

NORWEGIAN ANSWER TO OFFSHORE ACTIVITIES QUESTIONNAIRE

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.

1.1 Norway is party to the 1992 *OSPAR Convention* (as amended 23 July 1998 and 29 June 2007), but issues of liability and compensation are not dealt with in this convention.

1.2. Norway is a “Designated State” within the framework of the *Offshore Pollution Liability Agreement*, as amended on 27 June 2013 (“OPOL”), and the OPOL website states that “OPOL has been extended to cover facilities in other offshore areas of North West Europe and has the support of the UK and other Governments.”^[1] The degree of the Norwegian Government’s support for OPOL could perhaps be ascertained with the relevant authorities.

According to the Norwegian Petroleum Directorate, 38 companies were operators on the Norwegian Continental Shelf (“NCS”) per 19 September 2013.^[2] An operator is anyone executing on behalf of the licensee the day to day management of the petroleum activities (*The Act Relating to Petroleum Activities* (LOV 1996-11-29 no. 72, “PAA”) Section 1-6 *litra* k). The licensee is the physical person or body corporate, or several such persons or bodies corporate, holding a license to carry out exploration, production, transportation or utilization activities (Section 1-6 *litra* j). Currently, only two operators on the NCS are members of OPOL: ConocoPhillips Skandinavia AS and Lundin Norway AS.

The issues of liability and compensation in connection with offshore activities are adequately addressed by national legislation; see the answer to question 3 below.

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.

2.1 None of the other regional or bilateral agreements to which Norway is party specifically address the civil liability of the polluter for oil pollution damage from offshore facilities. However, Norway is party to the *International convention on civil liability for bunker oil pollution damage* of 23 March 2001, which aims to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. Mobile offshore rigs may in certain cases fall in under the convention, which *inter alia* provides for the strict liability of the shipowner for pollution damage (art. 3), compulsory insurance and direct action against the insurer (art. 7).

As there is some dissension regarding the application of the international regimes applicable to ships on offshore units like FSUs and FPSOs, please note that Norway is party to the *Protocol to amend the international convention on civil liability for oil pollution damage* of 27 November 1992, the *Protocol to amend the International convention on the establishment of an international fund for compensation for oil pollution damage* of 27 November 1992, and the *Protocol of 2003 to the international convention on the establishment of an international fund for compensation for oil pollution damage, 1992* of 16 May 2003.

2.2 Norway is furthermore party to a number of agreements currently in force, which, in a wider sense, address the issues of liability for pollution in connection with offshore exploration, in particular inter-state compensation for clean-up activities.

The *Agreement between the Government of Norway and the Government of the Russian Federation on cooperation on the response to oil pollution in the Barents Sea* of 28 April 1994 contains provisions on the reimbursement between the parties of costs incurred when responding to oil pollution (cl. XIV).

The *Agreement between Denmark, Finland, Iceland, Norway and Sweden for cooperation in dealing with pollution in the North Sea by oil and other harmful substances* of 29 March 1993 (amended by Denmark, Norway and Sweden 25 January 1994) ("the Copenhagen agreement"), contains rules on *inter alia* the reimbursement of costs of assistance between the parties (cl. 10), the liabilities of the party seeking assistance towards the assisting parties (cl. 11) and the duty to assist in securing evidence for the purpose of instigating legal action against the polluter (cl. 6).

The *International convention on oil pollution preparedness, response and cooperation* of 30 November 1990 ("the OPRC convention") promotes international cooperation and aim to enhance existing national, regional and global capabilities concerning oil pollution preparedness and response. Its Annex contains rules on the reimbursement between the parties of costs of assistance in connection with oil pollution incidents. Norway is party to the convention and the *Protocol on preparedness response and co-operation to pollution incidents by hazardous and noxious substances* of 15 March 2000.

The *Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances* of 13 September 1983 ("the Bonn agreement"), is a mechanism by which the North Sea states and the European Community work together to help each other in combating pollution in the North Sea area from maritime disasters and chronic pollution from ships and offshore installations. It contains rules on the reimbursement of costs of assistance rendered by the parties in connection with oil pollution in the North Sea, but it does not concern the rights of the contracting parties to seek recourse against any third parties (cl. 9 to 11).

2.3 Norway has also entered into agreements, mainly bilateral, relating to specific pipelines, offshore installations and oilfields. One example is the *Agreement between Norway and the United Kingdom relating to the transmission of petroleum by pipeline from the Ekofisk field and neighbouring areas to the United Kingdom* of 25 May 1975, that regulates the jurisdiction and governing law of pollution claims and questions concerning the licensee's duty to insure itself against such claims (art. 4 and 11). Further similar examples are the *Agreement between Norway and Germany relating to the transmission of petroleum by pipeline from the Ekofisk field and neighbouring areas to Germany* of 16 January 1974 (art. 4 and 12) and *Accord entre la Norvège et la France portant sur le transport par gazoduc de gaz du plateau continental norvégien et d' autres secteurs vers la France* of 27 March 1995 (art. 6 and 12).

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

3.1 The Norwegian State has the proprietary right to subsea petroleum deposits and the exclusive right to the management of these resources. The key legislative instrument is the Act Relating to Petroleum Activities (LOV 1996-11-29 no. 72, "PAA"), on the basis of which a complex system of concessions, licenses, terms and conditions have been put in place to secure that the management of the petroleum resources are carried out in a long-term perspective for the benefit of the Norwegian society as a whole.

