



AD-HOC INDUSTRY
Natural Resource Damage Group

A Program of Barbara J. Goldsmith & Company

RESPONSE TO PUBLIC CONSULTATION

IMPROVING OFFSHORE SAFETY, HEALTH AND ENVIRONMENT IN EUROPE

Submitted To

**European Commission
Directorate-General for Energy**

**11 May 2011
Brussels**

(Registration ID: 76326275827-75)

CONTENTS

<u>Section</u>	<u>Page</u>
PART 1: GENERAL COMMENTS	1
PART 2: RESPONSES TO SELECTED QUESTIONS FOR THE PUBLIC	3
Prevention of Accidents	
Question 4	3
Question 5	3
Verification of Compliance and Liability for Damage	
Question 6	3
Question 7	4
Question 8	4
Question 9	5
Question 10	5
Transparency, Sharing of Information and State-of-the Art Practices	
Question 11	6
Question 12	6
Question 13	6
Question 14	7
Question 15	7
Emergency Response and International Activities	
Question 18	7
APPENDIX A: ABOUT AD-HOC INDUSTRY NATURAL RESOURCE DAMAGE GROUP	A-1
APPENDIX B: REFERENCE COPY OF THE PUBLIC CONSULTATION ISSUED ON 16 MARCH 2011	B-1

PART 1: GENERAL COMMENTS

The Ad-Hoc Industry Natural Resource Damage Group (Group) is pleased to submit these comments on the European Commission, DG Energy Public Consultation “Improving Offshore Safety, Health and Environment in Europe” (Consultation) issued on 16 March 2011 and commends the European Commission for addressing the issue of offshore safety relative to worker health and safety and the environment and seeking public input. If the Commission chooses to establish an environmental liability framework relative to EU marine waters, the Group encourages that it be one that is “reasonable, balanced and predictable” and reflects sound policy, law and methodology, as further amplified in the comments provided below.

Our response is comprised of two parts. We first make some general comments and then, we provide responses to some of the questions posed in the Consultation.

- The EU should consider carefully whether an international, rather than limited European initiative can produce better results in the mid and long term. Offshore accidents have a potential to affect both EU and non-EU countries, and will likely affect more than one country. The EU should not over-react to the Gulf spill and rush to adopt EU legislation if an international regime is found to provide a better approach. A distinction may have to be made between (i) licensing and direct regulation of offshore activities, and (ii) liability for environmental and other damage that might result from offshore accidents. With respect to the latter, the EU should explore whether an extension of the International Convention on Civil Liability for Oil Pollution Damage is an option, and assess in depth the relative pros and cons of the available options.
- Any EU proposal to exert jurisdiction over territory beyond the EU’s and Member States’ jurisdiction, raises significant issues under EU and international law. It is by no means a given that the EU and Member States may assert legislative and judicial jurisdiction over extra-territorial waters. The EU should first examine this issue and define “marine waters” in a way consistent with international law. This is a critical preliminary issue.
- As a related matter, appropriate deference is due to the Member States’ international law obligations and freedom to enter into international treaties. The EU Environmental Liability Directive (ELD) ^{/1} does not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Annex IV, which lists several conventions relevant to international oil and other pollution, under the condition that any such convention is in force in the Member State concerned. Further, the ELD Directive does not prejudice the operator’s right to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988. As the ELD’s recitals explain, the EU legislature did not want to limit the Member States’ freedom to remain or become parties to the international civil liability agreements. These reasons and considerations continue to be highly relevant to offshore activities.
- Further, to the extent that the issues the Commission wants to address result from the territorial limits of EU law in general, any solution should not necessarily be limited to the activities the Commission is currently focusing on (i.e. certain offshore activities). Rather, if the EU wants to extend the territorial limits of its jurisdiction and those of the Member States, it should consider carefully whether it should do so generally, not only in relation to the current consultation. Any such extension, however, should be consistent with the international law to which the EU and Member States are subject.

