



**Friends of
the Earth
Europe**

PUBLIC CONSULTATION

Improving offshore safety, health and environment in Europe

Response from Friends of the Earth Europe

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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 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)

* All authorizations (including seismic prospecting, exploration drilling or extraction) should take into account a company's past health and safety record and environmental impacts, both within and outside the EU, to assess the company's wider corporate performance and management ability to maintain standards. This should be an independent assessment not reliant solely on data provided by the applicant company. It should be focused on actual incidents, not on policies and promises.

* Companies with egregious records of safety and project management, that have been repeatedly found in violation of basic standards and their duty of care towards workers, environment or local communities should not be allowed to drill within EU waters, to avoid endangering EU workers, environment, communities and resources.

* Companies which have tried to avoid or refused to accept responsibility for liabilities resulting from safety breaches, despite clear and independently assessed evidence, should not be held to be responsible players and entrusted with the safety of EU seas.

* Public consultations should allow specific input for each license award and not be restricted to overall comments on licensing rounds. Just as approval of a major industrial venture requires public consultation, so all oil and gas projects should follow public deliberations on permit applications. This should include specific comments on the applicant company and its suitability. There have been some moves towards increasing consultation in relation to oil & gas exploration of recent, including in France in relation to shale gas.¹

¹ <http://www.bloomberg.com/news/2011-03-23/france-plans-changes-to-oil-gas-exploration-license-rules.html>

2. European law ²foresees 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 elements³ 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)

Oil companies should not be allowed to conduct exploratory drilling or extraction in EU waters if they can't demonstrate the capability to run requisite clean-up operations *and* pay commensurate compensation following a spill. There should be a mandatory requirement to provide necessary financial security in the event of an accident. If companies cannot provide this guarantee to cover liabilities, the technical risk of failure is ultimately transferred from the company onto the local and national governments. This provides false incentives for corporations to take risks they would not do otherwise, as they can avoid the full consequences.

BP's liabilities following the Macondo spill were in the multiple tens of billions of euros. This is significantly out of the range of many oil companies operating within EU waters.

The British Parliamentary Energy & Climate Change Select Committee concluded that taxpayers could end up paying for a major oil spill in the North Sea, with a lack of clarity surrounding liability issues.⁴

The report also warned that a lack of clarity surrounding liability rules in the UK "could see taxpayers pick up the tab for a major oil spill in the North Sea".

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)

As the Commission correctly stated, "[Self-regulation by industry is not enough to protect citizens and the environment.](#)"⁵ Legislation should ensure that neighbouring member states whose water, soil or air could be polluted through a leak are consulted during the authorisation process, prior to award of licenses. However, a state-of-the-art authorization practice within the EU would not only be limited to neighbouring member states, but include those countries that could be affected through a major oil spill, even if they are not neighbouring. Especially with the natural movement

² 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

³ 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.

⁴ <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenergy/450/45002.htm>

⁵ http://ec.europa.eu/energy/oil/offshore/doc/2010_10_13_offshore_oil_citizen_summary.pdf

of both water and wildlife, this should include countries that share resources, such as fish.

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)

Voluntary measures leave the ball in the court of the oil companies, who are financially driven to cut corners and take socially and environmentally unacceptable risks. [Preventing environmental disasters like the Deepwater Horizon relies on EU standards counter-acting this pressure, to prevent such unacceptable risks from being taken.](#)

Stronger legislation, increased monitoring and stronger fines and legal consequences for violations and breaches of standards are essential to improve the prevention of accidents affecting worker safety.

The oil industry and the British government present the UK regulatory regime as strict and well-performing, especially after the Piper Alpha incident in which 167 workers were killed. British standards are supposedly both light-touch and robust, with no need for improvement. However, the actual record to date has been disappointing in many respects, with major concerns raised by both outside experts and oil workers' organizations.⁶

There was been a marked increase in the number of 'Notices of Improvement' issued by the Health and Safety Executive to offshore platform operators in 2009-2010. In that time period, BP was served with 14 notices – 7 for its West of Shetland operation in Schiehallion alone, just 18 months after a fire required the evacuation of staff there. In the past few years, serious concerns have been raised about the safety culture of companies operating in the North Sea.

