

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 the [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 prospecting 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 prospecting, exploration or production etc) (Please limit your response to maximum 1000 words)

EEB supports the answers made by its members ClientEarth and Environmental Law Service

2. European law¹ foresees 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

The EU framework for permitting industrial activities is set under the Industrial Emissions Directive (IED)³. That Directive lays down rules on integrated prevention and control of pollution arising from industrial activities (Art.1). It sets out the procedural framework for authorisations (industrial permits). In relation to technical requirements, industry is required to operate according to “Best Available Techniques” (BAT). BAT is agreed according to multi-stakeholder approach and considered as the “State of the art” techniques which are most effective in achieving a high general level of protection of the environment as a whole.

Although “energy industries” are covered by that Directive in Annex I, the Industrial Emissions Directive does not explicitly cover all the related activities such as the prospecting/exploration or production of hydrocarbons. An amendment to Annex I to that Directive by including under Annex I point 1.5 “offshore exploration or production of hydrocarbons” would be a logic next step to cover a key production step (with huge environmental damaging impact) of the energy sector in order to

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 prospecting, 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 Directive 2010/75/EC of 24 November 2010 on industrial emissions (integrated pollution prevention and control) RECAST; OJ L 334/17 of 17.12.2010

improve its environmental performance.

- b) Similarly, what key elements should the financial capability requirement include in your view? (Please limit your response to maximum 500 words)

EEB supports the answers made by its members ClientEarth and Environmental Law Service

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)

See answer to point 2 a). The IED already foresees consultation of neighbouring Member States in certain cases, pursuant to Art. 26.

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)

[To both, questions 4. and 5.]

1. Amendment to Annex I of the Industrial Emissions Directive to include offshore hydrocarbon production in scope:

The EU framework for permitting industrial activities is set under the Industrial Emissions Directive (IED). That Directive lays down rules on integrated prevention and control of pollution arising from industrial Activities (Art. 1). It sets out the procedural framework for authorisations (industrial permits). In relation to technical requirements, industry is required to operate according to “Best Available Techniques” (BAT). BAT is agreed according to multi-stakeholder approach and considered as the “State of the art” techniques which are most effective in achieving a high general level of protection of the environment as a whole.

Although “energy industries” are covered by that Directive in Annex I, the Industrial Emissions Directive does not explicitly cover all the related activities such as the prospection/exploration or production of hydrocarbons.

Proposal: amend the IED and include under Annex I point 1.5 “offshore exploration or production of hydrocarbons”.

2: own Amendment to Proposal for Seveso III Directive:

On 21st December 2010 the European Commission published a proposal for a Directive of the European Parliament and of the Council on control of major-accident hazards involving dangerous substances (Seveso III Proposal)⁴. The goal of the Seveso Framework is to “lay down rules for the prevention of major accidents which involve dangerous substances, and the limitations of their consequences for human health and the environment, with a view to ensuring high levels of protection throughout the Union in a consistent and effective manner”

The Seveso III Directive therefore includes hydrocarbons that are considered as dangerous

⁴ COM (2010) 781 final of 21.12.2010

substances, either subject to the general hazard classification or subject to specific thresholds under named substances (i.e. petroleum products, heavy fuel oil). Crude oil is a dangerous substance and classified as Carc. 1B (may cause cancer) under CLP. However Art 2 (2f) of the Seveso III Proposal excludes offshore exploration and the exploitation of minerals including hydrocarbons of the scope, meaning that the accidents prevention and control framework under Seveso II cannot come to play. This approach is not consistent and is in contradiction with the subject matter of the Seveso III Directive.

