Liability, compensation and financial security for offshore and gas operations

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PURPOSE: to present an overview how liability for damage from offshore accidents in oil and gas prospection, exploration and production is addressed in the EU.

CONTENT: the Commission presents a report on liability, compensation and financial security for offshore oil and gas operations pursuant to Directive 2013/30/EU on the safety of offshore oil and gas operations (the Offshore Safety Directive or OSD). The OSD defines the elements of such a comprehensive EU-wide framework for preventing major accidents and limiting their consequences.

The report analyses how Europe deals with a series of societal dilemmas arising in relation to offshore oil and gas:

- who is liable for what kinds of damage and loss to whom;
- how to ensure that liable parties have sufficient financial capacity to provide rightful compensation for the damage and loss they are liable for;
- how compensation should be disbursed so that it reaches legitimate claimants quickly and the risks of cascading impacts to the broader economy are minimised.

Liability regimes: whilst there are national differences in the way liability regimes govern access to justice for victims of offshore accidents, the Commission stated that no clear case can be made at the present time that any of the current approaches to civil liability in the Focal States is less effective in reinforcing the OSD's aim of ensuring the safety of offshore oil and gas operations across the EU.

The report highlighted the following aspects:

- **the transposition of the OSD** in national law will prompt Member States to explore in which ways their liability rules will best protect general public interest in line with the compensation requirements of the OSD;
- in certain cases, the Brussels I and Rome II Regulations prevent differences in national regimes from disadvantaging claimants from other EU Member States;
- in addition, **some Member States may be reappraising their existing liability regimes** for offshore accidents in tandem with other changes introduced by the OSD.

The effects of the OSD, as implemented by Member States, will show in the coming years whether it is appropriate to bring certain conduct leading to major offshore accidents within the **scope** of criminal law for further re-enforcing offshore safety. When appropriate, the Commission will put forward a legislative proposal.

Broadening liability provisions through EU legislation does not appear appropriate at this juncture according to the Commission. However, the Commission will be able to conclude on the need for further steps by the time of the OSD's first implementation report.

Notably, the Commission can:

- continue to advance liability issues through structured EUOAG discussions;
- focus on liability-related provisions in the OSD conformity checks;
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use EUOAG meetings for systematic data gathering covering all liability-related aspects of newly transposed laws.

Financial security and compensation mechanisms: the report noted that there is broad variety of financial security products available to hedge oil and gas companies' operating risk. These range from self-insurance options, to third-party insurance, to mutual schemes such as the Offshore Pollution *Liability Association Ltd* (OPOL), to alternative risk transfer mechanisms and others.

Whilst not all of these products may currently be in widespread use by the offshore industry, **the marketplace for financial security instruments appears to have the depth and innovation necessary** to cater to all oil and gas companies operating under the current EEA liability obligations.

There is currently a lack of uptake of financial security instruments to fully cover the more infrequent and costly offshore accidents in the EEA. In addition, **there are just two compensation mechanisms** currently in place specifically for oil and gas accidents in the Focal States.

However, **provisions in the OSD should lead to significant improvements in both of these areas.** Such anticipated changes should be seen following the July 2015 implementation deadline for the OSD and the implementation of the Offshore Protocol of the Barcelona Convention.

Should the new national laws not improve the availability of financial security instruments and put in place procedures for ensuring prompt and adequate handling of compensation claims, **the Commission will reassess whether and what further EU action** could achieve these objectives.

The Commission **encourages Member States to share their experiences** on financial security instruments, liability, compensation and criminal penalties, first of all, in the framework of the European Offshore Authorities Group.

After the implementation of the Directive and based on experiences of Member States working with the new legal basis the Commission may update its assessment as provided by this report.