

PUBLIC CONSULTATION
Improving offshore safety, health and environment in Europe

Questions for the public

Please use this response form for your replies. Thank you for respecting the maximum length for the replies as indicated after each question. This will ensure that your responses are taken into account in their entirety.

Please send the filled response form to (address of ENER-CONSULT-OFFSHORE mailbox)

Swiss Re appreciates the opportunity to provide input to the discussions in the European Union on the improvement of offshore safety. As a worldwide leading reinsurance company we are providing reinsurance and insurance solutions to the oil and gas industry covering the financial impact of accidents on human health, third party property, installations and operations as well as on the environment.

Authorisations

As described in the consultation document, the competent authorities of the EU Member States define the concrete regulatory requirements and conditions for starting, pursuing and terminating offshore activities within the broader boundaries of EU legislation. These authorities govern also the authorisations for offshore activities in a given area (both in terms of access to exploit a certain geographical area, and in terms of approval to perform concrete activities), regulatory requirements on ongoing activities and closing of operations.

1. Which changes, if any, would you recommend to the authorisation conditions for offshore prospection or exploration or production activities? Please specify which authorisations your recommendations concern (all authorisations, those in a specific country, those authorising only a certain stage(s) such as prospection, exploration or production etc) (Please limit your response to maximum 1000 words)

no comment

2. European law ¹foresees that the competent national authorities shall ensure that authorisations are granted on the basis of selection criteria which consider, among other things, the financial and technical capability of the companies wishing to carry out offshore oil or gas operations.
 - a) What key elements² should this technical capacity requirement include in your view?
Please limit your response to maximum 500 words
 - b) Similarly, what key elements should the financial capability requirement include in your view? (Please limit your response to maximum 500 words)

no comment

¹ Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons

² Focus is only on the main elements of this capability as opposed to detailed requirements which vary according to the different geological, geophysical, technical and other circumstances of each individual case.

3. How (such as through legislation or voluntary measures at international, EU or national levels or by industry) should the adoption of state-of-the-art authorisation practices be best achieved throughout the EU? Should neighbouring EU Member States be consulted on the award of authorisations? (Please limit your response to maximum 1000 words)

no comment

Prevention of accidents

4. Please describe here any recommendations or changes (to the current regulatory framework or practices) - if any - that you consider important to improve the prevention of accidents affecting the health or safety of workers on offshore oil and gas installations in the EU: (Please limit your response to maximum 1000 words)

no comment

5. Please describe here any recommendations or changes (to the current regulatory framework or practices) – if any – that you consider important in order to better prevent damage to the natural environment from accidents on offshore oil and gas installations: (Please limit your response to maximum 1000 words)

no comment

Verification of compliance and liability for damages

The enforcement of offshore health and safety regulations is the general responsibility of national public authorities. The enforcement measures include various activities such as on-site inspections, safety audits and reporting requirements for companies. The organisation, scope and frequency of these measures vary in the different Member States depending on national practices, laws and the local conditions.

While focus on compliance should prevent accidents, a robust liability regime needs also to be in place as accidents resulting in major oil spills may cause extensive environmental, economic and social damage. The financial consequences on the entities found liable for the accident may be significant. EU legislation defines the common principles (e.g. 'polluter pays - principle') and goals for ensuring liability for environmental damages while national laws and courts put them in practice. Concerning environmental liability, the applicable EU law (Directive 2004/35/EC) addresses pure ecological damage in terms of protected species and natural habitats (biodiversity damage), water pollution damage and land damage. As regards affected waters, the ELD covers the territorial waters (up to 12 nautical miles off the shoreline), but not all marine waters under the jurisdiction of EU Member States (up to 200 or 370 nautical miles).

Responsibilities for traditional damage (such as loss of life; personal injury, health defects; damage to property and economic loss affecting for example fishermen) are usually determined by civil courts or tribunals in accordance with national laws and/or case law following goals and principles defined at national level.