In particular the Seveso Framework aims to improve the prevention of accidents (also affecting the health or safety of workers). The following tools under Seveso III would better prevent damage to the environment from offshore activities:

- the obligation of the operator to develop a Major-accident prevention policy (MAPP) – (art. 7). This MAPP shall include the operator’s overall aims and principles of action, the role and responsibility of management and shall address safety culture. Regular reviews of the MAPP will ensure that a high standard is maintained.
- Furthermore the operator of an upper tier Seveso installation (i.e. oil rigs should be covered) has to draft a safety report (Art. 9). Such a safety report deals with questions as identifying the major accidents hazards as well as accidents scenarios as well as with the setting out of preventive measures. This includes design, construction, operation and maintenance stage. It is to be regularly updated where justified by new facts or by new technological knowledge about safety matters. Annex II lists the minimum data and information requirements to be considered. Although these are generic requirements some important aspects are particularly relevant to the offshore sector such as “review of past accidents and incidents with the same substances and processes uses, considerations and lessons learned from these and explicit reference o specific measures taken to prevent such accidents;” and “point 5 “measures of protection and intervention to limit the consequences of an accident”. These items may be further specified in relation to the offshore sector.
- Regular inspections (Art. 19 of the Seveso III Proposal): The Seveso Framework obliges the competent authorities to carry out regular inspections including a minimum frequency of on site visits. The frequency of these on site visits (minimum annual for upper tiers) as well as independence of inspectors may need to be increased or further specified in order to identify early deficiencies / ensure safety compliance.
- The obligation to develop emergency plans (Art. 11 of the Seveso III Proposal) would also contribute to avoid or to reduce the number of human casualties as well as environmental damage, in case an accident happens.

The European Parliament has called on the Commission to “develop rigorous EU-wide accident prevention policies for oil platforms, and to extend the scope of the SEVESO II Directive to oil rigs [own emphasis added]”⁵.

A few countries (UK and Norway) have put in place requirements that include elements largely based on the Seveso II framework.

Including those activities within the Seveso III Proposal would be a first and necessary step forward to prevention of major accidents and controlling its consequences. Furthermore the inclusion of offshore drilling within the scope of the Seveso Directive must not lead to any decrease of already existing national safety levels. As the Seveso Directive is based on Art 192 TFEU, Member states have the possibility to keep or to introduce more stringent rules (see Art 193 TFEU).

⁵ European Parliament resolution of 7 October 2010 on EU action on oil exploration and extraction in Europe.

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)

See answer to question 5 and next answer

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)

[To both 6 and 7]

See also answer provided to question 5.

EEB further supports the answers made by its members i.e. ClientEarth and Environmental Law Service

Improved transparency has a role to play in promoting improved industry compliance. Civil society must be able to monitor the environmental performance of companies, allowing it to assist in identifying instances of non-compliance and apply public pressure.

Therefore an active dissemination policy is essential (should be the rule for 21st century policy making), see answer to question 11.

Strong and clear liability laws are also a necessary means of improving compliance.

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)

EEB supports the answers made by its members ClientEarth and Environmental Law Service

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)

EEB supports the answers made by its members ClientEarth and Environmental Law Service

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)

EEB supports the answers made by its members ClientEarth and Environmental Law Service

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)

Based on previous recommendation made under question 5, i.e. making that industry sector subject to the rules of the Industrial Emissions Directive and the Seveso III Directive would provide a level playing field and equal treatment of the large industry within the EU.

Art. 24 of the IED set out requirements in relation to access to information and public participation in the permit procedure relating to industrial activity. This includes full access to the permit conditions and its decision making basis, description of the installation and technical requirements as well as emission monitoring data.

Art. 13 of the Seveso III Proposal sets out information which has to be made available to the public. All information referred to in Annex V is important to make available as a minimum.

The information should be made available actively through online database(s), as it is suggested by these regulatory frameworks. There is no reason to “reinvent the wheel” and to make special treatment for offshore activities.

However in order to be consistent and to provide the same level of transparency for highest risk installations, the Seveso III Proposal needs to be strengthened in order to make sure the inspection

reports are made publicly available online 4 months after a site visit took place, as is required under the IED Art. 23.6 para 2.

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)

See answer to question 11. In particular “near miss” and accidents information, but especially lessons learned and best practices in accidents prevention information are most important to share. Providing that information through accessible online database (s) –as proposed- is one simple means of best sharing information.

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)

See answer to question 12.

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)

See previous answers (to questions 4 and 5)

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)

See previous answers (to questions 4 and 5)

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)

EEB supports the answers made by its members ClientEarth and Environmental Law Service
