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From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities - Outcome of the European Parliament's first reading
(Strasbourg, 20 to 23 May 2013)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Ivo BELET (EPP, BE) presented one compromise amendment (amendment 1) to the proposal for a Regulation, on behalf of the Committee on Industry, Research and Energy. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 21 May 2013, the plenary adopted the compromise amendment to the proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Offshore oil and gas prospection, exploration and production activities *I**

European Parliament legislative resolution of 21 May 2013 on the proposal for a regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities (COM(2011)0688 – C7-0392/2011 – 2011/0309(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0688),
 - having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0392/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 22 February 2012³,
 - after consulting the Committee of the Regions,
 - having regard to the undertaking given by the Council representative by letter of 6 March 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on the Environment, Public Health and Food Safety and the Committee on Legal Affairs (A7-0121/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

³ OJ C 143, 22.5.2012, p. 107.

P7_TC1-COD(2011)0309

Position of the European Parliament adopted at first reading on 21 May 2013 with a view to the adoption of *Directive 2013/.../EU of the European Parliament and of the Council on safety of offshore oil and gas operations and amending Directive 2004/35/EC*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national *parliaments*,

Having regard to the opinion of the European Economic and Social Committee⁴,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁵,

⁴ OJ C 143, 22.5.2012, p. 125.

⁵ Position of the European Parliament of 21 May 2013.

Whereas:

- (1) Article 191 of the Treaty on the Functioning of the European Union establishes the objectives of preserving, protecting and improving the quality of the environment and ***the prudent and rational utilisation of natural resources***. It creates an obligation for all Union action to be supported by a high level of protection based on the precautionary principle, and ***on the principles that preventive action needs to be taken, that environmental damage needs as a matter of priority to be rectified at source and that the polluter must pay***.
- (2) The objective of this ***Directive*** is to reduce ***as far as possible*** the occurrence of major accidents relating to offshore oil and gas ***operations*** and to limit their consequences, thus increasing the protection of the marine environment and coastal economies against pollution, establishing minimum conditions for safe offshore exploration and exploitation of oil and gas and limiting possible disruptions to Union indigenous energy production, and to improve the response mechanisms in case of an accident.
- (3) This ***Directive*** should apply not only to future offshore oil and gas installations and operations but, subject to transitional arrangements, also to existing installations.
- (4) ***Major accidents relating to offshore oil and gas operations are likely to have devastating and irreversible consequences on the marine and coastal environment as well as significant negative impacts on coastal economies.***

- (5) Accidents relating to offshore oil and gas *operations*, in particular the accident *in the* Gulf of Mexico *in 2010, have raised public awareness of the risks involved in offshore oil and gas operations and have prompted* a review of policies aimed at ensuring the safety of such *operations*. The Commission launched a review of offshore oil and gas operations and expressed its initial views on the safety thereof in its Communication "Facing the challenge of the safety of offshore oil and gas activities" on 13 October 2010. The European Parliament adopted resolutions on the topic on 7 October 2010 and 13 September 2011. Energy Ministers of the Member States expressed their views in the Conclusions of the Council of 3 December 2010.
- (6) The risks relating to major offshore oil or gas accidents are significant. By reducing the risk of pollution of offshore waters, this *Directive* should therefore contribute to *ensuring* the protection of the marine environment and in particular to *achieving or maintaining* good environmental status by 2020 at the latest, an objective set out in Directive 2008/56/EC of the European Parliament and the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)⁶.

⁶ OJ L 164, 25.6.2008, p. 19.

- (7) Directive 2008/56/EC *aims to address, as one of its central purposes*, the cumulative impacts from all activities on the marine environment, *and* is the environmental pillar of the Integrated Maritime Policy. That policy is relevant to offshore oil and gas operations as it requires *the linking of* particular concerns from each economic sector with the general aim of *ensuring* a comprehensive understanding of the oceans, seas and coastal areas, with the objective *of developing* a coherent approach to the seas taking into account all economic, environmental and social aspects through the use of maritime spatial planning and marine knowledge.
- (8) Offshore oil and gas industries are established in a number of regions of the Union, and there are prospects for new regional developments in offshore waters of Member States, *with technological developments allowing for drilling in more challenging environments*. Production of offshore oil and gas is a significant element in security of the Union's energy supply.
- (9) The existing *divergent and* fragmented regulatory framework applying to safety of offshore *oil and gas operations* in the Union and current industry safety practices do not provide *a fully* adequate assurance that the risk of offshore accidents is minimised throughout the Union, and that in the event of an accident occurring in offshore waters of Member States, the most effective response would be **█** deployed *in a timely manner*. Under existing liability regimes, the party responsible may not always be clearly identifiable and **█** may not be able, or liable, to pay all the costs to remedy the damage it has caused. *The party responsible should always be clearly identifiable before offshore oil and gas operations are commenced.*

- (10) Pursuant to Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons⁷ offshore oil and gas *operations* in the Union may be carried out subject to **obtaining** an authorisation. In this context the **licensing** authority is required to consider the technical and financial risks, and where appropriate, the previous record of responsibility, of applicants seeking exclusive exploration and production licences. There is the need to ensure that when examining the technical and financial capability of the licensee the **licensing authority** thoroughly examine also its capability for ensuring continued safe and effective operations under all foreseeable conditions. *When assessing the financial capability of entities applying for authorisation pursuant to Directive 94/22/EC, Member States should verify that such entities have provided appropriate evidence that adequate provisions have been or are to be made to cover liabilities deriving from major accidents.*
- (11) There is a need to clarify that holders of authorisations for offshore *oil and gas operations* pursuant to Directive 94/22/EC are also **the** liable 'operators' within the meaning of Directive 2004/35/EC of the European Parliament and the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage⁸, and **should** not delegate their responsibilities in this regard to third parties contracted by them.

⁷ OJ L 164, 30.6.1994, p. 3.

⁸ OJ L 143, 30.4.2004, p. 56.

- (12) While general *authorisations* pursuant to Directive 94/22/EC *guarantee* to the licensees exclusive rights for exploring for or producing oil or gas within a given licensed area, *offshore oil and gas* operations within that area should be subject to continuous expert regulatory oversight by Member States in order to ensure there are effective controls in place for preventing major accidents, and limiting their impacts to persons, the environment, and security of energy supply.
- (13) *Offshore oil and gas operations should be conducted only by operators appointed by licensees or licensing authorities. The operator can be a third party or the licensee or one of the licensees depending on commercial arrangements or national administrative requirements. The operator should always be the entity with the primary responsibility for safety of operations and should be at all times competent to act in that regard. That role differs depending on the particular stage of activities covered by the licence. The operator's role is therefore to operate a well at the exploration stage and to operate a production installation at the production stage. It should be possible for the operator of a well at the exploration stage and the operator of a production installation to be the same entity for a given licensed area.*
- (14) *Operators should reduce the risk of a major accident as low as reasonably practicable, to the point where the cost of further risk reduction would be grossly disproportionate to the benefits of such reduction. The reasonable practicability of risk reduction measures should be kept under review in the light of new knowledge and technology developments. In assessing whether the time, cost and effort would be grossly disproportionate to the benefits of further reducing the risk, regard should be had to best practice risk levels compatible with the operations being conducted.*

- (15) *It is important to ensure that the public is given early and effective opportunity to participate in the decision-making relating to operations that can potentially have significant effects on the environment in the Union. This policy is in line with the Union's international commitments, such as the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters⁹ (the Aarhus Convention). Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not listed there which may have a significant effect on the environment. Article 7 of the Aarhus Convention requires public participation concerning plans and programmes relating to the environment.*
- (16) *Relevant requirements exist in Union legal acts in relation to the development of plans and projects, in particular in Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment¹⁰, Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment¹¹, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment¹² and Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances¹³. However, not all exploratory offshore oil and gas operations are covered by existing Union requirements on public participation. This applies in particular to the decision-making that aims or could lead to exploration operations being commenced from a non-production installation. However, such exploration operations may in some circumstances potentially have significant effects on the environment and the decision-making should therefore be the subject of public participation as required under the Aarhus Convention.*

⁹ OJ L 124, 17.5.2005, p. 4.

¹⁰ OJ L 197, 21.7.2001, p. 30.

¹¹ OJ L 156, 25.6.2003, p. 17.

¹² OJ L 26, 28.1.2012, p. 1.

¹³ OJ L 197, 24.7.2012, p. 1.

- (17) Within the Union, there are already examples of good standards in national regulatory practices relating to offshore oil and gas **operations**. However, these are inconsistently applied throughout the Union and no Member State has yet incorporated all of the best regulatory practices in its legislation for preventing major accidents or limiting the consequences **for human life and health, and for** the environment. Best regulatory practices are **necessary to deliver** effective regulation **which secures the highest safety standards and protects the** environment, **and can be achieved, inter alia**, by integrating related functions into a competent authority that may draw resources from one or more national **bodies**.

- (18) In accordance with Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral- extracting industries through drilling (eleventh individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)¹⁴, workers and/or their representatives should be consulted on matters relating to safety and health at work and be allowed to take part in discussions on all questions relating to safety and health at work. In addition, best practice in the Union is for consultation mechanisms to be formally established by Member States on a tripartite basis comprising the competent authority, operators and owners, and worker representatives. An example of such formal consultation is the International Labour Organisation Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).**

¹⁴ OJ L 348, 28.11.1992, p. 9.

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(19) *Member States should ensure that the competent authority is legally empowered and adequately resourced to be capable of taking effective, proportionate and transparent enforcement action, including where appropriate cessation of operations, in cases of unsatisfactory safety performance and environmental protection by operators and owners.*

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(20) *The independence and objectivity of the competent authority should be ensured. In this regard, experience gained from major accidents shows clearly that the organisation of administrative competences within a Member State can prevent conflicts of interest by a clear separation between regulatory functions and associated decisions relating to offshore safety and the environment, and to the regulatory functions relating to the economic development of offshore natural resources including licensing and revenues management. Such conflicts of interest are best prevented by a complete separation of the competent authority from the functions relating to the economic development of offshore natural resources.*

(21) *However, complete separation of the competent authority from economic development of offshore natural resources may be disproportionate where there is a low level of offshore oil and gas operations in a Member State. In such a case, the Member State concerned would be expected to make the best alternative arrangements to secure the independence and objectivity of the competent authority.*

- (22) Specific legislation is needed to address the major hazards relating to the offshore oil and gas industry, specifically in process safety, safe containment of hydrocarbons, structural integrity, prevention of fire and explosion, evacuation, escape and rescue, and limiting environmental impact following a major accident.
- (23) This *Directive* should apply without prejudice to any requirements under any other Union legal acts, especially in the field of safety and health of workers at work, in particular Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work¹⁵ and Directive 92/91/EEC¹⁶.
- (24) An offshore regime needs to apply both to operations carried out on fixed installations and to those on mobile installations, and to the lifecycle of exploration and production activities from design to decommissioning and permanent abandonment.
- (25) The best practices currently available for major accident prevention in offshore oil and gas operations are based on *a goal-setting approach and on* achieving desirable outcomes through thorough risk assessment and reliable management systems.

¹⁵ OJ L 183, 29.6.1989, p. 1.

