

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 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)

Any prospection, exploration or production activities within an EU Member State's Exclusive Economic Zone (EEZ) and waters not considered deep or otherwise hazardous should abide by common EU standards. National Authorities would be responsible for authorising such activities but ensuring that common EU standards are met should be the principal responsibility of the European Commission. All EU companies involved in offshore prospection, exploration or production activities in areas beyond European Sea basins should also conform to common EU standards.

In regards to prospection, exploration or production activities in deep or otherwise hazardous waters, it is essential that no authorisation should be permitted in such waters. The risks are currently too great to both the safety of offshore installation workers and to the marine environment when considering that the equipment currently available for the use of preventing blow-outs and major oil spills at offshore oil installations has not been adequately proven as fail-safe (particularly in relation to low-probability, high impact scenarios).

Operators should have an obligation to undertake an independent and comprehensive Environmental Impact Assessment in order to request a license/permit covering all stages of prospection, exploration, production and decommissioning. This assessment must include robust criteria on impacts on seabed integrity, noise effects, contaminants or disturbances of deep-sea communities and marine life. This is particularly valid for exploratory activities which have huge impacts (e.g. seismic tests). There must also be an obligation to implement mitigation measures to avoid and reduce harmful effects on the marine environment. If the outcome of the EIA is unsatisfactory or reveals risks which cannot be reduced or technology that limits safety of operations, the applicant should not be granted a license to operate.

2. European law ¹foresees that the competent national authorities shall ensure that authorisations are granted on the basis of selection criteria which consider, among other things, the financial and technical capability of the companies wishing to carry out offshore oil or gas operations.

a) What key elements² should this technical capacity requirement include in your view?

Please limit your response to maximum 500 words

As a minimum requirement, companies wishing to carry out offshore oil or gas operations must ensure that they have access to equipment proven to be capable of immediately sealing any potential oil leak resultant from such activities. The equipment should be capable of tackling all scenarios, and especially the sorts of accidents that have a low probability of occurring but could result in major oil spills.

Minimum technical requirements should include the use of Best Available Techniques (BAT), with regular inspections and maintenance which should include requirements for upgrading of installations as technology evolves. Oil and gas platforms generate immense amounts of waste from their general operations (discharges of produced water, cuttings contaminated with toxic drilling mud/fluids). The use of BAT must address this source of contamination and ensure strict discharge requirements are in place.

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

Any company, or association of companies, wishing to carry out offshore oil or gas operations should have the financial capability to fund ALL resulting clean-up work and ALL associated compensatory claims in the case of an accident. This must be a legal requirement across the EU, in contrast to a voluntary initiative. As regards setting appropriate financial guarantees and appropriate levels of liability, the worst case scenario should be planned for and should consider the estimated costs of the recent Deepwater Horizon incident that have been put at around 50 Billion US dollars.

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)

Voluntary agreements as regards certain aspects of offshore operations can complement binding legal instruments but should not be regarded as the sole instrument in dictating practises and procedures of offshore operations.

Considering that oil spills do not recognize political or geographic borders, when an award of authorisation is granted in a certain EU Member State's sovereign waters, other EU Member States and those outside of the EU should be consulted as a matter of course.

Prevention of accidents

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

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

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)

- *The EU can provide added value through setting strong EU standards as regards safety practices and procedures of offshore drilling;*
- *The European Commission should level-up minimum standards within the EU and ensure that safety and environmental concerns are imbedded in all legislation and that the highest safety and environmental standards are applied to industrial activities;*
- *Further investment by industry should be set aside for research and development as regards prevention and accident remediation technologies; and further investment by industry and support from Member States should be put towards achieving a larger and more experienced inspection workforce;*
- *Further investment into safety training for workers must be made compulsory.*
- *A dedicated EU agency should conduct regular “stress tests” of installations, in order to reduce risks of accidents;*
- *The rights of offshore workers should be strengthened and further protection given to protect them against any form of harassment when considering alerting authorities of potential safety risks; workers on offshore installations should be given the right to anonymously report to national or European authorities of safety concerns they might have as regards offshore installations.*

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)

- *A moratorium on all new offshore oil drilling should be enforced, until such time as the existing weaknesses attributable to offshore oil drilling have been properly dealt with by new regulations and procedures;*
- *Again, the EU can provide added value through setting strong EU standards as regards the practices and procedures of offshore oil drilling;*
- *Again, the European Commission should level-up minimum standards within the EU; safety and environmental concerns should be imbedded in all legislation and the highest safety and environmental standards be applied to industrial activities;*
- *The Seveso II Directive should be extended to offshore oil drilling operations;*
- *Again, further investment by industry should be set aside for research and development as regards preventing oil spills; and further investment by industry and support from Member States should be put towards achieving a larger and more experienced inspection workforce.*
- *As regards Arctic waters: All offshore drilling activities should be forbidden in light of the distinct lack of available clean-up and emergency prevention capabilities.*

