

**Meeting report on the  
STAKEHOLDER CONSULTATION**

**Evaluation of the Directive on safety of offshore oil and gas operations**

**19 September 2018, from 8.30 to 18.00**

**Background to the Directive**

Directive 2013/30/EU entered into force in July 2013. It was a response to the Commission's findings concerning a major offshore accident in the US Gulf of Mexico in 2010, itself preceded by a major environmental disaster in the Australian Timor Sea in 2009. The EU agreed the Commission's conclusions that the risk of a major accident in EU waters could be lowered through reasonable means and hence the risk was unacceptable.

Member States were required to complete transposition of the Directive by July 2015; industry (operators/license holders, and owners of mobile non production installations – mainly drilling rigs) were required to implement their systems and procedures for compliance in prescribed stages but no later than July 2018.

The Directive made provisions for preventing major accidents during offshore petroleum activities, including consequential major damage to the environment. The measures were inspired by best practices in global petroleum activities, mainly North Sea but also *inter alia* Italy Australia, New Zealand, Canada. Softer (non enforceable) measures were included to encourage more effective financial provisions by license holders and for strengthening compensation systems in Member States.

The Directive at Article 40 requires the Commission to report to Parliament and Council on the experience of implementing this Directive by July 2019. The evaluation project ('the project') is the means to fulfilling the obligation. In addition, Parliament considered a report by the Commission on EU-wide financial liability provisions and adopted a resolution (2015/2352(INI), by which it invited the Commission to carry out analysis and to consider legislation for reinforcing and harmonising existing rules. This task is incorporated into the project.

In terms of stakeholder reception of the Directive, the negotiations of the draft instrument had reasonable cross-stakeholder support. There was significant opposition to the form of a regulation as originally proposed by the Commission but the Directive has been both supported and executed by duty holders. This is reflected in submissions to the project.

## Summary

- Participants: experts of primary duty holders and the key social partners for the environment and offshore workers.
- A closing discussion between industry experts and affected parties addressed liabilities and financial indemnities.
- The workshop stimulated energetic discussions that endorsed most of the Commission's pre-ordained topics of interest as well as raising new elements, resulting in a substantial agenda for evaluation.
- Preparations for the workshop, and subsequent interventions has stimulated the development of compatible communities of interest whose participation in the project will enhance its outcomes and underpin credibility.

## Purpose of the workshop

The primary purpose of the workshop was to launch the project to the broad base of stakeholders where hitherto the discourses had been between the Commission and the primary duty holders (regulators and industry). The development of the full community of interest in the project is vital to its successful outcome both in terms of receiving all key information, and for the final report's credibility.

For the Commission, an important subsidiary point was to enhance the Commission's evaluation (i.e. of the directive's implementation experience) through the exchange of initial views of the principal duty holders and stakeholders; and to exchange views and information on progress with liability provisions. At the workshop the Commission announced the launch of public consultation and encouraged delegates to participate in it.

All delegates received the following statement of purpose ahead of the workshop.

“The evaluation will assess whether the Offshore Safety Directive 2013/30/EU, as implemented by Member States, has achieved the objective to ensure safe operations by: (i) avoiding major accidents, (ii) limiting the number of incidents and (iii) mitigating the effects of any unintended releases of hydrocarbons or other hazardous substances. Furthermore, it will take into account legislation linked to the Offshore Safety Directive and assess the Directive's overall coherence with EU legislation.”

## Attendance

The event was over-subscribed with 82 delegates against a planned 70. Notwithstanding the Commission's best endeavours to encourage a diverse delegation, the duty holders – regulators and industry – greatly outnumbered the social partners, *viz* non governmental organisations (NGO's: 2, plus one phone-in) and Trades Unions (TU's:2).

It was not possible to attract representatives of the marine economy nor coastal communities to the event. However, the efforts by the Commission in this direction have subsequently been bearing fruit: coastal communities and marine commercial players are becoming incorporated into the wider community of interest, which was the primary purpose behind the workshop.

