

Belgische Vereniging voor Zeerecht – Association Belge de Droit Maritime

VZW – ASBL

Opggericht in 1896

Fondée en 1896

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Comité Maritime International
For the attention of Mr Stuart Hetherington
President

Re: REPLY TO CMI QUESTIONNAIRE ON OFFSHORE ACTIVITIES- POLLUTION LIABILITY AND RELATED ISSUES.

Dear Mister President

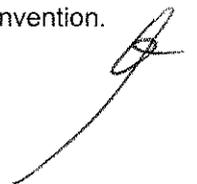
With reference to your letter dated 19 July 2013 please find below the response of the Belgian Maritime Law Association to the captioned Questionnaire.

The questions of the Questionnaire are repeated in our response for your ready reference.

The response of the Belgian Maritime Law Association deals with civil liability issues regarding accidental oil pollution coming from offshore exploration and exploitation.

1) Is your country a party to any of the instruments listed under 1 to 3 above or, in the case of OPOL, are the offshore operators in your country parties to that agreement? If so please advise whether issues of liability and compensation are adequately addressed by the instrument itself or by any subsidiary national legislation.

- Belgium is a Contracting Party to the 1992 CONVENTION FOR THE PROTECTION OF THE MARINE ENVIRONMENT OF THE NORTH-EAST ATLANTIC (the OSPAR Convention). The Convention was ratified by Belgium by Parliamentary Act of May 11, 1995. It entered into force internationally for Belgium on October 6, 1996.
- Belgium is no party to the 1994 Barcelona Convention neither to the 1981 Abidjan Convention.



- As far as the Belgian Maritime Law Association can verify there are no Belgian offshore operators active in the oil and gas exploration and exploitation on the Belgian continental shelf. We consequently assume that no Belgian company is a party to the 1975 OPOL (which rather dates from 1974 and which was apparently amended recently in June 2013). No publicly accessible records in respect of the actual members of OPOL seem to exist. We wonder whether the CMI cannot obtain the identity of the OPOL-members from "The Offshore Pollution Liability Association Ltd." directly.

2) If your country is not a party to any of the instruments listed under 1 to 3 above, is it party to any other form of regional or bilateral agreements which address the issues of liability and compensation? May we please have details of any such agreement.

Belgium is a party to the 1973 International Convention for the Prevention of Pollution from Ships (Marpol) as modified by the 1978 Protocol. This Convention however does not address liability issues as such. Belgium is equally a party to the 1992 Protocols to the CLC & Fund Conventions and to the 2003 Supplementary Fund Protocol. It is however well-known that these Conventions do not include oil pollution damage from platforms.

Belgium is also a party to the 1977 *London Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration and Exploitation of Seabed Mineral Resources 1977*. However, due to lack of sufficient ratifications, this convention did not yet enter into force.

Being a member state of the European Union, Belgium is subject to EU legislation. It can in general be said that under EU legislation the responsibility for the clean-up of any oil spill and the liability for damages caused by it, is based on the "polluter pays" principle. The "polluter pays" principle is contained in Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) that provides : *Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.*

With regard to offshore oil and gas exploration/exploitation, numerous directives apply. It may go beyond the scope of the CMI questionnaire to describe the relevance of each individual and relevant Directive. Some of the more relevant directives are e.g. :

- *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 (Environmental Liability Directive).*



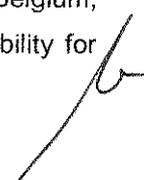
- *Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (IPPC Directive), replaced as from January 6, 2014 by DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions (integrated pollution prevention and control);*
- **DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the Environment;**
- *Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive);*
- *Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC . This directive is to be implemented by the European member states ultimately on 19 July 2015.*

3) Please identify the national regulations which are applied to offshore oil and gas exploration and exploitation operations by the authorities in your country?

As a preliminary remark, it should be emphasized that at present no offshore oil and gas exploration and exploitation activities take place in sea waters that fall under the jurisdiction of Belgium. This could explain why no specific Belgian national or domestic legislation on offshore oil and gas exploitation and exploration exists. The rights and obligations in respect of the use of sea waters and the exploration and exploitation of the sea bed that fall under Belgian jurisdiction, are governed by numerous national laws, e.g. :

- Parliamentary Act of 13 June 1969 concerning the exploration and exploitation of natural resources of the territorial sea en the continental shelf;
- Parliamentary Act of 22 April 1992 concerning the exclusive economical zone of Belgium in the North Sea;

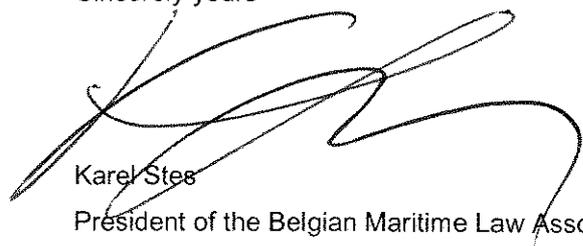
It is to be specified that offshore activities on the Belgian Part of the North Sea are subject to a permit system; these permits may include provisions concerning e.g. the prevention of pollution damage.

- Parliamentary Act of 20 January 1999 on the protection of the marine environment and on the organisation of the marine spatial planning in the sea areas under the jurisdiction of Belgium; Articles 37 *et seq.* of the Law of 20 January 1999 did introduce a general (no-fault) liability for environmental damage into Belgian legislation;
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- Royal decree of 21 November 2005 on the regulation of the investigation of accidents and incidents at sea;
- Royal decree of 25 October 2007 concerning remedial measures due to significant deterioration of the marine environment and the recovery of the costs of preventive measures, containment and remedial measures;

Finally, reference may be made to the law of 17 August 2013 on the exploration and exploitation of natural resources [of the sea and ocean bed and its subsoil] in areas beyond national jurisdiction (~ the « Area »), which relates the polluter pays-principle to such activities.

Sincerely yours

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Karel Stees
President of the Belgian Maritime Law Association

4 December 2013