

# SCOTTISH ENVIRONMENT PROTECTION AGENCY

## A PRESENTATION TO ENPE & EUROJUST Conference on Environmental Crime

30 October 2019, the Hague, NL



### Financial Provision – Protecting the Environment and the Public Purse

# ONE PLANET PROSPERITY

If everyone lived as we do in Scotland, we would need three planets to sustain ourselves. Businesses, societies and nations which will thrive in the 21st century are those which have developed ways to prosper within our environmental capacity.



“ The scale of environmental challenges facing humanity is enormous, with a real urgency to act. Poor leaders are going to pretend it isn't a problem, good leaders will face the reality of the situation. Only great leaders will understand that it is an opportunity for their businesses and organisations. ”

Quote attributed



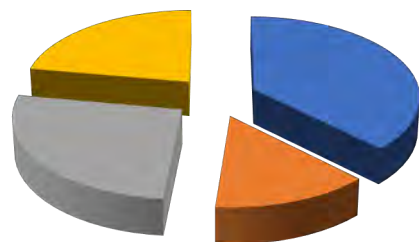
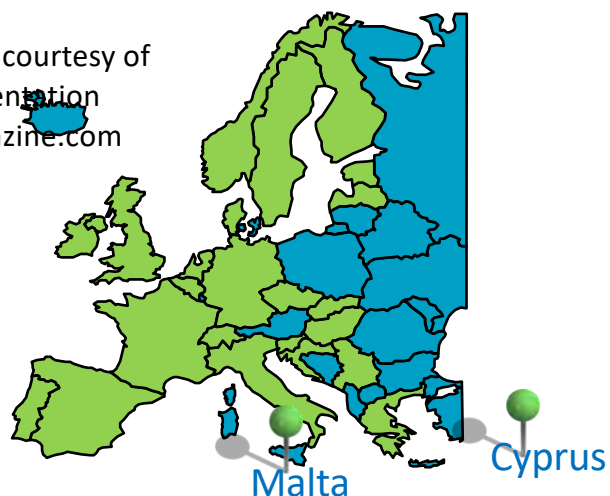


