

New EU Directive on the safety of offshore oil and gas operations



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The aim of the Directive is to set minimum standards for safe offshore oil and gas operations and reduce the consequences of major accidents.

There are more than 1000 offshore oil and gas installations operating in European waters. Whilst almost half in operation are located offshore the UK, interest in offshore oil and gas exploration and production is growing throughout the European Union (EU) and to date 13 Member States (including Denmark, Italy and the Netherlands) have awarded offshore oil and gas licences. However there is no comprehensive risk management regime in place as different Member States apply different environmental and health and safety standards.

European review

In 2010 the European Commission (EC) initiated a review of the regulatory framework relating to offshore oil and gas operations across the EU. This was in response to the *Deepwater Horizon* disaster as it was feared that a similar incident could occur in EU waters. The following year the EC published a draft Regulation on the safety of offshore oil and gas operations. This caused concern in jurisdictions such as the UK, which already have well developed safety regimes in place, as the Regulation would not need to be implemented into national law and would have direct legal effect. After lobbying from the oil and gas industry, the EC decided to change the form of the law to a Directive, which means that it will be left to Member States to decide how it should be implemented. This decision was particularly welcomed in the UK as it means that the extensive regulatory regime introduced following the *Piper Alpha* disaster can largely remain in place.

The Directive (2013/30/EU) came into force on 18 July 2013. Its objective is to establish a minimum standard of regulation across the EU in order to reduce the incidence of major accidents. Günther Oettinger, the EU Commissioner for Energy, remarked that *"these rules will make sure that the highest safety standards already mostly in place in some Member States will be followed at every oil and gas platform across Europe"*.

A new direction

The Directive applies to both future and existing offshore installations (i.e. fixed or mobile) throughout the whole lifecycle of exploration and production activities from design to operation, decommissioning and permanent abandonment¹.

Its main provisions:

- Member States' licensing authorities must assess the technical and financial capability of licensees and only award licences to those who have proved that they are technically and financially capable of covering potential liabilities arising from offshore oil and gas operations.
- Prior to commencing exploration or production operations, operators are required to submit a report to the Member State's competent authority² describing the potential major hazards for their installation, a major accident prevention policy, a safety and environmental management system and an emergency response plan.

- This report will be assessed by the Member State's competent authority and is subject to a thorough periodic review by the operator every 5 years. There is already a requirement under existing UK law for operators to prepare a safety case but this focuses on hazards to the health and safety of the workforce rather than environmental risks.
- Operators' internal emergency response plans must be site specific and based on risks and scenarios identified in the major hazard report. For example, in the case of a mobile offshore drilling unit, the operator must ensure that the emergency response plan applies to the specific location and the well operation hazards and that it is regularly tested by the operator.
- Operators are required to take "all suitable measures" to prevent major accidents i.e. to limit the consequences to human health and the environment. This differs from current UK law which refers to reducing risks to "as low as reasonably practicable". It's unclear whether "all suitable measures" is a more onerous standard.
- Operators will not be exonerated from liability if the acts or omissions of their contractors cause major accidents.
- Member States must ensure the independence and objectivity of their competent authorities i.e. prevent conflicts of interest from arising by having a clear separation between regulatory functions relating to offshore safety and the environment and those relating to economic development (i.e. licensing and the collection of revenues).
- The licensee shall be held financially liable for the prevention and reparation of environmental damage as defined under the EU Environmental Liability Directive (ELD) caused by "*operations carried out by, or on behalf of, the licensee or any operator*". This means that the licensee rather than the operator or contractors shall be liable for environmental damage under the ELD.
- It also extends the geographical application of the ELD to offshore installations operating in the Exclusive Economic Zone (200nm from the coastline) and the continental shelf of a Member State. At present the ELD only applies to environmental damage within territorial waters (12m miles of the coastline).

The Directive does not deal with civil liability that the licensee may bear for third party damage arising from offshore oil and gas operations. The EC has commissioned Maastricht University to carry out a study on the effectiveness of existing liability regimes in Member States assessing whether they could be broadened out across the EU to provide a comprehensive liability regime.

Member States are required to implement the provisions of the Directive into national law within 2 years (5 years for existing installations). Responsibility for its enforcement remains with their competent authorities. Member States with offshore waters that do not have oil and gas operations under their jurisdiction and landlocked countries with offshore oil and gas companies registered in their territories will only need to apply a limited number of its provisions.

Further details can be found on the website for the **European Commission**.

- 1 It only applies to mobile offshore units whilst they are stationed offshore carrying out drilling or production operations, and not whilst they are in transit.
- 2 Under the current UK regime, this means the Health and Safety Executive (which is responsible for enforcing health and safety legislation) and the Department of Energy and Climate Change (which is responsible for enforcing environmental legislation).