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**The impact of the new E.U.  
Environmental Liability Directive  
2004/35/CE  
on the European Insurance Market**

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# Contents

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- **The European environmental liability**  
*“chronic infection”*: a multi-stakeholder story
- **Directive 2004/35/CE at a glance**
- **Open issues & challenges for E.U. Members**  
**and the insurance industry**
- **Completing the puzzle**



## The European “*chronic infection*”...

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- Various legal & administrative traditions
- Weak enforcement & control – bureaucratic burden
- Diverse geographies of development within Europe
- Questionable implementation of the *acquis communautaire*
- In the past, reluctance to ensure environmental conformity
- Existing environmental “hot spots” – no remediation
- Lack of basic environmental education among decision makers
- Lack of data, know-how & historical information



## The European “*chronic infection*”...

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### HOWEVER:

- rising societal concern over the environment today
- rising interest of collective bodies to participate and debate on all environmental issues
- corporate value is gradually becoming more dependent on non-tangible components and sustainability is an emerging business driver
- environment has already stimulated competition pressures, CSR is already a driver, proactive attention to environmental matters
- “run” for compliance with EU legislative frameworks (e.g. IPPC-EPER, Kyoto, Seveso II, Environmental Liability, REACH, Water Directive etc.)
- slow but steady increase in adoption of EMS (ISO 14001:2004, EMAS II standards)



# Directive 2004/35/CE at a glance

L 143/56

EN

Official Journal of the European Union

30.4.2004

## DIRECTIVE 2004/35/CE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 April 2004

on environmental liability with regard to the prevention and remedying of environmental damage

### *Article 19*

#### **Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2007. They shall forthwith inform the Commission thereof.

### *Article 20*

#### **Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.



## Directive 2004/35/CE at a glance

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- The environment is “granted” a bonafide economic value, becoming less of an economic externality
- The “*polluter pays*” principle is enforced
- The prevention principle gains substance
- The role of the public is reinforced
- A framework / process of remediation of the environment is described
- Covers impairment in water, soil and protected species and natural habitats – no air
- Two types of liability schemes introduced:  
**strict** (ANNEX III hazardous activities) & **fault-based**



## Directive 2004/35/CE at a glance

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### *Article 14*

#### ▪ ARTICLE 14:

##### **Financial security**

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

2. The Commission, before 30 April 2010 shall present a report on the effectiveness of the Directive in terms of actual remediation of environmental damages, on the availability at reasonable costs and on conditions of insurance and other types of financial security for the activities covered by Annex III. The report shall also consider in relation to financial security the following aspects: a gradual approach, a ceiling for the financial guarantee and the exclusion of low-risk activities. In the light of that report, and of an extended impact assessment, including a cost-benefit analysis, the Commission shall, if appropriate, submit proposals for a system of harmonised mandatory financial security.



## Open issues & challenges

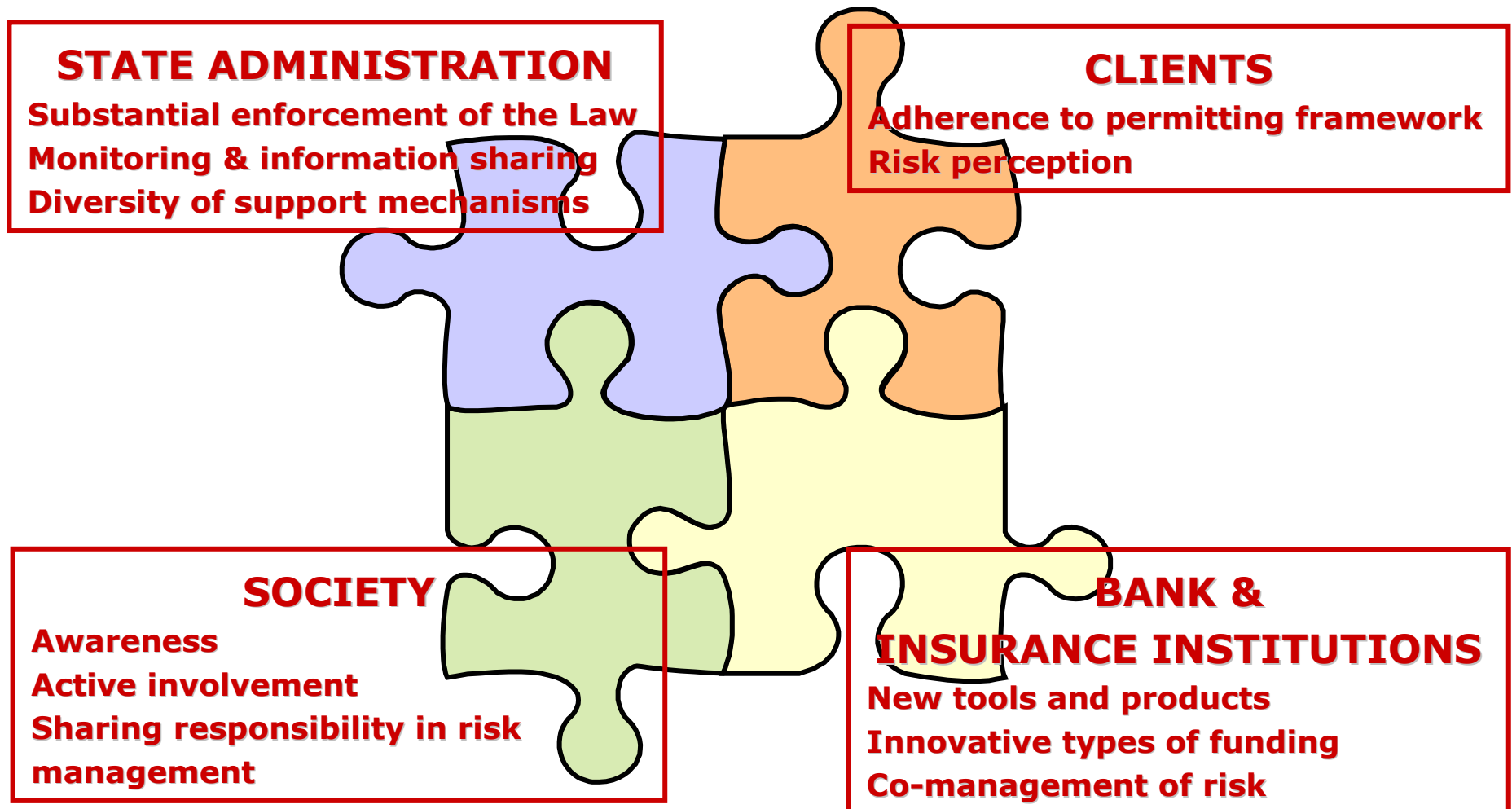
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- Legal framework adequate?
- Insurability
- Local knowledge of the insurer & reinsurer
- Financial security: optional or mandatory?
- Risk assessment / measurement of loss
- Claims management
- Minimum levels of financial cover
- Co-operation with authorities
- Fishing the small fish or the big fish?  
*Which is which?*





## Completing the puzzle





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***Thank you!***

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