Liability, compensation and financial security for offshore and gas operations

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The Committee on Legal Affairs adopted an own-initiative report by Kostas CHRYSOGONOS (GUE /NGL, EL) on liability, compensation and financial security for offshore oil and gas operations, following the Commission report on this issue.

Members recalled that offshore oil and gas operations are progressively taking place in increasingly extreme environments and could potentially have **major and devastating consequences** for the environment and economy of the sea and coastal areas. A number of studies, including one by the European Parliament Research Service and one by the Joint Research Centre, estimate in the thousands (more precisely, **9 700 between 1990 and 2007**), the number of incidents in the EU oil and gas sector.

Bringing up to date and extending the system of compensation and financial security: whilst welcoming the adoption of the Offshore Safety Directive 2013/30/EU (OSD), which complements the Environmental Liability Directive 2004/35/EC (ELD), the report called on Member States to **guarantee the independence of the competent authorities**, and called on the Commission to assess the appropriateness of introducing **further harmonised rules** on liability, compensation and financial security with a view to preventing any further accidents with cross-border implications.

Members stressed that the effective application of the ‘polluter pays’ principle to offshore oil and gas operations should extend not only to the costs of preventing and remedying environmental damage, but also to the **costs of remedying traditional damage claims**, in line with the precautionary principle and the principle of sustainable development.

Liability to third parties: Members regretted that the OSD does not deal with liability for civil damage to either natural or legal persons, be it bodily injury, property damage or economic loss, whether direct or indirect.

Stressing that the way civil liability is handled varies considerably from one Member State to another, Members believed that an **European framework** is needed, which should be based on the legislation of the most advanced Member States, should cover not only bodily injury and property damage but also pure economic loss, and should ensure **effective compensation mechanisms for victims and for sectors that may be severely affected** (e.g. fisheries and coastal tourism). They called in this respect on the Commission to assess whether a horizontal European framework of collective redress would be a possible solution.

Compensatory regimes: compensatory regimes must be able to address transboundary claims effectively, **rapidly, within a reasonable timeframe** and **without discrimination** between claimants from different EEA countries.

The report recommended that they cover both primary and secondary damage caused in all the affected areas. It considered that **strict civil liability rules** should be established for offshore accidents in order to facilitate access to justice for victims (both legal and natural persons) of offshore accidents, and that **financial liability caps should be avoided**.

The Commission was asked to revisit the need to introduce common EU standards for remedial and compensatory claim systems.

Members regretted the **over-reliance on insurance** and the lack of uptake of financial security instruments in the EU to cover the damage caused by the most costly offshore accidents. They asked the Commission to encourage Member States to **develop financial security instruments** concerning compensation for traditional damage claims resulting from incidents linked to general offshore oil and gas activities or to offshore oil and gas transport, including in cases of insolvency;

They also considered that in that context, the establishment of **a fund** based on fees paid by the offshore industry could also be assessed.

Lastly, the report noted it necessary to analyse to what extent the introduction of **criminal liability** at EU level will add a layer of deterrence beyond civil penalties. It also called for harmonisation of the **definitions of the criminal offences and of minimum sanctions** when it comes to offshore safety breaches.