## What can we learn from successful claims ?



# IMPEL PROJECT

Slide courtesy of  
presentation  
magazine.com



- Operator
- Financial Provision
- Regulator

## SECURE

Ring fenced to the  
environmental  
liability for its  
duration

## PRINCIPLES FOR SUCCESSFUL FINANCIAL PROVISION

## SUFFICIENT

To cover the  
costs of the  
potential liability

## AVAILABLE

When required  
to pay for  
restoration or  
clean up

# ADDRESSING THE NEEDS OF REGULATED BUSINESS

**More  
flexibility**

**More  
consistency**

**Less delay**

**Better  
construction  
of legal  
documents**

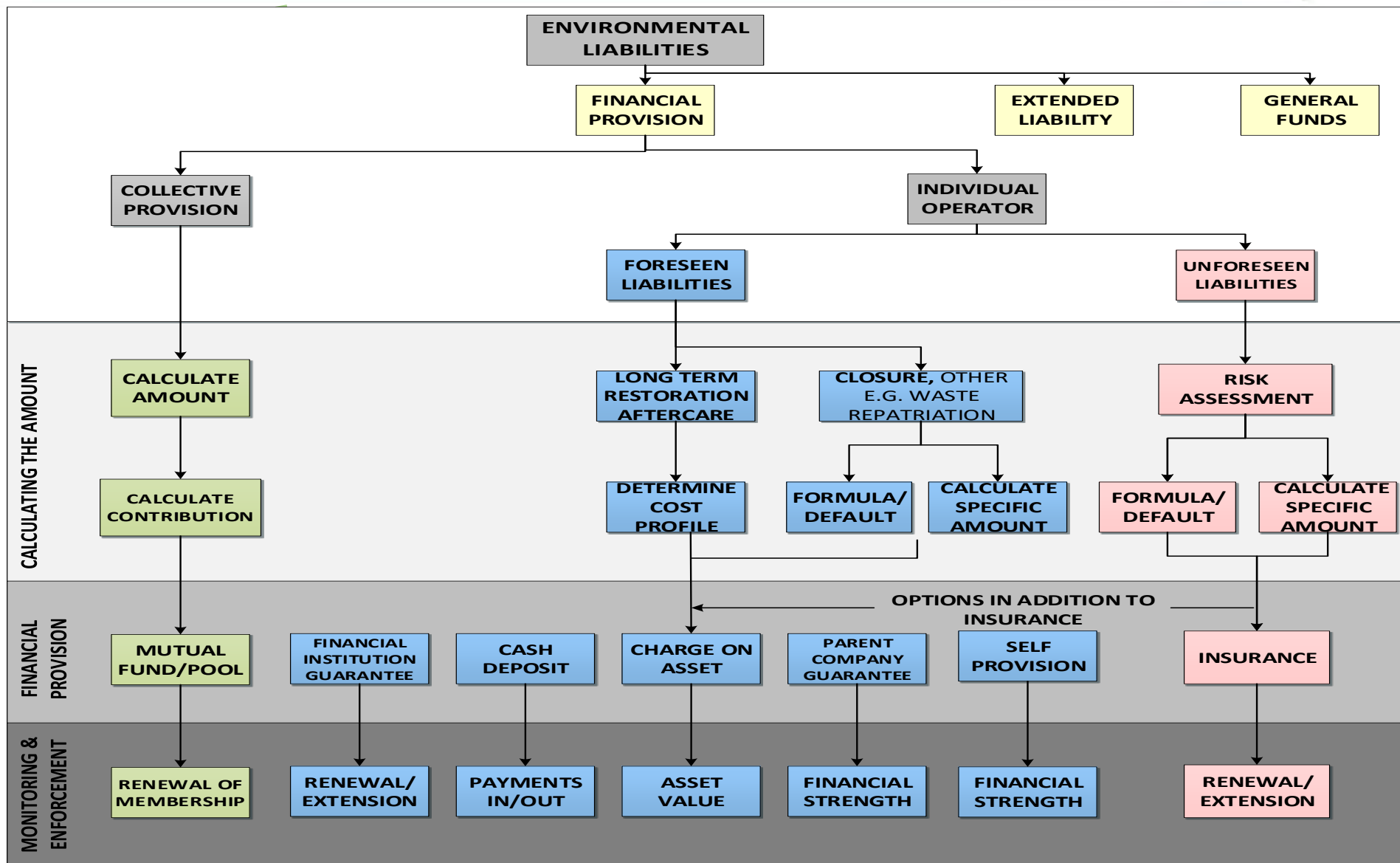
**Regulated  
Business**

**Risk based  
approach**

**Regulatory  
pre-approval  
of legal  
documents**

# A PRESENTATION TO THE ENPE & EUROJUST CONFERENCE ON ENVIRONMENTAL CRIME

“The Gold  
Standard”



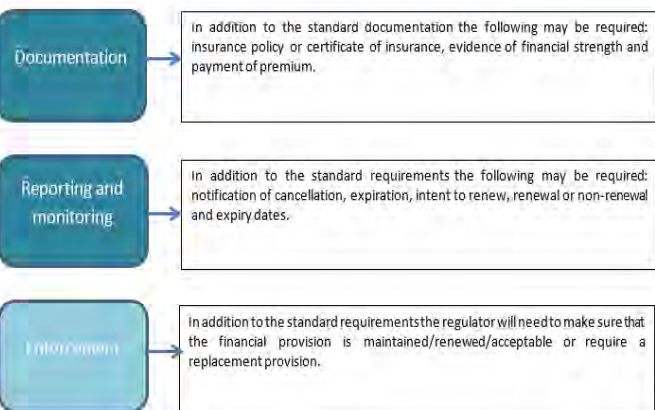


# PRACTICAL GUIDE

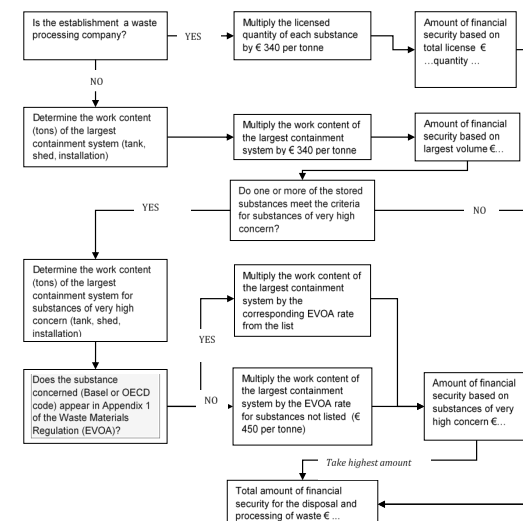
## ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE

