

Replies submitted by the
Malta Maritime Law Association
To the

CMI Questionnaire on
Offshore activities – Pollution liability and related issues

Question 1: Is your country a party to any of the instruments listed under 1 to 3 above or, in 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 the instrument itself or by any Subsidiary National Legislation.

Answer:

1. Malta is not a contracting party to *the Convention for the Protection of the Marine Environment of the North East Atlantic* (hereinafter referred to as the “OSPAR Convention”). The European Union has, however, approved the OSPAR Convention *via* Council Decision 98/249/ EC¹. This is relevant considering that Malta is an EU member state. It is pertinent to point out that the objectives of the EU’s Marine Strategy Framework Directive (Directive 2008/56/EC) to reach good environmental status of marine waters by 2020 through marine strategies which apply an eco-based approach is very much in line with the objectives and approaches of OSPAR.² Marine Strategy Framework Directive establishes a *Framework for Community Action in the Field of Marine Environment Policy*. The Marine Strategy Framework Directive has been transposed into Maltese National Law *via* Subsidiary Legislation 504.107, namely the *Maritime Framework Policy Regulations*.³ According to the Marine Strategy Framework Directive, in order for member States to achieve good environmental status they must follow a prescribed action plan. The first part of the Action Plan is to submit an Initial Assessment by July 2012. Malta has not yet submitted this assessment⁴.

Moreover, OSPAR Decision (i) 98/4 which aims to stabilise emissions and discharge limit values for the manufacture of vinyl chloride (VCM) and (ii) 98/5 which sets emissions and discharge limit values for certain dangerous substances generated by the manufacture of suspension PVC from VCM have been partly covered by European Union (EU) Law and have been transposed into Maltese national law. The said EU law that covers aspects of the said OSPAR Decisions consists of two (2) Directives, namely:-

- **Directive 2000/60 EC** which establishes a “Framework for Community Action in the Field of Water⁵” and it commonly referred to as the “Water Framework Directive”. The Water Framework Directive addresses some of the elements of OSPAR by controlling the discharge of certain substances. This Directive has been transposed into Maltese Law through the promulgation of Subsidiary Legislation 423.20, namely the *Water Policy Framework Regulations*.⁶

¹ Council Decision 98/249 EC may be viewed at :

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998D0249:EN:HTML>

² http://ec.europa.eu/environment/marine/international-cooperation/regional-sea-conventions/ospar/index_en.htm

³ S.L504.107 may be publically viewed at:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11632&l=1>

⁴ This is according to the European Scoreboard on the Maritime Directive which may be publically viewed at:

http://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/implementation/scoreboard_en.htm

⁵ The Water Framework Directive may be publically viewed at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0060:EN:NOT>

⁶ S.L 423.20 may be publically viewed at the following at:

- **Directive 2010/75 EU** of the European Parliament and the Council of the 24th November 2010 on Industrial Emissions (Integrated Pollution Prevention Control). This Directive has been transposed into Maltese Law *via* Subsidiary Legislation 504.54 namely the *Industrial Emissions (Integrated Pollution Prevention Control) Regulations*⁷. The scope of these regulations is to lay down rules for the integrated prevention and control of pollution arising from certain industrial activities. They also lay down the rules designed to prevent, or, where that is not practicable, to reduce emissions into the air, water, and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment taken as a whole.
2. Malta is a contracting party to the *Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean* (commonly referred to as the “Barcelona Convention”). Malta signed the Barcelona Convention on the 16th February 1976 and ratified it on the 30th December 1977. Subsequently, Malta signed 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* (a protocol to the Barcelona Convention and commonly referred to as the “Offshore Protocol”) but to date did not ratify it. On the 17th December 2012, however, the Council of the European Union approved the EU’s accession to the Offshore Protocol, underlying the EU’s commitment to reduce, through efficient regional cooperation, the environment impact from offshore activities in the Mediterranean region.⁸ The Offshore Protocol paved the way for Directive 2013/30/EU⁹ on the *Safety of Offshore Oil and Gas Operations*. Malta, as do other member states of the EU, have up to 19 July 2015 to bring into force the laws, regulations and administrative provisions that are necessary in order to comply with this Directive. To date, Malta has not transposed this Directive. The said Directive 2013/30/EU obliges member states to legislate with respect to issues concerning liability and compensation.
 3. Malta is not a contracting party to the 1981 *Convention for Co-operation in the Protection and Development of the Main and Coastal Environment of the West and Central Africa*.
 4. With regard to OPOL we note that the official site of OPOL¹⁰ does not name the parties to the OPOL Agreement and as far as we are aware, this information is not publically available. For this reason, we are not in a position to verify whether the current offshore operators in Malta are a party to the OPOL Agreement. We do, however, observe that Malta is not a *Designated State* to the Agreement which suggests that the Agreement is not relevant to operators that are operating off Malta. In these circumstances, we shall not