In 2003, the cost-cutting measures of Shell were held to be responsible for the death of two workers and the near explosion from a gas leak at the Brent Bravo platform in the East of Shetland region. "Shell's negligence came close to destroying the platform that day and killing another 105 souls who were on board," remarked Jake Molloy from the Oil Industry Liaison Committee/Rail, Maritime and Transport union.⁷ Despite the negative publicity and record fine of £900,000, the company's safety record has consistently been among the worst in the industry as it has continued to insist on deep cost-cutting measures.

According to industry journal Upstream Online, in 2008 Shell had been "by far the worst performer", receiving six out of a total of 18 legal notices issued by the HSE over a two-and-a-half year period.⁸ The article revealed that Shell had received more notices than any other operator working in the UK North Sea.

⁶ <http://www.oilc.org/>

⁷ Jake Molloy, 'The High Price of Cost Cutting (again)', OILC, <http://www.oilc.org/oilcorg/the-high-price-of-cost-cutt.html>

⁸ Chris Hopson, 'Under fire: Shell is feeling the heat over its Brent Bravo safety record', Upstream Online, 14 March 2008.

A recent investigation by The Press and Journal, found that between 2006 and 2008 the HSE was involved in 1,042 incidents offshore. Among these were 841 'dangerous occurrences' and 192 accidents.⁹ According to Carlo von Bernem, marine biologist and expert on oil pollution and coastal zone management at the German Institute for Coastal Research, "it is a wonder that an oil spill of the dimensions of the present one in the Gulf of Mexico has not occurred here."¹⁰

This lax approach to worker safety continues today. The UK Health & Safety Executive's offshore injury, ill health and incident statistics for 2009/2010 showed 50 major injuries, 20 more than the year before, and the highest recorded rate since 2005/6. The report also noted that "hydrocarbon releases" – oil or gas escaping, and that means potential explosions – rose by 19% year on year.¹¹

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)

N/A

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

⁹ Julio Godoy, 'Oil Spill Will Devastate the North Sea Warn Experts', IPS, 14 May 2010

¹⁰ ibid

¹¹ <http://www.hse.gov.uk/offshore/statistics/stat0910.htm>

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)

Oil and gas companies should be compelled to produce site-specific response plans to deal with oil spills and other major incidents. The harsh and windy conditions of the North Sea would make an oil spill clean-up extremely difficult – far more so than in the Gulf of Mexico. Especially because of this, there must be an end to generic response plans that are cut and pasted from elsewhere.

Further, rig operators need to enable staff to raise concerns about dangerous practices or safety failures, without fear of intimidation. Even the British Parliamentary Select Committee on Energy and Climate Change concluded that commercial pressures to keep drilling are so great that workers who point out safety problems "may be - or feel - intimidated by their managers".¹²

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)

N/A

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)

Existing environmental liability legislation should be extended to cover all EU marine waters. Given the movement of both water and wildlife, as well as the continuity of natural habitats, limiting environmental standards to the 12 nautical miles of territorial waters is not logical. Where offshore oil extraction is taking place within EU jurisdiction, it should be subject to the same standards, including on environmental liability. This is particularly important as member states extend their jurisdiction further out to sea through the UN Commission on the Limits of the Continental Shelf process. This loophole should be fixed.

9. In your view, is the current legislative framework sufficient for treating compensation or

¹² <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenergy/450/45002.htm>

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 legal framework for treating compensation or remedial claims for traditional damage caused by accidents on offshore installations is not sufficient. Potential victims face various barriers created by civil procedural law, including obstacles stemming from time limitations, financial costs, non-availability of public interest litigation and mass tort claims, and provisions on evidence. Legislation of Member States recognises various tools to alleviate such obstacles, however, their application and availability differ from Member State to Member State. The reform of these rules, while crucially important to the ability of victims to exercise their rights.

