

ASSOCIATION FRANCAISE DU DROIT MARITIME



ANSWERS OF THE ASSOCIATION FRANCAISE DU DROIT MARITIME

QUESTIONNAIRE

Offshore activities – pollution liability and related issues

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.

- The OSPAR Convention: As mentioned in the questionnaire, France is a contracting party to this Convention which does not deal with issues of liability and compensation.
- The 1994 Protocol to the Barcelona Convention: France is a party to the Convention but not to the 1994 Protocol even if the European Union encourages its Members States *“that are Contracting Parties to the Barcelona Convention and that have not yet done so [to] take the necessary steps to finalise the procedures to ratify or accede to the Offshore Protocol”*¹.
- The Abidjan Convention: As indicated in the questionnaire, France is not a contracting party to this Convention.
- The OPOL Agreement: the company Total Oil Marine Limited, a non-French subsidiary of the French company Total, is a party to this Agreement.
The OPOL Agreement imposes strict liability on operators and guarantee payment of a limited compensation up to USD 250 million per incident.
The scope of this Agreement is limited: there is no provision in French law concerning OPOL and in the event of a pollution of the French coasts, French law will apply.

¹ Preamble 13 of the European Council Decision 2013/5/EU dated 17 December 2012 by which the European Union became a party to the Protocol.

The adhesion of the EU to the Protocol does not imply that Member States become also parties to the Protocol.

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To our knowledge there has been no claim in France for pollution damage caused by offshore activities.

We consider that an operator, Party to OPOL, would not be entitled to rely on the OPOL Agreement to limit its liability, if damages were claimed by the French State or a French claimant victim of pollution.

This seems consistent with clause XIII of the OPOL Agreement which states that third party rights which might exist apart from the Agreement may not be affected by it.

- National legislation: Under French law there is no specific provision concerning pollution damage arising from offshore activities. The general provisions of article L.155-3 of the "Code minier" provide that the operator and/or the licensee of a mining activity is liable for all damages caused by its activities. It cannot limit its liability. There is a presumption of fault and the operator and/or the licensee may only be exonerated from liability if it proves that the damages were caused by an external cause ("cause étrangère"), such as an event of force majeure or the fault of a third party. If the operator and/or the licensee disappear or become insolvent, the French State will indemnify the victims of the damages and will be subrogated in their rights. In our view, article L.155-3 does not adequately address issues of liability and compensation in the case of offshore activities, because:
 - it is a general text on mining activities and it does not take into account the specificities of offshore activities,
 - it does not provide for the creation of a compensation fund such as the IOPC Fund for oil pollution from ships.

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?

Not applicable as France is a party to one of the instrument listed under 1 to 3 above.

We would add that the European Union Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations provides at article 7 that *“Without prejudice to the existing scope of liability relating to the prevention and remediation of environmental damage pursuant to Directive 2004/35/EC, Member States shall ensure that the licensee is financially liable for the prevention and remediation of environmental damage as defined in that Directive, caused by offshore oil and gas operations carried out by, or on behalf of, the licensee or the operator.”*

This Directive extends the scope of the Directive 2004/35/EC of 21 April 2004 on environmental liability to marine waters as defined by the Marine Strategy Framework Directive 2008/56/EC of 17 June 2008, i.e. *“waters, the seabed and subsoil on the seaward side of the baseline from which the extent of territorial waters is measured extending to the outmost reach of the area where a Member State has and/or exercises jurisdictional rights, in accordance with the Unclos, with the exception of waters adjacent to the countries and territories mentioned in Annex II to the Treaty and the French Overseas Departments and Collectivities.”*

Hence the obligation for the operator to bear the costs for the preventive and remedial actions taken after environmental damage has occurred, provided for by article 7 of the Directive 2004/35, is extended to offshore oil and gas operators.

The Directive 2013/30/EU should be transposed into national law by 19 July 2015. France has not transposed it yet.

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

Offshore oil and gas exploration and exploitation operations are governed by mining law (“droit minier”), whose main regulation is the “Code minier”.

Articles L.123-1 and seq. deal specifically with search for any mineral or fossil substance on the continental shelf and on the EEZ.

The exploitation of mineral or fossil substances on the continental shelf and on the EEZ are governed by article L.133-1 and seq.

As mentioned above at paragraph 1), article L.155-3 relates to the liability of operators and/or licensee of a mining activity.

Offshore oil and gas exploration and exploitation operations are also governed by:

- The law n°68-1181 dated 30 December 1968 and the Decree n°71-360 dated 6 May 1971 on the exploration of the continental shelf and the exploitation of its natural resources,
- The law n°76-655 dated 16 July 1976 on the EEZ and the Ecological Protection Zone off the coasts of the territory of the Republic,
- The Decree n°2006-648 dated 2 June 2006 on mining rights and underground storage rights,
- The Decree n°71-362 dated 6 May 1971 on authorizations of preliminary explorations of mineral or fossil substances on the continental shelf's subsoil,
- The Decree n°2006-649 dated 2 June 2006 on mining and underground storage operations and on the mine and underground storages police,
- The Decree n°2010-1389 dated 12 November 2010 on the obligation to provide financial guarantees before the opening of research or mining exploitation works.

Paris, the 17 September 2012