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

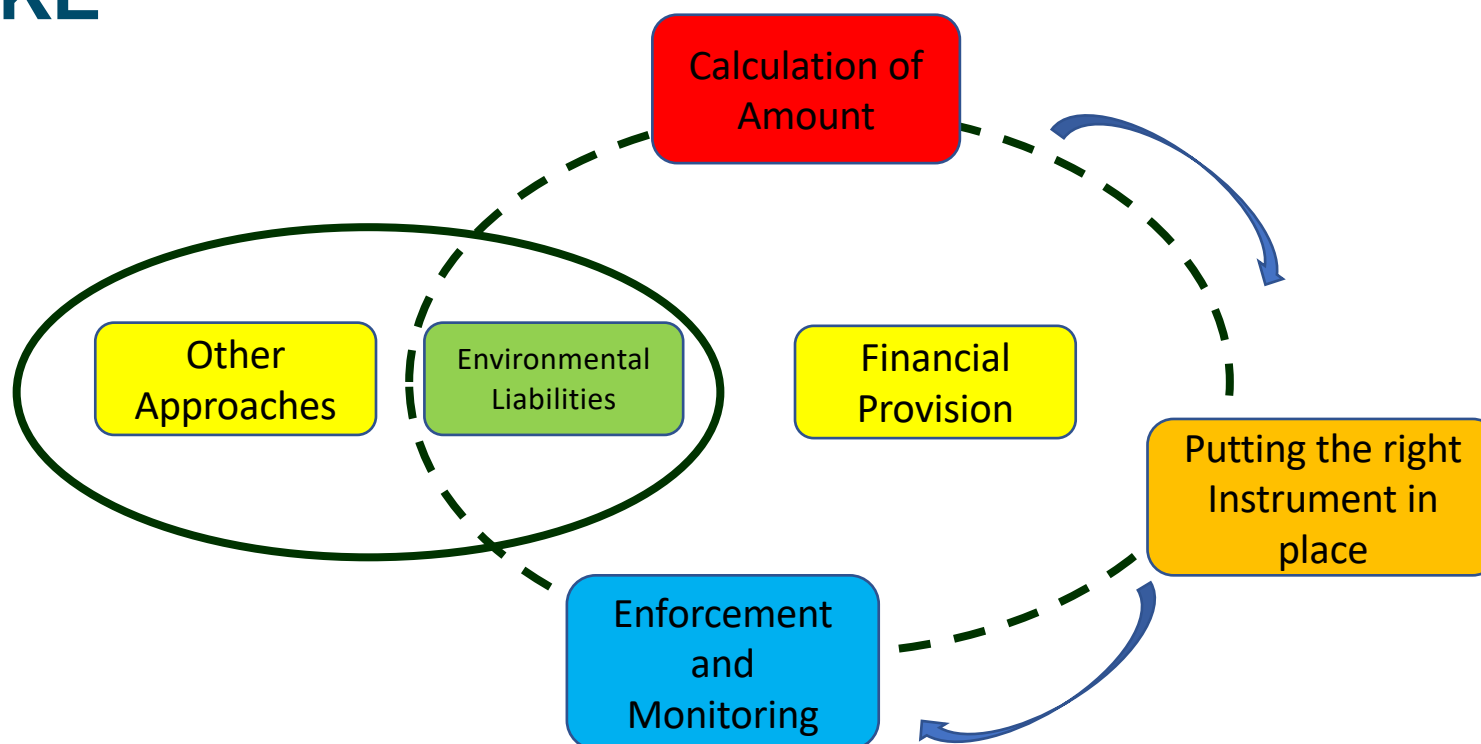
ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> <li>✓ Does not require collateral so may be more accessible to small and medium businesses and does not tie up capital.</li> <li>✓ Should not be affected by negative changes in the operator's financial strength or its dissolution provided the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



