notes that financial security is highly effective if the instrument is 'on first demand and without exception' (*'a prima richiesta e senza eccezioni'*) as for financial guarantees provided in accordance with article 1 of Law No 348 of 10 June 1982 in favour of the competent authority (see section 11.1.3 above).

The Ministerial Decree further notes that if a competent authority allows different types of financial security without verifying their effectiveness comparable to those on first demand and without exception, or where more than one type of instrument is used to satisfy the financial security requirement, the amounts should be adjusted independently with reference to criteria specified in the Ministerial Decree.

#### *13.1.4. Templates*

There are no templates for acceptable financial security instruments.

#### *13.1.5. Financial security instruments and mechanisms not acceptable*

See section 13.1.3 above.

### **13.2. Seveso III Directive**

#### *13.2.1. Competent authority(ies)*

The competent authorities for the Seveso III Directive, which is implemented in Italy by Legislative Decree 105/2015 (*Decreto legislativo 26 giugno 2015, No 105*),<sup>24</sup> are the State if the installation is subject to national competence, and the Region or the autonomous province of the Region if delegated by the Region.

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<sup>23</sup> See Marco Frigessi di Rattalma, Topic IV – Pollution Insurance – Methods, Coverage and Beneficiaries Questionnaire, AIDA World Congress, Rio de Janeiro, October 2018 (Italy), s 3.1, 9; <http://www.aida.org.uk/docs/Marco%20Frigessi%20di%20Rattalma%20AIDA%20%20%20ITALY%20re%20POLLUTION.pdf>

<sup>24</sup> Decreto legislativo 26 giugno 2015, No 105; <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2015;105> (in Italian)



### 13.2.2. *Financial security provisions*

Annex C(F.1) of Legislative Decree 105/2015 requires an installation subject to it to have insurance to provide cover for the risk of injury to persons, damage to property and damage to the environment (*rischi di danni a persone, a cose e all'ambiente*).

The documentation attached to a safety report submitted to the competent authority under Legislative Decree 105/2015 must include evidence of the insurance policy and specify, in particular, cover provided by it for potential major accidents as well as any changes in the premium and scope of insurance cover during the last five years.

### 13.2.3. *Financial security instruments and mechanisms accepted*

Legislative Decree 105/2015 states that only insurance policies are acceptable.

### 13.2.4. *Templates*

There are no templates for acceptable insurance policies.

### 13.2.5. *Financial security instruments and mechanisms not acceptable*

Not applicable

## 13.3. **Other legislation**

Mandatory financial security is also required by the Italian special provisions on remediation of contaminated sites as well as by the Italian legislation on waste management, the latter both nationally and by the Veneto Region.

### ➤ *National mandatory financial security for remediation of contaminated soil and waste management*

Article 242(7) of Legislative Decree 152/2006 provides that regional authorities may require an operator to provide financial security of up to 50% of the estimated costs of remediating contamination. The financial security instrument may be released following certification by the authority that the measures have been carried out properly, following a report prepared by the regional authority.

Further, article 208(11) of Legislative Decree 152/2006 requires waste disposal and recovery facilities other than landfills, as well as persons who must register on the National Register of Environmental Managers (*Albo nazionale gestori ambientali*) to have financial security to cover the costs of preventing and remediating environmental damage caused by their operations. Persons who must register on the National Register are businesses that collect and transport waste, carry out trade and brokerage activities in respect of waste generated by third parties, and those that carry out activities to remediate waste.<sup>25</sup> The guarantees must remain in place until the end of the expiration of the authorisation for the activities (for landfills: for the time necessary and in any case, unless a longer period is established by the competent authority, until the communication by the competent authority of the official approval of the closure of the landfill plus two years for the activation and active management of the landfill, including closure procedures, and plus 30 years for the post-closure

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<sup>25</sup> See Andrea Staccione, 'Financial Instruments for Environmental Risks and Damage' (Thesis in Master Degree programme in Environmental Sciences, Ca' Foscari University of Venice, 2016), 11; <http://dspace.unive.it/bitstream/handle/10579/9640/835047-1197450.pdf?sequence=2>; see Albo Nazionale Gestori Ambientale; <https://www.albonazionalegestoriambientali.it/Public/Home> (in Italian)

management of the landfill; for plants falling under the Industrial Emissions Directive: see section 13.1 above).

