



## POLISH MARITIME LAW ASSOCIATION

Plac Rodła 8/XII floor, 70-419 Szczecin, Poland  
tel.: +48 91 359 44 30; fax: +48 91 359 44 32; e-mail: [biuro@pmla.org.pl](mailto:biuro@pmla.org.pl)

Szczecin (Poland), 07<sup>th</sup> October, 2015

**Mr Stuart Hetherington**  
**President**  
**Comite Maritime International**

*by e-mail ([swb@cbp.com.au](mailto:swb@cbp.com.au)) only*

Dear Mr Hetherington,

**re.: Offshore activities – pollution liability and related issues.**

Reference is made, with thanks, to your e-mails of 19<sup>th</sup> July, 2013, attaching a questionnaire, and 06<sup>th</sup> February, 2014.

Please find below responses of the Polish MLA to the 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.**

The Republic of Poland is not a party of the Convention for the protection of the marine environment of the North-East Atlantic from 1992 (the OSPAR Convention).

The Republic of Poland is not a party of 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 from 1994 (The Barcelona Convention).

The Republic of Poland is not a party of the Convention (and 1985 Protocol) for co-operation in the protection and development of the marine and coastal environment of the West and Central African Region from 1981 (The Abijan Convention).

There are no operators from the Republic of Poland which are the members of OPOL.

- 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.**

The Republic of Poland is a party of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992. The Convention covers the whole of the Baltic Sea area, including inland waters as well as the water of the sea itself and the sea-bed. Measures are also taken in the whole catchment area of the Baltic Sea to reduce land-based pollution. Annex VI refers to prevention of pollution from offshore activities.



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

In Poland, questions pertinent to the exploitation of the offshore drilling installations straddle a number of legal acts, however there is no specific act regulating precisely the problem of liability caused by offshore oil and gas exploration or exploitation.

Primary significance attaches to the division that establishes whether drilling platforms and installations are ships or not. They are considered ships, if they are mobile/in transit, which then allows to apply all national provisions that additionally stipulate liability for the waste produced by ships. In this respect, Polish maritime code and further maritime legislation explicitly mirror international standards. Mobile drilling platforms while in transit are thereby subject to international maritime conventions, in particular SOLAS, MARPOL or standards prescribed in the currently binding version of a Construction and Equipment of Mobile Offshore Drilling Units Code (MODU Code). Furthermore, they are subject to provisions governing port State control and compliance with flag State requirements. Liability towards third parties for damage caused by mobile drilling platforms and installations, in Polish law deemed as ships, is set forth in Art. 265 of the Maritime Code (Act of 18 September 2001, J.L. 2001, No. 138, item. 1545). Such liability is of a strict character. It covers damage arising out of pollution from ship in connection with carriage of goods, ships exploitation and wastes dumping. Pollution damage is understood as loss and loss of profits including pure economic loss, cost of preventive measures, as well as necessary cost of restoration. The liability may be excluded, if damage has resulted from force majeure, sole third party's intentional fault or defective act or omission of authorities responsible for lighting or other navigational equipment. Gross negligence of the injured party may lead to the ship's operator (who, according to Polish law, in its own name operates his own or somebody else's vessel in shipping) partial liability, while its intentional fault excludes ship's operator's liability.

Drilling units which are seated and in the course of exploitation are not deemed ships at Polish law. In this respect, Polish law prescribes the application of the provisions of mining law (Act of 9 June 2011, Geological and Mining Law, J.L.2015, item196) which does not provide for the principle of prevention, introducing liability of the entrepreneur conducting movement of the drilling unit in line with the principle polluter pays. Such liability may be pursued in reliance upon the provisions of the Polish Civil Code, Art. 435 (Act of 23 April 1964, J.L. 2014, item 121) providing for strict liability for damage caused by operation of the enterprise set in motion by natural forces as steam, gas, electricity, liquid fuels etc. which is excluded in cases of force majeure, exclusive fault of the injured party or an injured party. Additionally, in terms of prevention and liability for environmental damage Act on Prevention and Remediation of Environmental Damage (J.L. 2007 No. 75 item 493), based on Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage may be applicable. The foregoing Act fails, however, to stipulate the liability towards third parties. It is limited to setting preventive measures as well as remedial liability in case of danger of or instances of environmental damage.

Liability for the damage resulting from the operations run by installations designed for the offshore exploration and exploitation of natural resources is stipulated in the Safety of



Offshore Oil and Gas Operations Directive of 12 June 2013 which so far has not been incorporated into the Polish law. Nevertheless, Poland is bound and under obligation to do so. Thus, it is to be assumed that Polish law will in the nearest time (through an amendment to Act on Geological and Mining Law) take account of the provision prescribing the entity that holds a license for the operations lying within the framework of directive application to incur financial preventive liability pertinent to prevention from and remediation of environmental damage caused by a licensee, installation operator or a party contracted by them. The area, such liability standards are to carry their binding force, is to cover all marine territories where the EU Member State exercises jurisdiction in accordance with the United Nations Convention on the Law of the Sea. Accordingly, not only will the foregoing standards apply in/to the area of territorial sea/waters but also in/to the Polish exclusive economic zone.

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The responses were contributed by: Mrs Dr Magdalena Adamowicz, Mrs Dr Justyna Nawrot, Mrs Dr Zuzanna Peplowska-Dabrowska and Mr Jakub Puzzkarski – Members of the Polish MLA.

In case of any doubts or questions, please feel free to ask anytime.

With Best Regards,

  
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**MAREK CZERNIS**  
Vice-President

  
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**PAWEŁ MICKIEWICZ**  
Secretary