

Brussels, 10 May 2012

The proposed EU Offshore Safety Regulation – A crucial framework that needs to be improved

The *Regulation on safety of offshore oil and gas prospecting, exploration and production activities 2011/0309 (COD)* proposed by the European Commission in October 2011 is welcome and necessary, and provides a starting-point for crucial improvements in the European offshore oil and gas sector. In its current state however, it risks failing to deliver on its promises and does not adequately address the uneven regulatory frameworks within the Union. Bellona, ClientEarth, Oceana, Seas at Risk and Greenpeace have reviewed the text and made a range of proposals for improvements to address current short-comings.

The need for a Regulation to set common minimum rules

With offshore operations taking place in increasingly difficult environments and under heterogeneous health, safety and environmental regimes across European waters, the need to ensure a consistently strong and coherent regulatory framework throughout the Union is ever more pressing. We believe this can best be achieved through the use of a Regulation and we therefore support the Commission's choice of legal instrument.

A Regulation will ensure direct application of consistent minimum rules in all Member States, which should indeed be the objective of the legislation. As a minimum standard regulation, the proposal furthermore allows those Member States who wish to go further in their national legislation to do so. It therefore does not prevent countries from establishing, or retaining, petroleum free zones in areas identified as particularly vulnerable.

An EU offshore agency is crucial

In order to fully address the issue of fragmented regulatory frameworks, we consider a more robust institutional structure for offshore safety in the EU necessary. We therefore advocate for an independent agency to ensure European oversight and support individual Member States.

This could be achieved either by extending the mandate of the European Maritime Safety Agency (EMSA), currently restricted to maritime transport, or by establishing a new agency, if that is politically and administratively preferable. What is important is that the agency is given sufficient resources to fulfil its tasks, including assessing national arrangements concerning drilling authorisation and emergency preparedness, assisting Member States during accident investigations and promoting high safety standards at an international level including with non-EU states drilling near EU waters.

Financial security requirements need to accompany strong and clear liability rules

The costs of a potential offshore accident can never be predicted, as illustrated by the tragic disaster in the Gulf of Mexico in April 2010. We therefore welcome the proposed extension of the Environmental Liability Directive¹, ensuring strict liability on operators for significant environmental damage caused by offshore accidents also in the Exclusive Economic Zones.

However, to guarantee that these costs can be paid and ensure they do not fall on taxpayers, a requirement should be made for all operators to prove that they are financially capable of meeting any liabilities prior to authorisation. We also request that the Commission proposes compulsory financial arrangements for operators to cover their liabilities within one year of adoption of the Regulation, based on a thorough analysis of the availability of financial security mechanisms in the sector.

Emergency response capacity in new petroleum provinces shall not be compromised

It is vital that remote areas – often with sensitive ecosystems – are not exposed to higher risks than other areas and that extreme operating conditions, such as long lasting darkness, icy conditions or deep water, are accurately reflected in the authorisation process. On 20 January 2011, the European Parliament agreed in a resolution that the extreme weather conditions and the high ecological fragility of the Arctic region renders it necessary for relevant oil companies to develop special expertise in preventing and handling oil spills in the region. Competent authorities should therefore be required to take due account of operating conditions when assessing emergency response effectiveness, including deployment times, clean-up rates and recovery rates. Pollution tolerance in sensitive ecosystems should also be taken into account.

Negligent behaviour should be criminalised

Major oil spills should be added to the Environmental Crime Directive², in order to criminalise accidents caused by serious negligence to fully reflect the potentially detrimental impacts of an offshore oil or gas accident. A safety element should also be added to the recruitment procedure in operators' safety management systems to ensure individuals with a proven past of negligent behaviour in the offshore oil and gas sector are excluded.

Transparency

Operators should be required to make their internal emergency response plans publicly available, to ensure maximum transparency. The transparency should not compromise security, as expressed in Article 26 (Confidentiality).

Action should not stop in the EU

Companies headquartered in the EU should conduct operations outside the EU to the same safety standards as within the Union. Obligations that can be applied directly to operators, such as third-party verification scheme, whistle-blowing or transparency rules, should therefore be binding on their operations worldwide. It must be possible to lodge complaints against breaches of these obligations with courts in the EU.

¹ Directive 2004/35/CE of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

² Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law

***Truly independent
third party
verification***

In order to ensure that the third party verification is truly independent, the verifier should be an independent legal entity from the operator and have no conflicts of interest or financial or commercial interests in the operations undertaken.

By taking due account of these recommendations, we believe that the proposed Regulation could respond to the pressing challenges in the European offshore oil and gas sectors and reduce the risks of major accidents and their resulting threats to health and the environment.

Contacts:

Eivind Hoff

Director, Bellona Europa
eivind@bellona.org
+ 32 2 648.31.22

Chris Carroll

Policy Officer, Seas at Risk
ccarroll@seas-at-risk.org
+ 32 2 893.09.67

Nicolas Fournier

EU Policy Advisor, Oceana
nfournier@oceana.org
+ 32 2 513.22.42

Susie Wilks

Biodiversity Lawyer, Client Earth
swilks@clientearth.org
+32 2 808.43.22

Joris den Blanken

EU Climate policy advisor, Greenpeace
joris.den.blanken@greenpeace.org
+32 2 274.19.19