- If a European initiative is the best way to proceed (as noted above, this is by no means a given), it should:
 - Be consistent with, and integrated into, the existing and evolving international legal framework (including, but not limited to, the International Convention on Civil Liability for Oil Pollution Damage);
 - Focus on creating a harmonized Europe-wide framework and pre-empt diverging national measures;
 - Impose effective and efficient requirements on both government and industry, and minimize red tape and procedures that do not contribute to efficient risk management; and
 - Not aim at “zero risk” but instead create conditions for careful management of risk.
- Industry, not governments, should play the main part in managing risks associated with offshore operations, and industry self-regulation should be accommodated and recognized in any EU framework.
- Effective application of the EU Environmental Liability Directive, which is aimed at preventing environmental damage, could go a long way in also preventing offshore accidents. If the ELD regime is applied in a predictable, reasonable, and balanced way, it will help to prevent offshore accidents.

PART 2: RESPONSES TO SELECTED QUESTIONS FOR THE PUBLIC

This part presents responses to some of the specific questions of the Consultation. We have chosen to respond only briefly on some of the questions, but can provide additional input as desired by the Commission.

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: ”

Effective application of the EU Environmental Liability Directive (ELD), which is aimed at prevention of environmental damage, could go a long way in also preventing offshore accidents. If the ELD regime is applied in a predictable, reasonable, and balanced way, it will help to prevent accidents. (The issue of the ELD's coverage of marine waters is discussed under Question 8, below.) Effective and efficient offshore accident prevention, of course, requires a thorough understanding of the offshore operations concerned, and have to be tailored to the specifics of such operations. This suggests that operators should be in charge of designing appropriate accident prevention plans and specific measures for their operations. Any regulatory framework should facilitate and support these efforts, not dictate a “one size fits all” approach, which will lead to less effective and inefficient risk management. The ELD is based on the operator's primary responsibility for risk management. It does not prescribe detailed risk management measures, but essentially provides financial incentives for excellence in risk management by imposing ex post facto liability for any accidents that may be caused by covered operations. If applied correctly, the ELD therefore provides the flexibility that is required to pursue efficient accident prevention.

“ 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 see the comments under Question 4, above.

Verification of Compliance and Liability for Damage

“ 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. ”

First of all, it should be recognized that compliance with regulations is not guaranteed to provide effective and efficient accident prevention. Whether, and to what extent, compliance leads to risk reduction depends entirely on the regulatory requirements. As noted under Question 4, above, effective and efficient risk management and accident prevention requires plans and measures tailored to the specific operation concerned. Regulations therefore cannot dictate the specifics and should be sufficiently flexible to accommodate the needs of an individual operation's risk management.

The level of regulatory compliance should be improved by:

- *Government support to the development by industry of compliance tools.*
- *Reducing the adversarial nature of the government-industry relationship and having governmental authorities cooperate with companies in achieving compliance; and*
- *Providing incentives and benefits to companies that demonstrate excellence and leadership in compliance management (for further details, see response under Question 14, below).*

“ 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?”

Supervision and verification should be done by the authorities in a spirit of working with industry to improve compliance, not to punish them for any non-compliance that may be discovered. The primary objective of supervision and verification should be prevention, not repression or punishment.

Key measures to supervise and verify compliance include:

- *Creating immunity schemes for companies that self-report non-compliance issues and address them in a pro-active manner;*
- *Setting unambiguous and balanced rules for reporting data to governmental authorities;*
- *Setting clear and proportional sanctions for non-compliance, with due regard for the nature of the non-compliance, the blameworthiness of the company concerned, and a company's overall compliance record; and*
- *Establishing clear rules on supervision and verification that strike the right balance between the need for verification and the rights of companies.*

“ 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?”

As noted above, there is an issue as to whether offshore activities, and in particular, damage arising from such activities, should be regulated by the EU. Indeed, given the cross-border and international aspects, an international law regime may well be more appropriate. Before the EU goes down the road of developing its own regime, the Commission should seriously examine whether a workable international law regime is a realistic option.