## Agenda

The agenda (see Annex I) was introduced by the Commission as being designed to share the experience of implementing the Directive of the principal duty holders who would, through their endeavours, have the most intense experiences to share. A North Sea and an Adriatic Member State presented the implementation experience from perspectives of fairly minor and very significant change in governance and process. Italy made a third detailed intervention from the floor.

The duty holders were balanced by social partners, speakers from NGO and TU sectors, whom reflected on the extent to which the Directive had met the ambitions of the environmental activists and offshore workers.

The final item was an introduction to the liabilities and financial indemnities subject from subject matter experts, joined with commentary from NGO's and academia.

The agenda was punctuated by significant plenary discussions.

The principal speakers were authoritative and well qualified to represent both their sector and their topic. Curriculum Vitae of the principal speakers are presented at the end of this report.

## Emerging themes

The workshop exposed a number of issues from all the groups present, though noting that regulators and industry far outweighed the other actors.

Prior to the workshop, the Commission had identified 15 elements of particular interest that were notified to speakers to guide their preparations for the workshop.

The workshop itself prompted discussions around 12 major topics, 5 of which were not amongst the elements previously identified by the Commission. Details of the Commission's original list of elements, and the further elements brought forward at the workshop are given at Annex II. Here is a brief summary of the elements arising from the workshop discussions:

1. Risk assessment (new element #1)
2. Safety & environment as unitary authority in the setting up of the Competent Authority (Previously identified, Article 8)
3. Independent verification (Previously identified, Article 17)
4. Overarching guidance on what is intended by the Directive's Articles (new element #2)
5. Time allowed for transposition of the Directive by Member States was too short (new element #3)
6. Cost recovery is inconsistently applied across Member States (new element #4)
7. Non-North Sea operators slow to act to implement the Directive (new element #5)
8. Post hoc verification of wells following platform dismantling or rig move (Previously identified as 'Additional item' by the Commission - decommissioning)
9. Movement of mobile non production installations (drilling rigs) between jurisdictions inhibited by the measures in the Directive (Previously identified as 'Additional item' by the Commission – internal market) Plus administrative restraints on

- operators/licensees operating across different Member States (as a related element to deepening the internal market)
10. Safeguards in new licensing (Previously identified, Article 5)
  11. Various measures in the Directive relating to workforce (Previously identified, Article 22)
  12. Liability provisions (previously identified)

Written submissions from the regulator and drilling contractor sectors endorsed a further 5 of the Commission's original list of 15 elements.

Therefore, as an outcome of the workshop, a catalogue of 20 specific elements fall to be given particular attention during the evaluation in addition to the generic evaluation of all the Articles in the Directive. Three elements in this catalogue that emerged during previous stakeholder (regulator and industry) meetings were not raised in the workshop.

### Further steps

The Commission outlined its prospective timetable commencing with the workshop and the simultaneous launch of the public consultation which all delegates were urged to complete and to disseminate widely throughout their networks. The consultation closes end of December 2018. Returns from the consultation are anticipated to stimulate bilateral discussion.

The Commission aims to render the 20 specific elements identified at and prior to the workshop and arising out of the consultation into a smaller cohort of *themes*. The Commission will encourage the formation of compatible groups of stakeholders to assist the Commission in evaluating the themes through additional thematic discussions. The Commission will consolidate its questions associated with the themes before engaging with the compatible groups<sup>1</sup>.

Following the workshop the Commission met with the lead NGO (Bellona Foundation) who agreed to promote the building of a substantial compatible NGO community for future bilateral engagement. The Commission plans a similar initiative with the EU Trades Union sector led by the EU Trades Union Confederation (EUTUC).

Thematic discussions are anticipated to be held with the compatible groups of stakeholders in January/February 2019, with the regulators meeting ('EU Offshore Authorities Group', EUOAG) already programmed for 17 January 2019.

During the consultation period the Commission will encourage stakeholders – industry, NGO's, TU's, coastal interests and so on – to consolidate communities of interest. The preparations for the workshop has already opened pathways into important third party stakeholder representatives (e.g. coastal businesses and residents; NGO's). Post-workshop indications are that industry, NGO's and coastal representatives are keen to engage in the evaluation of the Directive.

