

Response to the Public Consultation on Improving offshore safety in Europe

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Introduction

NOGEP A (the Netherlands Oil and Gas Exploration and Production Association) represents the interests of companies possessing permits to drill for and produce oil and gas both on land and on the Dutch continental shelf. NOGEP A members produce some 75 billion cubic meters of natural gas and two million cubic meters of oil annually. Some 3,000 people work for Dutch oil and gas companies. A similar number work in supplier companies. An additional 10,000 work for contractors in the offshore sector. Website: www.nogepa.nl

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Our reference
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NOGEP A is a member of OGP, the International Association of Oil & Gas Producers. OGP responded to the Communication from the Commission on 'Facing the challenge of the safety of offshore oil and gas activities'. NOGEP A fully supports the views expressed by OGP and underlines these views by echoing the answers from OGP.

For the sake of completeness, the answers from OGP are repeated in the text below.

General remarks

In December 2010, OGP, as well as a number of individual member companies, responded to the Communication from the Commission on 'Facing the challenge of the safety of offshore oil and gas activities'. A number of comments and suggestions made in the OGP submission remain very relevant to the questions asked by the Commission in the above-mentioned public consultation. The OGP response to the consultation consequently draws on the December 2010 OGP submission to the Commission Communication.

In addition, following the Macondo accident, OGP created the Global Industry Response Group (GIRG), which has been active since July 2010, and has focused on identifying lessons learned and potential improvements with respect to the safety of offshore oil and gas activities. More information on the GIRG is provided on pages 4-5 in the section on transparency, sharing of information and state-of-the-art practices.

Authorisations (3000 words maximum)

Questions 1-3

The Hydrocarbons Licensing Directive 94/22 requires demonstration of technical and financial capability by the operator before a licence can be obtained.

In addition, the systems for licensing and permitting currently applied in the four Member States (UK, the Netherlands, Denmark and Italy) with notable offshore oil and gas activities, as well as in Norway¹, are sound and ensure application of state-of-the-art technology and procedures². The regulatory regimes in place in these countries require the industry to provide credible safety cases, i.e. to prove on a case-by-case basis that risks are thoroughly assessed and minimised as far as is reasonably practicable and that operations are safe at each stage of exploration and production activities. 'State-of-the-art' practices are enshrined in the safety case approach applied today.

Moreover, operators bear full liability for both property and environmental damage in line with national law and the Environmental Liability Directive 2004/35.

OGP does therefore not recommend any changes to the authorisation conditions for offshore prospecting or exploration or production activities. OGP, however, does recognise that there may be concerns that not all EU Member States, particularly those that are only beginning to develop offshore oil and gas activities, have a system as solid as the safety case regime in place in European countries with a large experience in offshore oil and gas activities.

It is our view that the EU should work individually with the relevant Member States - with the help of other Member States and/or the industry, as appropriate - to bring standards up to those of the European countries with notable oil and gas production. In this context, the North Sea Offshore Authorities Forum (NSOAF) could serve as a model upon which a consultative and advisory body of national experts could be built.

Prevention of accidents (2000 words maximum) Questions 4-5

OGP first of all wishes to point out the good historical record of the industry in improving the prevention of accidents affecting the health and safety of workers. As the Commission Staff Working Document accompanying the Commission Communication recognises: "offshore oil and gas operations naturally entail risks. Yet, the European offshore industry boasts an improving safety record which is comparable e.g. to agriculture or the construction industry" and "continuous efforts to effectively manage the risks resulted in a significant reduction of the number of incidents."³

The Commission recognises that the safety record of the European offshore industry is comparable to that of agriculture. Yet, much higher risks are encountered in the European offshore industry. This corroborates the conclusion that the network of international, EU and national rules together with the industry's own discipline, have ensured the safety record described in the Staff Working Document. In several Member States the safety record of the

¹ By substantial margins, Norway and the UK are the largest oil producers in Europe. Norway, the Netherlands and the UK are the largest gas producers. This is without prejudice to the regulatory systems applied in Ireland, Germany and Romania, which are not considered to have notable offshore oil and gas production or a long experience in offshore oil and gas production.

³ COM(2010) 560 final, Commission Staff Working Document, p.9.

offshore oil and gas industry is far superior to both the agricultural or construction industries⁴. The oil and gas industry is far from complacent however.