- (26) According to the best practices in the Union, operators and owners are encouraged to establish effective corporate *safety and environmental policies and to give effect to them in a comprehensive safety and environmental management system and emergency response plan. In order to make* suitable arrangements for major accident prevention, operators and owners should comprehensively and systematically identify all major accident scenarios relating to all hazardous activities that may be carried out on that installation, *including impacts on the environment arising from a major accident.* Those best practices also require an assessment of the likelihood and consequences and *therefore the risk of major accidents, and also the measures necessary to prevent them and the measures necessary for emergency response,* should a major accident nonetheless occur. The risk assessments and arrangements for major accident prevention should be clearly described *and compiled in the report on major hazards. The report on major hazards should be* complementary to the safety and health document referred to in Directive 92/91/EEC. *The workers should be consulted at the relevant stages of the preparation of the report on major hazards. The report on major hazards should have to be thoroughly assessed and accepted by* the competent authority.

- (27) In order to maintain the effectiveness of major hazard controls in offshore waters of Member States, ***the report on major hazards should*** be prepared and, as necessary, amended in respect of any significant aspect of the lifecycle of a production installation, including design, operation, operations when combined with other installations, ***relocation of such installation within the offshore waters of the Member State in question***, major modifications, and final abandonment. ***Similarly, the report on major hazards should also be prepared in respect of non-production installations and amended as necessary to take into account significant changes to the installation. No installation should be operated in offshore waters of Member States unless the competent authority has accepted the report on major hazards submitted by the operator or owner. Acceptance by the competent authority of the report on major hazards should not imply any transfer of responsibility for control of major hazards from the operator or the owner to the competent authority.***
- (28) ***Well operations*** should be undertaken only by an installation which is technically capable of controlling all the foreseeable hazards at the well location, and in respect of which a ***report on major hazards*** has been accepted.
- (29) In addition to using a suitable installation, the ■ operator should prepare a detailed design plan and an operating plan pertinent to the particular circumstances and hazards of each well operation. In accordance with best practices in the Union, the operator should provide for independent expert examination of the well design. The ■ operator should send a notification of well plans to the competent authority in sufficient time for the competent authority to take any necessary action in respect of the planned well operation. ***In this respect, Member States may introduce more stringent national requirements prior to the commencement of a well operation.***

- (30) To ensure safety in design and continuous safe operations, the industry is required to follow the best practices defined in authoritative standards and guidance. Such standards and guidance should be updated based on new knowledge and invention to ensure continuous improvement. Operators, owners and competent authorities should collaborate to establish priorities for the creation of new or improved standards and guidance in the light of the Deepwater Horizon accident experience and other *major* accidents. Having due regard to the established priorities the preparation of new or improved standards and guidance should be commissioned without delay.
- (31) In view of the complexity of offshore oil and gas operations, the implementation of the best practices by the operators and owners requires a scheme of independent verification of safety *and environmental* critical elements *throughout the lifecycle of the installation, including, in the case of production installations, the design stage.*

- (32) *In so far as mobile offshore drilling units are in transit and are to be considered as ships, they are subject to international maritime conventions, in particular, SOLAS, MARPOL or the equivalent standards of the applicable version of the Code for the construction and equipment of mobile offshore drilling units (MODU Code). Such mobile offshore drilling units when in transit in offshore waters are also subject to Union law concerning port State control and compliance with flag State requirements. This Directive addresses such units when they are stationed in offshore waters for drilling, production or other activities associated with offshore oil and gas operations.*

- (33) The ***report on major hazards*** should, inter alia, take into account ***risks*** to the environment, including the ***impact of*** climatic conditions and climate change on the long term resilience of the installations. Given that offshore oil and gas ***operations*** in one Member State can have significant adverse environmental effects in another Member State, it is necessary to establish and apply specific provisions in accordance with the ***UN/ECE Convention on Environmental Impact Assessment in a Transboundary Context done at Espoo (Finland), on 25 February 1991. Member States with offshore waters that are inactive in offshore oil and gas operations should appoint contact points in order to facilitate effective cooperation in this regard.***
- (34) ***Operators should notify Member States without delay if a major accident occurs, or may be about to occur, so that the Member State can initiate a response as appropriate. Therefore, operators should include in the notification suitable and sufficient particulars concerning the location, magnitude and nature of the actual or imminent major accident, their own response, and the worst case escalation scenario including transboundary potential.***

- (35) In order to ensure effective response to emergencies, operators should prepare **internal** emergency response plans **that are site specific and** based on risks and hazard scenarios identified in the **report on major hazards**, submit them to their competent authority, and maintain such resources as are necessary for prompt execution of those plans when needed. In the case of mobile offshore drilling units, operators need to ensure that the owners' internal emergency response plans for the installation are amended as necessary to be applicable to the specific location and well operation hazards. Such amendments should be included in the notification of well operations. **The adequate availability of emergency response resources should be assessed against the capacity to deploy them at the site of an accident. The readiness and effectiveness of emergency response resources should be assured and regularly tested by the operators. Where duly justified, response arrangements are allowed to be reliant on speedily transporting the response equipment such as capping devices, and other resources, from distant locations.**
- (36) **Best global practice requires licensees, operators and owners to take primary responsibility for controlling the risks they create by their operations, including operations conducted by contractors on their behalf and therefore to establish within a corporate major accident prevention policy the mechanisms and highest level of corporate ownership to implement that policy consistently throughout the organisation in the Union and outside of the Union.**
- (37) **Responsible operators and owners should be expected to conduct their operations worldwide in accordance with best practices and standards. Consistent application of such best practices and standards should become mandatory within the Union, and it would be desirable for operators and owners registered in the territory of a Member State to apply the corporate major accident prevention policy when operating outside offshore waters of Member States as far as possible within the applicable national legal framework.**

- (38) *While recognising that it may not be possible to enforce application of the corporate major accident prevention policy outside of the Union, Member States should ensure that operators and owners include their offshore oil and gas operations outside of the Union in their corporate major accident prevention policy documents.*
- (39) *Information on major accidents in offshore oil and gas operations outside the Union can help in further understanding their potential causes, in promoting learning of key lessons and in further developing the regulatory framework. Therefore, all Member States, including the landlocked Member States and the Member States with offshore waters which do not have offshore oil and gas operations or licensing activities, should require reports on major accidents occurring outside the Union which involve companies registered in their territory, and should share this information at Union level. The reporting requirement should not interfere with emergency response or the legal proceedings relating to an accident. Instead they should focus on the relevance of the accident for further developing the safety of offshore oil and gas operations in the Union.*
- (40) *Member States should expect operators and owners, in following best practices, to establish effective cooperative relationships with the competent authority, supporting best regulatory practice by the competent authority and to proactively ensure the highest levels of safety, including, where necessary, suspending operations without the competent authority needing to intervene.*

- (41) To ensure that no relevant safety concerns are overlooked or ignored, it is important to establish and encourage adequate means for the *confidential* reporting of those concerns and the protection of whistleblowers. ***While Member States are not able to enforce rules outside the Union, those means should enable the reporting of concerns of persons involved in offshore oil and gas operations outside the Union.***
- (42) The sharing of comparable data between Member States is rendered difficult and unreliable due to the lack of a common data reporting format across all Member States. A common format for the reporting of data by operators and owners to the Member State would provide transparency of the safety and environmental performance of operators and owners and would provide public access to relevant and Union-wide comparable information on safety of offshore oil and gas *operations* and would facilitate dissemination lessons learned from major accidents and near misses.
- (43) In order to ensure uniform conditions for sharing information and encouraging transparency of performance of the offshore oil and gas sector, implementing powers should be conferred on the Commission ***regarding the format and details of information to be shared and to be made publicly available.*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers¹⁶.

¹⁶ OJ L 55, 28.2.2011, p. 13.

- (44) The advisory procedure should be used for the adoption of relevant implementing acts ***given that those acts are mainly of a mere practical nature. Therefore, the application of the examination procedure would not be justified.***
- (45) To facilitate public confidence in the authority and integrity of offshore oil and gas operations in the Union, Member States should provide periodic reports of activity and incidents to the Commission. The Commission should publish reports periodically on levels of Union activity and trends in ***the*** safety and ***environmental*** performance of the offshore oil and gas sector. Member States ***should, without delay, inform the Commission, and any other Member State whose territory or offshore waters are affected, as well as the public concerned,*** of a major accident.
- (46) Experience shows that ensuring the confidentiality of sensitive data is necessary in order to foster an open dialogue between the competent authority and the operator and owner. To that effect the dialogue between operators and owners and all Member States should be based on relevant existing international legal instruments and Union law on access to environmentally relevant information subject to any overriding requirement for safety and environment protection.
- (47) The value of collaboration between offshore authorities has been clearly established by the activities of the North Sea Offshore Authorities Forum and the International Regulators Forum. Similar collaboration ***has been*** established across the Union ***in an expert group, the European Union Offshore Oil and Gas Authorities Group (EUOAG)***¹⁷, ***whose task is to promote efficient collaboration between national representatives and the Commission, including disseminating best practices and operational intelligence, establishing priorities for raising standards, and for advising the Commission on regulatory reform.***

¹⁷ ***Commission Decision of 19 January 2012 on setting up of the European Union Offshore Oil and Gas Authorities Group (OJ C 18, 21.1.2012, p. 8).***

- (48) Emergency response and contingency planning for major **accidents** should be made more effective by systematic and planned cooperation between Member States and between Member States and the oil and gas industry, as well as by sharing compatible emergency **response** assets including expertise. Where appropriate, those responses and planning should also make use of the existing resources and assistance available from within the Union, in particular through the European Maritime Safety Agency ('the Agency'), established by Regulation (EC) No 1406/2002¹⁸, and the Union Civil Protection Mechanism, established by the Council Decision 2007/779/EC, Euratom¹⁹. **Member States should also be allowed to request additional assistance from the Agency through the Union Civil Protection Mechanism.**
- (49) **Pursuant to Regulation (EC) No 1406/2002, the Agency was established for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships within the Union as well as ensuring a response to marine pollution caused by oil and gas installations.**
- (50) In implementing the obligations under this **Directive**, account should be taken of the fact that marine waters covered by the sovereignty or **sovereign rights and** jurisdiction of Member States form an integral part of the four marine regions identified in Article 4(1) of Directive 2008/56/EC, namely the Baltic Sea, the North-east Atlantic Ocean, the Mediterranean Sea and the Black Sea. For this reason, **the Union should, as a matter of priority, strengthen** coordination with third countries that have sovereignty or **sovereign rights and** jurisdiction over marine waters in such marine regions. Appropriate cooperation frameworks include regional sea conventions, as defined in point 10 of Article 3 of Directive 2008/56/EC.

¹⁸ Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 5.8.2002, p. 1).

¹⁹ OJ L 314, 1.12.2007, p. 9.

