



Folketingets Miljø- og Fødevarerudvalg
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Miljøministerens endelige besvarelse af spørgsmål nr. 205 (Alm. del) fra Folketingets Erhvervsudvalg stillet den 8. marts 2024 efter ønske fra Pelle Dragsted (EL).

Spørgsmål nr. 205

”Kan ministeren – eventuelt i samarbejde med andre relevante ministre – indhente nærmere oplysninger om, hvordan Slovakiet, Portugal, Tjekkiet, Grækenland og Spaniens nationale ordninger for obligatoriske forsikringer i relation til miljøskader er udformet, og hvorledes de fungerer i praksis? Kan ministeren desuden redegøre for, hvordan Nordic Waste-sagen havde set ud fra et omkostningsdækningsperspektiv, såfremt vi i Danmark havde haft tilsvarende lovgivning som i de enkelte lande, der har obligatoriske forsikringer?”

Svar

Miljøministeriet har via Udenrigsministeriet anmodet om oplysninger til brug for besvarelsen af spørgsmålet fra Slovakiet, Tjekkiet, Grækenland, Portugal og Spanien. Følgende oplysninger er indhentet enten som direkte besvarelser fra de pågældende lande eller efter kontakt fra dansk ambassade:

Slovakiet

”The Slovak Republic transposed and implemented mentioned directive into the Act No. 359/2007 on the prevention and remedying of environmental damages and amending certain acts. According to this act the operator of the activity mentioned in § 1 par. 2 is obliged to ensure financial covering of its liability for environmental damage, including the anticipated costs of remedial action and remedial measures to eliminate environmental damage that may be caused by his occupational activity, continuously during the entire working time activities (§ 13 paragraph 1).

The operator is obliged no later than 100 days after the authorization of the work activity prove to the competent authority the method of financial coverage of their responsibility for environmental damage, including the estimated costs of remedial action and compensation measures to eliminate environmental damage and immediately inform the competent authority in writing about all its changes (§ 13, paragraph 3).

The operator is obliged to ensure financial coverage of liability for environmental damage in the form of an environmental damage liability insurance contract or in the form of contractual security of a suitable method of financial coverage of this liability, for example, a bank guarantee or a special account with specially earmarked funds.

From mentioned Act: “Section 13 Financial cover of the liability for environmental damage

(1) The operator of the activity, subject to Section 1 paragraph 2, shall be obliged to provide effective cover for his liability for the environmental damage, including expected costs for remedial activity and remedial measures for the elimination of environmental damage that may be caused by his occupational activity, namely during the entire operations of his occupational activity. The operator shall be obliged to provide the financial cover of the liability for environmental damage by the form of conclusion of the insurance contract or shall contractually provide for another suitable method of financial coverage of such liability, for example in the form of a bank guaranty.

(2) The amount of the financial coverage must correspond to the amount of expected costs for remedial activity, including risk analysis, and the costs for remedial measures to eliminate environmental damage.

(3) The operator shall, within 100 days, at the latest, from the permit for the occupational activity, be obliged to demonstrate for the competent authority the way of financial cover of his liability for environmental damage, including expected costs for remedial activity and remedial measures for the elimination of environmental damage, and notify the competent authority in writing, without delay, of any changes thereof.

(4) The operator of the occupational activity shall to demonstrate for the competent authority the way of financial cover of his liability for environmental damage including expected costs for remedial activity and remedial measures for the elimination of environmental damage, and notify the competent authority in writing, without delay, of any changes thereof.”

Based on experience so far it can be said that the operators mostly use insurance products and insurance companies offer special products for this purpose. Only small businesses use special accounts in the bank. Bank guarantees are not used in practice. Guidelines for assessing environmental damage are available to operators.

In case that the operator does not take preventive/remedial measures or is bankrupt, the relevant competent authority can take preventive/remedial measures. The costs of these measures may be reimbursed from the Environmental fund.

The Ministry is currently preparing a change in the legislation that will exclude small businesses which do not have the potential to cause serious environmental damage (e.g. pharmacies, car repair shops...) from mandatory liability coverage.”

Tjekkiet

” I overensstemmelse med »forureneren betaler-princippet« fastlagt i EU-direktiv 2004/35/EF (miljøansvarsdirektivet) skal en operatør efter tjekkisk lovgivning som udgangspunkt stille finansiel sikkerhed for eventuel kompensation. Det følger således af lov nr. 167/2008 om forebyggelse og afhjælpning af miljøskader, at operatører, der udfører driftsaktiviteter som nærmere anført i bilag 1 til loven, pålæggesen forpligtelse til at stille finansiel sikkerhed for kompensation for omkostninger, omfattet af loven.

