

Offshore Activities – responses to Questionnaire.

1 and 2. Regional or bi-lateral Agreements relating to compensation for pollution from offshore activities.

Korea.

Party to an environmental agreement with Japan, Russia and China but this contains no provisions on liability or compensation.

USA.

Party to several regional agreements in relation to offshore activities. For example the Canada – U.S. Joint Marine Pollution Plan which provides that each country will apply its own liability and compensation law, the Cartagena Convention covering the wider Caribbean (no protocol on liability and compensation has yet been agreed), the CANUSLANT and IEMAMOU agreements covering the Eastern Atlantic Seaboard and an agreement with Mexico regarding transboundary hydrocarbon reservoirs. None of these agreements deal with issues of liability and compensation. The USA, Canada, Denmark, Finland, Iceland, Norway Russia and Sweden are parties to the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic which does envisage that the parties may recover the costs of dealing with a spill from third parties.

Greece.

Not a party to any regional or bi-lateral agreements. (Subject to E.U. Directives on the prevention of environmental damage – see separate heading under 3.)

Spain.

Party to OSPAR which does not deal with liability and compensation and has not ratified the Barcelona Convention and 1994 Protocol which do. (Also subject to E.U. Directives on prevention of environmental damage.)

Croatia.

Party to Barcelona Convention and a signatory to the 1994 Protocol which it has not ratified though it applies the Protocol domestically. Other regional agreements relating to protection of the maritime environment to which Croatia is party do not deal with liability and compensation.

Japan.

Not party to any agreements apart from the environmental agreement with Russia and China which does not deal with liability or compensation.

Senegal.

Party to the Abijan Convention and its Protocol which deals with liability and compensation but only by encouraging states parties to formulate and adopt procedures for determining liability and payment of compensation in the convention area.

Netherlands.

Party to OSPAR which does not deal with liability and compensation and to CLEE which never came into force. (Subject to E.U. Directives on the prevention of environmental damage – see under 3 below.)

Malta.

Party to the Barcelona Convention and signed the 1994 Protocol though this has not been ratified to date. (Malta is also subject to E.U. Directives 2013/30/EU on prevention of environmental damage – see under 3 below.)

Italy.

Party to the Barcelona Convention but has not ratified the 1994 Protocol. (Subject to E.U. Directives on the prevention of damage to the marine environment – see under 3 below.)

Argentina.

Not party to any regional agreements but has a bi-lateral treaty with Uruguay but this does not deal with liability and compensation.

China.

China is party to the environmental agreement with Japan and Korea but nothing otherwise.

France.

Party to OSPAR which does not deal with liability and compensation. Also party to the Barcelona Convention but not to the 1994 Protocol. The French company, Total, is a party to the OPOL Agreement. It seems doubtful whether an operator would in practice be allowed to apply the OPOL limits against a French State or French claimant.

(Subject to E.U. Directives on prevention of damage to the marine environment – see under 3 below.)

Denmark.

Party to OSPAR which contains no provisions for liability and compensation. Otherwise Denmark is not a party to any regional or bi-lateral agreements. (Subject to E.U. Directives on prevention of damage to the marine environment – see under 3 below.)

Ukraine.

Not a party to any of the agreements listed in the Questionnaire or to any other regional or bi-lateral agreements containing rules governing liability or compensation.

Norway.

Party to OSPAR which contains no provisions for liability or compensation and is a party to OPOL. Norway has a 1994 bi-lateral agreement with Russia regarding pollution in the Barents Sea which contains provisions on reimbursement between the parties of costs incurred in responding to an oil spill. Similar rights of reimbursement arise under a 1993 agreement between Denmark, Norway, Finland, Iceland and Sweden. In the Norwegian response to the Questionnaire it is pointed out that in the 1990 OPRC Convention (widely ratified) there are similar obligations to reimburse expenses. The 1983 Bonn “*Agreement for Cooperation in dealing with pollution of the North Sea by oil and other harmful substances*” also contains rules for reimbursement of expenses. To the extent that a mobile offshore rig is a “ship” any escape of bunkers might be subject to the Bunkers Convention 2002 and its liability and compensation regime. Finally, Norway has entered into various bi-lateral agreements regarding leaks from particular pipelines.

Brazil.

Not a party to any regional or bi-lateral agreements.

Belgium.

Party to OSPAR which does not deal with liability or compensation and has no operators who are members of OPOL. (Subject to E.U. Directives on prevention of damage to the marine environment – see under 3 below.)

3. National regulations applicable to offshore oil and gas exploration and exploitation.

European Union.

The European Parliament and Council of the European Union have published a series of Directives covering the safety of offshore oil and gas operations. The most recent is Directive 2013/30/EU. This deals, for the main part, with issues of safe operation and the prevention of spills. However, Article 7 provides that member states “shall ensure that the licensee is financially liable for the prevention and remediation of environmental damage caused by offshore oil and gas operations”. Chapter VII is entitled Emergency Preparedness and Response and requires states to develop internal and external emergency response plans. Chapter VIII deals specifically with Transboundary Effects and requires co-operation between states in the event of a spill.

By Article 39 the Commission is required, by July 19th 2015, to submit to the European Parliament and to the Council a “report on the availability of financial security instruments, and on the handling of compensation claims...accompanied by proposals”. The Commission is also required to submit a report on the “effectiveness of the liability regimes in the Union in respect of the damage caused by offshore oil and gas operations.” This report is also to assess the “appropriateness of broadening liability provisions.”

It is assumed that the recently published report by the University of Maastricht will form the basis of the eventual report from the Commission. At the conclusion of this lengthy report it is recommended that the EU should (through an appropriate UN organisation or other world body) promote the creation of an international treaty to cover pollution from offshore activities with particular reference to transboundary pollution.