- (51) In relation to the Mediterranean Sea, in conjunction *with* this *Directive*, the necessary actions were undertaken for the Union to accede to 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 Subsoil²⁰ ('the Offshore Protocol') to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean ('the Barcelona Convention'), which was concluded by Council Decision 77/585/EEC²¹.
- (52) The Arctic waters *are* a neighbouring marine environment of particular importance for the *Union, and play an important role in mitigating climate change. The serious environmental concerns relating to the Arctic waters* require special attention to ensure the environmental protection of the Arctic in relation to any offshore *oil and gas operation, including exploration, taking into account the risk of major accidents and the need for effective response. Member States who are members of the Arctic Council are encouraged to actively promote the highest standards with regard to environmental safety in this vulnerable and unique ecosystem, such as through the creation of international instruments on prevention, preparedness and response to Arctic marine oil pollution, and through building, inter alia, on the work of the Task Force established by the Arctic Council and the existing Arctic Council Offshore Oil and Gas Guidelines.*

²⁰ Council Decision of 17 December 2012 on the accession of the European Union to 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 (OJ L 4, 9.1.2013, p. 13).

²¹ OJ L 240, 19.9.1977, p. 1.

- (53) National external emergency plans should be based on risk *assessment, taking into account the reports on major hazards for the installations stationed in the offshore waters concerned*. Member States should take into account the most up-to-date Risk Assessment and Mapping Guidelines for Disaster Management as prepared by the Commission.
- (54) Effective response to emergencies requires immediate action by the operator and owner and close cooperation with *Member States' emergency response organisations* which coordinate the introduction of additional emergency response resources as the situation develops. Such response should also include a thorough investigation of the emergency which should commence without delay so as to ensure minimum loss of relevant information and evidence. Following an emergency, *Member States* should draw up appropriate conclusions and take any necessary measures.
- (55) *It is crucial that all relevant information, including the technical data and parameters, are available for the later investigation. Member States should ensure that relevant data are collected during the offshore oil and gas operations and that in the event of a major accident, relevant data are secured and data collection is intensified appropriately. In this context, Member States should encourage the use of suitable technical means in order to promote the reliability and recording of relevant data and to prevent possible manipulation thereof.*

- (56) In order to ensure effective implementation of the requirements of this *Directive*, effective, proportionate and dissuasive *penalties* for infringements should be put in place.
- (57) In order to *adapt certain Annexes to include additional information which may become necessary in light of technical progress*, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the requirements in *certain Annexes* to this *Directive*. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

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- (58) *The definition of water damage in Directive 2004/35/EC should be amended to ensure that the liability of licensees under that Directive applies to marine waters of Member States as defined in Directive 2008/56/EC.*

- (59) *Many provisions of this Directive are not relevant for the landlocked Member States, namely Austria, the Czech Republic, Hungary, Luxembourg and Slovakia. It is nonetheless desirable that those Member States promote the principles and high standards existing in Union law for the safety of offshore oil and gas operations in their bilateral contacts with third countries and with relevant international organisations.*
- (60) *Not all Member States with offshore waters allow for offshore oil and gas operations under their jurisdiction. Those Member States are not engaged in the licensing and prevention of major accidents of such operations. It would therefore be a disproportionate and unnecessary obligation if those Member States had to transpose and implement all provisions of this Directive. However, accidents during offshore oil and gas operations may affect their shores. Therefore, those Member States should, inter alia, be prepared to respond to and investigate major accidents and should cooperate through contact points with other Member States concerned and with relevant third countries.*

- (61) *Given their geographical location, landlocked Member States are neither engaged in the licensing of, and prevention of major accidents in, offshore oil and gas operations nor are they potentially affected by such accidents in offshore waters of other Member States. Therefore, they should not have to transpose the majority of provisions of this Directive. However, where a company that is active, itself or through subsidiaries, in offshore oil and gas operations outside the Union is registered in a landlocked Member State, that Member State should request that company to provide a report on accidents occurring in such operations, which can be shared at Union level, in order for all the interested parties in the Union to benefit from the experience gained from such accidents.*
- (62) Apart from the measures introduced by this *Directive*, the Commission should explore other appropriate means of improving the prevention of *major* accidents and limiting their consequences.

- (63) ***Operators should ensure they have access to sufficient physical, human and financial resources to prevent major accidents and limit the consequences of such accidents. However, as no existing financial security instruments, including risk pooling arrangements, can accommodate all possible consequences of major accidents, the Commission should undertake further analysis and studies of the appropriate measures to ensure an adequately robust liability regime for damages relating to offshore oil and gas operations, requirements on financial capacity including availability of appropriated financial security instruments or other arrangements. This may include an examination of the feasibility of a mutual compensation scheme. The Commission should submit a report to the European Parliament and to the Council on its findings, accompanied if appropriate, by proposals.***
- (64) At Union level, it is important that technical standards are complemented by a corresponding legal framework of product safety legislation and that such standards apply to all offshore installations in offshore waters of Member States, and not just non-mobile production installations. The Commission should therefore undertake further analysis of the product safety standards applicable to offshore oil and gas operations.
- (65) Since the objective of this Directive, namely establishing minimum requirements for preventing major accidents in offshore oil and gas operations and limiting the consequences of such accidents, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS ***DIRECTIVE***:

CHAPTER I INTRODUCTORY PROVISIONS

Article 1 *Subject and scope*

1. This **Directive** establishes minimum requirements for **preventing major accidents** in offshore oil and gas operations **and limiting the consequences of such accidents**.
2. **This Directive shall be without prejudice to** Union law **concerning safety and health of workers at work**, in particular Directives 89/391/EEC and 92/91/EEC.
3. This **Directive** shall be without prejudice to Directives **94/22/EC, 2001/42/EC**, **2003/4/EC²², 2003/35/EC, 2010/75/EU²³ and 2011/92/EU**.

²² Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (OJ L 41, 14.2.2003, p. 26).

²³ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

Article 2
Definitions

For the purpose of this *Directive*:

■

- (1) *'major accident' means, in relation to an installation or connected infrastructure:*
- (a) *an incident involving an explosion, fire, loss of well control, or release of oil, gas or dangerous substances involving, or with a significant potential to cause, fatalities or serious personal injury,*
 - (b) *an incident leading to serious damage to the installation or connected infrastructure involving, or with a significant potential to cause, fatalities or serious personal injury,*

- (c) *any other incident leading to fatalities or serious injury to five or more persons who are on the offshore installation where the source of danger occurs or who are engaged in an offshore oil and gas operation in connection with the installation or connected infrastructure; or*
- (d) *any major environmental incident resulting from incidents referred to in points (a), (b) and (c).*

For the purposes of determining whether an incident constitutes a major accident under points (a), (b) or (d), an installation that is normally unattended shall be treated as if it were attended;

- (2) *'offshore' means situated in the territorial sea, the Exclusive Economic Zone or the continental shelf of a Member State within the meaning of the United Nations Convention on the Law of the Sea;*
- (3) *'offshore oil and gas operations' means all activities associated with an installation or connected infrastructure, including design, planning, construction, operation and decommissioning thereof, relating to exploration and production of oil or gas, but excluding conveyance of oil and gas from one coast to another;*

- (4) *'risk' means the combination of the probability of an event and the consequences of that event;*
- (5) *'operator' means the entity appointed by the licensee or licensing authority to conduct offshore oil and gas operations, including planning and executing a well operation or managing and controlling the functions of a production installation;*
- (6) *'suitable' means right or fully appropriate, including consideration of proportionate effort and cost, for a given requirement or situation, based on objective evidence and demonstrated by an analysis, comparison with appropriate standards or other solutions used in comparable situations by other authorities or industry;*
- (7) *'entity' means any natural or legal person or any group of such persons;*

- (8) *'acceptable', in relation to a risk, means a level of risk for which the time, cost or effort of further reducing it would be grossly disproportionate to the benefits of such reduction. In assessing whether the time, cost or effort would be grossly disproportionate to the benefits of further reducing the risk, regard shall be had to best practice risk levels compatible with the undertaking;*
- (9) *'licence' means an authorisation for offshore oil and gas operations pursuant to Directive 94/22/EC;*
- (10) 'licensed area' *means* the geographical area covered by the *licence*;
- (11) 'licensee' *means the holder or joint holders of a licence;*
- (12) *'contractor' means any entity contracted by the operator or owner to perform specific tasks on behalf of the operator or owner;*
- (13) *'licensing authority' means the public authority which is responsible for granting authorisations or for monitoring the use of authorisations as provided for in Directive 94/22/EC;*

- (14) 'competent authority' *means* the **public** authority, appointed pursuant to this *Directive* and responsible for *the* duties *assigned to it in this Directive*. *The competent authority may be comprised of one or more public bodies*;
- (15) '*exploration*' *means drilling into a prospect and all related offshore oil and gas operations necessary prior to production-related operations*;
- (16) 'production' *means offshore* extraction ■ of oil and gas from the underground strata of the licensed area including offshore processing of oil and gas and its *conveyance* through connected infrastructure ■ ;
- (17) 'non-production installation' *means* an installation other than *an* installation used *for production of oil and gas*;
- (18) 'the public' *means* one or more *entities* and, in accordance with national legislation or practice, their associations, organisations or groups;

- (19) *'installation' means a stationary, fixed or mobile facility, or a combination of facilities permanently inter-connected by bridges or other structures, used for offshore oil and gas operations or in connection with such operations. Installations include mobile offshore drilling units only when they are stationed in offshore waters for drilling, production or other activities associated with offshore oil and gas operations;*
- (20) 'production installation' *means* an installation used for production ■ ;
- (21) *'connected infrastructure' means, within the safety zone or within a nearby zone of a greater distance from the installation at the discretion of the Member State:*
- (a) *any well and associated structures, supplementary units and devices connected to the installation;*
 - (b) *any apparatus or works on or fixed to the main structure of the installation;*
 - (c) *any attached pipeline apparatus or works;*

- (22) 'acceptance', *in relation to the report on major hazards, means* the communication in writing by the competent authority to the operator *or the owner that the report, if implemented as set out therein, meets* the requirements of this *Directive. Acceptance does not imply any transfer of responsibility for control of major hazards to the competent authority;*
- (23) 'major hazard' *means* a situation with *the potential to result* in a major accident;
- (24) 'well operation' *means* any operation concerning a well that could result in the accidental release of *materials that has the potential to lead to a major accident, including the drilling of a well, the repair or modification of a well, the suspension of well operations and the permanent abandonment of a well;*
- (25) 'combined operation' *means* an operation carried out from *an* installation with another installation or installations for purposes related to the other installation(s) which thereby materially affects the risks to the safety of persons or the protection of the environment on any or all of the installations;
- (26) '*safety zone*' *means the area within a distance of 500 metres from any part of the installation, established by the Member State*

- (27) 'owner' **means an entity** legally entitled to control the operation of a non-production installation;
- (28) 'internal emergency response plan' **means a plan** prepared by **the** operator or owner pursuant to the requirements of this **Directive** concerning the measures to prevent escalation or limit the consequences of **a major** accident relating to offshore oil and gas operations **■** ;
- (29) 'independent **■** verification' **means** an assessment and confirmation of the validity of particular written statements by **an entity or an organisational part of the operator or the owner** that is not under the control **of or influenced by**, the **entity or the organisational part using** those statements;
- (30) '**material change**' **means:**
- (a) **in the case of a report on major hazards, a change to the basis on which the original report was accepted including, inter alia, physical modifications, availability of new knowledge or technology and operational management changes;**
 - (b) **in the case of a notification of well operations or combined operations, a change to the basis on which the original notification was submitted including, inter alia, physical modifications, replacement of one installation with another, availability of new knowledge or technology and operational management changes;**