The good safety record of the industry is indeed the result of a proven, robust and tight network of EU and national rules as well as industry's adherence to and adoption of evolving international standards.

At European level, the health and safety of workers are regulated by two Directives⁵ : a general Framework Directive and a sector-specific Directive which regulates the health and safety of workers in the mineral-extractive industries through drilling. At national level, the safety case approach, based on Directive 92/91/EEC, ensures the protection of the health and safety of workers.

OGP agrees with the approach suggested in the Communication that the Commission reviews the EU framework, building on the complete Deepwater Horizon investigation results before establishing the need, if any, to amend the Directive 92/11. OGP also supports the Communication's recommendation to the Member State licensing authorities and operators to review and update the safety cases as necessary and to communicate on clearly defined upgrade programmes if any deficiencies are identified. In this respect we note the initiatives underway or recently concluded⁶.

Existing legislation and mechanisms to prevent accidents affecting the health and safety of workers also include EU Directives on product safety⁷ as well as some 5000⁸ technical standards e.g. from organisations such as the American Petroleum Institute (API), the European Committee for Standardisation (CEN), and the International Organisation for Standardisation (ISO), which are the subject of continual review to ensure further improvement.

With regards to product safety, the national regulatory authorities in some Member States already have sufficient powers to deal with any safety issues regarding equipment. Hence, any proposals for action or change need to be informed through close cooperation between the Commission, individual Member States/national regulators, the industry and, in this case, the relevant standardisation bodies. The same applies to regulations and practices for well design and control.

The results of the Global Industry Response Group (GIRG) created by OGP members following the Macondo accident, the US Joint Industry Task Force and the API on well design and drilling

⁴For example, the offshore oil and gas industry in the UK has a lower reportable non-fatal injury rate than the wholesale/retail and public administration sectors.

⁵Framework Directive 89/391/EEC and Directive 92/91/EEC

⁶For example, Written Ministerial Statement of 4 April 2011 by UK Energy and Climate Change Minister announcing a Review of the UK Oil and Gas Regulatory Regime (following release of the investigation report by the US Presidential Commission).

⁷Directive 2001/95 on general product safety; Directive 2006/42 on machinery; Directive 97/23 on the approximation of the laws of the Member States concerning pressure equipment; Directive 94/9/EC on equipment and protective systems intended for use in potentially explosive atmospheres (ATEX).

⁸OGP report, Benchmarking on the use of internal technical specifications and external standards by some oil & gas companies, Report No. 450, February 2011

standards will be communicated to ISO and play a central role in supporting and improving the industry's safety record.

A similar tight, robust and interlocking network of international, EU and national rules is in place to ensure the protection of the environment.

At EU level, offshore activities are covered by:

- The Strategic Environmental Assessment Directive, which ensures that Member States carry out a screening procedure to determine whether future plans or programmes in the energy sector are likely to have significant environmental effects.
- The Environmental Impact Assessment Directive, under which companies submit to the competent authorities environmental assessments and mitigation proposals for individual projects so that the environmental implications of decisions are taken into account before decisions are made. Project developers inform and consult the public when conducting Environmental Impact Assessments.
- The Industrial Emissions Directive, which regulates emissions to air from offshore installations.
- The Emissions Trading Directive, which regulates carbon dioxide emissions from offshore installations.
- The Marine Strategy Framework Directive, of which the implementation process is under way with several working groups working on the ways of identifying and quantifying through scientifically based criteria environmental pressures thereby evaluating and establishing achieving a 'good environmental status'.
- The Habitats and Wild Birds Directive, which ensures the protection of sensitive species and habitats.
- The UN Convention on Environmental Impact Assessment in a Transboundary Context, or Espoo Convention, which lays down the general obligation of governments to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across borders.

Furthermore, offshore installations in the North-East Atlantic are covered by the pollution control measures of OSPAR related, for example, to the types of chemicals that can be used, discharges etc. Similar measures also exist in the Offshore Protocol of the Barcelona Convention, which, with the recent ratification by Syria, is just entering into force. Although Italy has not ratified the Protocol, its requirements are applied and enforced and complemented by national regulations. Tight control measures exist equally for the Baltic Sea, where offshore activities are limited at present, through the Helsinki Convention (HELCOM). The Black Sea Convention is active in the Black Sea region. In this context, OGP believes that there is value in encouraging the exchange of expertise between these conventions, or via a consultative body of experts building on the model of the NSOAF.

