

PUBLIC CONSULTATION
Improving offshore safety, health and environment in Europe

Questions for the public

Response from Greenpeace European Unit.

Greenpeace European Unit (**Registration number on EU Register of Interests: 9832909575-41**) is part of the international Greenpeace network, active in over 40 countries worldwide. Based in Brussels, we monitor and analyse the work of the EU institutions, expose deficient EU policies and laws, and challenge EU decision-makers to implement progressive solutions.

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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)

Greenpeace welcomes the principle of state-of-the-art minimum standards governing oil and gas activities in EU waters. Although the disaster on the Deepwater Horizon, in which 11 people died and several million barrels of oil poured into the Gulf of Mexico, has been described as a 'wake up call' for the oil and gas industry, there is compelling evidence of a systemic failure by the oil and gas industry to take safety and spill prevention seriously. There is a compelling need to set in place a practical and effective authorisation and management regime to ensure that a similar disaster never occurs in EU waters, and to use the EU's influence to reduce the risk of disasters elsewhere.

Greenpeace is concerned that the UK Government's 'safety case' regime is being held up as a possible model for the minimum standards. The 'safety case' regime still leaves a lot to be desired, and should not be regarded as sufficient to prevent a major disaster. For example, the number of major and significant hydrocarbon releases in UK waters has been increasing, with more incidents in 2009/10 than in any of the past six years. Earlier this year, the UK's Health and Safety Executive (HSE) found serious faults with Shell's Brent Charlie gas platform, after a 25

tonne fender fell into the sea.¹

The head of the UK HSE's offshore division, Steve Walker, described himself as "particularly disappointed, and concerned, that major and significant hydrocarbon releases are up by more than a third on last year. This is a key indicator of how well the offshore industry is managing its major accident potential, and it really must up its game to identify and rectify the root causes of such events."

Last year, BP was served with a number of "improvement notices" for its Schiehallion field. The oil group "failed to ensure the safety of your employees and others not in your employment by not providing and maintaining a system of work for the control of that operation that was, so far as reasonably practicable, safe". Another notice that required action by March last year said BP "failed to ensure so far as it reasonably practicable the health and safety of your employees and others not in your employment by failing to maintain the fabric components on the Magnus offshore installation such as walkways, gratings, stairways and walkways".²

The UK's Energy and Climate Change Committee examined the UK's operating and licensing regime in the aftermath of the Gulf of Mexico disaster. It concluded that despite the 'safety case' regime and its purported culture of risk identification and management, oil companies were still reacting to incidents instead of preventing them from occurring. The committee noted that gaps in the UK's liability regime meant that it was unlikely to ensure that those responsible for an incident were brought to account, and therefore urged the UK Government to work with the EU to make sure that companies to improve the legislative framework so that companies were held liable for any damage they cause.

2. European law 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 elements 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)

Greenpeace believes that any company which wants to drill for oil or gas must be able to demonstrate that it can fully cover any and all costs arising from a major disaster, as a fundamental condition of licensing. Otherwise, we run the risk of European taxpayers having to step in to cover the cost of cleaning up.

This is becoming ever more relevant as European oil and gas fields mature, with the resultant shift from larger multi-national operators towards smaller independents. This is compounded by an increase in frontier exploration – e.g. drilling in deep water and other, hostile environments, where the risk of a spill is greater and the clean up operation more complex.

These two developments make it all the more important that companies are properly insured against major disasters. We understand that there have been suggestions that this might come either through insurance or through industry-led mutualisation schemes, such as OPOL. We see no reason to prescribe the means of cover; what is important is that operators have adequate cover, not who provides it, as long as it is not public money. However, we believe that the OPOL limit (\$250 million) is insufficient, and would not be able to cover the costs arising from a disaster on the scale of that which struck the Gulf of Mexico.

¹ North Sea oil and gas field facing 'major problems' after accident. *Aberdeen Press and Journal*. 26 April 2011.
<http://www.pressandjournal.co.uk/Article.aspx/2232857>

² BP and Shell 'not meeting safety standards on North Sea oil rigs'. *The Guardian*. 1 May 2010.
<http://www.guardian.co.uk/business/2010/may/01/bp-shell-north-sea-oil-rigs-health-and-safety-executive>

The UK has direct experience of the OPOL model, and Members of its Parliament have expressed concerns that the \$250 million limit is insufficient. The UK's Energy and Climate Change committee, examined its regulatory regime in light of the Gulf of Mexico, and concluded in November 2010 that the limit was too low and the definition of what was covered was too vague and likely to expose taxpayers to clean up and compensatory costs.

"Given the high costs of the incident in the Gulf of Mexico, we believe that the OPOL... limit of \$250 million is insufficient. We are concerned that the OPOL provisions only cover direct damage and also that the precise definition of "direct damage" is unclear. While membership of OPOL remains voluntary—despite it being a pre-requisite for a licence—its voluntary nature weakens its legality and the control and deployment of its funds. We believe this lack of legal control will allow polluters to claim that damages to biodiversity and ecosystems are indirect, and therefore do not qualify for compensation."³

The cost of the Gulf of Mexico disaster has been estimated at around \$40 billion. We note that the three companies who share liability – Transocean, BP and Haliburton – are suing each other in an attempt to shift the burden of responsibility.

Given the cost of cleaning up the Gulf of Mexico, the ensuing legal altercations between the various parties and the level of financial reserves maintained by independent operators, Greenpeace cannot see how anything other than unlimited insurance cover could provide adequate reassurance to national regulators and governments that the cost of a spill or similar disaster would be met entirely by the company which caused it.

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)

Greenpeace supports the Commissions proposals to introduce legislation mandating minimum binding standards to which each company's licensing regime must adhere.

