

Oil & Gas UK Response to DG ENER Public Consultation: 'Improving Offshore Safety in Europe'

Introduction:

Oil & Gas UK is the leading representative body for the UK offshore oil and gas sector. Our membership of almost 100 companies comprise the major multi-national oil and gas companies, smaller specialist producers and explorers as well as large contractors and SME suppliers active across the UK Continental Shelf (UKCS).

Oil & Gas UK remains keen to engage positively and constructively with the Commission and welcomes the opportunity to respond to the consultation document. We recognise, respect and support the Commission's goal to pursue the highest possible standards of offshore safety and environmental protection throughout all European waters. Herein, Oil & Gas UK provides responses to the questions posed by the Commission as well as providing information about how, in practice, the offshore regulatory regime functions in the UK.

Possible EU Legislative Action:

Oil & Gas UK acknowledges the legitimate environmental concerns of European States with coastlines that could potentially be affected by an oil spill incident. We agree with the Commissioner's own proposal that 'the best practices already existing in Europe will become the standard throughout the European Union'. We also believe that the robust and highly effective regulatory regime that has developed in the UK – and in the neighbouring North Sea nations with mature offshore oil and gas operations – meets this aspiration. We believe that these environmental concerns should be somewhat allayed by the fact that the UK (as the biggest offshore oil and gas producer in the EU¹) already has stringent, robust and fit-for-purpose offshore regulatory standards in place for the prevention of oil spills, along with an oil spill response capability that is effective and being enhanced where necessary. We propose that the EU might work with those individual member states with less mature or developing regulatory regimes to bring standards up to these levels.

We also believe that the EU could facilitate (through informal means rather than via legislative action) an exchange of knowledge and lessons learned through a pan-European regulatory forum similar to the NSOAF (North Sea Offshore Authorities Forum). This best practice collaborative initiative was formed in 1989 to deliver continuous improvement in health, safety and the environment in petroleum activities in the North Sea and may prove to be a useful model for use elsewhere in Europe. In addition, we also consider that, where genuine value can be added, there may be some scope to consider strengthening the European Maritime Safety Agency (EMSA) to further support Member States' oil spill response capability where necessary (see later).

We believe that any new regulations at EU level should reflect, and build on, the existing best practice regulatory regime in the UK. Currently the European offshore oil and gas industry is controlled by a network of international, European and national legislation, regulation and standards (both in terms of health and safety and environmental protection). In its Communication, the Commission takes the view that this arrangement is unsatisfactory and does not acknowledge that this system has hitherto helped to ensure the high standards evident in the UK and in some other areas of Europe. Oil & Gas UK believes that a new, single piece of legislation at the EU level may risk undermining this system. We believe that predictability in the European regulatory regime is important for European offshore companies and any protracted new legislative process must not be allowed to create uncertainty, as this could be to the detriment of new investment.

¹ Only Norway (in the EEA) and a handful of EU Member States have significant offshore oil production, with the majority of EU Member States having none at all. By a substantial margin the UK is the largest producer in the EU. In terms of oil production only a handful of other EU Member States have any offshore production of note. The Companion document to the Communication (available at: [http://ec.europa.eu/energy/oil/offshore/doc/sec\(2010\)staff_working_doc.pdf](http://ec.europa.eu/energy/oil/offshore/doc/sec(2010)staff_working_doc.pdf)) suggests that, of the 88 million tonnes of oil produced in EU waters, 65 million tonnes are produced by the UK. The next largest producer is Denmark with a production total of around 12 million tonnes. Sixteen EU Member States having no offshore production at all.

Oil & Gas UK also believes that, in general, the overarching principle of subsidiarity should apply to the control of Member State hydrocarbon resources. In proposing any revision of existing or new legislation, the Commission should also take full account of existing practices, procedures, Member State regulatory regimes and the ongoing action being taken by industry and others (e.g. OSPRAG - see below - and OGP's Global Industry Response Group (GIRG)²).