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<sup>1</sup> Examples of the nature of the questions that may be generated are to be found in the indented points of Annex II, Part 2 (being the matters raised during the workshop).

Simultaneously, the Commission will solidify the key questions in time to be addressed by the compatible groups in early 2019.

## **Annexes**

### **Annex I**

#### **FINAL AGENDA**

19 September 2018  
Albert Borschette Congress Center (CCAB)

09.00

Welcome, confirmation of agenda

- Introduction to the project  
*Mr Stefan Moser, European Commission*

Observations of the principal duty holders:

- Regulator of North Sea Member State  
*Mr Rob Laane, State Supervision of Mines, Netherlands*
- Regulator of southern coastal Member State  
*Mr David Dobrinić, Environmental Protection Dept. Croatia*
- License holder/Operator active in the EU  
*Mr Gordon Ballard, International Association of Oil & Gas Producers*
- Owner of a mobile offshore drilling unit active in EU  
*Ms Ida Maria Welhaven Winther, Maersk Drilling*

Questions and answers with the duty holders

First plenary discussion

Observations of social partners (1):

- Non-governmental organisation (NGO), environmental sciences interactive discussion led by:  
*Mr Stefan Moser, European Commission; and  
Mr Sigurd Enge, Bellona Foundation*

Questions and answers with the social partners (1)

(Lunch break)

Observations of social partners (2):

- EU Trades Union  
*Mr Ketil Karlsen, Energi Industri (Norway) and Industrial/EU Trades Union Confederation*
- Non-governmental organisation (NGO), marine environment  
*Mr Sigurd Enge, Bellona Foundation*

Questions and answers with the social partners (2)

Second plenary discussion

Observations on liability, compensation and financial security provisions of:

- Market providers and operators of current institutional schemes  
*Mr Colin Wannell, Offshore Pollution Liability Association (OPOL) & Mr Daniel Reisen, International Association of Oil & Gas Producers*
- Sectors affected by major offshore pollution incidents  
*Ms Anne Foughard Helseth, Bellona Foundation & Dr Roy Partain, University of Aberdeen*

Final plenary discussion

Conclusions and summary

- Outline of forward programme  
*Mr Stefan Moser, European Commission*

18.00

## **Annex II**

### **Elements for specific consideration in the project**

#### 1. Elements identified by the Commission prior to the 19 September workshop

The evaluation aims to distinguish between Directive-embedded elements, and other elements not provided for directly in measures contained in the Directive. These *other* elements break down further into (i) ‘arms length’ and (ii) ‘Commission identified’ elements.

- Directive-embedded elements (10 off)
  - Article 3 – assignment of responsibility
  - Article 5 – public participation in allowing operations in new offshore areas
  - Article 8 – independence of the Competent Authorities and integration of safety and environmental functions
  - Article 17 – robustness of the scheme of independent verification
  - Articles 19 & 20 – safety in operations conducted outside the EU
  - Article 22 – provisions for whistle blowing
  - Article 24 – transparency – reporting of incidents
  - Articles 28, 29 & 30 (& 14) internal emergency response (as provided by operators and owners) and
  - As above, external emergency response (as provided by Member States)
  - Article 34 – dissuasive penalties
- Arms length elements (2 off)

- Liability, financial security and compensation schemes. Although directions emerge from Articles 4 and 7, these matters are made a special topic by virtue of Article 40 and the European Parliament resolution December 2016 (2015/2352(INI))
- Extending criminal sanctions to breaches of duty to safeguard the environment (by virtue of Article 39(3))
- Additional items previously identified by the Commission (3 off)
  - Post decommissioning responsibility for ensuring permanent sealing of wells (I.e. where a license has been relinquished)
  - External threats and cyber security
  - Deepening of the internal market through mutual recognition between Member States of mobile non production installations - mainly drilling rigs ( compliance with OSD-related measures

There are therefore 15 elements previously identified. These may be aggregated into *themes* for directing to compatible groups of stakeholders ('thematic groups') for consultations once the key question points are elaborated.