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



## BETTER ACCESS AND UPTAKE

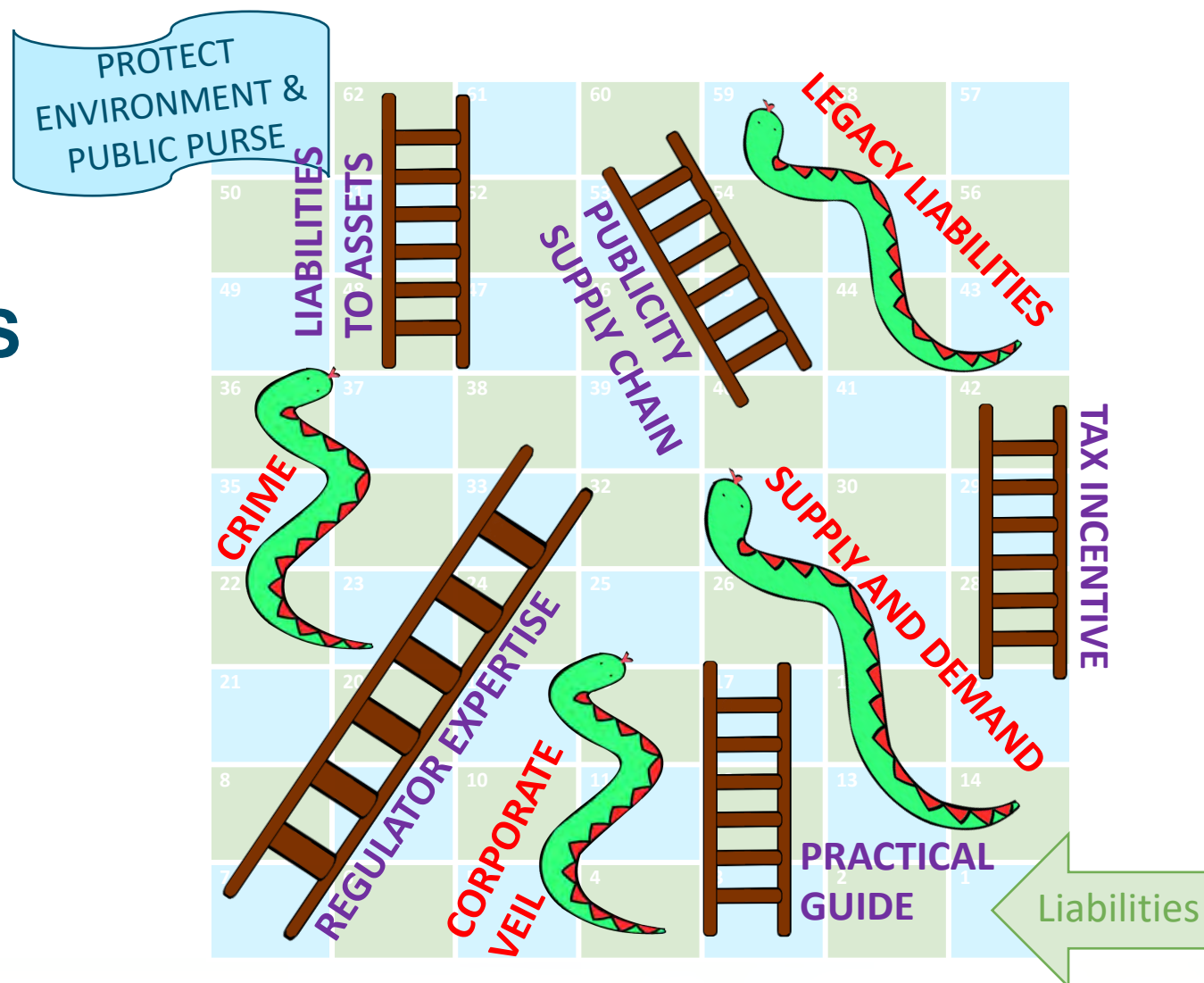




# THE ROLE OF PERMITTING AND REGULATION



# FINANCIAL PROVISION IS NOT A PANACEA



## CURRENT STATE OF PLAY

- Financial security for waste chain – on the increase
- Financial security for IED and Seveso - on the increase
- Financial security for return to satisfactory state (IED) – on the increase
- Move away from unsecured provision e.g. self provision
- Move away from reliance on financial viability health checks
- Move towards extending liability to directors and others
- In case of insolvency, transfer of assets to regulator



STEVENS&BOLTON  
IMPROVING FINANCIAL  
SECURITY IN THE CONTEXT OF  
THE ENVIRONMENTAL LIABILITY  
DIRECTIVE (ELD)

Valerie Fogleman  
Consultant, Stevens & Bolton LLP  
Professor of Law, Cardiff University School of Law

Can financial provision address the challenge of protecting the environment and the public purse?  
What role can it play in preventing environmental crime?

What role can it play in protecting against the consequences of environmental crime?

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environmentanalyst



Environmental Evaluators Network  
Réseau des Évaluateurs Environnementaux



KESKKONNAMINISTERIUM



## Building Expertise



WORLD  
ENERGY  
COUNCIL







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