Ministerial Decree Financial 141/2016 states that financial security must be in the form prescribed by article 14 of Legislative Decree 36/2008 (see section 11.1.3 above).

In addition, annex A of DM 06/20/2011 (Procedure and amounts of financial guarantees that have to be given to the State by traders and brokers of waste without holding the waste itself) requires that the financial surety that such traders and brokers must provide to the Ministry of the Environment includes expenses directly or indirectly inherent in or connected with any transportation and disposal of waste, safety measures (including their implementation), remediation, restoration of installations and contaminated areas under Legislative Decree 152/2006. As indicated in section 1 above, article 6 of annex A states that the financial guarantees can be used, without prejudice to the overall maximum limit of the guaranteed amount, for the restoration of further damage to the environment pursuant to Legislative Decree 152/2006.

➤ *Mandatory financial security for waste managers in the Veneto Region*

In 1999, the Veneto Region introduced mandatory financial security for waste operators by the Decision of the Regional Council (*Deliberazione della Giunta Regionale*; DGR) 2528/1999. The DGR has been revised several times. The current version, DGR 2721/2014, which has two annexes, approves the 'Financial guarantees to cover waste disposal and recovery activities scheme' (*Garanzie finanziarie a copertura dell'attività di smaltimento e recupero di rifiuti*).<sup>26</sup>

DGR 2721/2014 requires two types of financial security for waste operators; a performance bond, and insurance for civil liabilities from pollution. The requirements are more stringent than those that apply to waste activities pursuant to Legislative Decree 152/2006 (see this section directly above).

The following waste treatment and disposal facilities are required to have a financial guarantee issued by a bank or surety (*polizza fideiussoria, bancaria od assicurativa*) for the benefit of the Veneto Region when authorisations for the facilities are granted, renewed or modified:

- non-hazardous municipal waste, hazardous and non-hazardous waste and inert waste landfills;
- waste disposal facilities for third-party waste, own waste, and waste transfer facilities;
- waste treatment facilities for third-party waste, own waste, and waste from remedial activities; and
- waste transfer facilities for third-party waste, own waste, inert waste and recyclable waste.<sup>27</sup>

The operator of a landfill specified above must have a financial guarantee for the operation of the landfill and an additional financial guarantee for its closure and post-closure phases.

The limit of liability for the financial guarantee varies from EUR 1,000,000 to EUR 3,400,000 depending on the type of facility and waste and whether the facility is located in an aquifer recharge area. The amount of financial security for temporary storage facilities is based on the

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<sup>26</sup> Deliberazione della Giunta Regionale n. 2721 del 29 dicembre 2014; <https://bur.regione.veneto.it/BurServices/Pubblica/DettaglioDgr.aspx?id=289210> (in Italian)

<sup>27</sup> DGR 2721/2014; see also Andrea Staccione, Jaroslav Mysiak, Marco Ostoich and Antonio Marcomini, 'Financial liability for environmental damage: insurance market in Italy, focus on Veneto region experience' (2019) 25 *Environmental Science and Pollution Research* 25,749, 25,751

amount of waste temporarily stored at them; it does not apply to the total amount of waste stored at them.

The financial security requirements are reduced by 50% for companies that are registered under EMAS or ISO 14001.

Further, the above facilities with the exception of recycling plants for inert waste must have a pollution liability insurance policy (*polizza assicurativa della responsabilità civile inquinamento*) in the amount of EUR 3,000,000 that provides cover for civil liability claims from waste generated by third parties. Unlike the amount of financial guarantee which varies according to the quantity of waste, the limit of liability of the policy does not vary according to the quantity of waste at the facility.

