



European Union Network for the Implementation
and Enforcement of Environmental Law

IMPEL

Financial Provision

*Protecting the Environment
and the Public Purse*

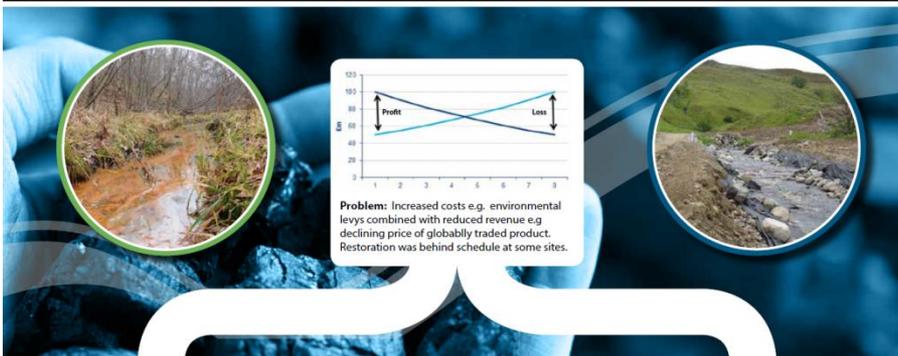
Kim Bradley, Scottish EPA

Introduction to the Practical Guide. 26th January 2018, Albert
Borschette Conference Centre, Brussels

Mineral extraction industry



Bonds in place for planning restoration, e.g. realigning streams.
No financial provision for other environmental liabilities e.g. managing polluting discharges.



The Problem

Proactively sought buyers for assets aiming to avoid compulsory liquidation.

Aimed to trade its way out of trouble through expansion of operations.

Business was restructured with new partners.

All or part of business transferred to liquidator.

New partner paid to extend bond.

Liquidator tried to disclaim land and environmental licences.

Continued in business.

Courts decided that liquidators don't have the right to abandon onerous property.

Success: the sites are in environmental compliance.