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)

In support of the European Commission and Member States, a dedicated EU agency, perhaps in the form of a modified European Maritime Safety Agency (EMSA), should be given the responsibility to monitor and assist in enforcing the implementation of new or amended EU legislation that concerns offshore oil drilling. In order to develop the services and expertise of an EU agency tasked with such responsibilities, EU offshore operators and other parties involved in offshore oil and gas activities should sponsor the agency perhaps in the form of an EU offshore safety tax.

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)

[See response to question 6]

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)

We support extending and strengthening the current Environmental Liability Directive to explicitly include offshore drilling activities in all marine areas under the jurisdiction of EU Member States. The scope of the Directive should also be reviewed to include liability for impacts on non-protected species, both for their intrinsic value as part of the marine ecosystem and due to the economic value of some of those species (exploited by fishing activities).

9. In your view, is the current legislative framework sufficient for treating compensation or remedial claims for traditional damage caused by accidents on offshore installations? If not, how would you recommend improving it? (Please limit your response to maximum 1000 words)

The current legislative framework dealing with compensation and remedial claims should be fully reviewed by the Commission as regards damage caused by offshore installations. All remedial or compensatory claims resultant from damage caused by offshore installations in EU waters should be met promptly with costs fully reimbursed. In the case of a remedial or compensatory claim being made, the operator, or association of operators, should be fully liable for meeting such claims. Here, comprehensive common EU standards are necessary.

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)

First and foremost, a company who cannot commit to, or cannot show evidence of being able to fund the consequences of unforeseen events (considering the potential cost of estimated worst case scenarios) should not be authorised to undertake oil drilling operations - without exception. If, through unforeseen circumstances a company does not have adequate finances for remedying and compensating for the environmental damage of an oil spill, the Commission should ensure that a system is in place whereby an association of firms involved in such activities within specific regions contributes proportionally to meet such claims. Measures must be put in place that ensure taxpayers are not made financially liable for industrial environmental 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)

Rules on company transparency need to be more rigorous, with clear requirements regarding the nature and extent of environmental disclosures which companies are required to make.
Companies should make available all information they have as regards the measures they have in place to prevent against oil spills and allow for fully independent organizations to report on the suitability of such measures.
In utilizing the services of an EU agency to monitor the implementation of EU legislation concerning offshore activities, reports of such investigations - and other routine national authority inspections - should always be made widely available to the public.
Companies should also make available all information as regards the number of leaks (including dispersed and crude oil) that occur at offshore installations.

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)

Companies must share all information as regards the suitability of specific equipment used to ensure offshore safety, including detailed reports from incidents and instances when standard equipment has failed to prevent or contain an incident/leak/spill.

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)

National regulators should share information as regards to best practises concerning regulatory initiatives used in order to reduce safety risks associated with all offshore drilling activities. Company information on equipment etc. (see answer to question 12) should obviously also be communicated to the relevant national authorities, who in turn should share it with their international counterparts.

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)

It should be compulsory for EU Member States to apply BAT and Best Environmental Practices (BEP). Alongside national authorities, an EU dedicated agency, such as a modified EMSA, could assist in ensuring that such provisions are adhered to.

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)

Operators of offshore installations should have the primary responsibility to respond to an incident whilst simultaneously being under the guidance of the Member State who has jurisdiction for the water (s) affected.

Support should be provided by EMSA, in a similar manner as already provided for maritime oil pollution incidents, to help “top-up” the efforts of coastal states by focusing on spills beyond the national response capacity of individual Member States. EMSA could also assist in providing pollution response vessels for at-sea recovery of oil, satellite imagery service for monitoring of spills and provide pollution response experts to give operational and technical assistance.

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)

Common EU oil drilling standards should apply to all EU oil drilling companies whether they are operating inside or outside of European sea basins. The Commission should consider the precedent for other similar action, such as the Council Regulation 1185/2003 on shark finning in waters outside of EU Member State sovereignty.

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)

For an EU company involved in offshore oil and gas activities, applying the strongest safety standards and practises across their operations globally should be a matter of course not just for protecting their own interests in securing business for the future but to protect their own brand identities. The Commission might want to further explore the potential for denying authorisation as regards prospection, exploration and production activities if a company fails to ensure that EU safety standards and practises are implemented globally.