Closely linked with the liability is the competence of the liable parties to actually stand up to their obligations. Insurance coverage in the offshore oil and gas sector is partial, with some companies insuring risks to a certain degree and others not. The insurance market does not currently provide products sufficient to cover damages of the magnitude seen in the Deepwater Horizon accident. Moreover, there are no international or EU-wide funds similar to those in maritime transport that would cover environmental or traditional liability.

6. Please describe here any recommendations you would like to make on how to improve compliance of the offshore oil and gas industry with applicable offshore safety legislation and other regulatory measures in the EU. (Please limit your response to maximum 1000 words)

no comment

7. In your view, which are the key measures to supervise and verify compliance of the industry with offshore health, safety and environmental rules and who should do the supervision and verification? (Please limit your response to maximum 1000 words)

no comment

8. In your view, should the existing environmental liability legislation (Directive 2004/35/EC) be extended to cover environmental damage to all marine waters under the jurisdiction of the EU Member States? (Please limit your response to maximum 1000 words)

Swiss Re welcomes and supports any reasonable and appropriate measures to increase the safety of workers and to reduce negative impacts of oil spills and other harmful consequences of accidents on human health and the environment.

The protection of the maritime environment is a global concern. We believe that global concerns would be best enhanced through cooperation with the international community. Taking into consideration environmental impacts can easily surpass the borders of the EU – e.g. impacting Norway (North-Sea oil exploration) or Russia (Black- Sea oil exploration) – and vice versa, efforts should be placed on addressing offshore safety and liability measures at the international level. There are already several international liability regimes in place which apply to losses caused by oil pollution such as the International Convention on Civil Liability for Oil Pollution Damage or the UN Convention on Law of the Seas.

The focus on existing treaties and other pertinent international legislation would be more appropriate before considering revision of the liability regimes implemented with the Environmental Liability Directive (ELD) in 2007. The current scope of the ELD fits perfectly with the intention to cover the operator's liability for the prevention and restoration of environmental damage as defined as land damage, water damage as well as damage to protected species (Wild Bird Directive) and habitats (Habitat's Directive) including the option to cover species and habitats of particular Member States' importance. An EU only regulation will not prevent the severe marine pollution that can still be caused by oil/gas exploration and extraction conducted in nearby third countries and impacting EU Member States. The creation of a further liability regime could also create

unnecessary duplication and result in legal uncertainty over which regime is applicable.

Considering that the scope of the ELD is for onshore activities, the European insurance market has been steadily developing appropriate insurance solutions for ELD risks through specific environmental impairment liability (EIL) policies or endorsements to General Third Party Liability (GTPL) policies. This ongoing development is by no means mature enough to provide significant insurance to cover the risks of offshore oil/gas sector activities. Offshore oil and gas activities are generally covered by specialised risk transfers solutions offered by the Marine and Energy lines of the insurance market. These markets have the detailed expertise and have effectively offered related liability insurance cover, including exposures for marine vessels that fall within the scope of international conventions dealing with marine pollution.

Insurance plays a very significant role in the risk management process of the oil and gas industry by covering the negative financial impact of accidents on human health, property and the environment. While stringent liability regimes are important instruments to respond to environmental accidents we advise, based on the experience in the insurance industry, not to neglect the importance of operational risk management instruments within the oil/gas sector, the safety, loss mitigation and prevention regulatory measures for offshore activities and effective control instruments. The focus on such risk management and loss mitigation/prevention instruments are the best means of reducing environmental damage risks.

We recommend:

- to keep any offshore liability regime within the scope of already existing multinational conventions and not restrict it to EU law
 - to keep the scope of the ELD as close as possible to the existing intention and the focus on significant environmental damage and on the prevention and restoration of protected species and habitats in particular
 - to focus on risk management/control instruments and to enforce risk management and loss mitigation/prevention measures to reduce environmental damage risks
9. In your view, is the current legislative framework sufficient for treating compensation or remedial claims for traditional damage caused by accidents on offshore installations? If not, how would you recommend improving it? (Please limit your response to maximum 1000 words)

The current civil liability regimes stipulating the operator's liability for damage to human life, third party property and consequential financial losses seem to be sufficient. The term operators' liability as used in this context includes all parties involved in offshore oil and gas exploration activity such as the owner/ operator of the assets, license holders and contractors.