In particular, the EU law should provide for harmonized procedure for collective injunctive and compensatory redress. In this respect we refer to the results of the consultations on collective redress.

See:http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/collective_redress_consultation_en.htm

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)

Firstly, companies should only be allowed to acquire licences if they can provide guarantees of ability to cover costs to remedy and compensate for a large scale oil spill. The “polluter pays” principle must be maintained, and liabilities caused by corporate failure should not be offloaded onto EU tax-payers.

Secondly, off-shore drilling are incredibly complex operations that require an accumulation of huge technical expertise and resources. The vast majority of off-shore drilling projects are therefore run by big enterprises that consist of myriads of legally independent companies bound together by ownership and contractual relationships. These conglomerates are usually called multinational enterprises, they are represented by a single brand, and are governed by a single parent company.

Due to the twin principle of separate legal personality and limited liability, parent companies are not liable for impacts of operations of their subsidiaries or subcontractors. However, the underpinning of company structure in this way creates a governance gap. The management of the enterprise is accountable to its shareholders for profits, while it is not liable for impact of companies that generate that profit.

Therefore, compliance of the industry with applicable legislation and its precautionary approach could be significantly improved if the legislation would put an requirement on parent companies to exercise oversight and control of their subsidiaries and business partners in regard of their compliance with the aforementioned standards.

Where the parent company would fail to meet this statutory duty and the subsidiary or subcontractor company which has been responsible for the offshore drilling operation is not able

to remedy and compensate for the environmental damages, the parent company would have to cover these costs instead. The parent companies could be also held responsible for ensuring that the operating company under their control does have sufficient financial capacity (including through insurance) to cover for such damage.

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)

- Plans for any onshore infrastructure (these should be up for consultation)
- The volume of oil and/or gas extracted.
- Full reports on environmental monitoring carried out at each installation, including emissions released, purposeful release of hydrocarbons or other chemicals, and accidental spills.
- Health and safety records, including accident statistics
- The numbers of wells, both active and abandoned. The condition of disused wells, as well as dates of latest check-ups;
- Emergency response plans, including (approximate) locations from where relief would be obtained, and forms of relief available. We have witnessed the inadequacy of those prepared by even major oil companies for large-scale and high-profile projects (BP – Macondo, Shell – Chukchi Sea in Arctic). Public access is essential to preventing such lazy project management. Oil Spill Response Plans are not and should not be considered matters of commercial confidentiality. Yet for example, Cairn Energy has refused to disclose its oil spill response plans for drilling in Arctic waters off the west coast of Greenland, despite widespread public concerns over their potential inadequacy.¹³ There is no legitimate reason for such a refusal to be transparent.
- The demonstration of the company's technical ability to take all reasonable measures to

¹³ <http://www.bbc.co.uk/news/uk-scotland-11788122>

prevent and respond to dangerous events must be made public. European citizens must be able to see how disasters will be responded to.

- The financial amount guaranteed to cover liabilities in case of disaster, and any contribution to a Joint Fund [See question 10].
- All official payments made to the host government, and profits made on each field. When improved and evolved health & safety regulations are suggested, we hear oil companies threaten to leave, claiming that they are barely breaking even. Yet history has shown the companies tend to stay, and that some of the fiscal terms in Europe are in fact highly lucrative. Companies should be required to publish the taxes they pay and the profits they make on each field. This data is collected anyhow, and making it public will not create a commercial disadvantage.
- Any contributions in kind, expenses, benefits or payments made to government officials at all levels.

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)

Every health, safety or environmental incident, the cause, if any, and how it could have been prevented, and what action will be taken to prevent a re-occurrence should be reported to both national and EU regulators.