Omfanget af den økonomiske sikkerhedsstillelse skal stå i rimeligt forhold til omfanget af de potentielle omkostninger og intensitet eller grad af risiko for miljøskader i hele perioden for operatørens driftsaktivitet. På den baggrund skal operatøren foretage en risikovurdering af de enkelte driftsaktiviteter, omfattet af bilag 1 til loven, og som operatøren har til hensigt at udføre, samt løbende opdatere denne vurdering i tilfælde af væsentlige ændringer i driftsaktiviteten. Den operationelle aktivitet må ikke udføres uden økonomisk sikkerhedsstillelse i henhold til loven.

Fremgangsmåden for vurderingen af risikoen er beskrevet i regeringsforordning 295/2011 om metoden til vurdering af risikoen for økologisk skade og de detaljerede betingelser for finansiel sikkerhed.

Denne vurdering består af to dele, hhv. den grundlæggende risikovurdering og den detaljerede risikovurdering. Enhver operatør, der udfører operationelle aktiviteter i henhold til bilag 1 i loven, er forpligtet til at udarbejde en grundlæggende risikovurdering og skal på baggrund af resultaterne af denne vurdering også udarbejde en detaljeret risikovurdering. Den grundlæggende risikovurdering udarbejdes i form af en screening efter parametre angivet i tilhørende bilag 1 til ovennævnte regeringsforordning.

De enkelte punkter gives point, og hvis det samlede antal point er mindre end 50, anses risikoen for at forårsage miljøskader for lav, og operatøren behøver ikke at foretage en detaljeret risikovurdering af aktiviteten og stille finansiel sikkerhed. Hvis det samlede resultat for den grundlæggende risikovurdering er højere end 50, skal operatøren derimod udarbejde en detaljeret risikovurdering.

Hvis den detaljerede risikovurdering viser, at de påtænkte driftsaktiviteter kan forårsage miljøskader, hvor omkostningerne til afhjælpning vil overstige CZK 20.000.000 (6.048.000 DKK), er operatøren forpligtet til at stille økonomisk sikkerhed i tilfælde af miljøskader.

Den nødvendige finansielle sikkerhedsstillelse kan deponeres på en særlig konto eller, hvilket oftere er tilfældet, søges dækket af en ansvarsforsikring hos kommercielle forsikringselskaber.

Dog følger det af lov om forebyggelse og afhjælpning af miljøskader, at en operatør ikke er forpligtet til at stille økonomisk sikkerhed, hvis operatøren er registreret i EMAS- programmet eller beviseligt har påbegyndt de aktiviteter, der er nødvendige for at blive registreret i dette program, eller som har et certificeret miljøledelsessystem, der er anerkendt i henhold til standardsættet ČSN EN ISO 14000, eller beviseligt har påbegyndt de aktiviteter, der er nødvendige for at opnå denne certificering. Det bemærkes i den sammenhæng, at det tjekkiske miljøministerium er ved at udarbejde en lovændring med henblik på at fjerne disse undtagelse fra forpligtelsen til at stille finansiel sikkerhed. Lovændringen vil også indføre en forpligtelse til at informere myndighederne om, at operatøren har stillet økonomisk sikkerhed og samtidig oprettes en database over sådanne operatører. I øjeblikket er det ikke fastsat nogen straf i tilfælde, hvor at en operatør ikke har stillet finansiel sikkerhed.

Hvis en operatør forårsager miljøskade men undlader at træffe afhjælpende foranstaltninger, bæres omkostningerne hertil af den kompetente myndighed, der udsteder beslutning om afhjælpning. Myndigheden betaler af statsbudgettet omkostningerne på vegne af operatøren og indriver dem efterfølgende fra operatøren.

Er operatøren gået konkurs eller under likvidation, skal den håndhævende myndighed kræve omkostningerne godtgjort i forbindelse med insolvensbehandlingen eller evt. i forbindelse med anden behandling i henhold til tjekkisk insolvenslov eller likvidation af en juridisk person. Hvis operatøren ikke kan identificeres, er ophørt med at eksistere, er død uden en retlig efterfølger, hvis kravet ikke kan inddrives, eller hvis operatøren beviser, at han ikke er ansvarlig for omkostningerne i henhold til denne lov, bæres omkostningerne af staten.