## 2. Elements arising from 19 September Workshop (5 new elements)

Items below are matters of concern unless expressly identified as positive

- Risk assessment (new element 1)
  - Using risk assessment as precursor to a decision
  - Identifying when the condition of 'risks ALARP'<sup>2</sup> is achieved
  - Measures adopted by Member States insufficiently stringent (generic)
  - Worker involvement in Reports of Major Hazards<sup>3</sup> (related to risk assessment, above)
    - Tight time frames
    - Workers not prepared/trained
    - Should incorporate to make tripartite consultation more effective
- Safety & environment as unitary authority in the Competent Authority (Previously identified, Article 8)
  - Works best for the Directive's framework (As practiced by Netherlands)
  - Requires single authority voice where Competent Authority is jointly comprised separate agencies
- Independent verification (Previously identified, Article 17)
  - Mandatory 3rd party?
  - Member States free to make obligatory 3<sup>rd</sup> party independent verification schemes
  - Whom is most independent: 2<sup>nd</sup> party independent verifiers (commonality of commercial goals) or 3<sup>rd</sup> party<sup>4</sup> (in employment of duty holder)?

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<sup>2</sup> ALARP = 'as low as reasonably practicable' and is the threshold of acceptable risk in the context of harm to workers and others affected by work activity and damage to the environment

<sup>3</sup> a RoMH is an *ex ante* report by the operator or owner of an installation demonstrating that all major hazard risks are ALARP. Comments of the workforce are to be taken into account. The competent authority must issue an acceptance of the RoMH prior to operations starting.

<sup>4</sup> 2<sup>nd</sup> party independent verifiers are derived from a separate part of the operator or owner organisation that is distinctively remote from any aspect of the matters being verified; 3<sup>rd</sup> party verifiers are from a commercial organisation separate from but engaged under a commercial contract with the operator or owner organisation



- Lack of clarity of the Directive Articles & Annex V relating to operation of independent verification schemes
  - Should independent verifiers be pre-approved?
  - Should 3<sup>rd</sup> party verifiers be mandatory and the scheme of independent verification be extended to the lifecycle of an installation, including monitoring of permanently abandoned wells? (Suggested by an independent verifier)
  - Will there be public aversion to 2<sup>nd</sup> party verification?
- Overarching guidance on what is intended by the Directive's Articles (new element # 2)
  - Lack of Commission guidance as to meanings/intents<sup>5</sup>
  - Call for the Commission to issue clarifications or guidance in the future
  - Suggestion for EU Offshore Authorities Group to disseminate guidance and clarifications on the Directive
- Time allowed for transposition of the Directive by Member States was too short (new element # 3)
- Cost recovery (new element # 4)
  - Arguments for and against a mandatory requirement to recover costs?
  - Which mechanism: charge-out rate; fees for service; levy?
  - Is further intervention of the Commission relevant (subsidiarity and proportionality tests met)?
- Non-North Sea operators were slow to react to implement the Directive (new element 5)
  - Problem has been with operators of production installations, not owners of mobile non production installations<sup>6</sup>
  - Required unforeseen effort by the Member State to establish productive dialogue with operators
- Post hoc verification of wells following platform dismantling or rig move. (Additional item previously identified by the Commission - decommissioning)
  - The Directive does not apply once installation removed (factual observation)
  - Should this gap in application be addressed by amending the Directive?
  - Is there an overlap with the Hydrocarbons Licensing Directive?
  - Should regional seas conventions be relied upon rather than amending the Directive?
  - Industry favours all regional seas conventions to be aligned with OSPAR – with no additional intervention via the Directive
- Mobile installations movements between Member states is inhibited by the Directive (Additional item previously identified by the Commission – internal market) Also applies to operators/licensees operating in several Member States (related element)
  - Corporate Major Accident Prevention Plan requirements vary indiscriminately between Member States
    - Creates administrative burden for duty holders working in more than one Member State
    - Possible mis-use of the requirement by Member States in the Directive for subjective purposes?

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<sup>5</sup> During negotiation of the Directive, the Commission was advised it would not be appropriate to issue guidance to Member States before the implementation phase was completed.

