

**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)

A licensing process that separates responsibility for authorising drilling permits from rig safety and well operations oversight should be viewed as best practice. In regions of Europe where such a system is not in place, separate regulators for licensing and safety should be established.

2. European law <sup>1</sup>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<sup>2</sup> 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)
- a) Part of the technical capacity should include a safety case, combined with robust inspections and auditing of the safety case to ensure it is actively used as a risk mitigation tool. Other technical requirements should include: designing wells to have two barriers; ensuring that there is genuinely independent review and assurance of the well design and operation, either by an external independent third party or by an independent function within the company that is removed from the line management of the well; ensuring that

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<sup>1</sup> 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

<sup>2</sup> 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.

robust human competence management systems are in place so that drill crews possess the required skills and demonstrate the correct behaviours on the rig; and a spill response plan that takes account of a credible worst case spill scenario. Also important is to raise the level of drilling minimum competency among rig crews, including through new and enhanced well control training.

- b) Adequate insurance coverage or other evidence of financial responsibility should be in place to cover the costs of credible worst-case scenarios. In the UK, OPOL (The Offshore Pollution Liability Agreement) provides the framework for companies to demonstrate financial capability of up to \$250million per incident, and \$500million in the annual aggregate. Companies that plan to drill wells with a credible worst-case spill scenario that exceeds the OPOL commitments should demonstrate additional financial responsibility instruments.

In areas of Europe not covered by OPOL – for example, the Mediterranean, Black and Baltic Seas – a financial responsibility regime should be established along the lines of OPOL. This would require gathering together the Operators of the region, agreeing a Constitution, rules and memoranda, and a Secretariat with a Managing Director. In the UK, participation in OPOL is a requirement for those seeking the award of drilling licenses.

3. How (such as through legislation or voluntary measures at international, EU or national levels or by industry) should the adoption of state-of-the-art authorisation practices be best achieved throughout the EU? Should neighbouring EU Member States be consulted on the award of authorisations? (Please limit your response to maximum 1000 words)

The International Regulators Forum (IRF) provides an appropriate forum in which best authorisation practice is shared between the major regulators around the world. This Forum, which is looking in detail at the regulatory implications of Macondo, is expected in due course to agree a range of guidelines that reflect the regulatory lessons from Macondo and the Montara well blow-out offshore Australia. National regulators will be able to draw on the deliberations of IRF and integrate these into their national systems.

Neighbouring Member States should not be consulted on the award of authorisations, as countries which do not have established and experienced regulators may not be in a position to adjudicate on the technical aspects of commercial licensing bid. However, these countries should be notified once the licence has been awarded in order that crisis response resources can be planned for and deployed as part of a regional spill preparedness plan.

### **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)

BG Group believes that the 'ALARP' concept, whereby risks are mitigated to as low as reasonably

practicable, represents a robust regulatory tool to ensure that adequate prevention measures are in place.

In the UK, regulators hold senior company management to account in the event that the ALARP requirement has not been met. This non-prescriptive approach to HSSE management has helped to deliver a strong safety record in the UK in recent years. Where appropriate, it could be adopted by other regulators around Europe.

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)

Questions 5, 6 and 7 will be taken together.

The supervision of offshore operators needs to be conducted primarily by the national regulators with responsibility for offshore safety and well design/operations. It is important that offshore installations are not inspected by duplicate parties seeking to verify similar processes.

On UK installations, inspections take place at a number of levels. DECC inspects rig procedures, asset integrity, equipment and behaviours against the requirements of the installation safety case. The Health and Safety Executive (HSE) verifies well designs and operations. Drilling equipment and other safety critical infrastructure may also be inspected by insurance providers. Importantly, companies should have internal independent verification capabilities in place to perform detailed audits of the procedures, well designs and contractors undertaking the work.

BG Group believes that the inspections regime in the UK has proved to be robust, especially when compared to the regimes in other countries. For example, according to the US National Commission on the BP Deepwater Horizon Oil Spill, between 1996 and 2009 79 loss of well control accidents occurred in the US Gulf of Mexico; in the UK, since the Ocean Odyssey disaster in 1988, BG Group is not aware of a single well blow out with associated spill.

The regulatory system that prevails in the UK is a factor in the explanation for the North Sea industry's strong safety performance in recent decades.

A further key measure to verify compliance of the industry should be to ensure that the performance of the national regulators is in turn assessed by other national auditing bodies in the relevant country, for example the National Audit Office (NAO) in the UK.

### **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)
7. In your view, which are the key measures to supervise and verify compliance of the industry with offshore health, safety and environmental rules and who should do the supervision and verification? (Please limit your response to maximum 1000 words)
8. In your view, should the existing environmental liability legislation (Directive 2004/35/EC) be extended to cover environmental damage to all marine waters under the jurisdiction of the EU Member States? (Please limit your response to maximum 1000 words)

In order to assess any damage that may have been caused by an oil spill incident, a baseline condition must be established against which any changes can be measured. Such baseline metrics are currently not available to all marine waters and without protocols, including for damage assessment in the marine environment, any such extension to the current ELD is difficult to envisage.

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)

In the UK, there is no legal limit on the liability of companies for the consequences of their actions. Nevertheless, the current compensation framework in the UK operates via OPOL a voluntary industry mutual agreement which requires each operator to accept strict liability for pollution

damage and reimbursement of third parties (including public authorities) for cleanup and compensation costs of up to \$250million per incident, and \$500million in the annual aggregate.

Both the North Sea offshore industry and the UK Government are satisfied that OPOL has delivered, and will continue to ensure, sufficient financial responsibility in the event of an oil spill in UK waters. While this framework applies to the UK and some of the surrounding regions of North West Europe, a concept structured on OPOL principles could be replicated in other European regions, including the Mediterranean, Baltic and Black Seas. Establishing a similar oil pollution compensation fund in other parts of Europe could enable compensation best practice to be extended across the EU.

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)

Creating a pan-European industry pollution regime, with governance procedures and rules similar to OPOL to establish levels of financial responsibility, would enhance the ability of the smaller operators to pay for the costs of a spill.

An additional measure could be to ensure that there are consistent methods for calculating compensation awards across Europe. Progressing compensation payouts through different national court systems could increase the time needed to reach agreement with impacted stakeholders and lead to differing levels of compensation being awarded.

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