UK Action Post-Macondo:

In the UK in May 2010, immediately after the Gulf of Mexico incident, Oil & Gas UK established the Oil Spill Prevention & Response Advisory Group (OSPRAG³). In its initial work, OSPRAG reviewed offshore practices and procedures in a number of areas. This work concluded that there is a high degree of confidence in the regulatory regime, that it drives the right safety and environmental behaviours and that the UK is in a strong position to prevent and, where necessary, respond to oil spill incidents. The group involves representatives from the industry, the regulators and the trade unions and is reviewing oil spill prevention and response practices and procedures, sharing learning from the Gulf of Mexico accident, and recommending improvements where appropriate. The European Commission also attends OSPRAG meetings as an observer. Several OSPRAG achievements and ongoing work-fronts are referenced below; however, we would also like to refer the Commission to the recently published OSPRAG second interim report⁴ which details the significant progress made to date.

Summary:

Oil & Gas UK considers that, in general, any action taken at EU level should:

- **take account of the analysis and findings of the various investigations into the Macondo accident and of the action being taken by industry and Member State authorities in response;**
- **take into account the existing national, EU and international network of regulation/legislation - and act to enhance and add value to this existing system;**
- **not have a detrimental effect on the current high safety standards present on the UKCS;**
- **respect the general principle of subsidiarity regarding regulation of individual Member States' offshore oil and gas activities and, therefore, the right of individual Member States to control their respective energy resources.**

Oil & Gas UK believes that in order to raise safety standards in all EU waters, the Commission should work collaboratively with those Member States having less mature or developing regulatory regimes to bring standards up to the high levels present in the UK and in some other areas of Europe. This should be with a view to ensuring that each such Member State:

- a. **fully separates the regulation of economic/licensing aspects from those relating to safety;**
- b. **requires the national safety regulator to be an independent and adequately resourced expert body (such as the UK's Health and Safety Executive);**
- c. **applies a goal setting regulatory regime including a requirement to reduce risks as low as reasonably practicable;**
- d. **requires a 'safety case', submitted to and formally accepted by the state regulatory authority, for all relevant operations within its jurisdiction.**

² See: <http://girg.ogp.org.uk/>

³ See: <http://www.oilandgasuk.co.uk/knowledgecentre/OSPRAG.cfm>

⁴ See: <http://www.oilandgasuk.co.uk/publications/viewpub.cfm?frmPubID=400>

Responses to Specific Questions Posed:

Questions 1-3: Authorisations:

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)

The UKCS petroleum licensing process includes requirements for the demonstration of technical capability to respond to oil spill incidents and the financial capacity to cover the liabilities associated with operations. In addition, separate health and safety legislation requires the presentation of full safety cases. The safety case regime effectively ensures (on a case-by-case basis and across all stages of prospecting, exploration and production) that the latest technology and procedures are fully applied.

Oil & Gas UK, therefore, does not consider that any changes to the authorisation conditions for offshore prospecting, exploration or production activities are required in the UK. Instead, Oil & Gas UK would recommend that the Commission should consider that the authorisation conditions (including those under both petroleum licensing and safety cases) in the UK could be used as a benchmark for working with other member states with less developed offshore industries.

It should be noted that a key aspect of the UK regime is the separation of the regulation of licensing from that relating to health and safety; thus avoiding any potential for conflict of interest.

Oil & Gas UK considers that stipulating authorisation (licensing) requirements on a pan-EU basis would fail to take into account the distinct characteristics and requirements of oil and gas provinces across the EU. Furthermore, in our view it is also essential that the licensing of offshore oil and gas activities (and therefore control of the exploitation of their respective energy resources) remains under the control of the individual Member States in accordance with the principle of subsidiarity.

Considerable expertise, developed over many years, already exists in the UK and several other European States and we suggest that it would make sense to draw upon this knowledge to assist the extension of existing best practice regulation across the rest of Europe. Oil & Gas UK would support EU level efforts to ensure that regulatory best practice is shared among national regulatory bodies with the goal of raising standards in those Member States with less mature, developing offshore oil and gas industries, to the high levels which exist in those European States with developed offshore sectors.

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

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

Please limit your response to maximum 500 words

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

The UK offshore licensing process has proven authorisation procedures in full accordance with the EU Hydrocarbons Licensing Directive 94/22⁵ which requires the demonstration of the technical and financial capability of the operator.