As mentioned in question 8 we do not see the need to modify Member States' existing liability regimes for traditional damage. The primarily focus should be on

the review, modification and/or implementation of international regulations/conventions. The current distinction between liability regimes for traditional damage on civil law basis and the statutory liability regimes for prevention and restoration of environmental damage should be kept in place. The General Liability as well as the Energy and Marine Insurance Markets have long experience in providing insurance solutions covering the liability for traditional loss/damage to human health, property and consequential losses.

We recommend relying on the existing liability regimes. The review of existing treaties and other pertinent international legislation should be considered together with the legislative framework for environmental damage as highlighted in our comments to question 8.

10. In your view what would be the best way(s) to make sure that the costs for remedying and compensating for the environmental damages of an oil spill are paid even if those costs exceed the financial capacity of the responsible party? (Please limit your response to maximum 1000 words)

Considering the size of financial losses that an oil spill can present, offshore oil/gas companies should be free to compound the required solvency guarantee alongside the range of options available for covering potential environmental liabilities. This could be done through a combination of various methods:

- Re-/Insurance, warranties and guaranties
- Self-insurance and private funds
- Public funds (properly designed to respects the principles of proportionality between the risk created by given sectors and their contribution)

For example, the oil industry has developed the Offshore Pollution Liability Agreement (OPOL), in force since 1975, to ensure that, in the event of a spillage or escape of oil, claims for pollution damage are met and the cost of remedial measures reimbursed. The operators agreed to accept strict liability for pollution damage and the cost of remedial measures with only certain exceptions, up to a maximum of USD 250mm per incident (including the cost of remedial measures), and have established financial responsibility to meet claims arising under OPOL by providing evidence of insurance, self-insurance or other instruments. They also jointly agree that in the event of a default by one of the parties, each will contribute proportionally to meet claims.

OPOL applies to offshore facilities within the jurisdiction of the UK, Denmark, Germany, France, Ireland, the Netherlands, Norway, the Isle of Man, the Faroe Islands and Greenland. The OPOL, perceived as a proportionate and reasonable approach, might be a good starting point the EU Commission may wish to consider in addressing the issues raised by question 10.

Insurance is one of several appropriate instruments to protect an operator or owner against the negative financial impacts of pollution incidents. However, it should be seen as a secondary - instrument in the (pollution) risk management process of a company. Operational risk management and Health/Safety/Environmental (HSE) processes, risk prevention and, accident response measures

are the more fundamental and primary instruments.

Considering the immense financial capacity required to cover the impacts of an incident like the Deepwater Horizon oil spill the insurance industry cannot provide the sole solution in compensating companies for losses/damage arising from oil spills. However, from a European perspective, it is relevant to note the recent Oil and Gas UK response to the UK DECC Committee report on UK Deepwater drilling:

“The OPOL limit of \$250 million per incident is considered, based on previous independent oil spill studies, to be more than sufficient for the vast majority of wells in the North Sea. As the majority of well activities are adequately covered by the current limit, raising the universal limit further to address the few higher-risk (but low probability) wells would unnecessarily burden and could even jeopardise normal UKCS operations.”

The European insurance solvency law requires insurance companies to charge adequate premiums to build up sufficient capital reserves. In the context of offshore oil/gas insurance, which is a small and specialised insurance market, this is incredibly difficult to achieve even in a worldwide context, much less if the geographical scope is Europe only.

The introduction of a compulsory insurance requirement would not solve the problem. Compulsory financial security schemes are restrictive in nature and make it difficult for insurers to match the insurance protection demanded under the mandatory scheme. If a market is too small to handle the demand brought about by compulsory requirements, as is the case with the offshore oil insurance market, many insurers are likely to withdraw their services due to an inability to offer the promised cover, or otherwise severely restrict their policies in order to continue offering the statutory cover. The result is a level of severely diminished competition in the insurance market, leading to fewer and less viable options for the oil/gas companies themselves.