- (31) 'commencement of operations' **means** the point in time when the installation **or connected infrastructure** is involved **for** the first time in the operations for which it is designed;
- (32) '**oil spill response effectiveness**' **means the effectiveness of spill response systems in responding to an oil spill, on the basis of an analysis of the frequency, duration, and timing of environmental conditions that would preclude a response. The assessment of oil spill response effectiveness is to be expressed as a percentage of time that such conditions are not present and is to include a description of the operating limitations placed on the installations concerned as a result of that assessment;**
- (33) '**safety and environmental critical elements**' **means parts of an installation, including computer programmes, the purpose of which is to prevent or limit the consequences of a major accident, or the failure of which could cause or contribute substantially to a major accident;**
- (34) '**tripartite consultation**' **means a formal arrangement to enable dialogue and cooperation between the competent authority, operators and owners, and workers' representatives;**

- (35) 'industry' *means entities* that are directly involved in offshore oil and gas *operations* covered by this *Directive* or whose activities are closely related to those operations;
- (36) 'external emergency response plan' *means* a local, national or regional strategy to prevent escalation or limit the consequences of *a major* accident relating to offshore oil and gas operations using all **■** resources *available to the operator as* described in the relevant internal emergency response plan, *and any supplementary resources made available by the Member States*;
- (37) '*major environmental incident*' *means an incident which results, or is likely to result, in significant adverse effects on the environment in accordance with Directive 2004/35/EC.*

CHAPTER II
PREVENTION OF MAJOR ACCIDENTS
RELATING TO OFFSHORE OIL AND GAS OPERATIONS

Article 3

General principles of risk management in offshore oil and gas operations

1. *Member States shall require operators to ensure that all suitable measures are taken to prevent major accidents in offshore oil and gas operations.*
2. *Member States shall ensure that operators are not relieved of their duties under this Directive by the fact that actions or omissions leading or contributing to major accidents were carried out by contractors.*
3. In the case of a major accident, *Member States shall ensure that operators take all suitable measures to limit its consequences for human health and for the environment.*
4. *Member States shall require operators to ensure that offshore oil and gas operations are carried out on the basis of systematic risk management so that the residual risks of major accidents to persons, the environment and offshore installations are acceptable.*

Article 4
Safety and environmental considerations relating to licences

1. ***Member States shall ensure that decisions on granting or transferring licences to carry out offshore oil and gas operations take into account the capability of an applicant for such a licence to meet the requirements for operations within the framework of the licence as required by the relevant provisions of Union law, in particular this Directive.***
2. In particular, when assessing the technical and financial ***capability of the applicant for a licence***, due account shall be taken of the ***following***:
 - (a) ***the risk, the hazards and any other relevant information relating to the licensed area concerned, including, where appropriate, the cost of degradation of the marine environment referred to in point (c) of Article 8(1) of Directive 2008/56/EC;***
 - (b) ***the particular stage of offshore oil and gas operations;***

- (c) *the applicant's financial capabilities, including any financial security, to cover liabilities potentially deriving from the offshore oil and gas operations in question including liability for potential economic damages where such liability is provided for by national law;*
- (d) *the available information relating to the safety and environmental performance of the applicant, including in relation to major accidents, as may be appropriate to the operations for which the licence was requested.*

Before granting or transferring a licence for offshore oil and gas operations, the licensing authority shall consult, where appropriate, the competent authority.

3. *Member States shall ensure that the licensing authority does not grant a licence unless it is satisfied with evidence from the applicant that the applicant has made or will make adequate provision, on the basis of arrangements to be decided by Member States, to cover liabilities potentially deriving from the applicant's offshore oil and gas operations. Such provision shall be valid and effective from the start of offshore oil and gas operations. Member State shall require applicants to provide, in an appropriate manner, evidence of technical and financial capacity and any other relevant information relating to the area covered by the licence and the particular stage of offshore oil and gas operations.*

Member States shall assess the adequacy of provisions referred to in the first subparagraph in order to establish whether the applicant has sufficient financial resources for the immediate launch and uninterrupted continuation of all measures necessary for effective emergency response and subsequent remediation.

Member States shall facilitate the deployment of sustainable financial instruments and other arrangements to assist applicants for licences in demonstrating their financial capacity pursuant to the first subparagraph.

Member States shall, as a minimum, establish procedures for ensuring prompt and adequate handling of compensation claims including in respect of compensation payments for trans-boundary incidents.

The Member States shall require the licensee to maintain sufficient capacity to meet their financial obligations resulting from liabilities for offshore oil and gas operations.

4. *The licensing authority or the licensee shall appoint the operator. Where the operator is to be appointed by the licensee, the licensing authority shall be notified of the appointment in advance. In such cases, the licensing authority, if necessary in consultation with the competent authority, may object to the appointment of the operator. Where such an objection is raised, the Member States shall require the licensee to appoint a suitable alternative operator or assume the responsibilities of the operator under this Directive.*

5. *The licensing procedures for offshore oil and gas operations relating to a given licensed area shall be organised in such a way that information collected as a result of exploration can be considered by the Member State prior to production commencing.*

6. *When assessing the technical and financial capabilities of an applicant for a licence, special attention shall be paid to any environmentally sensitive marine and coastal environments, in particular ecosystems which play an important role in mitigation and adaptation to climate change, such as salt marshes and sea grass beds, and marine protected areas, such as special areas of conservation pursuant to the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora²⁴, special protection areas pursuant to the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds²⁵, and marine protected areas as agreed by the Union or Member States concerned within the framework of any international or regional agreements to which they are a party.*

²⁴ OJ L 206, 22.7.1992, p. 7.

²⁵ OJ L 20, 26.1.2010, p. 7.

Article 5

Public participation relating to the effects of planned offshore oil and gas exploration operations on the environment

- 1. The drilling of an exploration well from a non-production installation shall not be commenced unless the relevant authorities of the Member State have previously ensured that early and effective public participation on the possible effects of planned offshore oil and gas operations on the environment pursuant to other Union legal acts, in particular Directive 2001/42/EC or 2011/92/EU as appropriate, has been undertaken.***
- 2. Where public participation has not been undertaken pursuant to paragraph 1, Member States shall ensure that the following arrangements are made:***
 - (a) the public is informed, whether by public notices or other appropriate means such as electronic media, where it is planned to allow exploration operations;***
 - (b) the public concerned is identified, including the public affected or likely to be affected by, or having an interest in, the decision to allow exploration operations, including relevant non-governmental organisations such as those promoting environmental protection, and other relevant organisations;***

- (c) *relevant information about such planned operations is made available to the public including, inter alia, information about the right to participate in decision-making, and to whom comments or questions may be submitted;*
- (d) *the public is entitled to express comments and opinions at a time when all options are open before decisions to allow exploration are taken;*
- (e) *when decisions under point (d) are taken, due account is taken of the results of the public participation; and*
- (f) *the Member State in question promptly informs the public, after examining the comments and opinions expressed by them, about the decisions taken and the reasons therefor and considerations upon which those decisions are based, including information about the public participation process.*

Reasonable time-frames shall be provided allowing sufficient time for each of the different stages of public participation.

3. *This Article does not apply in respect of areas licensed before ... **

* OJ: please insert the date: entry into force of this Directive.

Article 6
Offshore oil and gas operations within licensed areas

1. ***Member States shall ensure that production installations and connected infrastructure are operated only in licensed areas and only by operators appointed for that purpose pursuant to Article 4(4).***
2. ***Member States shall require the licensee to ensure that the operator has the capacity to meet the requirements for specific operations within the framework of the licence.***
3. ***Throughout all offshore oil and gas operations, Member States shall require the licensee to take all reasonable steps to ensure that the operator meets the requirements, carries out its functions and discharges its duties under this Directive.***

4. ***Where the competent authority determines that the operator no longer has the capacity to meet the relevant requirements under this Directive, the licensing authority shall be informed. The licensing authority shall then notify the licensee thereof and the licensee shall assume responsibility for the discharge of the duties concerned and shall, without delay, propose a replacement operator to the licensing authority.***

5. ***Member States shall ensure that operations relating to production and non-production installations are not commenced or continued until the report on major hazards has been accepted by the competent authority in accordance with this Directive.***

6. ***Member States shall ensure that well operations or combined operations are not commenced or continued until the report on major hazards for the installations involved has been accepted in accordance with this Directive. Furthermore, such operations shall not be commenced or continued where a notification of well operations or a notification of combined operations has not been submitted pursuant to point (h) or (i) of Article 11(1) respectively to the competent authority or where the competent authority expresses objections to the content of a notification.***

7. ***Member States shall ensure that a safety zone is established around an installation and that vessels are prohibited from entering or remaining in that safety zone.***

However, that prohibition shall not apply to a vessel entering or remaining in the safety zone:

- (a) in connection with the laying, inspection, testing, repair, maintenance, alteration, renewal or removal of any submarine cable or pipe-line in or near that safety zone;***
- (b) to provide services for or to transport persons or goods to or from any installation in that safety zone;***
- (c) to inspect any installation or connected infrastructure in that safety zone under the authority of the Member State;***
- (d) in connection with saving or attempting to save life or property;***
- (e) owing to stress of weather;***
- (f) when in distress; or***
- (g) if there is consent from the operator, owner or the Member State in which the safety zone is located.***

8. ***Member States shall establish a mechanism for effective participation in tripartite consultation between the competent authority, operators and owners, and worker representatives in the formulation of standards and policies dealing with major accident prevention.***

Article 7
Liability for environmental damage

Without prejudice to the existing scope of liability relating to the prevention and remediation of environmental damage pursuant to Directive 2004/35/EC, Member States shall ensure that the licensee is financially liable for the prevention and remediation of environmental damage as defined in that Directive, caused by offshore oil and gas operations carried out by, or on behalf of, the licensee or the operator.

Article 8
Appointment of the competent authority

1. Member States ■ shall appoint a competent authority responsible for ■ the following ***regulatory functions:***
 - (a) ***assessing and accepting reports on major hazards, assessing design notifications, and assessing notifications of well operations or combined operations, and other similar documents that are submitted to it;***
 - (b) ***overseeing compliance by operators and owners with this Directive, including inspections, investigations and enforcement actions;***

- (c) advising other authorities or bodies, including the licensing authority;*
- (d) making annual plans pursuant to Article 21;*
- (e) producing reports;*
- (f) cooperating with the competent authorities or contact points pursuant to Article 27.*

- 2.** *Member States shall at all times ensure the independence and objectivity of the competent authority in carrying out its regulatory functions and particularly in respect points (a), (b) and (c) of paragraph 1. Accordingly, conflicts of interest shall be prevented between, on the one hand, the regulatory functions of the competent authority and, on the other hand, the regulatory functions relating to the economic development of the offshore natural resources and licensing of offshore oil and gas operations within the Member State and the collection and management of revenues from those operations.*
- 3.** *In order to achieve the objectives set out in paragraph 2, Member States shall require the regulatory functions of the competent authority to be carried out within an authority that is independent of any of the functions of the Member State relating to the economic development of the offshore natural resources and licensing of offshore oil and gas operations within the Member State and the collection and management of revenues from those operations.*

However, where the total number of normally attended installations is below six, the Member State concerned may decide not to apply paragraph 3. Such a decision shall be without prejudice to its obligations under paragraph 2.

