

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)

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)

KIMO believes that before an authorisation is given companies or consortium should be required to evaluate and plan for all low probability high impact events, such as blowouts, which in the past have been considered too unlikely to plan for. This is particularly important for high pressure, high temperature and deep-sea wells due to the difficulty in preventing ongoing leakage. These developments are also undertaken in some of the most difficult sea conditions that are likely to hamper and response/clean up operation. However these conditions should be applied to all licensing operations to ensure that response planning is improved across the industry. In relation to the technical aspects of the authorisation there should be an increase in the redundancy and back up of equipment used on high pressure, high temperature and deep-sea wells given the potential scale of the impacts of any accident in these areas.

At the European level the Hydrocarbon Directive should be improved to only allow licences where the sufficient environmental protection measures are in place. In addition the Environmental Impact Assessment Directive should be amended to make it mandatory for all seabed exploration activities in the exploration, production and decommissioning phases.

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?

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

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)

Any company that is given a licence should be to prove, either by guarantee or through its size that it has the financial capacity to deal with the maximum liability caused by an accident caused by the licensed activity. If it cannot prove this it should not be granted a licence as risk to the environment and coastal communities is too high.

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)

The EU should develop a comprehensive legislative package to ensure that best practices not minimum standards are implemented in all EU member states whilst allowing member states to implement more stringent measure if they deem it necessary.

Neighbouring Member States should not be consulted on individual licences but should be on the overall licensing procedure, framework and requirements.

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)
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)

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

according to the different geological, geophysical, technical and other circumstances of each individual case.

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)
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)
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)

Yes. It is important to extend the coverage of the Environmental Liability Directive to all marine waters under the jurisdiction of Members States. This is particularly important due to the possible scale of the impacts from a deep-sea accident. The current liability regime is totally inadequate and does not provide the level of protection required for the environment and EU citizens.

It is imperative that the ELD is expanded to place a strict liability on oil and gas companies, including compulsory insurance, with a limit that suitable to provide compensation and remediation for the scale of impact caused in a worst-case scenario and a no limit on compensation in the case of gross negligence. The directive should be amended to include the following points³:

- An agreed system assigning liability in the event of a pollution incident involving an offshore installation to the party or parties responsible.
- Liability should be strict
- A fund, to which compulsory payments must be made as a condition of being granted operating licences for offshore activities. This fund would guarantee resources for clean-up

³ As highlighted by Client Earth in their report: International and EU regulation of oil rigs and other offshore activities
Analysis and proposals for reform

operations and compensation payments for personal injury, property and other environmental damage (broadly defined), up to set limits. Research is needed on the basis of the costs of previous spills in order to decide what the appropriate payments and limits should be, and there should be widespread public consultation on that issue.

- In the event that the party responsible for the pollution is unable to pay, for example in case of insolvency, the fund should be available to meet costs.
- Financial security conditions should extend to the period after a well is decommissioned, Consideration should also be given to whether insurance is an appropriate vehicle for financial security.
- The system should apply to any entity which wanted to undertake offshore drilling or any other type of offshore activity in the deep sea/seabed for any purpose including oil, gas, other deep sea minerals, CCS and including exploratory drilling.
- The Hydrocarbons Directive should be amended so the Member States may not issue licenses for off-shore drilling unless the operator can demonstrate it has emergency funds and/or insurance for environmental damage in place up to a sufficient minimum level.

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)

No. For traditional damage as well as environmental there needs to be a strict liability regime in place to ensure that claims are paid in a full and timely fashion and that claimants are not required to go through a long and expensive court procedure in order to receive compensation. The US OPA 90 should be used as an example to be implemented in Europe.

9. 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)

Firstly we believe that the companies should either through their size or through a financial guarantee should have the capacity to cover the costs, however ever if this is not the case we believe that there should be a compulsory oil spill fund based on the amount of production and risk of a major accident. We believe that the current systems, such as OPOL in the UK, are inadequate and do not provide the level of compensation required for a major incident due to limitation of liability for each accident. The deep water Horizon has show the potential scale of possible accidents and any scheme should be similar to the US OPA 90 which has no limit on liability in cases of gross negligence.

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.

10. 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)
11. 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)
12. 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)
13. 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)
14. 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)

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.

15. 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)

In our view in cases of pollution that occur within the EEZ of a member state and are not likely to cause transboundary pollution should be handled by the relevant authority in that member state. Where a pollution incident is likely to cause transboundary pollution we believe that EMSA should be empowered to intervene and manage the incident to ensure that any actions

minimise the impact on all member states. This should include the ability to requisition any vessel or equipment, from any member state, that it deems necessary to resolve the situation. The EU should also incorporate the OPRC directive into EU law and introduce a package similar to the Seveso II directive for oilrigs.

16. 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)
17. 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)