As a general principle, it is important that authorisation criteria (including criteria on the technical and financial capability of potential operators) are transparent, non-discriminatory and adequate in the particular circumstances of the proposed operation or activity. Criteria should not be defined on a one-

⁵ Directive 94/22/EC of the European Parliament and of the Council of May 30 1994 on the conditions for granting and using authorizations for the prospecting, exploration and production of hydrocarbons

size-fits-all basis. On financial criteria, the level of financial capability to be demonstrated should be commensurate with the level of exposure associated with a particular activity. The level of exposure can be assessed considering factors such as location of the well, reservoir pressure, composition of the well fluids, water depth, etc

The industry, through Oil & Gas UK, is currently conducting a major consultation on aspects of the demonstration of the financial capability of UK licensee companies. This will feed into the work of OSPRAG, and when complete will be shared with the Commission. It is however, recognised that any criteria around financial capability should not preclude smaller companies from operating on the UKCS. If this were the case, the UK Government's stated goal of maximising indigenous UK oil and gas recovery would be severely hampered. Exposure-based requirements will enable smaller companies to continue to operate on the UKCS.

Various financial and insurance instruments should work together in the market to provide the right solution for companies, bearing in mind different balance sheet strength, financing capabilities and risk appetites.

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)

Oil & Gas UK supports the Commission in its desire to ensure that appropriate authorisation procedures are employed by Member States throughout the EU, in order to help ensure that authorisations are made which will result in safe operations.

In the UK and several other North Sea and EU Member States, the relevant regulatory authorities have developed, over the course of several years, robust authorisation processes for the exploration and production of offshore oil and gas resources. These authorisation procedures are already considered to be state-of the-art, robust and fully fit for purpose. However, Oil & Gas UK appreciates that the European Commission has concerns over standards in some EU Member States – particularly those in the early stages of developing an offshore oil and gas industry. We recommend that the EU helps to facilitate and encourage collaboration between national regulatory authorities with a view to raising standards across the EU to those present in Member States which have significant, established offshore oil and gas sectors. We believe that this may best be achieved through non-legislative action.

There are examples of existing mechanisms that help facilitate such sharing. They include forums such as the North Sea Offshore Authorities' Forum (NSOAF) and the International Regulators' Forum (IRF). Advisory organisations such as these which consist of national regulatory experts could have an important role in helping to disseminate state-of-the art authorisation procedures across the EU. Oil & Gas UK recommends that the Commission encourages all relevant EU Member State authorities (i.e. those in which offshore oil and gas exploration and production are conducted) to actively participate in such forums, or to help facilitate the formation of new bodies modelled on these arrangements.

Oil & Gas UK notes that EU Member States have sovereign rights over the exploitation of hydrocarbon resources within their respective territories. This suggests that neighbouring countries may not formally participate in the decisions taken by other Member State authorities on the award of authorisations to explore for, or produce offshore oil and gas resources. However, in order to assure adjoining Member States that the authorisation process is robust, Oil & Gas UK recommends that all Member States with oil and gas operations within their waters publicly disclose their authorisation processes and procedures. For example, in the UK, the relevant licensing authority (the Department of Energy & Climate Change (DECC)) publishes guidelines on the licensing process on its website.

Questions 4-5: 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)

As noted previously, health and safety aspects of the UK offshore oil and gas industry are controlled by an existing network of European and national legislation, regulation and standards. The Commission's Communication proposed a review of safety legislation and suggested that the Commission favours a single new piece of legislation. Oil & Gas UK would not be in favour of this partly because, in terms of health and safety, to a large extent a 'single piece of legislation' already exists in the Extractive Industries Directive (EID) 92/91/EEC.⁶ This sector specific legislation provides for the minimum protection of workers in the mineral-extracting industries and has been fully implemented in UK. In several areas the UK regime already goes well beyond the EID (e.g. requirement for a safety case that has to be accepted by the regulator before operations can commence; advance well notifications; weekly drilling reports; well examination scheme, etc). In addition, the UK regime already requires well design, construction and maintenance to be critically examined by independent competent persons (ICPs).

Prior to the Macondo accident, the EID was already scheduled to be reviewed by the Commission in 2011. Oil & Gas UK supports the review of the EID as the correct way of examining any changes that may be needed to the legislation.

The Communication also recommended that the relevant national authorities and oil and gas operators undertake to review the safety cases and update these if necessary. The requirement for periodic thorough reviews is already a requirement of the UK safety case regulations. In addition, DECC has announced that (in collaboration with the UK Health & Safety Executive (HSE), and the UK Maritime & Coastguard Agency (MCA), they will be leading a comprehensive review into the UK's offshore oil and gas regulatory regime.⁷

The Commission Communication proposes extending EU product safety legislation, in particular to Mobile Offshore Drilling Units (MODUs). The product safety regulations concern the free movement and supply of equipment that are required to meet certain basic safety standards. It has been an anomaly that drilling equipment supplied to a MODU does not need to comply with product safety regulations because MODUs are technically classified as "ships", whereas similar equipment on fixed installations does already have to comply.

