



TOTAL

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**Response to the European Commission Public Consultation on
oil & gas offshore safety in Europe**

Submission from the TOTAL Group

Introduction

The TOTAL Group is a major offshore operator in Europe, with its main operations in the UK, the Netherlands and Norway. Following the Macondo accident in the Gulf of Mexico, the TOTAL Group has carried out a thorough internal review, setting up three internal working groups, focussing on Prevention, Intervention and Spill Response, to ensure that we learn all relevant lessons from this accident. More detailed information about these work groups has been provided to Mr Gunther Oettinger in our letters of 29 July 2010 and 19 January 2011 attached for information.

TOTAL is also actively participating in industry-wide efforts and task forces, such as the Global Industry Response Group (GIRG) through the International Association of Oil and Gas Producers (OGP) and the Oil Spill Prevention and Response Advisory Group (OSPRAG) through the Oil and Gas UK association.

The European Commission issued in October 2010 the Communication entitled "Facing the challenge of the safety of offshore Oil and Gas activities" and seeks the views of the public about improving offshore safety in Europe through a public consultation.

TOTAL's views are expressed hereafter.

Authorisations

Questions 1-3

Member States with significant offshore activities all have sound and robust systems in place for licensing and permitting. In order to hold a Licence in these countries prospective licensees must demonstrate that they have the requisite financial capability to perform the agreed work program, and the technical capability to carry out the operations safely while protecting the environment. Likewise any company wishing to become a party to a Licence by virtue of an assignment from another company must also meet these criteria.

In particular, the regulatory regimes in place in these mature petroleum producing countries require the operator to show that operations are safe at each stage of exploration and production activities, and to provide safety cases, which means for each project the operator has to prove that risks are assessed and reduced as low as reasonably practicable.

TOTAL consequently does not recommend any change to the authorization conditions for offshore exploration or production activities in these countries.

The Commission may, however, wish to ensure that Member States which have less experience in offshore activities than the Member States with mature offshore operations implement similar robust systems in their country.

It is the view of TOTAL that this could be achieved by a dialogue between those Member States and the EU Commission, supported by a consultative and advisory forum such as the North Sea Offshore Authorities Forum, rather than by implementing additional measures at the EU level.

On the particular issue of whether EU Member States should be consulted on the award of authorisations in neighbouring countries, TOTAL believes that cooperation between Member States on cross-border licensing issues is important, and this is already achieved through bilateral treaties (such as that between the UK and Norway). However, decisions on the granting of particular licences and drilling authorisations to exploit natural resources are a matter for national governments alone.

Prevention of accidents

Questions 4-5

TOTAL is fully committed to continuously improve the prevention of accidents affecting the health and safety of workers. It requires long-term efforts to implement high standards and best practices throughout the whole process of exploration and production, within the frame of proven EU and national rules.

In TOTAL's view the industry's safety record in Europe is promoted by the goal-setting regime introduced by national governments such as the UK to govern health and safety at work (Health and Safety at Work Act 1974).

Under a goal-setting regime duties imposed on employers are set out in broad terms without specifying what steps require to be taken in order to meet the expected standards. Essentially, it is for the employer to determine what he requires to do to safeguard his employees at work on the basis of the best technology available at the time. In seeking to identify practices and measures which ensure that safety risks are "as low as reasonably practical", employers can refer to a range of Approved Codes of Practices and guidance documents.

The advantages of a goal-setting regime are that it ensures that safety standards remain current and pushes Operators to be constantly seeking to apply the very best safety standards. Operators have no option but to be proactive in the safety arena.

Goal-setting also allows companies working in many different jurisdictions to harmonise best practice safety standards across their business rather than having to comply with different prescriptive regulations in each country in which they work.

For these reasons, TOTAL would urge the Commission to avoid adopting detailed prescriptive legislation or regulations at EU level and instead promote the implementation of a goal-setting regime.

TOTAL would draw the Commission's attention to the evolving international standards, issued by organisations such as the European Committee for Standardisation (CEN), the American Petroleum Institute (API) and the International Organisation for Standardisation (ISO).

It is TOTAL's view that within a goal-setting regime the development and the dissemination of these standards is encouraged.

TOTAL is actively involved in the UK initiative, OSPRAG. OSPRAG was established shortly after Macondo. It is an ad hoc organisation made up of oil companies, contractors, the Health and Safety Executive (HSE), the Department of Energy and Climate Change (DECC), the Maritime and Coastguard Agency and trade unions. Its activity has been divided into four streams: the Oil Spill Emergency Response Review Group, the Insurance and Indemnities review Group, the Technical Review Group and the EU issues review group (which is considering information sharing to ensure a co-ordinated response in case of emergency). A huge amount of detailed work has been carried out by OSPRAG on all aspects of risk mitigation in relation to oil spills. TOTAL considers that this is a good example of the extent to which, in a goal-setting regime, industry and regulators work closely together to achieve improvements in practice.

In summary, TOTAL is particularly concerned to ensure that new prescriptive regulations should not create a reduction in safety standards or gap in responsibilities for Member States which already have fit-for-purpose offshore regulatory regime. If it is deemed that new, or amended, legislation is necessary in this area TOTAL would strongly recommend a "goal-setting" approach. Alongside this goal-setting approach, the EU authorities should encourage industry initiatives to identify and share best practices and to set guidelines for their members which will assist in ensuring that "state of the art" techniques continue to be used.