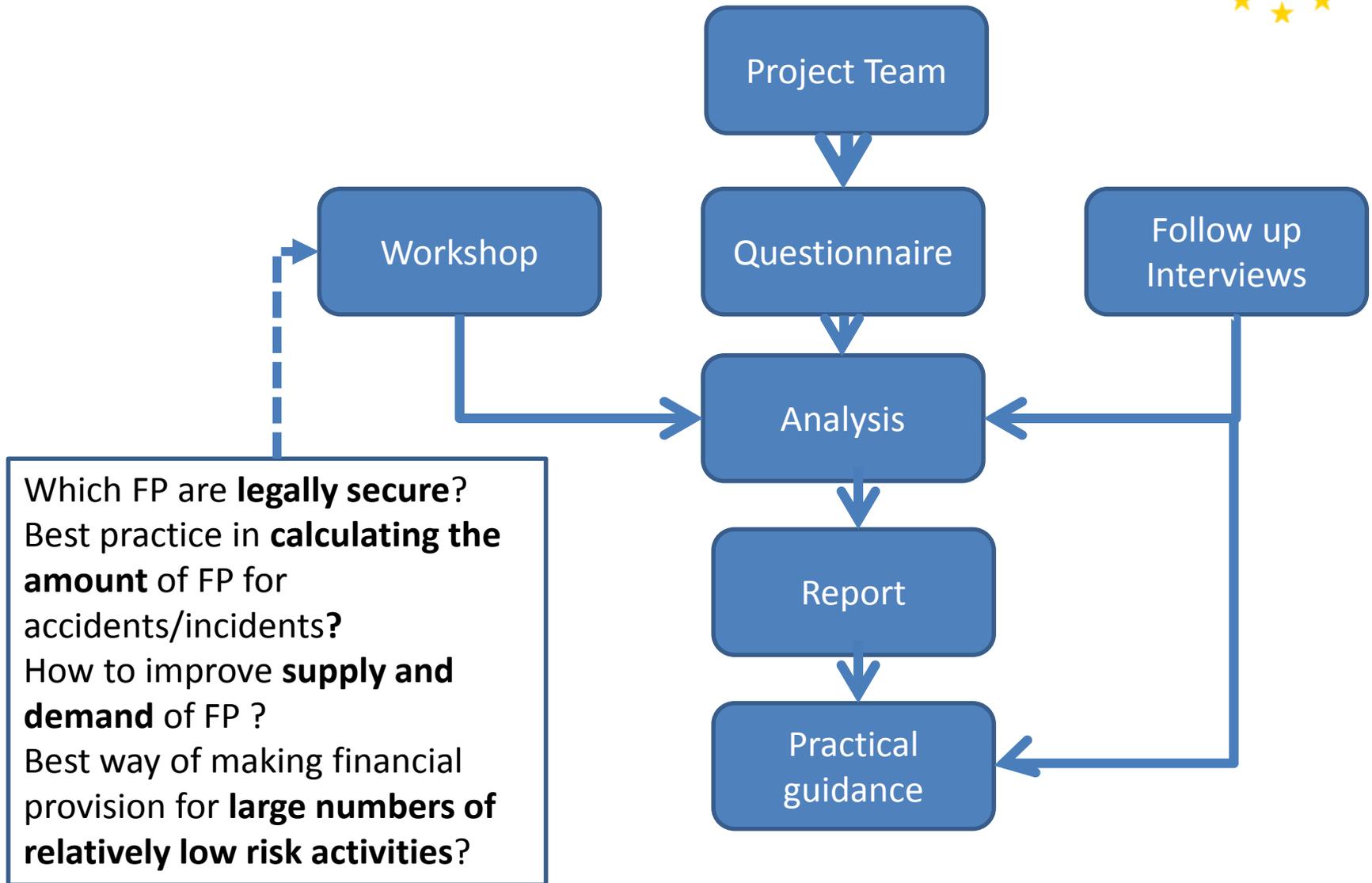
Success: the sites and assets transferred to a charity – Scottish Mines Restoration Trust.

INSOLVENT