The main features of such a treaty would, according to the report, be:-

- (i) strict liability,
- (ii) reduced liability to pay compensation in the event of contributory negligence,
- (iii) no channelling of liability,
- (iv) joint and several liability of the parties involved,
- (v) “economic channelling” – the financial security of the licensee or operator to cover sub-contractors,

- (vi) promotion within the E.U. of regional pooling of risks by contractors (OPOL type agreements for other areas of sea).

The Directive requires all states to implement the safety and operational provisions of the Directive by July 19th 2015. It is assumed that, in due course, there will be a further Directive dealing with issues of liability, compensation and financial security.

Korea.

The Marine Environment Management Act governs the liability and compensation obligations of owners/operators of offshore facilities following a spill within the territorial waters and EEZ.

USA.

Requirements to prove financial responsibility for offshore oil and gas facilities are enforced under the U.S. BOEM pursuant to 30 CFR (Mineral Resources) Chap. V (BOEM) Part 553 (Oil Spill Financial Responsibility for Offshore Facilities).

OPA 90 will not enable a foreign country to recover damages for a spill unless that country can demonstrate that US claimants would have reciprocal rights in the event of a spill in their country. (Mexico could not recover damages in respect of the Deepwater Horizon spill for this reason.)

Greece.

See under European Union. The offshore industry is regulated by domestic law and liability for pollution is covered by Presidential Decree 55/1998 which imposes an obligation to pay damages where pollution occurs from an offshore installation through negligence. There are also penal and administrative penalties.

Spain.

There are no specific regulations relating to offshore oil and gas exploration. The issues of liability and compensation are generally covered under various environmental rules.

Croatia.

Has a Mining Act, an Environmental Protection Act and a raft of Ordinances which regulate all aspects of offshore oil and gas operations. Many of the E.U. Directives on environmental protection have been incorporated into Croatian law. There is strict liability for the consequences of a spill.

Japan.

Act on Prevention of Marine Pollution and Maritime Disaster (Act No. 136 of 1970) governs offshore activities but does not contain any liability provisions. However, under general civil law and the Mining Act (Act No. 289 of 1950) there would be strict liability for pollution damage.

Senegal.

We have no information about a domestic law in Senegal but as noted above it is a party to the Abijan Convention and Protocol.

Netherlands.

Anyone suffering damage as the result of pollution from offshore activities would have the right to claim damages under the general provisions of Dutch tort law and also under the provisions of the Civil Code which deal with the liability of an operator of mining works. The implementation of Directive 2013/30/EU and, in due course, any liability and compensation provisions which may be introduced will affect the position in the Netherlands.

Malta.

Offshore activities are regulated by the Continental Shelf Act – Chapter 194 and a number of other acts. Notably the Code of Police provides that a person guilty of causing pollution shall be liable for all damages caused. Again, reference is made to Directive 2013/30/EU and the fact that Malta is obliged to give effect to the regulations by July 19th 2015 and, in due course, to any liability and compensation rules which may be introduced.

Italy.

As regards liability the Italian Environmental Code, brought into effect by Legislative Decree of April 3rd 2006, the state is entitled to claim compensation for environmental damage and the right of private parties also to claim is not excluded.

Argentina.

Pollution liability is governed by the Ley General del Ambiente (General Environment Act). This applies a strict liability regime to the whole territory, including the territorial sea and EEZ. There is no right to limit and evidence must be produced of adequate insurance.

China.

There are six national regulations covering the offshore industries. Most of these appear to be technical in nature but it is not known which deals with issues of liability and compensation.

France.

There are no specific provisions concerning liability for pollution caused by offshore activities. However, Article L. 155-3 of the “Code Minier “ provide that the operator and/or licensee is strictly (force majeure excepted) liable for all damage caused and cannot limit liability. In the absence of other specific laws it is thought that this would cover pollution from offshore activities. Again, Directive 2013/30/EU will, in due course, affect the situation in France.

Denmark.

Offshore operations are tightly regulated at a technical level. And by Danish Act No. 960 of 2011, known as the Danish Act on the Use of the Danish Subsoil, the owner of the license must pay compensation for any damage caused when operating under the license. This is a strict liability (unless the injured party has been grossly negligent) and there is no right to limit liability.

Ukraine.

The Natural Resources Code of Ukraine regulates offshore activities. Article 69 provides that damage caused by breach of the law relating to environmental protection shall be compensated in full including for loss of income during the time it takes for the environment to recover. Liability is strict though events caused by natural phenomena or by wilful act of the victim are excepted.

Norway.

The key legislative instrument is the Act Relating to Petroleum Activities (1996). This act embraces all aspects of offshore activities. Chapter 7 imposes strict and unlimited liability (subject to certain defences) for any escape or discharge from an offshore facility. Liability is channelled to the licensee though he may have a right of recourse against the actual wrongdoer. The licensee is liable for the acts of anyone undertaking tasks for him. There are requirements for compulsory insurance and for the provision of security in the event of a spill. Liability to pay compensation extends to “economic loss resulting from environmental damage” and to the cost involved to “restore the state of the environment.”

Belgium.

The point is made that at present no offshore oil or gas exploration or exploitation activities take place in Belgian waters which explains why there are no specific national laws on this subject. However, there are national laws

which regulate the exploration for and exploitation of natural resources in the territorial sea which would cover the situation if oil and gas were to be found. No doubt the Belgian government will be considering whether, in the circumstances, it is obliged to implement Directive 2013/30/EU.

Patrick Griggs.

Chairman, IWG.

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