4. *Member States shall make available to the public a description of how the competent authority is organised, including why they have established the competent authority in such a way, and how they have ensured that the regulatory functions set out in paragraph 1 are carried out and that the obligations set out in paragraph 2 are complied with.*
5. Member States shall ensure that *the* competent authority *has* adequate *human and financial* resources to carry out its duties under this *Directive*. *Those resources shall be commensurate with the extent of offshore oil and gas operations of the Member States.*
6. *Member States may enter into formal agreements with appropriate Union agencies or other suitable bodies where available for the provision of specialist expertise to support the competent authority in carrying out its regulatory functions. For the purposes of this paragraph a body shall not be deemed suitable where its objectivity may be compromised by conflicts of interest.*

7. *Member States may establish mechanisms according to which the financial costs to the competent authority in carrying out its duties under this Directive may be recovered from licensees, operators or owners.*



8. *Where the competent authority is comprised of more than one body, Member States shall make every effort to avoid duplication of regulatory functions between the bodies. Member States may designate one of the constituent bodies as the lead body with responsibility for the co-ordination of the regulatory functions under this Directive and for reporting to the Commission.*

9. *Member States shall review the activities of the competent authority and shall take any necessary measures to improve its effectiveness in carrying out the regulatory functions set out in paragraph 1.*

Article 9
Functioning of the competent authority

Member States shall ensure that the competent authority:

- (a) acts independently of policies, regulatory decisions or other considerations unrelated to its duties under this Directive;*
- (b) makes clear the extent of its responsibilities and the responsibilities of the operator and the owner for the control of major accident risks under this Directive;*
- (c) establishes a policy, process and procedures for thorough assessment of reports on major hazards and notifications submitted pursuant to Article 11 as well as for overseeing compliance with this Directive within the jurisdiction of the Member State, including inspection, investigation and enforcement actions;*
- (d) makes the policy, process and procedures pursuant to point (c) available to operators and owners and makes summaries thereof available to the public;*
- (e) where necessary, prepares and implements coordinated or joint procedures with other authorities in the Member State to undertake the duties under this Directive; and*
- (f) bases its policy, organisation and operational procedures on the principles set out in Annex III.*

Article 10
Tasks of the European Maritime Safety Agency

- 1. *The European Maritime Safety Agency (EMSA, hereinafter "Agency") shall provide the Member States and Commission with technical and scientific assistance in accordance with its mandate under Regulation (EC) No 1406/2002.***
- 2. *Within the framework of its mandate, the Agency shall:***
 - (a) assist the Commission and the affected Member State, on its request, in detecting and monitoring the extent of an oil or gas spill;***
 - (b) assist Member States, at their request, with the preparation and execution of external emergency response plans, especially when there are transboundary impacts within and beyond offshore waters of Member States;***
 - (c) on the basis of the Member States' external and internal emergency response plans, develop with Member States and operators a catalogue of emergency equipment and services available.***
- 3. *The Agency may, if requested:***
 - (a) assist the Commission in assessing the external emergency response plans of Member States to check whether the plans are in conformity with this Directive;***
 - (b) review exercises that focus on testing transboundary and Union emergency mechanisms.***

CHAPTER III
PREPARING AND CARRYING OUT OFFSHORE OIL AND GAS OPERATIONS

Article 11

Documents to be submitted for carrying out offshore oil and gas operations

1. ***Member States shall ensure that*** the operator **■** ***or the owner submit*** to the competent authority the following documents:
 - (a) ***the corporate major accident prevention policy or an adequate description thereof, in accordance with Article 19(1) and (5);***
 - (b) ***the safety and environmental management system applicable to the installation, or an adequate description thereof, in accordance with Article 19(3) and (5);***
 - (c) in the case of a planned production installation, a design notification in accordance with the requirements of Annex I, part 1;
 - (d) ***a description of the scheme of independent verification in accordance with Article 17;***

- (e) *a report on major hazards , in accordance with Articles 12 and 13;*
- (f) *in the event of a material change or dismantling of an installation, an amended report on major hazards in accordance with Articles 12 and 13;*
- (g) *the internal emergency response plan or an adequate description thereof, in accordance with Articles 14 and 28;*
- (h) *in the case of a well operation, a notification of that well operation and information on that well operation in accordance with Article 15;*
- (i) *in the case of a combined operation, a notification of combined operations in accordance with Article 16;*
- (j) *in the case of an existing production installation which is to be moved to a new production location where it is to be operated, a relocation notification in accordance with Annex I, part 1;*
- (k) *any other relevant document requested by the competent authority.*

2. *The documents to be submitted under points (a), (b), (d) and (g) of paragraph 1 shall be included with the report on major hazards required under point (e) of paragraph 1. The corporate major accident prevention policy of an operator of a well shall, where not previously submitted, be included with the notification of well operations to be submitted under point (h) of paragraph 1.*

3. The **■** design notification required pursuant to point (c) of paragraph 1 ***shall be submitted to the competent authority by a deadline set by the competent authority*** before the intended submission of the ***report on major hazards*** for the planned operation. ***The competent authority shall respond to the design notification with comments to be taken into account in the report on major hazards.***

4. *Where an existing production installation is to enter or leave the offshore waters of a Member State, the operator shall notify the competent authority in writing prior to the date on which the production installation is due to enter or leave the offshore waters of the Member State.*
5. *The relocation notification required pursuant to point (j) of paragraph 1 shall be submitted to the competent authority at a stage that is sufficiently early in the proposed development to enable the operator to take into account any matters raised by the competent authority during the preparation of the report on major hazards.*
6. *Where there is a material change affecting the design notification or the relocation notification prior to the submission of the report on major hazards, the competent authority shall be notified of that change as soon as possible.*
7. *The report on major hazards required pursuant to point (e) of paragraph 1 shall be submitted to the competent authority by a deadline set by the competent authority that is before the planned commencement of the operations.*

Article 12
Report on major hazards for a production installation

1. Member States shall ensure that the operator prepares a ***report on major hazards*** for a production installation, to be submitted pursuant to point (e) of Article 11(1). That report shall contain the information specified in Annex I, parts 2 and 5 ***and shall be updated whenever appropriate or when so required by the competent authority.***
2. ***Member States shall ensure that workers' representatives are consulted at the relevant stages in the preparation of the report on major hazards for a production installation, and that evidence is provided to this effect in accordance with Annex I, part 2, point 3.***
3. The ***report on major hazards*** for a production installation may be prepared in relation to a group of installations, subject to the agreement of the competent authority.

4. *Where further information is necessary before a report on major hazards can be accepted, Member States shall ensure that the operator provides, at the request of the competent authority, such information and makes any necessary changes to the submitted report on major hazards.*
5. *Member States shall ensure that the planned modifications are not brought into use nor any dismantlement commenced until the competent authority has accepted the amended report on major hazards for the production installation.*
6. Where modifications are *to be* made to the production installation *that entail a material change*, or it is intended to dismantle *a fixed production installation*, the operator shall *prepare an amended report on major hazards*, to be submitted pursuant to point (f) of Article 11(1) by a deadline specified by the competent authority, in accordance with Annex I, part 6.
7. The *report on major hazards* for a production installation shall be subject to *a thorough* periodic review by the operator at least every *five* years or earlier *when so* required by the competent authority. The results of the review shall be notified to the competent authority.

Article 13
Report on major hazards for a non-production installation

1. ***Member States shall ensure that the owner prepares a report on major hazards*** for a non-production installation, to be submitted pursuant to point (e) of Article 11(1). That report shall contain the information specified in Annex I, parts 3 and 5 ***and shall be updated whenever appropriate or when so required by the competent authority.***
2. ***Member States shall ensure that workers' representatives are consulted at the relevant stages in the preparation of the report on major hazards for a non-production installation, and that evidence is provided to this effect in accordance with Annex I, part 3, point 2.***
3. Where further information is necessary before a ***report on major hazards for a non-production installation*** can be accepted, ***Member States shall require the owner to provide, at the request of the competent authority, such information and to make any necessary changes to the submitted report on major hazards.***
4. Where **■** modifications are to be made to the non-production installation that entail a material change, or it is intended to dismantle a fixed non-production installation, ***the owner shall prepare an amended report on major hazards*** , to be submitted pursuant to point (f) of Article 11(1) by a deadline specified by the competent authority, in accordance with Annex I, part 6, points 1, 2 and 3.

5. For a fixed non-production installation, *Member States shall ensure that the planned modifications are not brought into use nor any dismantlement commenced until the competent authority has accepted the amended report on major hazards for the fixed non-production installation.*
6. For a mobile non-production installation, *Member States shall ensure that the planned modifications are not brought into use until the competent authority has accepted the amended report on major hazards for the mobile non-production installation.*
7. The *report on major hazards* for a non-production installation shall be subject to a thorough periodic review by *the owner* at least every 5 years *or* earlier *when so* required by the competent authority. The results of the review shall be notified to the competent authority.

Article 14
Internal emergency response plans

1. ***Member States shall ensure that operators or owners, as appropriate, prepare internal emergency response plans to be submitted pursuant to point (g) of Article 11(1). The plans shall be prepared in accordance with Article 28 taking into account the major accident risk assessment undertaken during preparation of the most recent report on major hazards. The plan shall include an analysis of the oil spill response effectiveness.***

2. In the event that a mobile non-production installation is to be used for carrying out well operations, the ***internal*** emergency response plan for the installation ***shall take into account the risk assessment undertaken during the preparation of the notification of well operations to be submitted pursuant to point (h) of Article 11(1). Where the internal emergency response plan has to be amended due to the particular nature or location of the well, Member States shall ensure that the operator of the well submits the amended internal emergency response plan, or an adequate description thereof, to the competent authority to complement the relevant notification of well operations.***

3. ***In the event that a non-production installation is to be used for carrying out combined operations, the internal emergency response plan shall be amended to cover the combined operations and shall be submitted to the competent authority to complement the relevant notification of the combined operations.***

Article 15
Notification of and information on well operations

1. ***Member States shall ensure that the operator of [] a well prepares the notification to be submitted pursuant to point (h) of Article 11(1) to the competent authority. It shall be submitted by a deadline set by the competent authority that is before the commencement of the well operation. That notification of well operations shall contain details of the design of the well and the proposed well operations in accordance with Annex I, part 4. This shall include an analysis of the oil spill response effectiveness.***
2. ***The competent authority shall consider the notification and, if deemed necessary, take appropriate action [] before the well operations are commenced, which may include prohibiting the operation from being commenced.***
3. ***Member States shall ensure that the operator of the well involves the independent verifier in planning and preparation of a material change to the submitted notification of well operations pursuant to point (b) of Article 17(4) and that it immediately informs the competent authority of any material change to the submitted notification of well operations. The competent authority shall consider those changes and, if deemed necessary, take appropriate action.***
4. ***Member States shall ensure that the operator of the well submits reports of well operations to the competent authority in accordance with the requirements of Annex II. The reports shall be submitted at weekly intervals, starting on the day of commencement of the well operations, or at intervals specified by the competent authority.***