In the UK, the HSE already has sufficient powers to deal with any safety issues regarding equipment. We do not therefore consider that additional powers are needed in the UK context. We would suggest that any proposals for action at the EU level are guided by close cooperation between industry, Member State regulators, the European Commission, plus the relevant standardisation bodies.

The Seveso Directive also has relevance to both offshore health and safety and environmental protection. Our comments regarding Seveso are contained within the response to question 5, below.

⁶ The concept of a written safety and health document for offshore installations originated in Lord Cullen's 1990 Report into the Piper Alpha disaster of 1988. This predated the EID. The concept was introduced into UK law through the Offshore Installations (Safety Case) Regulations 1992, made the same month (November 1992) as the Directive was adopted. While the Cullen Report influenced the development of Directive 92/91, the Safety Case Regulations (SCRs) go well beyond the Directive. The SCRs have made a major contribution to reducing risks offshore, but this would have happened irrespective of the Directive. Nevertheless, the Directive has ensured that similar concepts exist in all EU states with offshore industries, helping to encourage harmonisation of standards across the North Sea and adjoining waters. The impact of the reform was evaluated in 1999 (independently by Aberdeen University) and found to have contributed to improving standards of health and safety offshore, though there was criticism of excessive legal complexity. To some extent this was because Directive 92/91 is not consistent with a risk-based approach underlying the offshore reforms. However, this has not caused significant problems in practice. HSE continues to monitor the implementation of offshore safety law and to promote improvements where necessary. The SCRs were revised and updated in 2005.

⁷ A written Ministerial Statement of 4th April 2011 confirmed that a thorough review of the UK offshore oil and gas regulatory regime would take place.

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)

As per health and safety, the environmental⁸ aspects of the UK offshore oil and gas industry are controlled by a tight network of international⁹, European¹⁰ and national legislation and regulation. It is crucial that any new measures proposed by the Commission for the protection of the environment build upon this existing regime and avoid areas of duplication, or regulatory ambiguity that may result in a less effective regulatory regime.

The UK environmental regulatory regime is already subject to stringent controls which set requirements for consents, permits, inspection, investigation and enforcement. A key requirement is for each operator to have an independently verified environmental management system which ensures that appropriate control measures are applied. The environmental regulations stipulate that every offshore operation must have a corresponding Oil Pollution Emergency Plan (OPEP) which should be approved by DECC. OPEPs are tailored to location and the environmental and socio-economic sensitivities within a potential impact area. They are updated as required and exercised periodically.

As a result of the Macondo accident, governments around the world are examining the enforcement of their respective regulatory regimes. In the UK for example, DECC has announced that the number of offshore environmental inspections will rise from 80 to 150, allowing environmental checks of all manned, fixed installations and about 24 drilling rigs every year. The increase means that 15 more inspectors will be available to examine UKCS installations. Furthermore, in the UK the national authorities have already announced that a thorough regulatory review will take place.

The primary method of protecting the natural environment and avoiding the impacts associated with offshore incidents is through accident prevention. The Commission Communication suggests that existing legislation could be strengthened (e.g. the Seveso¹¹ Directive, covering major accident hazards involving dangerous substances, could be extended to offshore oil and gas installations) or, a stand-alone instrument for such operations could be developed.

As discussed previously, the existing safety case regime has been shown to be robust and fit-for-purpose. To remove the already effective regime for dealing with major hazard issues currently in use on the UKCS in order to introduce another approach may well be counterproductive and have an adverse effect on the high safety (and therefore also environmental protection) standards in place on the UKCS. For this reason, Oil & Gas UK does not support either the extension of the Seveso Directive to offshore oil and gas installations, or the creation of a new stand alone instrument to be applied to offshore operations.