If the EU is found to be best positioned to issue legislation (which is by no means a given and should be demonstrated and documented, which the EU so far has not done), the EU could consider extending the ELD to cover marine waters. The definitions of environmental damage and damage and the operator definition, however, should not be altered, nor should the exceptions and defenses available under the current ELD be limited in any way.

Relevant arguments that could be invoked to support an extension of the ELD to cover marine waters include the following:

- *There should be a harmonized approach to dealing with environmental damage in marine waters, and diverging national regimes should be pre-empted.*

- *Experience with the application of the ELD regimes in other areas and best practices developed in relation to ELD application can inform application of the ELD in cases of damage to marine waters, which would benefit the management of these cases.*
- *Offshore accidents are likely to result in cross-boundary damage and the ELD's coordination regime can be utilized to deal with these kinds of cases, as well as encourage similar standards for assessing environmental damage in neighboring Member States and other countries.*
- *There is potential that an offshore spill or release could also result in damage to nearshore shore waters and coastal habitats (under the scope of the ELD) and therefore, an extension of the ELD would promote similar damage assessment methods and remedial methods as well as reduce the potential for double-counting of damages and increasing the cost of remediation.*

The EU, as discussed above, however, should first ensure that it is in the best position to deal with the issue of damage arising from offshore activities. In addition, if the EU decides to extend the ELD, it should do so only if it ensures that application of the ELD to marine cases is predictable, reasonable, and balanced. If the EU decides to extend the ELD to marine waters, it should also review specifically whether the ELD liability limitations should be extended for offshore activities, and whether any future ELD requirements regarding financial security/insurance, if any, are appropriate for offshore. A liability cap may be necessary to ensure that the right incentives are in place for offshore activities, which tend to be highly complex and present a different mix of incentives and disincentives than onshore 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? ”

Traditional damages (property damage, personal injury, economic damages) should continue to be subject to national administrative and civil liability laws. The EU has no comprehensive framework for civil liability and is not in a position to develop one for addressing traditional damage only in relation to offshore accidents. The Member States have developed very different traditions on issues of traditional damage; an EU regime on such damage only for offshore accidents would lead to inconsistencies in treatment under national law of traditional damage depending on its cause. In cases where a defective product is involved, the national laws transposing the EU Product Liability Directive should provide adequate relief. If the EU wants to extend EU and Member States' jurisdiction, it should consider doing so generally, not only in relation to the activities at issue here (also refer to General Comments, pages 1- 2).

“ 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? ”

A financial security or insurance mechanism could be worked out to provide for some level of funding to the extent the liable person is unable to pay the full amount of the damages it caused. As noted, any such mechanism is better developed under international law, as opposed to EU law, and should be built on existing solutions relating to offshore and oil pollution liability. Any such solutions, however, should not be dictated by law; and in any event, the EU should not move to impose financial security requirements. Rather, if EU action is appropriate, the EU should work with industry to come up with an efficient, workable approach that meets the needs

identified in an efficient manner, building on the existing solutions. Further, the best predictor of underlying risk is to ensure that a liability framework is implemented in site-specific situations in a manner that is reasonable, balanced and predictable, which in turn, will allow appropriate insurance and other financial security instruments to develop through market forces^{/2}.

Transparency, Sharing of Information and State-of-the Art Practices

“ 11. What information on offshore oil and gas activities do you consider most important to make available to citizens and how? ”

Again, in relation to transparency/informational requirements and obligations, the EU should consider the limits of its jurisdiction and those of the Member States' jurisdiction. If the EU demonstrates that it is lawful and appropriate to extend jurisdiction, informational requirements could serve a legitimate need, if they are not inconsistent with the concept of continuous, industry-led, government-supported improvement of compliance management. Before any such requirements are imposed, it must be clear what objective they serve and what the direct and indirect costs of any such requirements would be. Broad release of data creates a risk of uninformed action that threatens the achievement of better compliance management. This risk should be considered before any obligation to publish data is imposed. If government and industry are to work together on a basis of confidence, the data that companies provide to the authorities should, in principle, not be made available to the public, unless there is a good reason for doing so.