Article 16
Notification of combined operations

1. ***Member States shall ensure that operators and owners*** involved in a combined operation ***jointly prepare*** the notification to be submitted pursuant to point (i) of Article 11(1). The notification shall contain the information specified in Annex I, part 7. ***Member States shall ensure that one of the operators concerned submits the notification of combined operations to the competent authority.*** The notification shall be submitted ***by a deadline set by the competent authority before combined operations are commenced.***
2. The competent authority shall consider the notification and, ***if deemed necessary, take appropriate action before the combined operations are commenced, which may include prohibiting the operation from being commenced.***
3. ***Member States shall ensure that the operator who submitted the notification informs,*** without delay ***■***, the competent authority of any ***material change to the submitted notification.*** ***The competent authority shall consider those changes and, if deemed necessary, take appropriate action.***

Article 17
Independent ■ verification

1. ***Member States shall ensure that operators and owners establish schemes for independent verification and that they prepare a description of such schemes, to be submitted pursuant to point (d) of Article 11(1) and included within the safety and environmental management system submitted pursuant to point (b) of Article 11(1). The description shall contain the information specified in Annex I, part 5.***
2. ***The results of the independent verification shall be without prejudice to the responsibility of the operator or the owner for the correct and safe functioning of the equipment and systems under verification.***
3. The selection of the independent ■ verifier and the design of schemes for independent ***verification*** shall meet the criteria of Annex V.
4. The ***schemes*** for independent ■ verification ■ shall be established:
 - (a) in respect of installations, to give independent assurance that the ■ ***safety and environmental*** critical elements identified in the risk ***assessment*** for the installation, ***as described in the report on major hazards***, are suitable and ***that*** the schedule of examination and testing of the ***safety and environmental critical elements*** is suitable, up-to-date and operating as intended;
 - (b) in respect of ***notifications of well operations***, to give independent assurance that the well design ***and well*** control measures are suitable for the anticipated well conditions ***at all times***.

5. ***Member States shall ensure that operators and owners respond to and take appropriate action based on the advice of the independent verifier.***
6. ***Member States shall require operators and owners to ensure that advice received from the independent verifier pursuant to point (a) of paragraph 4 and records of action taken on the basis of such advice are made available to the competent authority and retained by the operator or the owner for a period of six months after completion of the offshore oil and gas operations to which they relate.***
7. ***Member States shall require operators of wells to ensure that the findings and comments of the independent verifier pursuant to point (b) of paragraph 4 of this Article and their actions in response to those findings and comments are presented in the notification of well operations prepared in accordance with Article 15.***
8. For a production installation, the verification scheme shall be in place prior to ***the completion*** of the ***design***. For a non-production installation, the scheme shall be in place prior to the commencement of operations ***in the*** offshore ***waters*** of Member States.

Article 18

Power of the competent authority in relation to operations on installations

Member States shall ensure that the competent authority:

- (a) *prohibits* the operation or commencement of operations on any installation or any *connected infrastructure* where the measures proposed *in* the *report on major hazards* for the prevention *or* limiting the consequences of major accidents or notifications of well operations or combined operations submitted pursuant to points (h) or (i) of *Article 11(1) respectively* are considered *insufficient to fulfil the requirements set out in this Directive;*
- (b) *in exceptional* situations and where it considers that safety and environmental protection are not compromised, shortens the time interval required between the submission of the *report on major hazards* or other documents *to be submitted pursuant to Article 11 and the commencement of operations;*

- (c) *requires* the operator to take *such proportionate* measures as the competent authority considers necessary to ensure compliance *with* Article 3(1);
- (d) *where Article 6(4) applies, takes adequate measures to ensure the continuing safety of operations;*
- (e) *is empowered to require improvements and, if necessary, prohibit the continued operation* of any installation or any part thereof *or any connected infrastructure* where it is shown by the outcome of an inspection, *a determination pursuant to Article 6(4)*, a periodic review of *the report on major hazards submitted pursuant to point (e) of Article 11(1)* or by changes to notifications submitted pursuant to *Article 11*, that the requirements of this *Directive* are not *being* fulfilled or there are reasonable concerns about the safety of offshore oil and gas operations or installations.

█

CHAPTER IV

PREVENTION POLICY

Article 19

Major accident prevention by operators and owners

1. ***Member States shall require operators and owners to prepare a document setting out their corporate major accident prevention policy which is to be submitted pursuant to point (a) of Article 11(1), and to ensure that it is implemented throughout their offshore oil and gas operations, including by setting up appropriate monitoring arrangements to assure effectiveness of the policy. The document shall contain the information specified in Annex I, part 8.***
2. ***The corporate major accident prevention policy shall take account of the operators' primary responsibility for, inter alia, the control of risks of a major accident that are a result of its operations and for continuously improving control of those risks so as to ensure a high level of protection at all times.***
3. ***Member States shall ensure that operators and owners prepare a document setting out their safety and environmental management system which is to be submitted pursuant to point (b) of Article 11(1). That document shall include a description of the:***
 - (a) organisational arrangements for control of major hazards;
 - (b) arrangements for preparing and submitting reports ***on major hazards***, and other documents as appropriate, pursuant to ***this Directive***; and
 - (c) schemes for independent verification established pursuant to Article 17.

4. ***Member States shall create opportunities for operators and owners to contribute to mechanisms for effective tripartite consultation established pursuant to Article 6(8). When appropriate, an operator's and owner's commitment to such mechanisms may be outlined in the corporate major accident prevention policy.***
5. The corporate ***major accident prevention*** policy and ***the safety and environmental*** management systems shall be prepared in accordance with Annex I, ***parts 8 and 9 and Annex IV***. ***The following conditions shall apply:***
 - (a) ***the corporate major accident prevention policy shall be in writing and shall establish the overall aims and arrangements for controlling the risk of a major accident, and how those aims are to be achieved and arrangements put into effect at corporate level;***
 - (b) ***the safety and environmental management system shall be integrated within the overall management system of the operator or owner and shall include organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the corporate major accident prevention policy.***
6. ***Member States shall ensure that operators and owners prepare and maintain a complete inventory of emergency response equipment pertinent to their offshore oil and gas operation.***

7. *Member States shall ensure that operators and, owners in consultation with the competent authority and making use of the exchanges of knowledge, information and experience provided for in Article 27(1), prepare and revise standards and guidance on best practice in relation to the control of major hazards throughout the design and operational lifecycle of offshore oil and gas operations, and that as a minimum they follow the outline in Annex VI.*
8. *Member States shall require operators and owners to ensure that their corporate major accident prevention policy document referred to in paragraph 1 also covers their production and non-production installations outside of the Union.*
9. *Where an activity carried out by an operator or an owner poses an immediate danger to human health or significantly increases the risk of a major accident, Member States shall ensure that the operator or the owner takes suitable measures which may include, if deemed necessary, suspending the relevant activity until the danger or risk is adequately controlled. Member States shall ensure that where such measures are taken, the operator or the owner notifies the competent authority accordingly without delay and no later than 24 hours after taking those measures.*
10. *Member States shall ensure that, where appropriate, operators and owners take suitable measures to use suitable technical means or procedures in order to promote the reliability of the collection and recording of relevant data and to prevent possible manipulation thereof.*

Article 20

Offshore oil and gas operations conducted outside the Union

1. *Member States shall require companies registered in their territory and conducting, themselves or through subsidiaries, offshore oil and gas operations outside the Union as licence holders or operators to report to them, on request, the circumstances of any major accident in which they have been involved.*

2. ***In the request for a report pursuant to paragraph 1 of this Article, the relevant Member State shall specify the details of the information required. Such reports shall be exchanged in accordance with Article 27(1). Member States which have neither a competent authority nor a contact point shall submit the reports received to the Commission.***

Article 21

Securing compliance with the regulatory framework for major accident prevention

1. ***Member States shall ensure that operators and owners comply with the measures established in the *report on major hazards* and in the plans referred to in the notification of *well operations* and notification of combined operations , submitted pursuant to points (e), (h) and (i) of Article 11(1) respectively.***

2. *Member States shall ensure that operators and owners provide the competent authority, or any other persons acting under the direction of the competent authority, with transport to or from an installation or vessel associated with oil and gas operations, including the conveyance of their equipment, at any reasonable time, and with accommodation, meals and other subsistence in connection with the visits to the installations, for the purpose of facilitating competent authority oversight, including inspections, investigations and enforcement of compliance with this Directive.*

■

3. *Member States shall ensure that the competent authority develops annual plans for effective oversight, including inspections, of major hazards based on risk management and with particular regard to compliance with the report on major hazards and other documents submitted pursuant to Article 11. The effectiveness of the plans shall be regularly reviewed and the competent authority shall take any necessary measures to improve them.*

Article 22
Confidential reporting of safety concerns

1. ***Member States shall ensure that the competent authority establishes mechanisms:***
 - (a) ***for confidential*** reporting of safety and █ environmental concerns relating to offshore oil and gas operations ***from any source; and***
 - (b) for investigation of such reports while maintaining ***the*** anonymity of the individuals concerned.

2. ***Member States shall require operators and owners to*** communicate details of the national arrangements for the mechanisms referred to in paragraph 1 to their employees and ***contractors connected with the operation and their employees,*** and to █ ensure that reference to ***confidential*** reporting is included in relevant training and notices.

█

CHAPTER V
TRANSPARENCY AND SHARING OF INFORMATION

Article 23
Sharing of information

1. ***Member States shall ensure that operators and owners provide the competent authority, as a minimum, with the information described in Annex IX.***
2. The Commission shall by means of an implementing act determine a common data reporting format and the details of information to be shared. That implementing act shall be adopted in accordance with the **■** advisory procedure referred to in Article 37(2).

■

Article 24
Transparency

1. **Member States shall make the information referred to in Annex IX** publicly available .
2. The Commission shall by means of an implementing *act* determine a common publication format that enables easy cross-border comparison of data. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 37(2). **The common publication format shall allow for a reliable comparison of national practices under this Article and Article 25.**

Article 25
Reporting on safety and environmental impact

1. Member States shall **submit** an annual report **to the Commission containing the information specified in Annex IX, point 3.**
2. Member States shall designate an authority to be responsible for exchanging information pursuant to Article 23 and for publication of information pursuant to Article 24 .

3. █ The Commission shall publish ***an annual report*** based on the information reported to it by Member States ***pursuant to paragraph 1.***

Article 26
Investigation following a major accident

1. Member States shall ***initiate*** thorough investigations of major accidents █ occurring in their jurisdiction.
2. A summary of the ***findings*** pursuant to paragraph 1 shall be made available to the Commission ***either*** at the conclusion of the investigation or at the conclusion of legal proceedings ***as appropriate. The Member States shall make a non-confidential version of the findings publicly available.***
3. ***Member States shall ensure that, following the investigations pursuant to paragraph 1, the competent authority implements any recommendations of the investigation that are within its powers to act.***

CHAPTER VI COOPERATION

Article 27

Cooperation between Member States

1. Each **Member State shall ensure that its** competent **authority** regularly **exchanges** knowledge, information and experience **with other competent authorities, inter alia, through the European Union Offshore Oil and Gas Authorities Group (EUOAG), and that it engages** in consultations on the application of relevant national and Union **law** with the industry, other stakeholders and the Commission.

