

**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 Directive<sup>1</sup>, the Habitats Directive<sup>2</sup> and the Birds Directive<sup>3</sup>) 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

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<sup>1</sup> [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

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

<sup>3</sup> [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.

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**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 <sup>4</sup>foresees that the competent national authorities shall ensure that authorisations are granted on the basis of selection criteria which consider, among other things, the financial and technical capability of the companies wishing to carry out offshore oil or gas operations.
  - a) What key elements<sup>5</sup> should this technical capacity requirement include in your view?  
Please limit your response to maximum 500 words
  - b) Similarly, what key elements should the financial capability requirement include in your view? (Please limit your response to maximum 500 words)
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)

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<sup>4</sup> Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons

<sup>5</sup> Focus is only on the main elements of this capability as opposed to detailed requirements which vary according to the different geological, geophysical, technical and other circumstances of each individual case.

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)

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