“ 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? ”

The nature of the information that companies and/or authorities should share cannot be identified in the abstract. Such information-sharing should serve the purpose of improving compliance, but also respect business confidentiality (where information-sharing between companies is concerned). The industry is in the best position to take the lead on developing best practices. Government could facilitate this process by making funding available to develop and disseminate best practices.

“ 13. What information should the national regulators share with each other and how to improve offshore safety across the EU? ”

The focus of the authorities should be primarily on preventing accidents. Information-sharing should also serve this objective. Rather than spending much time on investigating technical issues (which are often better left to industry), the authorities should spend more time on thinking through how they can contribute to improving safety and work with industry.

“ 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? ”

The development and effective implementation of state-of-the-art practices and other best practices should be encouraged by the government. The primary means of encouragement

should be incentives for companies to develop and apply such practices. Such incentives should include the following:

- Companies that effectively apply a defined set of best practices are protected against liability, if, despite adequate application, an accident occurs.
- Companies applying best practices are subject to reduced inspection and verification requirements.
- Tax incentives, subsidies and other financial instruments should also be considered.

“ 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? ”

The development and effective implementation of state-of-the-art practices and other best practices should be encouraged by the government. Since the ELD was enacted in 2004, the Ad-Hoc Industry Natural Resource Damage Group has been working with multiple stakeholder groups, including the European Commission, DG Environment and Member State Government Authorities, to develop a series of “Best Practices”³ related to key legal, administrative, technical and economic issues associated with the ELD’s implementation. These Best Practices, which could be modified as needed for offshore activities, are intended to promote successful implementation of cost-effective remediation of environmental damage pursuant to the ELD and Member State implementation laws, as well as provide a degree of consistency and technical rigor in liability evaluations conducted under the ELD.

The primary means of encouragement to promote the use of state-of-the-art practices and other best practices should be incentives for companies to develop and apply such practices. Such incentives should include the following:

- Companies that effectively apply a defined set of best practices are protected against liability, if, despite such application, an accident occurs.
- Companies applying best practices are subject to reduced inspection and verification requirements, and reduced financial requirements, if any.
- Tax incentives, subsidies and other financial instruments should also be considered.

Emergency Response and International Activities

“ 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: ”

The EU should not require that Europe-based companies apply EU best practices worldwide. Any such requirement would raise even more serious international law issues. Even if the EU is comfortable in addressing international law aspects, any obligation to this effect would create significant disincentives and could cause companies to move their headquarters out of the EU. It would render EU companies less competitive in other parts of the world. It would create very substantial complexities, as best practices are written in a specific context, not in the abstract, and cannot be applied any place in the world. European authorities have limited enforcement jurisdiction and cannot investigate non-compliance outside the EU. There is no legal basis in international law and in the Treaty for regulating conduct entirely outside of the EU. An international convention would therefore be a much more suitable instrument, if the EU desires

to spread the application of best practices. Many of these points apply to both direct requirements and financial incentives for companies to apply European standards worldwide. Before the EU considers adopting any incentives or disincentives, an extensive dialogue with industry is necessary to understand the current practices, what barriers exist to applying standards and best practices in various parts of the world, and how standards could be raised and practices improved.

Note: The above comments have not been reviewed or endorsed by the full membership of the Ad-Hoc Industry Natural Resource Damage Group.

^{/1} Directive 2004/35/EC of the European Parliament and the Council of 21 April 2004 on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage (2004) OJ L143

^{/2} For more information on the issue of financial security in the context of the ELD, see “White Paper: Financial Security and Insurance Aspects of the EU Environmental Liability Directive”, prepared by the Ad-Hoc Industry Natural Resource Damage Group, July 2009.