We understand that certain member states have expressed concern that introducing minimum standards could undermine their authorisation and licensing regimes. To allay their concerns, the Commission should propose introducing minimum standards which are, at the very least, as stringent as the most comprehensive standards of any member state. Further, the Commission should ensure that the minimum standards take account of ongoing revelations as to the cause of the Deepwater spill, building on existing regimes and ensuring that any gaps in liability are closed.

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)

The only way to prevent accidents affecting workers and the environment is to engender a

culture shift throughout the oil and gas industry. The UK's Energy and Climate Change committee found that oil and gas companies operating in UK waters were accustomed to reacting to incidents, not preventing them. This is particularly worrying, because the UK claims to have one of the most arduous safety regimes of any EU member state.

Although the causes of the Deepwater Horizon disaster are not fully understood, the prevailing conclusions of the published reports is that there was a culture of cutting costs and of failing to do anything other than the most cursory safety checks.

Greenpeace believes that this is because the oil and gas industry does not properly account for the externalities of its operations. Saving money in the short term is valued more highly than preventing accidents, even though the costs arising from such an event outweigh the cost of prevention, because the industry has no means of properly accounting for the risk and costs of a major spill.

Insisting on mandatory insurance is one way of ensuring that the costs of a spill are factored in to operational decisions (thereby helping to change the operating culture towards accident prevention). However, the Commission may like to consider powers to bar operators from operating in EU waters (not just territorial waters) in the event of their being responsible for a major disaster either inside or outside of EU waters.

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)

There are four steps to improving compliance. The first step is the introduction of mandatory, EU-wide standards.

The second step is to ensure that companies would be liable for any and all damage arising from their operation in EU waters. As mentioned in our response to questions 4 and 5 (above), there is compelling evidence that the oil and gas industry is not taking the risk of major disasters seriously, and is certainly not doing enough to prevent them from occurring. Any loopholes or gaps in the present liability regime must be closed, so that there can be no doubt that all costs would be met by the company whose operations resulted in the damage.

Thirdly, there needs to be some form of supra-national body with powers to oversee national regulators. We understand that there are various proposals being put forward, including expanding EMSA's remit, creating a wholly new body with powers to regulate offshore installations, and a third proposal for a 'board of regulators' akin to BEREC, which governs the telecoms industry. Greenpeace is neutral as to the optimum system, but we firmly believe that there must be some form of oversight, independent of national regulatory and licensing regimes.

Finally, there is a need for frequent unannounced inspections of offshore installations. Frequent inspections mean that any problems can be identified quickly, thereby encouraging the company to make the necessary repairs. They also give inspectors a better understanding of the cultural attitude to health and safety on individual platforms.

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)

As stated above, we believe that there should be some form of supra-national body with powers of oversight, and frequent, unannounced inspections of individual platforms. This is necessary to identify problems and to ensure that companies remedy them.

Given that there may be instances when companies repeatedly ignore orders to improve their operations or to make repairs, it would be helpful for the supra-national body to have the power to bar operators from EU waters for a designated period of time.

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)

Greenpeace fully supports the Commission's proposals to close the various liability loopholes, such as the omission of environmental damage to marine waters from the ELD. From a broader perspective, the Environmental Liability Directive needs to be urgently revised so as to have its scope expanded and so as to deliver mandatory financial security.

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)
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)

There is only one way to ensure that the costs of remedying and compensating for the environmental damages of a major disaster: to require that all companies have unlimited

insurance cover as a pre-requisite for licensing. We do not believe that this requirement would be too onerous, because the alternative would be for European taxpayers to pick up the bill.

Greenpeace recognises that there are no such products available at present, but expects that if this were made a requirement of licensing then either the insurance industry would step in to fill the gap or the industry would band together and provide mutual support by expanding or replicating the OPOL agreement (albeit with more extensive cover).

Either way, we believe that the EU must require all companies to be able to demonstrate that they can pay for any and all damage arising from their operations before being given a license to operate in EU waters. If the cost of doing so would exceed the financial capacity of the applicant, then they should not be given a license until they have secured sufficient insurance or similar cover.

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)

The most important information to provide is full disclosure of all incidents on offshore rigs, whether unauthorised hydrocarbon releases, accidents involving workers or similar events.

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)
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)
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)
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)

As stated above, we believe the best way to promote pan-European safety standards would be to introduce minimum standards, building on existing 'best practice' and emerging information as to the causes and impacts of the Gulf of Mexico disaster, reinforced by a supra-national regulator, the closure of all liability loopholes and a requirement that all operators have adequate insurance to cover a major disaster.

At the same time, we need to ensure that the impact of drilling and oil spills is properly recognised. There needs to be proper consideration of the risk and impacts of oil spills as

part of the Strategic Environmental Assessment. There should also be proper assessment under the Habitats Directive of the impact of individual wells and the cumulative effect of offshore drilling programmes.

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)
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)

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)

Greenpeace strongly supports the European Commission proposals to hold EU-based companies to the same high standards, wherever in the world they operate. We believe that the simplest way to do this would be to require, as a condition of licensing, any company wishing to operate in the EU to agree to conform to at the very least the same minimum standards outside of EU waters. Companies should also be required to publicise their oil spill response plans, regardless of where in the world they would be drilling.

Where companies can be shown to have failed to adhere to this agreement, their licenses could be revoked for a designated period of time, or permanently for more serious infringements.

With the easy oil running out, companies are increasingly pushing into new frontiers, such as the Arctic Circle, where the combination of hostile environments and fragile ecosystems mean that we should take even greater steps to prevent oil spills and equivalent disasters from occurring. Such environments require more stringent standards and regulations, and the EU must work with Arctic Council nations to prevent EU companies from carrying out risky and unsafe practices in frontier environments.