For Member States without offshore oil and gas operations under their jurisdiction, the information referred to in the first subparagraph shall be received by the contact points appointed pursuant to Article 32(1).

2. Knowledge, information and experience exchanged pursuant to paragraph 1 shall concern, in particular, the functioning of the measures for risk **management**, major accident prevention, verification of compliance and emergency response relating to offshore oil and gas operations within the Union, as well as outside of the Union where appropriate.

3. ***Each Member State shall ensure that its competent authority participates in establishing clear joint priorities for the preparation and updating of standards and guidance in order to identify and facilitate the implementation and consistent application of best practices in offshore oil and gas operations.***
4. ***By...^{*}, the Commission shall present to the Member States a report on the adequacy of national expert resources for complying with the regulatory functions pursuant to this Directive which, if necessary, shall include proposals for ensuring all Member States have access to adequate expert resources.***
5. ***By ...^{**}, the Member States shall notify the Commission of the national measures they have in place regarding access to knowledge, assets and expert resources, including formal agreements pursuant to Article 8(6).***

█

* OJ: please insert the date: one year after the entry into force of this Directive.

** OJ: please insert the date: three years after the entry into force of this Directive.

CHAPTER VII
EMERGENCY PREPAREDNESS AND RESPONSE

Article 28

Requirements for internal emergency response plans

1. ***Member States shall ensure that the internal*** emergency response plans to be prepared by the ***operator or the owner*** in accordance with Article 14 ***and submitted pursuant to point (g) of Article 11(1) are:***
 - (a) **█** put into action without delay to ***respond to any major accident or a situation where there is an immediate risk of a major accident; and***
 - (b) ***consistent*** with the external emergency ***response*** plan referred to in Article 29 **█** .
2. ***Member States shall ensure that the operator and the owner maintain*** equipment and expertise relevant to the ***internal emergency response*** plan in order for that equipment and expertise to be available at all times and to be made available as necessary to the ***authorities responsible for the execution of the external emergency response plan of the*** Member State where the internal emergency response plan applies.

3. The internal emergency *response* plan shall be prepared in accordance with Annex I, *part 10*, and updated *as a consequence of any material* change to the *report on major hazards or notifications submitted pursuant to Article 11* Any such updates shall be *submitted* to the *competent* authority *pursuant to point (g) of Article 11(1) and notified to the relevant authority or authorities* responsible for preparing the external emergency response plans for the area concerned.
4. *The internal* emergency response plan shall be integrated with other *measures* relating to protection and rescue of personnel from the stricken installation so as to secure a good prospect of *personal safety and* survival.

█

Article 29

External emergency response plans and emergency preparedness

1. Member States shall prepare external emergency **response** plans covering all offshore oil and gas installations **or connected infrastructure** and potentially affected areas within their jurisdiction. **Member States shall specify the role and financial obligation of licensees and operators in the external emergency response plans.**
2. External emergency response plans shall be prepared **by the Member State in cooperation with relevant operators and owners and, as appropriate, licensees and the competent authority, and shall take into account** the most up to date version of the internal emergency response plans of the **existing or planned installations or connected infrastructure in the area covered by the external emergency response plan.**

3. External emergency response plans shall be prepared in accordance with Annex VII, and shall be made available to the Commission, *other potentially affected Member States* and the public. *When making available their external emergency response plans, the Member States shall ensure that disclosed information does not pose risks to the safety and security of offshore oil and gas installations and their operation and does not harm the economic interests of the Member States or the personal safety and well-being of officials of Member States.*
4. Member States shall take suitable measures to achieve a high level of compatibility and interoperability of response equipment and expertise between all Member States in a geographical region, and further afield where appropriate. Member States shall encourage industry to develop response *equipment and contracted services that are compatible and interoperable throughout the geographical region.*

5. Member States shall keep **■** records of emergency response *equipment and services in accordance with Annex VIII, point 1*. Those records shall be **■** available to the other *potentially affected* Member States and *the Commission and*, on a reciprocal basis, *to* neighbouring third countries **■** .
6. Member States *shall ensure that* operators *and owners* regularly test their preparedness to respond effectively to major accidents *in close cooperation with the relevant authorities of the Member States*.
7. *Member States shall ensure that competent authorities or, where appropriate, contact points develop cooperation scenarios for emergencies. Such scenarios shall be regularly assessed and updated as necessary.*

Article 30
Emergency response

1. ***Member States shall ensure that the operator or, if appropriate, the owner notifies without delay the relevant authorities of a major accident or of a situation where there is an immediate risk of a major accident. That notification shall describe the circumstances, including, where possible, the origin, the potential impacts on the environment and the potential major consequences.***

2. ***Member States shall ensure that in the event of a major accident, the operator or the owner takes all suitable measures to prevent its escalation and to limit its consequences. The relevant authorities of the Member States may assist the operator or owner, including with the supply of additional resources.***

3. In the course of the emergency response, the Member State shall collect the information necessary for ***thorough investigation pursuant to Article 26(1).***

CHAPTER VIII
TRANSBOUNDARY EFFECTS

Article 31

*Transboundary emergency preparedness and response
of Member States with offshore oil and gas operations under their jurisdiction*

1. *Where a Member State considers that a major hazard relating to offshore oil and gas operations that are to take place under its jurisdiction is likely to have significant effects on the environment in another Member State, it shall, prior to the commencement of operations, forward the relevant information to the potentially affected Member State and shall endeavour, jointly with that Member State, to adopt measures to prevent damage.*

Member States that consider themselves to be potentially affected may request the Member State in whose jurisdiction the offshore oil and gas operation is to take place, to forward all relevant information to them. Those Member States may jointly assess the effectiveness of the measures, without prejudice to the regulatory functions of the competent authority with jurisdiction for the operation concerned under points (a), (b) and (c) of Article 8(1).

2. *The major hazards identified pursuant to paragraph 1 shall be taken into account in internal and external emergency response plans to facilitate joint effective response to a major accident.*

3. ***Where there is a risk of the foreseeable transboundary effects of major accidents affecting third countries, Member States shall, on a reciprocal basis, make information available to the third countries.***
4. Member States shall coordinate ***between themselves*** measures relating to areas outside of the Union in order to prevent potential negative ***effects*** of offshore oil and gas operations.
5. Member States shall regularly test their preparedness to respond effectively to major accidents in cooperation with potentially affected Member States, relevant Union agencies ***and, on a reciprocal basis, potentially affected*** third countries. The Commission may contribute to exercises focused on testing ***transboundary*** emergency mechanisms.
6. In the event of a major accident, or of an imminent threat thereof, which has or is capable of having transboundary effects, the Member State under whose jurisdiction the situation ***occurs*** shall, without delay, notify the Commission and those Member States ***or third countries*** which may be affected by the situation ***and shall continuously provide information relevant for an effective emergency response.***

Article 32

*Transboundary emergency preparedness and response of Member States
without offshore oil and gas operations under their jurisdiction*

- 1. Member States without offshore oil and gas operations under their jurisdiction shall appoint a contact point in order to exchange information with relevant adjacent Member States.*
- 2. Member States without offshore oil and gas operations under their jurisdiction shall apply Article 29(4) and (7) so as to ensure that adequate response capacity is in place in the event that they are affected by a major accident.*
- 3. Member States without offshore oil and gas operations under their jurisdiction shall coordinate their national contingency planning in the marine environment with other relevant Member States to the extent necessary to ensure the most effective response to a major accident.*

4. *Where a Member State without offshore oil and gas operations under its jurisdiction is affected by a major accident, it shall:*
- (a) *take all suitable measures, in line with the national contingency planning referred to in paragraph 3;*
 - (b) *ensure that any information which is under its control and available within its jurisdiction and which may be relevant for a full investigation of the major accident is provided or made accessible on request to the Member State conducting the investigation pursuant to Article 26.*

Article 33

Coordinated approach towards the safety of offshore oil and gas operations at international level

1. *The Commission shall, in close cooperation with the Member State and without prejudice to relevant international agreements, promote cooperation with third countries that undertake offshore oil and gas operations in the same marine regions as Member States.*

2. *The Commission shall facilitate the exchange of information between Member States with offshore oil and gas operations and adjacent third countries with similar operations in order to promote preventive measures and regional emergency response plans.*
3. *The Commission shall promote high safety standards for offshore oil and gas operations at international level in relevant global and regional fora, including those relating to Arctic waters.*

CHAPTER IX FINAL PROVISIONS

Article 34 Penalties

Member States shall *lay down the rules on* penalties applicable to infringements of *the national provisions adopted pursuant to this Directive* and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. *Member States shall notify those provisions to the Commission by ...* and shall notify it without delay of any subsequent amendment affecting them.*

* OJ: please insert the date: two years after the entry into force of this Directive.

Article 35
Delegated powers of the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 36 ***in order to adapt Annexes I, II, VI and VII to include additional information which may become necessary in light of technical progress. Such adaptations shall not result in substantial changes in the obligations laid down in this Directive.***

■

Article 36
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The ■ power ***to adopt delegated acts*** referred to in Article 35 shall be conferred on the Commission for a period of ***five years*** from ...* . ***The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than four months before the end of each period.***

* OJ: please insert: the date of entry into force of this Directive.

3. The delegation of power referred to in Article 35 may be revoked at any time by the European Parliament or by the Council. A decision **to revoke** shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify **it** simultaneously **to** the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 35 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **two** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **two** months at the initiative of the European Parliament or **of** the Council.

Article 37
Committee procedure

1. The Commission shall be assisted by a committee. **That** committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article **4** of Regulation (EU) No 182/2011 shall apply.

Article 38
Amendment to Directive 2004/35/EC

1. In Article 2(1) of Directive 2004/35/EC, point (b) shall be replaced by the following:
'(b) 'water damage', which is any damage that significantly adversely affects:
 - (i) the ecological, chemical or quantitative status or the ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies, or

- (ii) the environmental status of the marine waters concerned, as defined in Directive 2008/56/EC, in so far as particular aspects of the environmental status of the marine environment are not already addressed through Directive 2000/60/EC;'

2. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with paragraph 1 by ...^{*}. They shall forthwith inform the Commission thereof.

Article 39

Reports to the European Parliament and to the Council

1. *The Commission shall, by 31 December 2014, submit to the European Parliament and to the Council a report on the availability of financial security instruments, and on the handling of compensation claims, where appropriate, accompanied by proposals.*
2. *The Commission shall, by ...^{*}, submit to the European Parliament and to the Council a report on its assessment of the effectiveness of the liability regimes in the Union in respect of the damage caused by offshore oil and gas operations. That report shall include an assessment of the appropriateness of broadening liability provisions. The report shall be accompanied, where appropriate, by proposals.*

^{*} OJ: please insert the date: two years after the entry into force of this Directive.

