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Responses of the Italian MLA to the Questionnaire on 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.

Italy is not a party to the OSPAR Convention. The EU is, however, a party thereto (Council Decision of 7 October 1997 on the conclusion of the Convention for the protection of the marine environment of the north-east Atlantic[1]).

Italy is not a party to the Madrid Protocol to the Barcelona Convention. The EU has, however, recently become a party thereto (Council Decision of 17 December 2012 on the accession of the European Union to the Protocol for the Protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil[2]).

Note should be taken of the fact that recital 13 of the Council's Decision of 17 December 2012, after having recalled that "*[i]t is essential to ensure close cooperation between the Member States and the institutions of the Union, both in the process of negotiation and conclusion and in the fulfilment of the commitments entered into*" and that "*[t]hat obligation to cooperate flows from the requirement of unity in the international representation of the Union*", goes on to stress that "*those Member States that are Contracting Parties to the Barcelona Convention and that have not yet done so should take the necessary steps to finalise the procedures to ratify or accede to the Offshore Protocol*".

Italy is not a party to the Abidjan Convention.

None of the signatories of the latest available version of the OPOL Agreement, as amended on 27 June 2013, appears to be an Italian offshore operator[3].

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[1] OJ L 104 of 3 April 1998, p. 1.
[2] OJ L 4 of 9 January 2013, p. 13.
[3] Information retrieved from the OPOL website at the address http://www.opol.org.uk/ (visited 27 August 2013). The full list of signatories includes: Amoco (U.K.) Exploration Company, Burmah Oil (North Sea) Limited, BP Petroleum Development Limited, Total Oil Marine Limited, Conoco North Sea Incorporated, Esso Exploration and Production U.K. Inc., Gulf Oil Production Company, Brothers Oil Company (G.B.) Limited, Mobil North Sea Limited, Shell U.K. Limited, Phillips Petroleum Company, Signal Oil and Gas Company Limited, Siebens Oil and Gas (U.K.) Limited, Texaco North Sea U.K. Company, North Sea Sun Oil Company Limited, Cluff Oil Limited.

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.

No regional or bilateral agreement to which Italy is a party addresses the issue of liability for damage caused by offshore activities, if one excludes the combined effect of 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[4] and the said 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[5].

In fact, the 2013 Directive contains a provision requesting Member States to ensure that, "*[w]ithout prejudice to the existing scope of liability relating to the prevention and remediation of environmental damage pursuant to Directive 2004/35/EC*", "*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*"[6].

In parallel, coverage of the 2004 Directive has been thereby extended also to damage adversely affecting the environmental status of "*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 [United Nations Convention on the Law of the Sea], 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*"[7].

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

Relevant national legislation is posted and regularly updated on the website of the Italian Ministry for Economic Development – General Directorate for Mineral and Energy Resources[8].
Notably, in the aftermath of the *Deepwater Horizon* accident, a legislative decree was enacted introducing a prohibition to engage in prospection and exploitation of liquid and gaseous state hydrocarbons at sea within the borders of maritime areas protected for environmental reasons pursuant to national or regional legislation as well as on the basis

[4] OJ L 178 of 28 June 2013, p. 66.
[5] OJ L 143 of 30 April 2004, p. 56.
[6] Art. 7 of the Directive.
[7] See art. 38 of the Directive, which refers to the concept of "*marine waters*" as defined by 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), OJ L 164 of 25 June 2008, p. 19.
[8] http://unmig.sviluppoeconomico.gov.it/unmig/norme/norme.asp (visited 27 August 2013).

of international law provisions[9]. The prohibition was, initially, intended to apply to maritime areas falling within a distance of 12 miles calculated from the external perimeter of such protected areas.

With regard to liquid hydrocarbons only, a littoral strip of 5 miles calculated from the baseline of the territorial sea along the whole Italian coastline was also covered.

Only one year later, though, a significant step backwards was taken by the adoption of another legislative decree[10] whose effect was *inter alia* to limit, from a geographical standpoint, the above-mentioned prohibition by providing that this would not apply "*with regard to the historic bay of Taranto, if not within five miles calculated from the coast*" as opposed to from the baseline of the territorial sea.