^{/3} “Implementation of the EU Environmental Liability Directive: Summary of Guiding Principles and Recommended Best Practices”, prepared by the Ad-Hoc Industry Natural Resource Damage Group, July 2009

APPENDIX A
ABOUT AD-HOC INDUSTRY NATURAL RESOURCE DAMAGE GROUP

The Ad-Hoc Industry Natural Resource Damage Group (“Group”), founded in 1988, is comprised of multinational industrial companies in all sectors. The Group is exclusively focused on natural resource damage liability and restoration and all related issues and is the largest such industry group worldwide. In Europe, the Group serves as a resource to its member companies and the broad industrial community on the Environmental Liability Directive (“ELD”) and related Directives and issues, and facilitates communication and practice exchange both within the industrial community and between industry, government authorities and other practitioners. Since 2004, the Group has convened, in Brussels, a series of ELD-related meetings, seminars and workshops, involving industry, government and other experts. The Group has prepared White Papers, Issue Papers, Case Study Analyses, and numerous other documents in an effort to foster the “reasonable, balanced and predictable” implementation of Environmental Liability Directive throughout the European Union. Further information may be found at www.NRDonline.com.

Contact Information

Ad-Hoc Industry Natural Resource Damage Group
Attn: Barbara J. Goldsmith, Director
Rond Point Schuman, 6 - Box 5
1040 Brussels, Belgium

Tel + 32 (0) 2 234 6390
Fax + 32 (0) 2 234 7911
info@NRDonline.com

APPENDIX B

REFERENCE COPY OF PUBLIC CONSULTATION ISSUED ON 16 MARCH 2011

PUBLIC CONSULTATION
Improving offshore safety in Europe

Waters off EU shores are in parts intensively exploited for the production of oil and gas. In 2009, oil production in the EU and Norway amounted to 196 million tons, while gas production totalled 269 million tons of oil equivalents. Over 90% of the oil and over 60% of the gas produced comes from off-shore operations, mostly in the North West Continental Sea. In the North Sea, there is hydrocarbon production in the Danish, Dutch, German, Norwegian and UK sectors. At a much lower scale, off-shore production is also taking place in the Mediterranean (mainly in Italian waters) and the Black Sea (mainly in Romanian waters).

In this context, the EU obviously has a vital interest in ensuring maximum safety for workers in the industry and the environment. The European offshore oil and gas industry has not been immune to severe accidents in the past. As a result, a number of European countries have developed strict safety requirements and regulatory regimes. The industry in turn has adopted policies, practices and developed technologies to manage the risks to the environment and the health and safety of workers inherent in this sector.

The explosion of the Deepwater Horizon drilling rig in the Gulf of Mexico on 20 April 2010 and the subsequent leak from the oil well on the sea bottom led the Commission to assess current procedures in Europe in order to prevent the occurrence of a similar incident in its own waters.

It has led the Commission to also assess whether in Europe the current regulatory frameworks and practices are adequate in terms of safety, emergency preparedness and response. Such a reflection is also warranted in the context of the ongoing transformation of the European oil and gas industry, regarding the progressive depletion of "easy" oil and gas reservoirs. Exploration is moving towards more complex environments characterised by high pressure/high temperature reservoirs, deeper waters and/or extreme climatic conditions that may complicate the control of subsea installations and incident response. The efficiency of containment technologies at seabed level have been put in question worldwide since the Deepwater Horizon accident. However, the Montara oil spill in Australia in 2009 demonstrated that similar problems can occur even in shallow waters and they can have cross-border effects - a possible scenario in the European context. At the same time, production facilities in maturing fields are ageing and often taken over by specialist operators with smaller capital bases.

In May 2010 the Commission launched an assessment of the safety in exploration and production of oil and gas in European waters and went on to publish on 13 October 2010 the Commission Communication entitled "Facing the challenge of the safety of offshore oil and gas activities", summarising its findings on the matter. These included a conclusion that the offshore oil and gas industry is governed by heterogeneous health, safety and environmental regimes that may not always provide an adequate response to the risks posed due to changes in the activities of the sector nor legal clarity on the obligations of the industry. It was concluded that further action is needed to ensure that best available practises are adopted throughout the EU.