<sup>6</sup> Owners of mobile non production installations, mainly drilling rigs, are broadly familiar with the concept of ex ante risk assessments or RoMh's – see footnote 3. The International Association of Drilling Contractors has produced a template for a European model RoMH

- Some Member States are content to acknowledge other Member States acceptance of a formal risk assessment (RoMH – see footnote #3) of a mobile installation, subject to minor additional reviews
- Some Member States add-in unnecessary bureaucracy without benefit (generic observation)
- Safeguards in new licensing (Previously identified, Article 5)
  - Insufficient regard to changes in sea conditions over recent time (10 years)
  - Some Member States licensing authorities seek to avoid safeguarding requirements in previously licensed areas that have been inactive for a number of years
  - Relinquishment of licenses should be matter of public information and comment
- The Directive relating to the workforce (Previously identified, Article 22)
  - Protection of whistleblowers insufficient
  - Tripartite consultation (operators / regulators / worker representatives) not embedded in many Member States
- Liability etc provisions (Previously identified as an ‘arms length’ element of particular interest to the European Parliament)
  - Preference for exposure-based approach over ‘blanket’ liability provision
  - New UK Financial Responsibility guidelines issued 2018 (exposure based) offered as relevant and up to date exemplar
  - Data exists on EU claims and payouts
  - Liabilities financial responsibility models are based on outdated sea models – backward looking
  - Influx of smaller less financially capable operators has become widespread
  - Pure economic loss where applied in other jurisdictions has ‘not opened flood gates’
  - Where pure economic loss models are applied, limited liability and/or exclusions also apply
  - What does the Directive aim to solve regarding financial responsibility and liability? Is it the relevant instrument in the EU *acqui* of legislation?
  - Who drives the liabilities and compensation market: EU, Member States, Industry?

Italy raised 2 further points of priority, without elaboration, at the end of the workshop:

- Cyber security (Additional item previously identified by the Commission)
- Transboundary effects of pollution (Previously identified, Articles 28, 29 & 30)

## Supplement

### Curriculum Vitae of principal speakers

#### Mr Rob Laane

- Rob Laane is the Director of Engineering and Gas Distribution for State Supervision of Mining (SSM) in the Netherlands
- Mr Laane studied mechanical engineering at Eindhoven University and holds an MBA from Henley Management College in the UK
- Prior to joining SSM, Rob worked for 25 years for Shell in a variety of international engineering and project maturation & delivery roles.
- In 2010 Mr Laane joined the Vienna based oil and gas operator and producer OMV, as Senior Vice President for major capital projects, again internationally.
- Rob returned to the Netherlands in 2016 and joined SSM. The directive, OSD, is a subject close to his heart, as Rob was in charge of Safety Case development for Shell's Southern North Sea assets in the UK immediately following the Piper Alpha disaster in July 1988 that left a lasting commitment to support the further development of standards in risk control and continuous improvement.

#### Mr David Dobrinić

- David Dobrinić joined the University of Zagreb in 2002, and remained there until 2009 becoming a professor of geology in the Faculty of Science.
- David worked in the Climate Change unit of the Croatian Environment Agency, primarily involved in the EU ETS until 2014. He then worked as an advisor in the environmental protection sector until 2018, when he joined the Croatian Hydrocarbons Agency to support its work on strategic environmental assessments and emerging energy technologies and, critically for today's meeting, offshore petroleum.
- In the field of offshore petroleum Mr Dobrinić's responsibilities include drafting national transposition legislation for OSD; developing the national Competent Authority for offshore and acting as its first Secretary and its representative on the EUOAG.
- In his new role, David undertakes many of the CA functions under OSD (document assessments, industry drafting guidance etc)

#### Mr Gordon Ballard

- Gordon Ballard graduated from the University of Glasgow with a B.Sc. Hons in Civil Engineering and holds a Masters in Petroleum Engineering from Heriot-Watt University.
- He is Executive Director of the International Association of Oil and Gas Producers having joined the Association in January 2016 after 34 years working with oilfield services company, Schlumberger, on four continents.
- He was Schlumberger's UK Chairman 2005-2016. He has also served as Chairman of the UK Government's Oil and Gas Industry Council and was co-Chairman of the industry trade association, Oil & Gas UK.