Verification of compliance and liability for damages

Questions 6-10

With the regulations already in place in the North Sea, companies are subject to very stringent programmes of inspection, assessment and investigation through national authorities including national Health and Safety departments, marine and coastguard agencies and civil aviation authorities. These authorities have very broad powers to investigate accidents and impose stringent administrative and criminal sanctions. This regulation is in addition to the internal system of audits and controls within each company.

The current system in Member States with significant petroleum activities is very robust and efficient. Any proposed change would have to fit with the proven systems that are in place today. It is important that any European initiative does not undermine the credibility of national authorities or their ability (thanks to considerable expertise) to work together with industry to achieve improvements in practice.

On the issue of financial capacity for remedying and compensating for environmental damages for an oil spill, TOTAL urges the Commission to base its analysis of required financial capacity on proven techniques for oil spill modelling and economic analysis. TOTAL believes that any measures in this area should be flexible enough to take into account the actual risks involved which will vary substantially from well to well and country to country. As an example the economic consequences of a leak from a gas well will be very different from that arising from a heavy oil well. Moreover due to different climatic conditions and current, a spill in the Northern North Sea will have a different impact from that might occur in Mediterranean waters.

TOTAL agrees with the Commission that it is important to ensure that all companies involved in exploration and production of natural resources can demonstrate that they have sufficient financial capacity to meet the costs of such damages. Such demonstration should be made not just on award of a licence but also prior to the start of any new drilling campaign. We consider that it is for Member States to establish how such financial capacity should be demonstrated. It is very important that any initiative in this regard should seek to take account of the variety in size and resources of the various companies involved. Thus demonstration of financial capability should be as flexible as possible allowing, for example, demonstration by means of a robust balance sheet (production of annual report and accounts of parent company), letter of support from parent company, insurance, bank letters of credit or bonds.

In this regard, TOTAL would draw the Commission's attention to the OPOL (the Offshore Pollution Liability Association Limited) regime, which is an example of mechanism that has been created by the UK operators to face the liabilities associated with pollution damages and remedial measures. Although OPOL is sometimes labelled a "voluntary" initiative, it is in fact obligatory in the UK since the UK government require all Operators to be members of OPOL. The OPOL mechanism provides two layers of protection. Each OPOL member undertakes to be strictly liable for the direct costs of remedial measures and compensation to third parties for pollution damage arising from a discharge of oil from offshore facilities up to a certain limit (at present USD 250 million). OPOL administrators (funded by a modest annual payment by members) verify that each Operator has the financial capability to respond to such a claim. Most Operators will do so by demonstrating that they have insurance coverage up to the cap, however other mechanisms are available eg surety bond, guarantee considered to be acceptable by Board, self insurance provided that company in question demonstrates financial responsibility). Thus, OPOL ensures that all of its members can respond to a claim up to the cap and it is very unlikely that any would be unable to pay in case of an incident. However, as a second layer of protection, if any member of OPOL did fail to pay, the other OPOL members will step in and assume liability up to the cap. Such payment is

pro rata according to the number of facilities operated by the member at the time of the incident.

In TOTAL's view the OPOL mechanism is a robust one since it gives full protection up to the cap, and a guarantee by industry. The mechanism does not remove the flexibility of individual operators to manage these risks as they deem appropriate according to the size and resources of their company. Crucially the mechanism does not require any pre-funding of pollution losses and therefore does not act as an additional "tax" on petroleum companies.

TOTAL does not support the establishment of a mandated industry-wide pre-loss mutual insurance fund or mandatory insurance as it considers that it is up to each company to find the most efficient option to meet its financial responsibilities.

Transparency, sharing of information and state-of-the-art practices

Questions 11-15

TOTAL will, in principle, agree to the disclosure of any information that the national regulators consider fit for publication, as long as no commercially sensitive information is communicated.

Some forums promote a wide exchange of information between national regulators, such as the North Sea Offshore Authorities Forum (NSOAF), or the International Regulators Forum (IRF) which brings together regulators from all over the world.

With respect to the sharing of information within the industry and between companies, TOTAL is member of the International Association of Oil & Gas Producers (OGP), which is one place where operators exchange information and experience. OGP created the Global Industry Response Group (GIRG) in July 2010 following the Macondo tragedy which aims to ensure that the lessons learned from Macondo are applied around the world. TOTAL is an active contributor to GIRG.

GIRG is working in three areas:

- Prevention : improving well engineering design/equipment and developing better operating procedures to reduce the possibility of loss of well control
- Intervention: helping to identify the best ways to handle deepwater uncontrolled hydrocarbon releases from wells, with emphasis on local conditions and regional requirements
- Response: ensuring that all the necessary equipment, expertise and resources are available if, despite improved prevention and intervention efforts, an oil spill occurs.

Emergency response and international activities

Questions 16-18

TOTAL supports the initiative to examine whether the effectiveness and efficiency of oil spill response capacities existing in Europe can be further enhanced.

Through national oil industry associations, TOTAL is part of the Operators Co-operative Emergency Services (OCES) Agreement, which is the framework under which oil and gas companies operating in the waters of the North Sea and North West European Continental Shelf co-operate and share resources in the event of an emergency situation.

TOTAL is also member of Oil Spill Response (OSR), an organization through which more than one hundred companies share equipment and resources for intervention, with bases located in the major producing areas worldwide.

With respect to worldwide application of standards, TOTAL as a worldwide operator applies the same high standards of safety and accident prevention in all operations around the globe, while complying with the legal and regulatory frame imposed by the host government.
