

European Community Shipowners' Associations



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IMPROVING OFFSHORE SAFETY IN EUROPE

PUBLIC CONSULTATION

ECSA CONTRIBUTION

INTRODUCTION

The European Community Shipowners' Associations (ECSA) – the association representing the interests of the national shipowners' associations of EU Member States and Norway – welcomes the opportunity to contribute to the public consultation on improving offshore safety in Europe. ECSA has been included in the European Commission's Register of Interest Representatives since June 2003 with identification number 288846415-01.

As a starting point, ECSA draws attention to the fact that there is a fundamental distinction between shipping and offshore exploration/exploitation activities, which is, *inter alia*, reflected in legislation.

Pollution damage arising from ships is covered by a longstanding, internationally agreed and comprehensive regulatory framework, adopted under the auspices of the International Maritime Organisation (IMO) based in London. This regulatory framework covers maritime safety, environmental protection, liability and compensation.

With the exception of the operational part of a rig, which is regulated by the IMO in some specific areas, pollution damage resulting from offshore exploration/exploitation activities is – in contrast with shipping – currently not covered by an international regulatory framework but it is primarily regulated by national legislation. However the issue of liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation activities is to be included in the agenda of the IMO's Legal Committee, for discussion and possible decision.

ECSA firmly believes that any Commission proposal or decision with regard to offshore exploration/exploitation activities in Europe must continue to respect the primacy of IMO conventions on pollution damage arising from ships since any other proposal or decision would violate signatory Member States' obligations, cause serious disruption to the internationally agreed regime and create legal uncertainty.

SPECIFIC COMMENTS

As the European Commission's public consultation on improving offshore safety in Europe appears to be exclusively focused on offshore activities, the contribution from ECSA will not relate to all 18 questions contained in this consultation but it will be focused on questions 8 and 10 as they appear to have potential implications for shipping.

Question 8 relates to question whether Directive 2004/35/EC on environmental liability should be extended to cover environmental damage to all marine waters under jurisdiction of the EU Member States.

This Directive establishes the "polluter pays" principle for a wide range of industrial and agricultural undertakings, many of which are land based. With regard to shipping, Article 4 (2) of Directive 2004/35/EC provides that "*this Directive shall not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Annex IV, including any future amendments thereof, which is in force in the Member State concerned.*" It results from this article that environmental damage or any imminent threat of such damage arising from a shipping incident would (continue to) be covered by the provisions laid down in the Civil Liability Convention (1992), the International Oil Pollution Compensation Fund Convention (1992), the Bunker Oil Pollution Damage Convention (2001) and the Hazardous and Noxious Substances Convention (1996, and amended in 2010), provided that these conventions are in force in the Member State concerned.

Furthermore, Article 4 (3) of Directive 2004/35/EC stipulates that "*this Directive shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, including any future amendment to the Convention*".

By these two exceptions with regard to shipping EU decision-makers on Directive 2004/35/EC have recognized the primacy of the relevant IMO instruments on pollution damage arising from ships and any proposals to amend Directive 2004/35/EC must continue to respect the primacy of the IMO conventions on pollution damage arising from ships. Therefore, any decision to extend the geographical scope of this Directive should not affect the afore-mentioned two exceptions, as this would otherwise cause serious disruption to the international regime and create legal uncertainty.

Question 10 seeks views on the best means of ensuring that remedial costs of environmental damage for an oil spill are paid "even if those costs exceed the financial capacity of the responsible party".

Based on the introduction to the public consultation we read this question as being restricted to the oil and gas offshore sector not including shipping. Pollution damage

from ships is, as mentioned above, regulated by international IMO conventions. For example, for oil spills arising from ships, there is a well-functioning international liability and compensation regime in place, based on the 1992 Civil Liability Convention, the 1992 International Oil Pollution Compensation Fund and the 2005 Supplementary Fund. Under this regime, the maximum amount payable for one oil spill incident arising from a ship is approximately USD 1,185.8 million, which is sufficient to address the need for compensation to be available in case of an oil spill incident arising from a ship.

In addition, over the past 10 years several initiatives – both legal and operational – have been adopted to avoid ship-source pollution or to limit the consequences of an oil spill arising from a ship. In this respect, reference can be made to the European Maritime Safety Agency (EMSA), based in Lisbon, which has been tasked to provide EU Member States and the European Commission with technical and scientific assistance in the field of ship-source pollution.

In conclusion, ECSA again asks the Commission to continue to support that shipping is dealt with by the IMO securing an international maritime regulatory framework to a truly international business and to coordinate future efforts with regard to the oil and gas offshore industry with the IMO Legal Committee.

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