By an even more recent move, the Minister of Economic Development announced on 4 September 2013 the adoption of a decree by which, among other things, the areas open to offshore activities are reduced by a half (from 255.000 to 139.000 square kilometres) and moved further away from the coasts[11]. The Tyrrhenian Sea, all protected areas and strips falling within 12 nautical miles from the coastline are excluded and a research area is launched in proximity existing activities by France and Spain close to the Balearic Islands.

With specific regard to the liability aspects, mention must be made of the Italian so-called "environmental code"[12], whose Part VI ("*Norme in materia di tutela risarcitoria contro i danni all'ambiente*") contains a series of provisions on liability and compensation for environmental damage in general, implementing among other things the 2004 Directive into Italian legislation.

Without entering into the details of what is by all means an intricate piece of legislation, it is worth mentioning the fact that, as a matter of principle, under Italian law the State is entitled to claim compensation for environmental damage *stricto sensu* (damage to natural resources), which does not exclude, however, the possibility for private parties to bring a claim for physical damage or economic loss.

For the purpose of the CMI questionnaire, it is also important to highlight the fact that, notwithstanding the very limited scope of application of the 2004 Directive with regard to recoverable damage (only a few "protected" natural resources are, in fact, covered thereby), the Italian "environmental code" makes it very clear, at its art. 300, par. 1, that within the ambit of application of national legislation, any significant and measurable environmental impairment is covered, thus apparently ensuring a wider coverage than European law, potentially already including damage from offshore activities occurred within Italian jurisdiction irrespective of the resources affected.

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[9] Legislative Decree of 29 June 2010, no. 128.

[10] Legislative Decree of 7 July 2011, no. 121.

[11] Due to its very recent adoption, it has not been possible to examine the official text of the decree. A press release in Italian is available at the address http://www.sviluppoeconomico.gov.it/index.php?option=com_content&view=article&idmenu=1999&idarea1=0&andor=AND&idarea2=0&sectionid=0&andorcat=AND&idarea3=0&cattitle1=Comunicati%20Stampa&partebassaType=1&showMenu=1&showCat=1&idarea4=0&idareaCalendario1=0&MvediT=1&showArchiveNewsBotton=0&id=2029024&viewType=0.

[12] Legislative Decree of 3 April 2006, no. 152.

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Further to a significant debate in the Environmental Committee of the Senate (Italy's upper house), on 2 April 2014 two motions ("*ordini del giorno*") were approved by the plenary concerning offshore oil and gas activities.

In Italian parliamentary practice, an "*ordine del giorno*" is, *inter alia*, a document which may be voted by the Senate with a view to politically tie the Government to follow a certain course of action.

Whilst not *legally* binding in themselves, the two motions at stake give a noteworthy insight into the possible future developments of Italian legislation in the field.

The **first motion** (G1) is the least interesting of the two, being much shorter in length and simply inviting the Government to elaborate increasingly efficient systems for separating water from oil and for the depuration of the former.

The **second motion** (G2, second version) is much more detailed in terms of both the premises on which it is based and the requests that are put to the Government.

In general terms, the Italian executive branch is thereby urged to carry out an examination and an evaluation of the existing legislation with particular regard to the procedural rules governing authorizations and concessions. It is also requested to ratify any pertinent international law instruments (including, in particular, the Offshore Protocol to the Barcelona Convention) and to contribute to the enhancement of the relevant regulatory framework also through the usual diplomatic channels.

With regard, more in particular, to liability, the motion, on the one hand, calls for the Government to rapidly implement Directive 2013/30/EU by focussing on the economic and technical capabilities of the operators in light of their potential liability.

On the other hand, when dealing with decommissioning, the Senate requires the Government to monitor the financial viability of the operators also with a view to ensure that these are capable to satisfy any claim for compensation that may arise as a consequence of a pollution damage caused by them.

It is impossible to say, at this stage, whether the requests set forth by the Senate will sooner or later be transformed in whole or in part into full-fledged legislation. This recent move shows, however, that offshore oil and gas activities remain a highly politically sensitive issue capable of attracting significant public attention.

It is worth noting, in this respect, that other motions were simultaneously presented to the plenary, some of which having an even more stringent content, which were however unable to obtain the required majority.

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Appendix

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