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10683&l=1>

⁷ S.L. 504.50 may be publically viewed at the following:-

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11531&l=1>

⁸ Council Decision 2013/5 “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” published in the Official Journal of the European Union on the 9th January 3013EU Council Decision 2013/5 may be publically viewed at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:004:0013:0014:EN:PDF>

⁹ The Directive is discussed below.

¹⁰ www.OPOL.org.uk

comment on the second part of the question concerning whether issues of liability and compensation are adequately addressed.¹¹

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

Answer:

- ✚ As explained Malta is a party to the Offshore Protocol (listed under 2) but did not ratify it, albeit the EU acceded to the Offshore Protocol and has adopted Directive 2013/30/EU on the *Safety of Offshore Oil and Gas Operations* that shall eventually be transposed and form part of Maltese law. Other than this, to our knowledge, Malta has not entered into regional and bilateral agreements which address liability and compensation.
- ✚ In the context of offshore activities (albeit not specifically connected to oil and gas exploration) we point out that Malta is a party to the *Convention on the Prevention of Marine Pollution by Dumping of Waste*¹² (commonly known as the “London Convention”). The Convention seeks to control pollution of the sea by dumping it further encourages regional agreements to supplement the convention. It covers the deliberate disposal at sea of wastes or other matter from vessels, aircraft and platforms.

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

Answer:

The planning and permitting of maritime activities on Malta’s continental shelf is of paramount importance. Malta’s position in the centre of the Mediterranean Sea and its proximity to producing oil and gas fields in Italy, Tunisia and Libya are indicative of the potential of Malta’s maritime space which is good news for the islands especially when considering that the Maltese archipelago has a much larger continental shelf area relative to its land base.¹³

✚ **Continental Shelf Act -Chapter 194**¹⁴

This Act aims to regulate the exploitation and exploration of the Continental Shelf. It provides that any rights exercisable by Malta with respect to the continental shelf and its natural resources are vested in the Government of Malta. The Act is far from extensive, containing a limited number of provisions that regulate the exploitation of the Maltese

¹¹ At the time of writing, reference has been made to the official Government website which states that *at present, three oil companies, namely, Heritage Oil plc, Malta Oil Pty (a subsidiary of Mediterranean Oil & Gas plc) and Capricorn Malta Ltd (a subsidiary of Cairn Energy plc) are exploring areas on Malta’s continental shelf and around 45% of the total area designated for oil exploration is still unlicensed.* None of the operators are a member of OPOL. This web site may be publically viewed at:

<https://mticms.gov.mt/en/Pages/Continental%20Shelf/Continental-Shelf.aspx>

¹² A copy of the London Convention may be publically accessed at:

<http://www.imo.org/OurWork/Environment/SpecialProgrammesAndInitiatives/Pages/London-Convention-and-Protocol.aspx>

¹³ <https://mticms.gov.mt/en/Pages/Continental%20Shelf/Oil-Exploration-Unit.aspx> Accessed 16.8.2013

¹⁴ Chapter 194 may be viewed at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8706&l=1>

continental shelf. The Act regulates the discharge of oil and prescribes penalties for violations.

Territorial Sea and Contiguous Zone – Chapter 226¹⁵

This Act endows the Prime Minister with the power to publish regulations of pollution reduction, prevention and control.

The Code of Police – Chapter 10¹⁶

Article 228 of the Code specifically lays down that if petroleum or other oil or any mixture containing petroleum or other oil is discharged, leaks or runs into the waters of any harbour or into any part of the internal waters or of the territorial waters of Malta from any vessel or any place afloat, or from any place on land, or from any apparatus used for transferring petroleum or other oils from or to any vessel (whether to or from a place on land or afloat), the person responsible shall be guilty of an offence. Apart from the monetary penalty, the article further provides that any person found guilty of an offence under the said Article 228 shall be liable for all damages caused and all costs occasioned by the facts constituting the offence. The Article goes on to provide that, at the request of the prosecution, the court is empowered to order, in the same judgment, the offender makes good and pays to the Maltese authorities a sum of money representing damages suffered.