Questions 6-10: Verification of compliance and liability for damages:

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)

The UK offshore oil and gas industry invariably strives to fully comply with all applicable safety legislation and other regulatory measures. However, the industry is not complacent in this challenge and constantly seeks opportunities to maintain compliance and to address any shortcomings. Furthermore, compliance is strictly enforced by the national competent authorities who act in their

⁸ Further information on relevant environmental legislation is available here: <http://www.ukooaenvironmentallegislation.co.uk/index.htm>

⁹ Including the Oslo and Paris Conventions for the protection of the marine environment of the North-East Atlantic (OSPPAR) and the Offshore Protocol of the Barcelona Convention.

¹⁰ Including, for example, The Strategic Environmental Assessment Directive; The Environmental Impact Assessment Directive; The Industrial Emissions Directive; The Emissions Trading Directive; The Marine Strategy Framework Directive; and, The Habitats and Wild Birds Directive

¹¹ Seveso (made law in the UK as the 'Control of Major Accident Hazards Regulations', COMAH) covers both safety and the environment and involves a joint competent authority for inspections (HSE and the Environmental Protection Agencies). The COMAH safety report is different from the safety case (albeit that there are many similarities too).

capacities as inspectors and supervisors and, if necessary, provide advice on where further improvements can be made. The systems in place are robust and fit for purpose and administered by expert, highly professional and competent authorities. Strict penalties are in place and these are rigorously enforced if rules are not followed correctly. These penalties may include fines, suspensions or revocation of licences and/or permits and the removal of an operator.

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)

The relevant UK regulatory authorities (DECC, HSE, the Scottish Environmental Protection Agency and the Environment Agency) already strictly monitor compliance of rules and regulations relating to the industry. Oil & Gas UK strongly believes that the relevant national authorities should continue to exercise their rights to supervise, inspect and verify industry compliance. It remains unclear how adjusting this control system could offer any additional value to the supervision and verification of compliance processes that are already in place in the UK. Member State authorities should remain responsible for inspecting and ensuring compliance within their own respective regulatory regimes. Oil & Gas UK does not support the creation of any form of pan-EU supervisory body or inspection organisation, or the removal of UK supervisory and/or verification of compliance powers from UK authorities.

In addition, it is apparent that expert offshore oil and gas inspectors have recently become a precious commodity. Individual Member States should ensure that these valuable human resources remain fully functional in their capacity as national regulatory bodies and this resource is applied close to the operational interface where it can apply the greatest scrutiny and impact.

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)

Under the Environmental Liability Directive (ELD) operators are held responsible for environmental damage to protected habitats and species. Oil & Gas UK understands that the Commission may consider the need to extend the ELD to all marine waters irrespective of whether these are designated sites or not. Under additional UK national legislation, clear provisions for the responsibility of clean-up and liability for damage, beyond that currently covered by the ELD, already exist. We believe that any extension of the ELD should be considered in the context of the existing legislation present in individual Member States.

Furthermore, assessment of any damage that may have been caused by an oil spill incident requires that a baseline condition must be established against which any changes can be measured. Such baseline metrics are currently not available in all marine waters. Oil & Gas UK believes that the Commission should develop protocols for damage assessment in the marine environment, before considering amendments to the current ELD. We also note the difficulty in accurately assessing damage, as can be seen from the differing reports of damage following the Macondo accident.

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)

Under UK law, there is no statutory financial limit on the liability of companies for the consequences of their actions. The industry also operates, through Offshore Pollution Liability Association Ltd (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 up to a pre-determined limit. OSPRAG recommended that the limit be raised

from \$120 million per occurrence to \$250 million per occurrence. This came into effect on 1 October 2010.

DECC in the UK requires all operators to be members of the OPOL. Each Operator provides the OPOL Association with evidence of its financial responsibility to meet these obligations in the prescribed form, which is checked by the Association.

The industry can make a robust case for protecting the public purse as there are several levels that would need to be breached before it could be exposed, in order:

- A catastrophic event where multiple prevention processes and barriers fail;
- Operator default due to insolvency (unlimited liability exposure);
- Joint venture partnership default due to insolvency of all partners (unlimited liability exposure);
- Inadequate level of insurance cover or breach of policy conditions;
- Insurer default (due to insolvency);
- Compensable damage exceeds the OPOL mutual guarantee (currently \$250 million) which only applies after the above conditions are met.