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

### **14.1. Competent authority(ies)**

The competent authority for licensing offshore oil and gas operations is the Ministry for Economic Development (*Ministero dello Sviluppo Economico*).

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

Offshore oil and gas exploration and production operations have been carried out in offshore Italy for many years. Following the *Deepwater Horizon* incident, the Italian Government amended article 6, paragraph 17 of Legislative Decree 152/2006 by article 35 of Legislative Decree 83/2012 (*Decreto-legge 22 giugno 2012, No 830*).<sup>28</sup>

Article 35 imposed a ban on drilling within 12 miles of the Italian coastline and protected marine areas, with an exception for licences that were pending or that existed when it entered into effect.

### **14.3. Requirements for financial security**

Legislative Decree 145/2015 (*Decreto Legislativo 18 agosto 2015, No 145*),<sup>29</sup> which implements the Offshore Safety Directive (2013/30/EU) in Italy requires an applicant for a licence or concession for offshore oil and gas operations to provide a guarantee in the form of a cash deposit, bank guarantee or insurance guarantee. The purpose of the financial security instrument is to ensure that the licensee or concessionaire will comply with the obligations of the licence or concession contract, including potential economic damage. An application for a licence must be accompanied by an initial deposit of EUR 300,000 consisting of a bank guarantee or insurance guarantee issued by specified institutions.

The amount of financial security required depends on the type of operations and the paid-up share capital of the applicant. Companies with paid-up share capital of less than EUR 10,000,000 that have exploration licences, research licences and concessions are required to provide financial security for the construction of exploratory wells. Companies with paid-up share capital of over EUR 10,000,000, and companies with a parent company or subsidiaries

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<sup>28</sup> Decreto-legge 22 giugno 2012 , No 830;

[https://www.agid.gov.it/sites/default/files/repository\\_files/leggi\\_decreti\\_direttive/dl-22-giugno-2012-n.83\\_0.pdf](https://www.agid.gov.it/sites/default/files/repository_files/leggi_decreti_direttive/dl-22-giugno-2012-n.83_0.pdf) (In Italian)

<sup>29</sup> Decreto Legislativo 18 agosto 2015, No 145;

[https://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2015-09-16&atto.codiceRedazionale=15G00159](https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2015-09-16&atto.codiceRedazionale=15G00159) (in Italian)

that have net assets over EUR 10,000,000 do not need to provide financial security provided that the parent company or subsidiary provides a guarantee.

The amounts of financial security are subject to revision every five years. They may be reduced, at the time of renewal, in proportion to progress or environmental recovery works.

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

Legislative Decree 145/2015 does not contain any provisions that specifically require financial security for ELD liabilities.

### **15. FAILURE OF FINANCIAL SECURITY**

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

In the early 2010s, surveys were carried out to investigate whether a facility operated by Miteni in the Veneto Region had caused pollution by perfluoroalkylated substances (PFAS). In January 2017, Miteni began carrying out measures to remediate the pollution.<sup>30</sup> On 31 October 2018, the facility was closed. In November 2018, an Italian court declared Miteni bankrupt.<sup>31</sup> Miteni's insurance policy had a limit of liability of EUR 26,000,000.

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

No information was provided about the insolvency of any operator that led to a failure of a financial security instrument or mechanism.

#### **15.3. Other**

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

### **16. FUNDS**

Italy has not established a fund to provide monies for preventing and remediating environmental damage under the ELD.

#### **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

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<sup>30</sup> See Andrea Staccione, 'Financial Instruments for Environmental Risks and Damage' (Thesis in Master Degree programme in Environmental Sciences, Ca' Foscari University of Venice, 2016), 3; <http://dspace.unive.it/bitstream/handle/10579/9640/835047-1197450.pdf?sequence=2>

<sup>31</sup> See Cheryl Hogue, 'Imports of used PFAS into US scrutinized', 97(9) Chemical and Engineering News (3 March 2019); <https://cen.acs.org/environment/persistent-pollutants/Imports-used-PFAS-US-scrutinized/97/i9>

**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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