The Petroleum Act - Chapter 156¹⁷

This Act regulates petroleum discovered in Malta and addresses questions such as title and ownership, exploitation and other related matters. Petroleum is defined as “all natural hydrocarbons liquid or gaseous including crude oil, natural gas, asphalt, ozokerite and cognate substances and natural gasoline”. The Act provides that property in any petroleum in its natural condition in strata wheresoever existing in Malta is vested in the Government of Malta and the right of searching and boring for and getting such petroleum shall be subjected to licence which is granted according to the provisions of the Act. Any person who does not obtain a licence commits an offence in terms of this legislation.

Public Procurement of Entities Operating in the Water, Energy, Transport and Postal Services Sectors Regulations- S.L. 174.06

This Law regulates the procurement of gas and energy by the Government of Malta.

¹⁵ This Chapter may be publically viewed at
:<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8728&l=1>

¹⁶ The Code of Police may be publically viewed
at:<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8575&l=1>

¹⁷ Chapter 156 may be viewed at:<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8679&l=1>

✚ **Marine Pollution (Prevention and Control) Act – Chapter 271 of the Laws of Malta**¹⁸

The Act regulates marine pollution and control. The Act is not in force: it is unlikely that the Act is to be brought into force given that substantial parts of the areas that are covered by the Act have, since the Act was passed, become the subject of other separate legislation.

✚ **Petroleum Production Regulations Subsidiary Legislation 156.01**¹⁹

The regulation seeks to set out the mode in which a company obtains a licence for oil exploration. It also lays down the kind of licences which a company may apply.

✚ **Marine Policy Framework Regulations (Subsidiary Legislation 504.107)**

This subsidiary legislation, discussed in Question 1, transposes Union Law and aims at attaining good environmental status of marine waters by 2020 through marine strategies which apply the ecosystem-based approach in line with the objectives of OSPAR.

✚ **Water Policy Framework Regulations (Subsidiary Legislation 423.50)**

Addresses some of the elements of OSPAR as above discussed, mainly in eutrophication related matters.

✚ **Directive 2013/30 EU on the safety of offshore oil and gas operations**²⁰

On 10 June 2013 the EU adopted a Directive on safety of offshore oil and gas operations. The new rules will make sure that the highest safety standards will be followed at every oil and gas platform across Europe. It will also ensure that we react effectively and promptly should an accident nevertheless occur. This would help minimize the possible damage to the environment and the livelihoods of coastal communities. The new directive sets clear rules that cover the whole lifecycle of all exploration and production activities from design to the final removal of an oil or gas installation. Malta is expected to transpose this Directive into Maltese Law in due course. Member States have two years to transpose the Directive into National Law. This Directive amends Directive 2004/35EC on Environment Liability, which was transposed into Maltese Law via Subsidiary Legislation 504.85²¹, the amendment expands the scope of damage to marine waters.²²

¹⁸Chapter 271 may be viewed at:-

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8761&l=1>

The Marine Pollution Act is not yet in force. The Act clearly and unequivocally states that any person who does not Discharge of oil from pipelines or as the result of sea-bed exploration in accordance with the regulations shall be guilty of an offence and hence criminally liable.

¹⁹ S.L 156.01 may be viewed

at:<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9436&l=1>

²⁰ A copy of this Directive may be found at:

<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2013:178:SOM:EN:HTML>

²¹ This S.L may be publically viewed at:-

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11562&l=1>

²² <http://ec.europa.eu/environment/legal/liability/>

✚ **Directive 94/22 EC of the European Parliament and of the Council on the Conditions for Granting and using authorisation for the prospection, exploration and production of Hydrocarbons²³.**

National governments can determine the geographical areas for prospecting, exploring for and producing hydrocarbons. However, they have to follow a specific procedure when granting licences: an invitation for applications has to be published in the Official Journal of the EU at least 90 days before the closing date for applications. This notice should specify information such as the geographical area, the type of authorisation and selection criteria for applicants. All interested companies can submit applications.

²³ A copy of this Directive may be publically accessed at :

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994L0022:EN:NOT>

The Directive was not required to be transposed into Maltese Law. However, in accordance to Article 3(3) of the Directive a Notice has been published in the Official Journal of the European Union, which notifies areas in offshore Malta, which are available for authorisation on a permanent basis under either exploration licence and production licence. A copy of the Notice may be accessed at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994L0022:EN:NOT>