To conclude, in the domains of the prevention of health and safety of workers as well as in terms of the protection of the environment, European operations are subject to a process of continuous learning between regulators and the industry. OGP members accept the need to challenge the industry to do even better. This challenge, however, must be based on a thorough and accurate understanding of the current state of affairs in Europe. Any recommendations for change must be based on a clear identification of shortcomings in the way operations are regulated and must not be designed or implemented in a way which results in a reduction in

safety standards in those Member States which already have fit-for-purpose offshore regulatory regimes.

The imperative resulting from this is that any new measures taken must clearly build on this network of rules and avoid creating gaps that do not exist today. Gaps risk being created by shifting responsibilities, which may result in a loss of competence, or by splitting responsibilities, which can lead to ambiguity within national administrations about who is answerable and to what extent. This applies to both setting and enforcing regulation.

Verification of compliance and liability for damages (5000 words max)
Questions 6-10

Compliance is an issue to which the industry devotes significant energy and resources and constantly strives to improve. Companies risk fines and suspensions or even loss of permits and licences, in cases of non-compliance. Furthermore, it is important to recognise that the cost of damage to both people and the environment, of any incident, is a strong incentive for the industry to comply with the existing framework.

Supervision and verification of compliance is ensured by the competent authorities. Adaptations to permits are made as considered necessary by the competent authorities. With respect to inspections, OGP is of the view that the current system is working well. Any proposed changes to the control system should demonstrate precisely how they would ensure the necessary competence and coordination to the extremely rigorous and proven systems that are in place today.

The Environmental Liability Directive holds companies responsible for environmental damage to protected habitats and species. OGP recognises that the Commission may wish to review the scope of the existing environmental liability legislation to cover environmental damage to all marine waters.

In terms of the existing regulatory framework on compensation and remediation for both property and environmental damage, OGP would like to provide some information on an existing mechanism, currently in place in the North Sea: the Offshore Pollution Liability Association Limited (OPOL). OPOL⁹ was created by the UK Operators who agreed strict liability for pollution damage and the cost of remedial measures from their offshore facilities.

The limit for compensation (pollution damage and the cost of remedial measures) has been recently increased by OPOL following discussions with OSPRAG¹⁰, a UK working group created following the Gulf of Mexico accident and involving the industry, regulators and trade unions. The OPOL limit is US\$250 million per incident and US\$500 million in the annual aggregate, as of 1st October 2010. With the expected ability to implement a cap (see p. 6 for more information), the new limit will be sufficient to cover third party costs associated with the majority of spill scenarios in the UK, with only a 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 adequate

⁹For more information on OPOL, see www.opol.org.uk

¹⁰For more information on OSPRAG, see www.oilandgasuk.co.uk/knowledgecentre/OSPRAG/cfm

financial responsibility, relative to the identified exposures, is provided by the parties concerned and is independently verified.

OPOL covers quantifiable losses that result directly from a spillage of oil from offshore exploration and production facilities.

OGP also understands that the Commission may wish to review current liability limitation amounts to take into account the scale and consequences of the Macondo accident. OGP does, however, not support the establishment of a mandated industry-wide pre-loss mutual insurance fund or mandatory insurance. There are various ways for companies to meet their financial responsibilities and this choice should not be removed. It is also crucial that mechanisms to enable companies to insure their liabilities are carefully conceived in order to avoid pricing smaller companies out of the market place.

Transparency, sharing of information and state-of-the-art practices (5000 words max)

Questions 11-15

OGP considers that it is not in the industry's remit to judge what information would be most important to citizens. That said, OGP would like to point out that the SEA and EIA Directives, mentioned above, ensure that the public is informed and consulted by the project developer. Furthermore, the Espoo Convention mentioned above requires Member States to share upfront information with each other in case of projects that are likely to have significant adverse environmental impact, and the impacting member state is subsequently involved in the decision-making.

OGP members will, in principle, agree to the disclosure of information that the national regulator considers fit for publication, as long as no commercially sensitive information is made public. Beyond information already published today, an exchange of information takes place in forums such as the NSOAF or the International Regulators Forum (IRF), which brings together regulators from all corners of the world.