- He is also Chairman of OPITO International, the upstream oil & gas skills organization, an independent Board Director of Oil Spill Response Limited (OSRL) and a Director of The Royal Automobile Club Ltd.

#### Ms Ida Maria Welhaven Winther

- Ida Maria Graduated from the Svendborg International Maritime Academy as a Master Mariner
- In 2000 Ida Maria entered the commercial maritime sector, initially with the Maersk Line specialising in technical safety, design surveillance and workplace integrity, prior to joining the Danish Maritime Authority for a 2-1/2 year stint in 2006, again specialising as team leader in technical safety and legislation.
- Ida Maria joined Maersk Drilling in 2009 and has had an extensive career in technical safety and legislation, sitting on numerous boards and committees in behalf of both Maersk and the drilling industry more generally, and rising to her current position as Technical Lead for the company.

#### Mr Ketil Karlsen

- Ketil Karlsen's early career was in drilling, working on mobile offshore drilling units, or MODU's, for 10 years in Norwegian waters, including the Arctic.
- For the past 30 years Ketil Karlsen has devoted himself to the Trades Union in Norway and the EU. In Norway, Mr Karlsen is a member of the Trades Union EnergiIndustri and has taken leading roles on health and safety matters. He has contributed to government working groups producing both MoU's and policy papers; and he now leads the Union's EU office here in Brussels.
- Ketil contributed to the formation of the Industriall working group on offshore safety, of which he is currently Chair.

#### Mr Sigurd Enge

- Sigurd Enge is not merely one of the most experienced advisers at Bellona, he joined during its foundation in 1988.
- Sigurd is a master mariner by background and at Bellona he is the principal adviser on marine safety and oil spill protection.
- He is a the skipper of M/S Kallinika and he is Head of the Bellona Environmental Patrol.
- Sigurd has a unique experience working on a broad variety of subjects during his 25 years with the foundation, including fisheries, oil and fish farming. He has also been head of IT and technical support.

#### Mr Daniel Reisen

- Daniel Reisen holds a Masters in Law from the University in Zurich, is an Associate of the Chartered Insurance Institute in London and an Associate in Risk Management of the American Insurance Institute.

- Daniel is a leading experienced risk management and insurance professional, with more than 20 years of practical experience in this field.
- For the last 15 years he has been with Shell in the Oil and Gas industry managing hazard risks and arranging insurance for some of Shell's largest projects and operations.
- Prior to joining Shell Daniel worked for one of the leading insurers in Switzerland. Daniel is also a director of the OPOL, the Oil Pollution Liability Association.

#### Mr Colin Wannell

- Colin Wannell is Chair of OPOL, The Oil Pollution Liability Association
- He has worked extensively in the oil industry for BP for over 30 years both as an insurance professional specialising in upstream insurances and insurable risk management
- Colin eventually joined BP's legal organisation, holding the position of managing counsel in BP's oil trading business.
- In addition to his role as OPOL Chair, Mr Wannell is a practising consultant in the oil and gas sector

#### Ms Anne Fougner Helseth

- Anne Fougner Helseth holds an LLM in maritime law from the University of Oslo, and wrote her master thesis on the inclusion of shipping in the EU emissions trading system.
- She has worked as a journalist for business daily Dagens Næringsliv, as a trainee at the United Nations Regional Information Centre for Western Europe in Brussels and in Amnesty International Norway. Anne has also been the editor of Norway's largest student newspaper, Universitas.
- In Bellona, Anne works as environmental law advisor
- In addition, Anne acts as executive assistant to Frederic Hauge, Bellona's founder and president.

#### Dr Roy Partain

- Roy Partain is the Director of Aberdeen's Master in Law school, specialising in International Commercial Law, and in Business Law with Sustainable Development.
- Dr Partain is an expert on regulatory strategies for innovative energy technologies, and a leading legal expert on the policy implications of offshore methane hydrates
- Roy has recently co-authored a book on carbon capture and storage legal policies with Professor Michael Faure, and is currently researching regulatory frameworks to enable corporations to address regulatory compliance relating to computational complexity.