Although still awaiting finalisation, initial OSPRAG oil spill modelling work suggests that with the capping device (referred to below) on hand for rapid deployment, this \$250 million per occurrence limit will be sufficient to cover the clean-up and third party costs associated with the vast majority of oil spill scenarios, with only a relatively small number of higher risk wells having the potential to exceed the limit. Proposals are now being considered on how to ensure that, in such cases, no costs will fall on the public purse, possibly through a mechanism for obtaining additional “top-up” financial responsibility. This is only expected to be necessary for a small number of wells. This approach would reward safe operations and investments in safety and environmental protection and it would not penalise those companies that invest more to ensure safe operations. Discussions are still at an early stage and further work is needed to determine how best to identify which wells may entail the risk of exceeding the OPOL limit and to agree on any further provisions which might be put in place. Once recommendations have been finalised and agreed, OSPRAG would be happy to share its conclusions with the Commission.

While OPOL provides for third party clean-up and compensation costs to a predetermined limit, there are additional expenses that the operator has to cover in the event of a blowout, such as those related to bringing the well back under control and drilling a relief well. The industry regulator DECC carries out checks on a company's finances before it grants a licence to that company. DECC ensures that companies operating in UK waters have appropriate financial integrity to carry out the planned operations including the ability to pay (in the highly unlikely event that controls around the proposed operations fail) for any unforeseen events. I.e. DECC require explicit confirmation that sufficient finance or insurance/indemnity provision is available to cover the drilling of relief wells.

Oil & Gas UK believes that the current legislative framework for treating compensation or remedial claims for traditional damage caused by accidents on offshore installations including MODUs, as it applies in the UK, is sufficient. In our view, individual Member States should retain the authority to determine how they regulate indemnity and insurance provisions within their respective jurisdictions. As a result, Oil & Gas UK does not support any move by the Commission to establish a mandated industry-wide pre-loss mutual insurance fund or obligatory insurance policy.

A mandatory ‘one-size-fits-all’ approach to insurance and liability provisions would be counter productive to both socio-economic and health, safety and environmental risk management objectives as they would not take into account the fundamental differences and risks present for different operations under different geological and reservoir conditions (e.g. variable flow rates and whether a well produces gas, condensate, or oil). Naturally, such factors vary from operation to operation and within different oil and gas regions. For example, the risk posed (and therefore the appropriate cover required) for drilling a southern North Sea gas well is very different from the risk posed for drilling a northern North Sea high-pressure, high-temperature oil well. It would be inappropriate to equate the two activities and mandate a standard insurance provision or financial security for both activities. Currently, companies have a variety of means available to them to meet their financial responsibilities. Oil & Gas UK does not believe that this choice should be removed. It is also important that

mechanisms designed to enable companies to insure liabilities are carefully conceived and implemented in order to avoid pricing smaller companies out of the market place. Requiring pooling of risk in a *mandatory* mutual fund would decrease incentives for individual companies to improve safety practices.

Questions 11-15: 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? (Please limit your response to maximum 1000 words)

DECC, HSE and industry already issue relevant information and much data are already publicly available. For example, the HSE website contains data such as operations notices, safety notices, safety alerts, information sheets, research reports, 'key programme' (KP) reports¹², hydrocarbon databases and other relevant statistics. There is also a high degree of transparency in terms of information relating to environmental protection and performance. For example, OPEPs submitted to DECC are public documents and maybe obtained upon request. So too are the Environmental Impact Assessments (EIAs) that underpin OPEPs. Operators are also required to publish an annual environmental report on their operations.

Oil & Gas UK feels that it is important that European citizens are also provided with information on how the industry operates and the benefits that the indigenous European oil and gas industry brings to the EU. In particular, it is important to ensure the availability of information concerning industry's contribution to the economy, science and technology, capital investment, employment, tax revenues and security of energy supply, to ensure that citizens appreciate the contribution that the industry makes to society.

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).

Various national and international industry trade associations, all with readily accessible websites, act as bodies for the sharing of information and best practice between companies and for the development of guidelines.

Within Europe, a number of National Oil Industry Associations (NOIAs) participate in the established NOIAs' forum at which information is shared on a variety of aspects of the industry including health and safety and environmental issues.

There is strong co-operation across the UK offshore oil and gas industry to improve safety performance continually, year on year. An example of this is the industry's *Step Change in Safety (SCIS)* initiative which has a readily accessible website¹³ for the sharing of information relating to health and safety incidents. With the application of the safety case regime and the formation of SCIS there has been a marked overall improvement in safety performance, with falling long term trends for dangerous occurrences, hydrocarbon releases and injuries. The ultimate goal is to make the UKCS the safest place to work in the oil and gas industry worldwide.