Consequently, the Commission invited the Council of the EU and the European Parliament to express their views on the specific actions proposed. These actions focussed on five areas: 1) thorough licensing procedures, 2) improved controls by public authorities, 3) closing gaps in applicable legislation, 4) reinforcing EU disaster response and 5) international cooperation to promote offshore safety and response capacities.

Subsequently, the Council of the EU and the European Parliament issued their findings on the document and recommendations for further work to address the challenges identified.

In order to further define and evaluate the impact of the policy options presented in the Communication in the five areas mentioned above the European Commission seeks the views of the public on the safety, health and environmental aspects and transparency of offshore oil and gas operations in the EU. The questionnaire below is designed for this purpose. It focuses on the challenges, priorities, and possible improvements which the European Commission could propose to EU Member States and the European Parliament in the course of 2011.

Background: Regulatory framework for offshore safety in the EU

In the context of this consultation, the concept of offshore safety covers safety and health of workers on offshore installations (mainly drilling rigs and platforms) and the protection of the natural environment against oil spills and other harmful consequences of accidents. The level of offshore safety is determined by several factors that are controlled mainly by the offshore industry and the national public authorities authorising and supervising these operations in accordance with national laws and practices. In this context technologies or practices representing the highest level of development are called "state-of-the-art" that usually exceed the legal minimum requirements for the given technology or practice.

Offshore exploration and production, in comparison to a related field of maritime transport, is less covered by international legislation (the main piece being the United Nations Convention on the Law of the Sea). Instead, offshore oil and gas operations in European waters are regulated by national legislation of individual Member States and EU legislation. Most EU legislation in this field consists of directives setting common objectives or minimum requirements to be met. This allows the Member States to choose their preferred way of putting them in practice through national laws. For instance, Council Directive 92/91/EEC sets minimum requirements for improving occupational safety of workers on offshore oil and gas installations in the EU.

As concerns the environment, there are no EU laws specifically for offshore industry. However, parts of EU's cross-sectoral environmental legislation, such as on the liability for a polluter to compensate environmental damage caused to water or biodiversity. (the Environmental Liability Directive¹, the Habitats Directive² and the Birds Directive³) are interpreted as to governing offshore oil and gas operations.

Directive 94/22/EC sets up common minimum rules to ensure that the procedures for granting and using authorizations for the prospection, exploration and production of hydrocarbons will be transparent and open to all companies with the necessary capabilities. The overall goal is to encourage competition in the European energy market while maintaining the competence of the national authorities to decide on the exploitation of their national energy resources. For this reason, the Directive introduces *i.a.* publication requirements and identifies common, objective and non-discriminative selection criteria (technical and financial capacity, way to explore/produce and price) to be applied in authorisations. National authorities determine individually the content of the technical and financial capability in their respective jurisdictions. For instance, in some EU Member

¹ [Directive 2004/35/EC](#) of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

² [Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora](#)

³ [Directive 2009/147/EC](#) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds

States technical capability includes environmental aspects.

In the area of product safety some EU legislation such as Directive 97/23/EC on the approximation of the laws of the Member States concerning pressure equipment, Directive 94/9/EC concerning equipment and protective systems intended for use in potentially explosive atmospheres applies to equipment on non-mobile offshore installations. As a general rule EU Member States and the Commission discuss the implementation and updating of EU legislation in expert working groups. As concerns standardisation, offshore oil and gas industry and the regulatory authorities use a variety of international, regional, national and industry standards, best or recommended practices and guidelines. In addition the oil and gas companies have developed various group and/or company specifications for their activities.

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 (address of 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)
2. European law ⁴foresees 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 elements⁵ 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)
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)

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)

⁴ 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

⁵ 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.

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)

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)

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)

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)
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)

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)
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)