SUCCESS

SMRT

Project Methodology



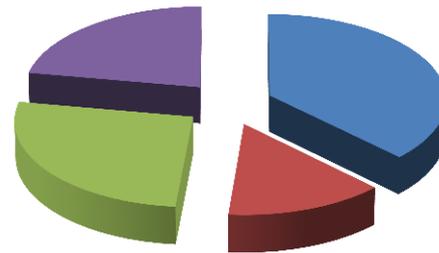
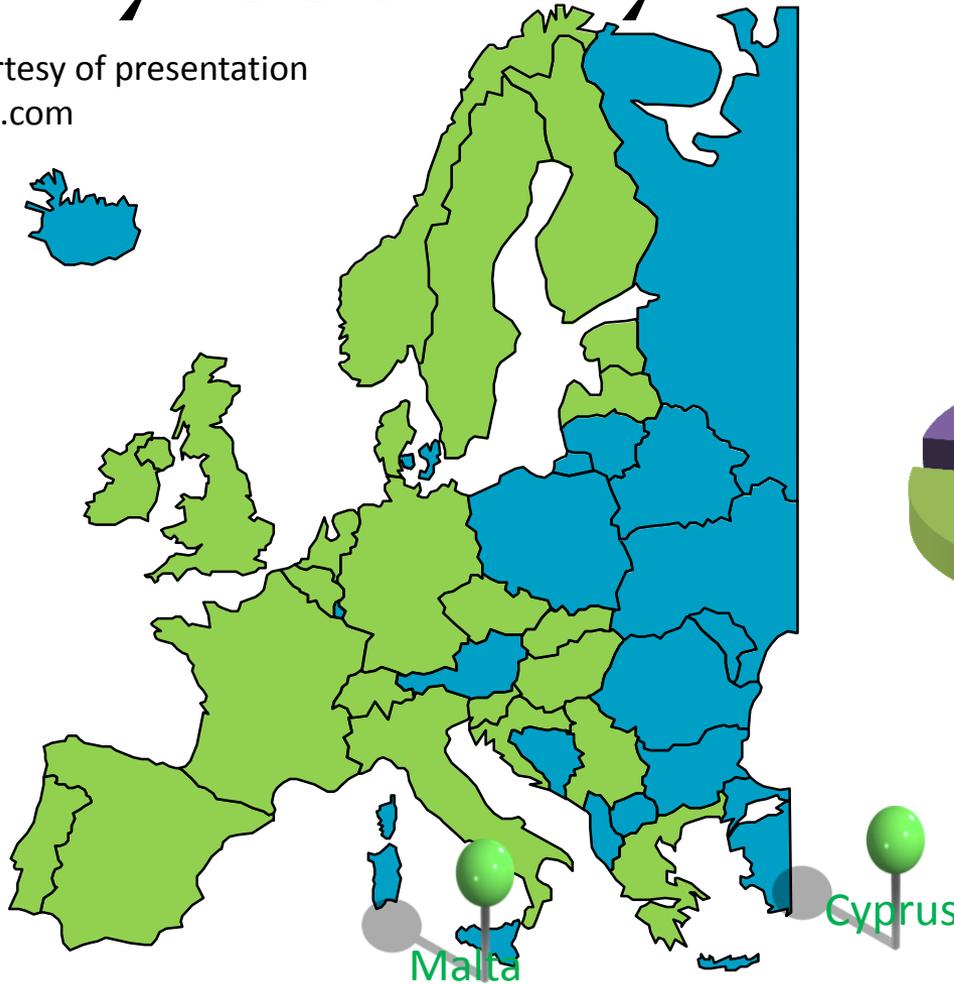
Questionnaire Participation