In terms of safety, the principal rule is set out in Section 9-1: Petroleum activities shall be conducted in such a manner as to enable a "high level of safety to be maintained and further developed in accordance with the technological development". This requirement is elaborated in a number of laws and regulations, the compliance of which is monitored by a range of governmental agencies. Of particular importance is the Petroleum Safety Authority, an independent government regulator with responsibility for the safety, emergency preparedness and working environment in the Norwegian petroleum industry.^[3] The licensee and other participants in the petroleum activities shall at all times maintain efficient emergency preparedness with a view to dealing with accidents and emergencies (Section 9-2).

While the activities related to petroleum exploration and exploitation on the NCS to a large part takes place outside of Norwegian territory, Norwegian law, including the law of torts, is generally applicable to petroleum activities (Section 1-5). Due to the nature of the activities, specific rules do however apply, the most general of which is Section 10-9, stating that if liability in respect of a third party is incurred by anyone undertaking tasks for a licensee, the licensee shall be liable for damages to the same extent as the perpetrator and, if applicable, his employer.

The issues of liability and compensation for oil pollution damage from offshore petroleum facilities are addressed in PAA Chapter 7. The definition of facilities, or parts thereof, includes plants, equipment, pipelines and cables used in connection with petroleum activities, ships used for stationary drilling, ships used for storage of petroleum in conjunction with production facilities, and ships for transport of petroleum during loading from the facility, but it does not include supply and support vessels (Section 1-6 *litra d* and Section 7-1).

PAA Chapter 7 sets out the strict and unlimited liability (subject to certain defences) of the licensee for pollution damage, which is defined as damage or loss that is "caused by pollution as a consequence of effluence or discharge of petroleum from a facility, including a well, and costs of reasonable measures to avert or limit such damage or such loss, as well as damage or loss as a consequence of such measures" or "incurred by fishermen as a consequence of reduced possibilities for fishing" (Section 7-1). The liability is channelized to the licensee, as the injured party generally cannot claim damages from other participants in the petroleum activities (suppliers, employees etc.). The licensee may in certain cases have a right of recourse against the actual tortfeasor (Sections 7-4 to 7-5).

PAA Chapter 7 is primarily concerned with the protection of Norwegian interests, and is as such mainly applicable when pollution damage occurs in Norway or inside the outer limits of the NCS or affects Norwegian property in the adjacent sea areas. It is however not a condition for its application that the polluting facility is situated on the NCS.

PAA Chapter 8 sets the rules relating to compensation of Norwegian fishermen: some compensating for losses as a result of the petroleum activities occupying fishing fields, some compensating for losses caused by pollution and waste or as a result of damage caused by facilities.

The authorities may require the licensee to provide security for the liabilities it might incur in connection with its activities (PAA Chapter 10), and the *Regulations to Act Relating to Petroleum Activities* (adopted 27 June 1997 pursuant to the PAA) specify the requirement of compulsory insurance.

3.2 The Act Relating to the Protection of the Environment in Svalbard (LOV 2001-06-15 no. 79, henceforth SA) and *Regulations Relating to Safe Practice in Exploration and Exploration Drilling for Petroleum Deposits on Svalbard* ("SSR", adopted 25 March

1988 pursuant to Section 4 of the Act Relating to Svalbard LOV 1925-07-17 no. 11) apply to the land area of Svalbard and its territorial sea.

SA Section 95 sets out strict and unlimited liability for “economic loss resulting from the environmental damage,” including “financial losses incurred because the environmental damage prevents or impedes the exercise of the public right of access and passage in connection with commercial activities” and “the costs of or losses relating to reasonable measures to reduce or mitigate environmental damage or to restore the state of the environment”. The liable party may be ordered to pay compensation to the Svalbard Environmental Protection Fund, which, in turn, may provide a layer of compensation for costs related to “restoration of the environment” in the event of an oil spill off the coasts of Svalbard (Section 98). SSR Article 15 stipulates that the licensee may be required to “provide financial security for fulfillment of the obligations he has undertaken, as well as for possible liability in connection with the activities.”

3.3 The Norwegian Maritime Code (LOV 1994-06-24 no. 39, henceforth NMC) applies to pollution damage related to petroleum activities in some circumstances. For instance, NMC Chapter 10.1, which incorporates the *International convention on civil liability for bunker oil pollution damage* of 23 March 2001, applies to bunker oil spills from drilling platforms and similar mobile constructions.

Chapter 10.2 incorporates *Protocol to amend the international convention on civil liability for oil pollution damage* of 27 November 1992, the *Protocol to amend the International convention on the establishment of an international fund for compensation for oil pollution damage* of 27 November 1992, and the *Protocol of 2003 to the international convention on the establishment of an international fund for compensation for oil pollution damage, 1992* of 16 May 2003. The chapter thus contains rules on *inter alia* the strict liability of the shipowner, channelization of liability, limitation of liability and compulsory liability insurance.

The relationship with the liability rules in the PAA is regulated in NMC Section 209, which does not relieve the licensee of its liability under PAA Chapter 7.

3.4 General rules for liability and compensation for pollution damage are set out in the Act Relating to Protection against Pollution and Relating to Waste (LOV 1981-03-13 no. 6, henceforth PA) and the Act Relating to Compensation in Certain Circumstances (LOV 1969-06-13 no. 26, henceforth CA). The starting point is that the owner or, as the case may be, the operator of an object, an installation or an enterprise is strictly liable to pay compensation for damage, nuisance or loss caused by pollution (PA Chapter 8). The provisions in PA and CA may however be superseded by more specific provisions in *inter alia* the PAA and NMC (PA Section 53 and CA Section 5-5, respectively).

Of particular relevance are PA Section 57, which allows for compensation for pure economic loss, and CA Chapter 5 (Section 5-2), which implies that the liability of the tortfeasor may be reduced by a court due to the concrete circumstances of a pollution incident (a similar provision is found in PAA Section 7-3).