With respect to the sharing of information within the industry and between companies, OGP since its creation in 1974 has been the place where operators have exchanged information and experience and established guidelines for the industry world-wide.

In the aftermath of the tragic incidents in the Gulf of Mexico on the Macondo prospect, Montara in Australia, and other similar incidents, OGP formed the GIRG in July 2010.

GIRG aims to ensure that the lessons learned from Macondo are applied around the world. To do that, part of GIRG's remit is to monitor and collate the outcomes of the official Macondo investigations. This process is helping to identify and answer other questions about Macondo and deepwater operations.

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 still occurs.

The GIRG will also incorporate the results of the official investigations into the Gulf of Mexico accident into its studies, as well as the outcome of the work undertaken by API, the Joint Industry Task Force in the US, and the UK initiative OSPRAG (see below for more information). OGP will ensure that any relevant findings are consolidated and disseminated throughout the global members of the association.

OGP expects GIRG to report later this month and their reports should be taken to form a significant part of the global oil and gas industry's response to the challenges that it faces.

With regards to the means necessary to promote the use of state-of-the-art practices across all Member States in order to protect occupational health and safety and the environment, OGP believes that cooperation and exchange of information between the regulators would be very valuable. A consultative and advisory body of national experts, as stated above, could be established. The industry would be happy to participate in such a structure.

Emergency response and international activities (3000 words max)

Questions 16-18

OGP supports the initiative to examine whether the effectiveness and efficiency of oil spill response capacity existing in Europe can be further enhanced. The following information on existing arrangements in this area may be useful in this context:

1. The Operators Co-operative Emergency Services (OCES) Agreement is the organisational framework under which oil and gas companies operating in the waters of the North Sea and adjacent waters of the North West European Continental Shelf co-operate and share resources in the event of an emergency situation.

Its members are the national oil industry associations of Denmark, Germany, Ireland, the Netherlands, Norway and the UK. The national associations have a declared policy of mutual support between members to promote and facilitate the sharing of resources. They are currently revising the necessary arrangements and procedures to ensure that support can be provided more effectively. These are described in the Mutual Aid and Emergency Assistance Code. This co-operation between associations and their members has been in place since the early days of the industry and is currently being amended to include the latest views. The arrangements have been developed in parallel with the expansion of the industry, and are designed to provide assistance to members and others in both real and potential emergencies.

2. The international oil and gas industry can call on its own organisation in the event of a spill. Oil Spill Response (OSR) is a cooperative that consists of 112 member companies. From bases in major producing areas around the world – including the UK – it is ready to respond to an emergency 24/365. OSR provided equipment and expertise in the Gulf of

Mexico. OSR also helps members to improve their readiness by providing training, response exercises and contingency planning.

3. The Global Response Network (GRN) is a collaboration of seven major oil industry-funded spill response organisations. Their mission is to harness cooperation and maximise the effectiveness of oil spill response services worldwide.

OGP would also wish to provide some information on contingency plans. The contingency plans are produced and submitted to national regulators in accordance with the Oil Pollution Preparedness, Response and Co-operation (OPRC) Convention of 1990. The OPRC convention provides an international framework for co-operation in combating and responding to major incidents or threats of oil pollution. The UK, Norway, The Netherlands and Italy have ratified the OPRC Convention. This ratification resulted in the production of National Contingency Plans which these countries have in place. Moreover, the countries developed regional agreements (e.g. the Bonn Agreement) and cross-border agreements, such as 'NorBrit' (Norway/UK) 'Mancheplan' (UK/France), 'DenGerNeth plan' (Denmark/Germany/ Netherlands).

We also mentioned above that OGP's GIRG is analysing the various regional needs around the globe and will propose solutions for development in 2011. Whilst this work is ongoing, OSPRAG is developing a capping device for use in all areas of the UK Continental Shelf including the area West of Shetland. It is envisaged that the device will be completed by summer 2011. Individual companies in the UK and Norway are also developing similar capping devices.

For information on OGP's position on the European Maritime Safety Agency (EMSA), please see the attached position paper.

With respect to companies' own standards, European companies with worldwide operations apply their own high standards of safety and accident prevention around the globe. However, it is important to note that host governments may require changes in line with natural, legal or other local circumstances.

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