By country

By sector

Slide courtesy of presentation magazine.com



■ Operator

■ Financial Provision

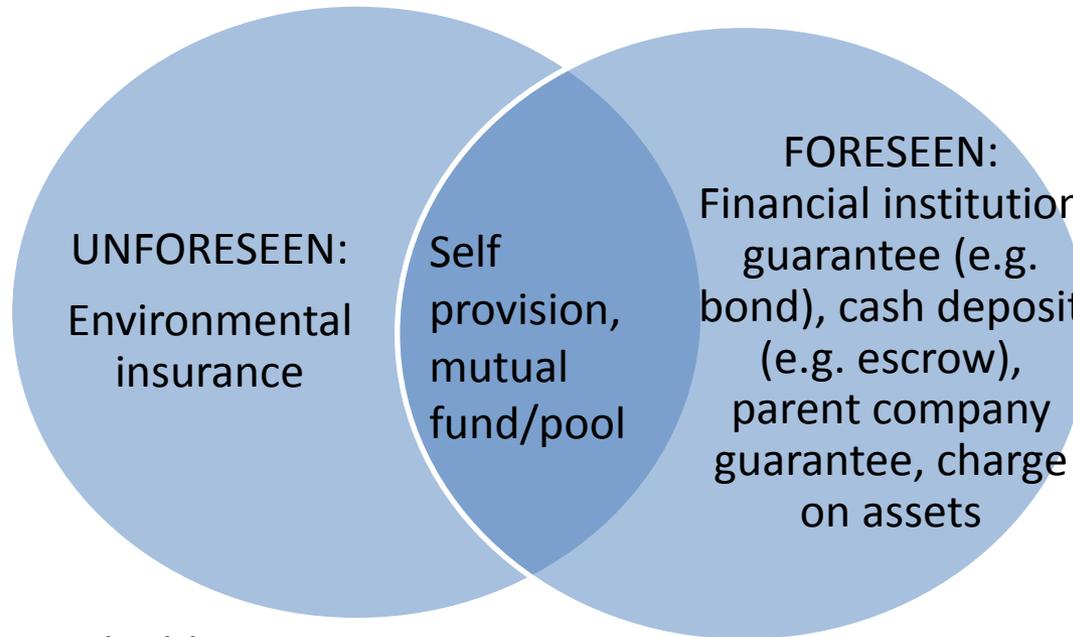
■ Regulator

■ Academic/Consultant/NGO



Findings

Regulatory consistency and time



More options and flexibility for Small Medium Enterprises E.g. pools

Success highly dependent on construction and monitoring of the Financial security and sufficiency