The formation of OSPRAG and other groups in response to the Macondo accident is also an example of how industry shares information in order to improve offshore safety. As a result of a recommendation from OSPRAG, Oil & Gas UK has developed a new group – the Well Life Cycle and Practices Forum (WLCPPF) which serves as the permanent forum for the upstream oil and gas industry to address well life-cycle related issues. The group has six individual workgroups designed to address issues in specific areas. There are over 50 active members from over 30 separate operators and well management companies. The group also has links to the UK regulatory authorities. Similar groups have been set up in other European oil and gas sectors. The purpose of the WLCPPF is to provide a formal and active body through which its member representatives can: identify and review well life cycle cross industry issues; share best practice; create and resource workgroups to work well-related

¹² See: <http://www.hse.gov.uk/offshore/programmereports.htm>

¹³ See: <http://stepchangeinsafety.net/stepchange/>

issues; interface with industry and regulatory stakeholders; and prepare and implement recommendations.

In summary, we believe that industry already has sufficient information sharing mechanisms in place to facilitate the efficient sharing of safety related information.

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)

Relevant national regulators already have established processes for working together where necessary, for example, the UK HSE and Norwegian Petroleum Safety Authority (PSA) routinely work together to undertake joint inspections on the installations that straddle the North Sea median line. In addition, previously mentioned organisations such as NSOAF and the IRF are existing bodies which already work to share safety and other information between the relevant national regulators. We believe the EU could act via informal, non-legislative means, to encourage the expansion or replication of such bodies to help ensure the efficient sharing of information across the EU.

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)

Oil & Gas UK recognises that an oil spill incident in one Member State may affect other Member States and, in that context, we support any appropriate additional efforts to support oil spill response capability across Europe. However there are already established procedures and processes in place for responding to incidents and these should also be taken into account. Any additional measures at the EU level should act to add value to existing mechanisms.

There are several existing agreements already in place (with relevance to the UK) to deal with cross border oil spill response. These include the Bonn Agreement¹⁴, the Norway–UK Joint Contingency Plan (NorBrit Agreement) and the Mancheplan.¹⁵ Also of relevance is the North Sea Offshore Co-operative Emergency Services (OCES) arrangement which exists among the national oil and gas trade associations of the UK, Norway, Denmark, the Netherlands, Germany and the Irish Republic. The arrangement provides a framework of principles facilitating the provision of support between operators in emergency situations regardless of national boundaries. The arrangement was first put in place by the national associations in 1979. In light of the Macondo accident, industry will re-assert its mutual intent to come to each other's aid in this manner.

The international oil and gas industry has its own organisation, Oil Spill Response Limited¹⁶ (OSR), to respond to offshore oil spill incidents. OSR is a cooperative that consists of over a hundred member companies. From bases in major producing areas around the world (including the UK) the organisation can respond to an emergency at any time, all year round. OSR has also provided equipment and expertise in the Gulf of Mexico. In addition, OSR also helps members to improve their readiness by providing training, response exercises and contingency planning.

In addition, the UK (as a signatory to the United Nations Convention on the Law of the Sea, UNCLOS) has an obligation to protect and preserve the marine environment. The UK (through MCA) produces a National Contingency Plan (NCP) for marine pollution from shipping and offshore installations. The plan is designed to ensure that incidents are responded to in a timely, measured and effective way.

¹⁴ See: <http://www.bonnagreement.org/>

¹⁵ See: http://www.mcga.gov.uk/c4mca/mcga07-home/emergencyresponse/mcga-pollutionresponse/mcga-dops_cp_sosrep_role/mcga-dops_cp_ncp/mcga-dops_cp_coastal_states_agreement.htm

¹⁶ <http://www.oilspillresponse.com/>

OSPRAG has also been active in ensuring that industry is adequately equipped to respond to an oil spill incident. After an extensive review of UKCS wells, the met-ocean environment in which the industry operates and the practicality of a range of potential response options, the primary solution identified by OSPRAG is a capping device that can be relatively rapidly deployed using a wide range of vessels or rigs while a relief well is drilled. Deployment of a cap has the potential to significantly reduce the time required to stop the uncontrolled flow of hydrocarbons from a well and consequently mitigate third party exposure for most wells. The manufacture of the OSPRAG cap is now in progress and completion of the device is due in summer 2011. Steps are being taken to ensure that the UK's work in this area and the GIRG/OGP activity around non-US well control contingency planning remains integrated and complementary.