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)

N/A

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)

N/A

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)

N/A

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)

N/A

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)

The issue of extraterritorial responsibility has long been discussed at the EU and international level within the general context of corporate social responsibility and corporate accountability. The United Nations and the European Union have identified that the best way forward is through a 'smart mix' of regulatory and voluntary measures. The support voluntary approach can encourage some progress; however, if not accompanied by minimum regulatory standards, it does not bring expected results. For further details see:

http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index_en.htm

The European companies operate in third countries through their subsidiaries or contractual partners. States may, where a recognised basis for jurisdiction exists, impose requirements on parent companies to control and prevent their subsidiaries in third countries from committing

relevant offences, in this case from negligently causing environmental accident.¹⁴ This view has been echoed in the Study of Edinburgh University prepared for, and at the request of, the European Commission.¹⁵ An example where States have resorted to extraterritorial jurisdiction and imposition of duties on parent companies is in the area of criminal responsibility for corruption of foreign officials. The new UK offence of 'failing to prevent' bribery by foreign subsidiaries and sub-contractors is a prominent example.¹⁶

The aforementioned duty of care should apply to all situations where a EU company is able to exercise significant influence over the off-shore drilling operations of another entity. This duty of care should entail two basic obligations:

- 1/ to investigate the risks of accidents, and
- 2/ to take all reasonable steps to prevent and mitigate these where they have been or should have been identified.

For further details, please see the publication of the European Coalition for Corporate Justice (of which Friends of the Earth Europe is founding member) called Principles & Pathways: <http://www.corporatejustice.org/new-legal-report-principles-and.html?lang=en>

Drilling in the Arctic, especially off Norway and Greenland, could carry major consequences for the EU. Drilling in the Arctic is extremely dangerous, and a wide range of groups, including Friends of the Earth Europe, have demanded a moratorium.¹⁷ If the dangers are ignored, far more robust oil spill response plans are essential.¹⁸

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)

Oil and gas companies registered in the EU should apply EU standards when they operate abroad. EU citizens, organizations and governments, as well as non-EU individuals, civil society

¹⁴ See report of UN Special Representative of Secretary General 'Protect, Respect and Remedy', A/HRC/4/35/Add.2, 2008, pt 19: "Recognized bases include where the actor or victim is a national, where the acts have substantial adverse effects on the State, or where specific international crimes are involved."

¹⁵ Study of Edinburgh University, paras 188-191. The study is available at:

http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index_en.htm

¹⁶ Ibid, para 229. Bribery Act 2010, Chapter 23, available at <http://www.legislation.gov.uk/ukpga/2010/23/contents>.

Other examples include US 1990 Americans with Disabilities Act (42 U.S.C. § 12101), or 1964 Civil Rights Act, that imposes on all American employers covered by the Acts an obligation to monitor the compliance of all the corporations they control in foreign countries with the prohibitions stipulated in those Acts.

¹⁷ Sixteen organisations in Greenland, Norway, Russia, Canada, Denmark, USA demand moratorium

<http://www.ienearth.org/news/foreign-ministers-attending-arctic-council-meeting-told-to-leave-it-in-the-ground.html>

WWF calls for moratorium on oil exploration in Arctic

<http://afp.google.com/article/ALeqM5gtbuGGDjdie7ey0zIjSf-MUMI-Q>

¹⁸ Pew Trust, "Oil Spill Prevention and Response in the U.S. Arctic Ocean: Unexamined Risks, Unacceptable Consequences" http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Protecting_ocean_life/PEW-1010_ARTIC_Report.pdf

organizations or governments should be able to raise violations of EU standards in European courts, wherever the company committed the violation. This is necessary to improve offshore safety standards globally.

Separately, companies that don't adhere to EU standards abroad should not be awarded exploration or extraction licenses inside the EU. This is important also to protect EU citizens and environment and not a punitive measure, as a company that applies one set of principles abroad and another set within the EU is not implementing comprehensive best practice. Without such a safeguard, the regular rotation of staff, equipment and management practices would lead to lower and inadequate standards being brought to bear within EU waters.