SECURE, SUFFICIENT,
AVAILABLE WHEN
REQUIRED

Concerns around the role of corporate law and insolvency/bankruptcy law in hindering cost recovery

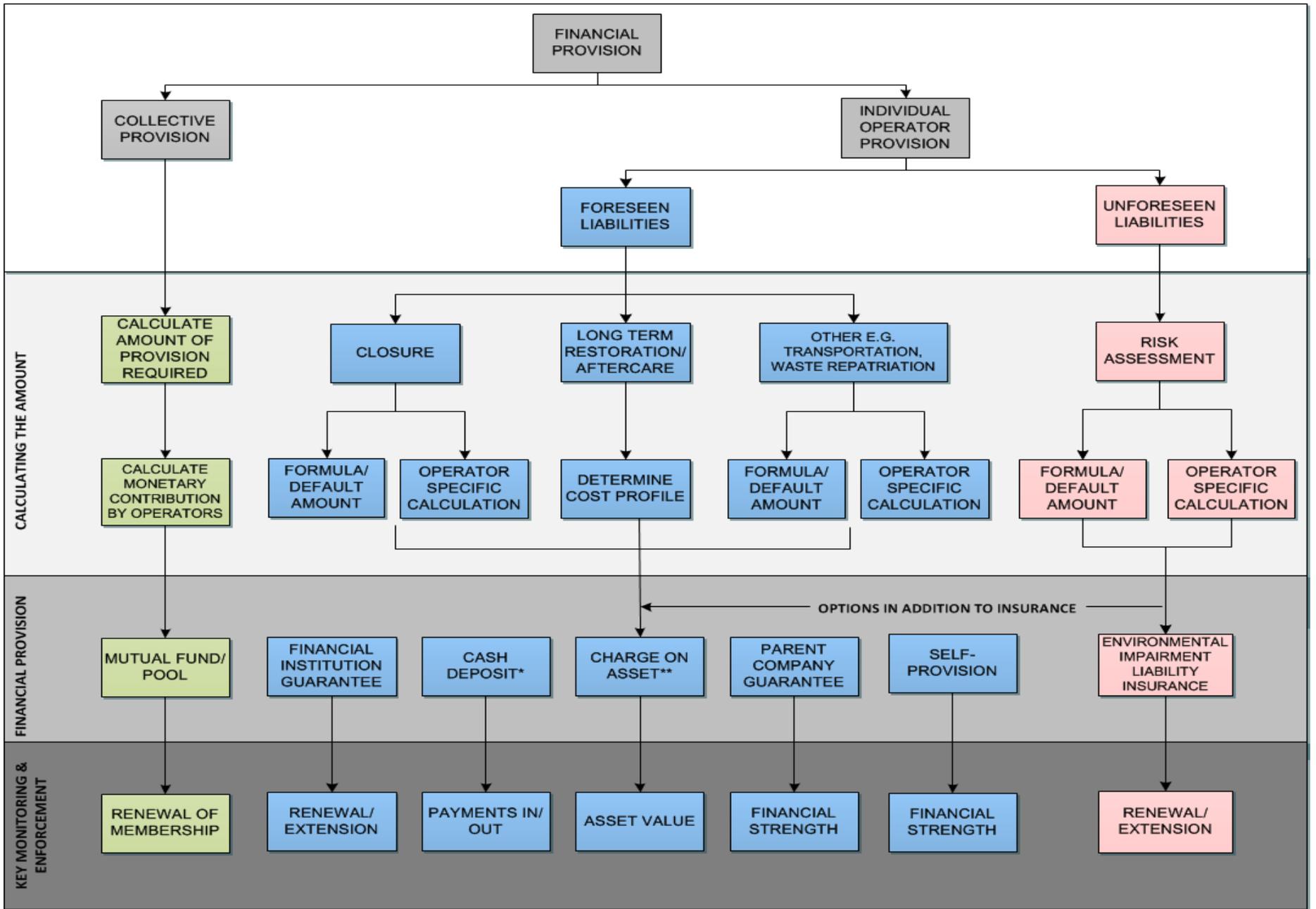
The Role of Regulators



- Firm enforcement
- Regulatory acceptance
- Publicity campaigns
- Working with the supply chain



- Tax breaks
- Mandatory provision - conflicting views



*A COMBINATION OF FINANCIAL PROVISIONS MAY BE REQUIRED WHERE A CASH DEPOSIT IS ALLOWED TO BUILD UP OVER TIME UNTIL THE VALUE OF THE DEPOSIT IS SUFFICIENT TO MEET THE LIABILITY.

**A COMBINATION OF FINANCIAL PROVISIONS MAY BE REQUIRED WHERE A CHARGE ON ASSET IS USED DUE TO ITS ILLIQUIDITY.

This Year



- Secure, **sufficient**, available when required



2018 - Objective and Outcomes



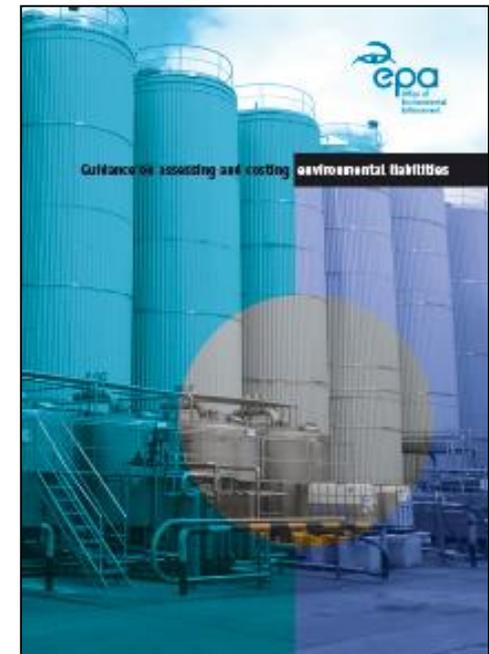
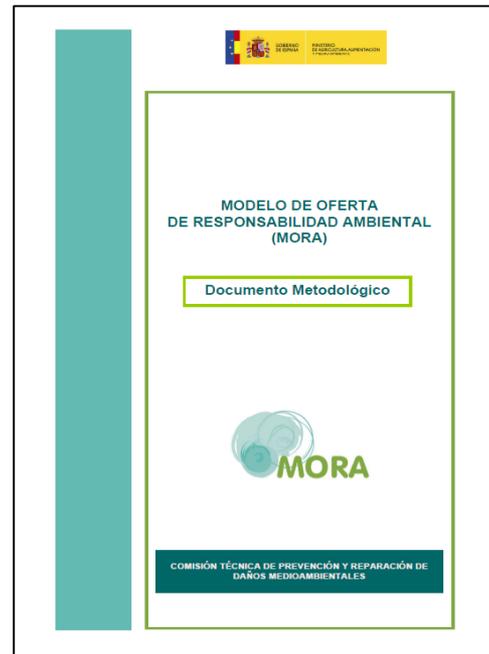
Evaluation of the potential application of the Spanish and Irish (and Netherlands) models to other jurisdictions



Confidence in decision making

Streamlining

Reducing regulatory burden





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<https://www.impel.eu/projects/financial-provision-what-works-when/>

Questions

- What is the availability of FP that meets the needs of the operator and regulator?
- What are key considerations for the regulator about the financial health of FP institutions?
- Would you be interested in participating in the road-testing of the calculation tools?