In addition, OSPRAG has been working to ensure that other aspects of the UK's oil spill response capability are effective and fit-for-purpose. This has included the development of a 'tool-kit' comprising the response options utilised during the Macondo accident, to provide a suite of potential counter pollution measures for use on the UKCS¹⁷. OSPRAG has agreed to recommend that a group be established under Oil & Gas UK governance to ensure that this effective, robust and sustainable oil spill response capability is maintained for upstream operations on the UKCS.

As per health and safety issues, new knowledge and technological advancements relating to environmental incidents are shared throughout industry and between regulators through internal company mechanisms, various organisations, trade associations and industry bodies and through the multitude of conferences and events which cover these aspects of the industry nationally and internationally.

Question 16-18 Emergency Response and international activities:

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)

Oil & Gas UK would caution against a one-size-fits-all approach to accident and oil spill emergency response in different geographical areas with differing characteristics and properties. Under the UK's regulatory regime, operators must have individually approved OPEPs which demonstrate response plans that are tailored to the assessed risks of particular operations in specific locations. Oil & Gas UK believes that the regulation already in place is sufficient to ensure that adequate emergency response plans are in place for all UKCS operations.

In October 2010 the Commission published a proposal for a Regulation¹⁸ amending the rules applying to EMSA. It is proposed that the revision clarifies that EMSA's response capabilities can also be used in case of marine pollution caused by sources other than vessels, notably by oil platforms. Any strengthening of the capability of Member States to respond to offshore accidents and oil spill incidents is to be strongly welcomed, though the added value of extending EMSA's remit should be carefully evaluated (and the current emergency response practices and procedures existing in, and between Member States, as detailed above, fully considered). Oil & Gas UK would support any measures that provide genuine additional value to Member States' capacity to respond to accidents and oil spill incidents. However, any role that EMSA may acquire in responding to accidents and/or oil spills from offshore installations, should only be exercised when at the specific request of the relevant national authorities.

Article 2.2 d) of the proposed Regulation states that: *"The Agency shall assist the Commission (...) in the analysis of the safety of mobile offshore gas and oil installations, in order to identify possible weaknesses"*. It is unclear what this means in practice or what implications it would have for EMSA's remit. It is also unclear if EMSA has the expertise to comment upon the safety of offshore oil and gas installations. On this basis Oil & Gas UK would have serious doubts about the effectiveness or desirability of a pan-EU "control-the-controllers" regulatory regime for offshore safety, or the possibility

¹⁷ Elements of the toolkit include: sub-surface dispersant application; surface vessel dispersant application close to source; containment and recovery at sea; in-situ burning; aerial dispersant application offshore; containment and recovery near shore; shoreline protection; and, surveillance.

¹⁸ (COM(2010) 611 final). See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0611:FIN:EN:PDF>

of EMSA taking a role in the assessment or auditing of the safety of offshore oil and gas installations, or the licensing of oil and gas activities.

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)

Oil & Gas UK supports European and international dialogue with others regarding offshore safety and environmental protection. As noted previously, bodies such as the NSOAF represent an efficient model for the sharing of information between countries with offshore operations. Conceivably this could be extended to include the relevant regulatory authorities from other countries, or, similar fora set up in other regions. Industry would also be happy to participate in such arrangements.

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)

The Commission Communication suggests that if EU companies failed to meet obligations in other regions of the world, then their ability to obtain licences to operate in EU waters might be affected. Oil & Gas UK would suggest that such proposals might well be impractical to implement and that monitoring and enforcing such a system on an international basis might well prove challenging. We would also suggest that encouragement of best practice globally through collaboration could ultimately be more persuasive.

Oil & Gas UK believes that such an approach would not adequately take into account the distinct and complex nature of operations in different oil basins, both within Europe and around the world. Differences in the regulatory regimes present in the various international offshore oil and gas producing countries are also apparent. For example, the goal setting approach employed by North Sea EU and EEA States is fundamentally different from the more prescriptive regulatory approach utilised in the USA.

11th May 2011

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