Tjekkiet har dog ingen praktisk erfaring med anvendelsen af lov om forebyggelse og afhjælpning af miljøskader, da der endnu ikke er registreret tilfælde af miljøskader omfattet af loven. Aktuelle tilfælde af miljøskader håndteres af de kompetente myndigheder ved hjælp af anden lovgivning, hvor miljøskader og afhjælpning heraf også behandles.”

Grækenland

”The Greek Government transposed the ELD by Presidential Decree (PD) No 148/2009 “On Environmental Liability for the Prevention and Remedying of Environmental Damage” (Official Journal No 190/2009). P.D. 148/2009 entered into force on 29 September 2009, with retrospective effect to 30 April 2007.

Greece has enacted legislation to impose mandatory financial security for ELD liabilities. The legislation to bring the requirements into force had not been enacted yet. Article 14 of PD 148/2009 provides for the introduction of compulsory financial security for specific projects and activities. Article 14 includes a legal authorization for the adoption of a Joint Ministerial Decision, which will define and regulate the exact terms and conditions applicable to mandatory financial security.

It has to be highlighted here that, according to legislation applicable to hazardous waste (which is under the scope of ELD), the management, storage and transportation of hazardous waste is subject to compulsory insurance against environmental liability. In specific, according to Joint Ministerial Decision 13588/725/2006 “On measures, terms and restrictions for the management of hazardous waste in compliance with Directive 91/689/EEC on hazardous waste”, as amended and in force, projects and activities focused on the collection, storage, management and transportation of hazardous waste must obtain an insurance policy against environmental damage. The insurance policy must at least determine the activities covered, it must cover at least liability towards third parties and restoration of the environment at its previous situation, while the amount of coverage ranges between 500,000 and 1,000,000 euro. The signing of the policy and the submission of a relevant copy to the licensing authority constitute a precondition for the granting of any environmental license. In addition according to Law 4685/2020 collection, storage, management and transportation of non-hazardous waste (also under the scope of ELD) as well, are required to obtain financial security. A draft ministerial decision is underway in order to enact financial security for all activities included under the scope of ELD.

The majority of policies do cover primary and complementary remediation up to the insurance limit.

Special provisions in cases of bankruptcy are not applicable. If the competent authority take over the restoration measures (because of environmental damage or significant threat to the environment) then the demand for recovery of the amount from the responsible operator, is subject among demands from his creditors.”

Portugal

“The decree-law no. 147/2008 transposes to the Portuguese legal system the Directive 2004/35/EC, and establishes the Legal Framework for Liability for Environmental Damage.

Under the mentioned decree-law, operators who carry out any of the occupational activities listed in the Annex III to the decree are obliged to set up a financial guarantee - that enables them to assume the environmental liability inherent in the activity they carry out (Article 22).

Financial guarantees can be set up via:

- I) subscription of insurance policies;*
- II) obtaining bank guarantees;*
- III) setting aside own funds for this purpose; or*
- IV) participation in environmental funds.*

In what concerns the value of the financial guarantees, there is no set amount.

The amount is calculated according to the risk of the activity at stake, taking into consideration the estimated costs for both preventive measures (Article 14) and repair measures (Article 15) related to the potentially caused damage.

To this end, the operator must:

- 1) Characterise the establishment, its surroundings and occupational activity, including all operations involving risks to protected species and natural habitats, water and soil, and analyse the history of emissions, events or incidents that have occurred.*
- 2) Identify the sources of danger, initiating events and accident scenarios likely to affect protected species and natural habitats, surface waters, artificial or heavily modified bodies of water, groundwater and marine waters, and soils in the vicinity of the occupational activity, as well as services from these natural resources.*
- 3) Assess the frequency of occurrence of foreseeable risk scenarios.*
- 4) Assess the severity of the consequences, i.e. the environmental damage associated with the foreseeable risk scenarios, estimating the resources and respective services affected - namely in terms of the extent, depth, persistence and duration of the damage or loss of services.*
- 5) Define the necessary and appropriate preventive and remedial measures to be adopted.*
- 6) Estimate the costs of the measures defined in the previous paragraph, for the scenario with the most serious consequences for the resources covered.*

In the case of insurance policies, in order to support operators in complying with the aforementioned regime, it is suggested that the following elements are taken into account:

- a) Name of the ‘policy’, full identification of the documents, date and signature;*
- b) Identification, VAT number and address of the parties: insured, beneficiary and representative of the insurer;*
- c) Unequivocal identification of the insured location;*
- d) Object of the insurance and its nature (to ensure the environmental liability of the operator inherent to the activity it carries out within the scope of Decree-Law no. 147/2008, of 29 July, in its current wording);*