Being the most specialised experts within their own sector, oil/gas companies are also in the best position to assess their own need for insurance within their financial guarantee scheme and to determine to what extent they will require it. Moreover, the dominant oil/gas companies have as much, if not more, financial capacity than re-/insurers due to the amount of capital they regularly generate through their businesses. Thus, their own ability to cover these risks independently of any financial security instruments should be one of the options considered.

In summary, we recommend as a starting point, considering a compensation and financial security scheme similar to OPOL to cover the liability associated with offshore oil and gas activities. Such a scheme may include various methods of covering potential liabilities (e.g. insurance, warranties, self-insurance, private and public funds). A voluntary financial security scheme is more appropriate for the development of market-driven solutions in which a certain level of insurance capacity can be maintained and developed.

Transparency, sharing of information and state-of-the-art practices

Transparency of an offshore regulatory regime means the policy and practices on how the regulatory authorities and offshore industry share information with each other, between peers or with the civil society. The degree of transparency affects the awareness of the public authorities, the industry and the civil society, i.e. on offshore oil and gas activities and the way they are managed and controlled. It may also affect the nature of communication, commercial interests of companies, spreading of technologies, lessons learned and cross-border cooperation. An example of transparency in the offshore sector is the practice of some EU national regulatory authorities to publish information such as accident statistics and license award decisions concerning offshore operations.

11. What information on offshore oil and gas activities do you consider most important to make available to citizens and how? (Please limit your response to maximum 1000 words)

no comment

12. What is the most relevant information on offshore oil and gas activities that the offshore companies should in your view share with each other and/or with the regulators in order to improve offshore safety across the EU? How should it best be shared? (Please limit your response to maximum 1000 words)

no comment

13. What information should the national regulators share with each other and how to improve offshore safety across the EU? (Please limit your response to maximum 1000 words)

no comment

14. Which means, if any, would you recommend using to promote, across the EU, the use of state of the art practices to protect occupational health and safety during offshore oil and gas operations? (Please limit your response to maximum 1000 words)

no comment

15. Which means, if any, would you recommend using to promote, across the EU, the use of state of the art practices to protect the environment against accidents caused by offshore oil and gas operations? (Please limit your response to maximum 1000 words)

no comment

Emergency response and International activities

The emergency response capacity at present consists of resources and contingency plans on the level of the industry, national administrations and of the EU. In general, contingency plans are required for all offshore installations and are complemented by national and EU contingency plans to respond to large scale accidents. Adequacy of resources and their coordination, both affect the effectiveness of response to offshore accident. In response to recent accidents, particularly the one of the Deepwater Horizon drilling rig in the Gulf of Mexico, the emergency capacities are being strengthened. For instance, new response devices are being developed for use in deepwater conditions.

In the Mediterranean and the Black Sea offshore, oil and gas activities are underway both on EU and adjacent non-EU waters. This causes a risk for cross-border environmental damages from a possible offshore accident, not only across internal EU borders, but also across EU's external border. Apart from an interest in promoting high offshore safety practices also in adjacent regions, the EU participates in international activities to increase safety of offshore activities.

In response to the differing regulatory requirements both within the EU and internationally, some oil and gas companies have adopted company practices or standards that they apply to their activities in the EU and outside. Others adjust their practices more substantially to suit local conditions in the given country.

16. In your view what should be the role of the EU in emergency response to offshore oil and gas accidents within the EU? (Please limit your response to maximum 1000 words)

no comment

17. Please describe any recommendations you may have concerning cooperation with non-EU countries to increase occupational safety and/or environmental protection in offshore oil and gas operations internationally? (Please limit your response to maximum 1000 words)

no comment

18. Please describe here any recommendations you may have on how to incentivise oil and gas companies with headquarters in the EU to apply European offshore safety standards and practices in all their operations worldwide: (Please limit your response to maximum 1000 words)

no comment