- e) *Risks covered and respective exclusions;*
- f) *Insured capital;*
- g) *Territorial scope of the contract;*
- h) *Premium or formula for calculating it;*
- i) *Time limit of the contract;*
- j) *Content of the insurer's benefit in the event of a claim or how to determine it;*
- k) *Any waiting periods and deductibles;*
- l) *Any increases or bonuses that may be applied to the contract;*
- m) *Renewal, waiver and free cancellation of the contract, if defined;*
- n) *Other rights and obligations of the parties;*
- o) *Law applicable to the contract and arbitration conditions.*

The Portuguese Environment Agency (APA) is the body responsible for implementing the Legal Framework for Liability for Environmental Damage.

The Insurance and Pension Funds Supervisory Authority is the national authority whose mission is to ensure the proper functioning of the insurance and pension funds market in Portugal, in order to help guarantee the protection of policyholders, insured persons, participants and beneficiaries.”

Spanien

“Spain has introduced mandatory financial security for certain operators:

- *Operators subject to the scope of application of Royal Decree 840/2015 of 21 September approving measures to control risks inherent to major accidents involving hazardous substances (SEVESO)*
- *Operators subject to the scope of application of Royal Legislative Decree 1/2016, of 16 December approving the consolidated text of the law on Integrated Pollution Prevention and Control (IPPC)*
- *Waste management operators in the extractive industries, in the case of installations classified as Category A, according to Royal Decree 975/2009 of 12 June*

The financial security scheme entered gradually into force for them from 2018 to 2022, and the types of financial security specified in Law 26/2007 are:

- *An insurance policy meeting the requirements of Law 50/1980, of 8 October on Insurance Contracts and taken out with an insurance company authorised to operate in Spain.*
- *A bank guarantee provided by a financial institution authorised to operate in Spain.*
- *A technical reserve consisting of an ad hoc fund of financial investments backed by the public sector.*

The determination of the amount of the mandatory financial security for operators required to provide it, must be based on an environmental risk analysis, and based on it, operators have to carry out a series of steps described in Article 33 of the Regulation of partial development of the law:

- a) *Identify the accident scenarios and establish the probability of occurrence of each scenario.*
- b) *Estimate the Environmental Damage Index associated to each accident scenario, following the steps established in Annex III of the regulations.*
- c) *Calculate the risk associated with each accident scenario based on the probability of occurrence of the scenario and the value of the environmental damage index.*
- d) *Select the scenarios with the lowest associated environmental damage index representing 95 percent of the total risk.*
- e) *Set the amount of the financial security as the value of the environmental damage of the scenario with the highest environmental damage index among the selected accident scenarios. This process shall follow these steps:*
 1. *First, the environmental damage generated in each scenario shall be quantified.*
 2. *Second, the environmental damage generated in each scenario shall be monetized, the value of which shall be equal to the cost of the primary remediation project.*

The cost of prevention and avoidance measures, representing at least 10% of the cost of the primary remediation project, must be added to the calculated amount.

Once the financial security has been determined, the operator must submit to the competent authority an affidavit stating that it has been provided in accordance with the procedure established in the regulations. The competent authorities shall establish the corresponding monitoring systems enabling them to check operators' compliance with their obligations to determine and provide the financial security.

There are some flexibility mechanisms, and once the environmental risk analyses and the amount of financial security has been determined, the following operators are exempted from the obligation to provide a financial security:

- *Operators of activities likely to cause damage remediation which is estimated to cost less than 300,000 euros.*
- *Operators of activities likely to cause damage remediation which is estimated to cost between 300,000 and 2,000,000 euros, and who can accredit adherence either to the EU Eco-Management and Audit System (EMAS) or to the current UNE- EN ISO 14001 environmental management system.*

As stated above, the financial security scheme entered gradually into force for them from 2018 to 2022, and once it entered into force, it is a requisite for these operators to have them in order to operate. “

Miljøministeriet har ikke mulighed for at vurdere, hvilken betydning tilsvarende regler – som de ovenfor beskrevne – ville have haft for Nordic Waste-sagen. Miljøministeriet bemærker i den sammenhæng, at rammerne for arbejdet med en undersøgelse af, om miljøskadereglernes indretning fungerer efter intentionen, er blevet fastlagt. Dette arbejde omfatter ligeledes en undersøgelse af reglerne om sikkerhedsstillelse.

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