3. *The Commission shall examine the appropriateness of bringing certain conduct leading to a major accident within the scope of Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law²⁶. The Commission shall, by 31 December 2014, submit a report on its findings to the European Parliament and the Council, accompanied, where appropriate, by legislative proposals, subject to appropriate information being made available by Member States.*

Article 40

Report and review

1. *No later than ...^{*}, the Commission shall, taking due account of the efforts and experiences of competent authorities, assess the experience of implementing this Directive.*
2. *The Commission shall submit a report to the European Parliament and to the Council with the result of that assessment. That report shall include any appropriate proposals for amending this Directive.*

²⁶ OJ L 328, 6.12.2008, p. 28.

^{*} OJ: please insert the date: six years after the entry into force of this Directive.

Article 41
Transposition

1. ***Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive by ...****

They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

* OJ: please insert the date: two years after the entry into force of this Directive.

2. *Member States shall communicate to the Commission the texts of the main measures of national law which they adopt in the field covered by this Directive.*
3. *By way of derogation from the first subparagraph of paragraph 1 and subject to paragraph 5, Member States with offshore waters that do not have offshore oil and gas operations under their jurisdiction, and which do not plan to license such operations, shall inform the Commission thereof and shall be obliged to bring into force, by... **, only those measures which are necessary to ensure compliance with Articles 20, 32 and 34. Such Member States may not license such operations until they have transposed and implemented the remaining provisions of this Directive and have informed the Commission thereof.*
4. *By way of derogation from the first subparagraph of paragraph 1 and subject to paragraph 5, landlocked Member States shall be obliged to bring into force, by... **, only those measures which are necessary to ensure compliance with Article 20.*
5. *Where, on ... * , no company conducting operations covered by Article 20 is registered in a Member State falling within paragraph 3 or 4 , that Member State shall be obliged to bring into force those measures which are necessary to ensure compliance with Article 20 only as from 12 months following any later registration of such a company in that Member State or by ... ** , whichever is the later.*

* OJ: please insert the date of entry into force of this Directive.

** OJ: please insert the date: two years after the entry infor force of this Directive.

Article 42
Transitional provisions

1. *In relation to owners, operators of planned production installations and operators planning or executing well operations, Member States shall apply the laws, regulations and administrative provisions adopted pursuant to Article 41 by ...^{*}.*
2. *In relation to existing installations, Member States shall apply the laws, regulations and administrative provisions adopted pursuant to Article 41 from the date of scheduled regulatory review of risk assessment documentation and no later than by...^{**}.*

^{*} OJ: please insert a date: 3 years after the date of entry into force of this Directive.

^{**} OJ: please insert a date: 5 years after the entry into force of this Directive.

Article 43
Entry into force

This **Directive** shall enter into force on the **twentieth** day following that of its publication in the *Official Journal of the European Union*.



Article 44
Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament

For the Council

The President

The President

I

ANNEX I

Information to be included in documents submitted to the competent authority pursuant to Article 11

1. INFORMATION TO BE SUBMITTED IN A DESIGN OR RELOCATION NOTIFICATION FOR A PRODUCTION INSTALLATION

The design notification *and the relocation* notification for a production installation to be submitted pursuant to points (c) and (j) of Article 11(1) respectively shall contain at least *the* following information:

- (1) the name and address of the operator of the installation;
- (2) a description of the *design process for the production operations and systems, from an initial concept to the submitted design or selection of an existing installation*, the relevant standards used, and the design *concepts included in the* process;
- (3) a description of the selected design concept in relation to the major hazard scenarios for the particular installation and its location, and the primary risk control features;
- (4) a demonstration that the concept *contributes to reducing* major hazard risks to an acceptable level ■ ;
- (5) a description of the installation and the conditions at its intended location;

- (6) *a description of any environmental, meteorological and seabed limitations on safe operations, and the arrangements for identifying risks from seabed and marine hazards such as pipelines and the moorings of adjacent installations;*
- (7) a description of the types of major hazard operations to be carried out;
- (8) a general description of the safety *and environmental* management system by which the intended major accident risk control measures are to be maintained in good effect ■ ;
- (9) *a description of the independent verification schemes and an initial list of safety and environmental critical elements and their required performance;*
- (10) *where an existing production installation is to be moved to a new location to serve a different production operation, a demonstration that the installation is suitable for the proposed production operation;*
- (11) *where a non-production installation is to be converted for use as a production installation, a justification demonstrating that the installation is suitable for such conversion.*

2. INFORMATION TO BE SUBMITTED IN A *REPORT ON MAJOR HAZARDS FOR OPERATION OF A PRODUCTION INSTALLATION*

Reports on major hazards for a production installation to be prepared in accordance with Article 12 and submitted pursuant to point (e) of Article 11(1) shall contain at least *the* following information:

- (1) a description of the account taken of the competent authority's response to the design notification;
- (2) *the name and address of the operator of the installation;*
- (3) a summary of any worker involvement in the preparation of the *report on* major hazards ■ ;
- (4) a description of the installation and *any association with other installations or* connected infrastructure ■ , including wells ■ ;
- (5) demonstration that all the major hazards have been identified, their likelihood and consequences assessed, *including any environmental, meteorological and seabed limitations on safe operations*, and that their control measures *including associated safety and environmental critical elements* are suitable so as to reduce the risk of a major accident to an acceptable *level; this demonstration shall include an assessment of oil spill response effectiveness*;

- (6) a description of the types of operations with major hazard potential to be carried out, and the maximum number of persons that can be on the installation at any time;
- (7) a description of **equipment** and arrangements to ensure well control, process safety, containment of hazardous substances, prevention of fire and explosion, protection of the workers from hazardous substances, and protection of the environment from an incipient major accident ■ ;
- (8) a description of the arrangements to protect persons on the **installation** from major hazards, and to ensure their safe **escape**, evacuation and **rescue**, and **arrangements** for the maintenance of control systems to prevent damage to the installation and the environment in the event **that** all personnel are evacuated;
- (9) relevant codes, standards and guidance used in the construction and commissioning of the installation;
- (10) information, **regarding** the **operator's** safety **and environmental** management system, **that is relevant to the production installation**;
- (11) **an internal emergency response plan or an adequate description thereof**;

- (12) a description *of* the ***independent*** verification scheme ■ ;
- (13) any other relevant details, for example where two or more installations operate in combination in a way which affects the major hazard potential of either or all installations;
- (14) the information relevant to ***other*** requirements under this ***Directive*** obtained pursuant to ***the major accident prevention requirements of Directive 92/91/EEC***;
- (15) ***in respect of operations to be conducted from the installation, any information relating to the prevention of major accidents resulting in significant or serious damage to the environment relevant to other requirements under this Directive, obtained pursuant to Directive 2011/92/EU***;
- (16) ■ an assessment of the identified potential environmental effects ***resulting from the loss of containment*** of pollutants ***arising from a major accident***, and a description of the technical and non-technical measures envisaged to prevent, reduce or offset them, including monitoring.

3. INFORMATION TO BE SUBMITTED IN A *REPORT ON MAJOR HAZARDS* FOR A NON-PRODUCTION INSTALLATION

Reports on major hazards for a non-production installation to be prepared in accordance with Article 13 and submitted pursuant to point (e) of Article **11(1)** shall contain at least *the* following information:

- (1) the name and address of the *owner*;
- (2) a summary of any worker involvement in the preparation of the *report on* major hazards **■** ;
- (3) a description of the installation and, in the case of a mobile installation, a description of its means of transfer between locations, and its stationing system;
- (4) a description of the types of operations with major hazard potential that the installation is capable of performing, and the maximum number of persons that can be on the installation at any time;

- (5) demonstration that all the major hazards have been identified, their likelihood and consequences assessed, ***including any environmental, meteorological and seabed limitations on safe operations*** and that their control measures ***including associated safety and environmental critical elements*** are suitable so as to reduce the risk of a major accident to an acceptable ***level***; ***this demonstration shall include an assessment of any oil spill response effectiveness***;
- (6) a description of the plant and arrangements to ensure well control, process safety, containment of hazardous substances, prevention of fire and explosion, protection of the workers from hazardous substances, and protection of the environment from a major accident ■ ;
- (7) a description of the arrangements to protect persons on the ***installation*** from major hazards, and to ensure their safe ***escape***, evacuation and ***rescue***, and ***arrangements*** for the maintenance of control systems to prevent damage to the installation and the environment in the event ***that*** all personnel are evacuated;

- (8) relevant codes, standards and guidance used in the construction and commissioning of the installation;
- (9) demonstration that all the major hazards have been identified for all *operations* the installation is capable of performing, and that the risk of a major accident is reduced to an acceptable *level*;
- (10) a description of *any* environmental, meteorological and seabed limitations on safe operations, and the arrangements for identifying risks from seabed and marine hazards such as pipelines and *the* moorings of adjacent installations;
- (11) information, *regarding* the safety *and environmental* management system, *that is relevant to the non-production installation*;
- (12) *an internal emergency response plan or an adequate description thereof*;
- (13) a description *of the independent* verification scheme ■ ;

- (14) any other relevant details, for example where two or more installations operate in combination in a way which affects the major hazard potential of either or all installations;
- (15) *in respect of operations to be conducted from the installation, any information obtained pursuant to Directive 2011/92/EU relating to the prevention of major accidents resulting in significant or serious damage to the environment relevant to other requirements under this Directive;*
- (16) ■ an assessment of the identified potential environmental *effects resulting from the loss of containment* of pollutants *arising from a major accident*, and a description of the technical and non-technical measures envisaged to prevent, reduce or offset them, including monitoring.

4. INFORMATION TO BE SUBMITTED IN A NOTIFICATION OF WELL OPERATIONS

Notifications of well operations ■ to be prepared in accordance with Article *15* and submitted pursuant to point (h) of Article *11(1)* shall contain at least the following information:

- (1) the name and address of the ■ operator *of the well*;

- (2) the name of the installation to be used and the ***name and address of the owner or, in the case of a production installation, the contractor undertaking drilling activities;***
- (3) details that identify the well and any association with ***installations and connected infrastructure;***
- (4) information on the well work programme, including the period of its operation, ***details and verification of barriers against loss of well control (equipment, drilling fluids and cement etc), directional control of the well path, and limitations on safe operations in keeping with the risk management;***
- (5) ***in the case of an existing well, information regarding its history and condition;***
- (6) any details concerning safety equipment to be deployed that are not described in the current ***report on major hazards*** ■ for the installation;
- (7) a risk assessment incorporating a description of:
 - (a) the particular hazards associated with the well operation ***including any environmental, meteorological and seabed limitations on safe operations;***
 - (b) the subsurface hazards;

- (c) any surface or subsea **operations** which introduce simultaneous major hazard potential;
- (d) suitable control measures;

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- (8) a description of the well configuration at the end of operations – i.e. permanently or temporarily abandoned; and whether **production equipment has been placed into the well** for future use;

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- (9) in the case of a modification to a previously submitted notification **of well operations**, sufficient details to fully update the notification;
- (10) where a well is to be **constructed, modified or maintained** by means of a non-production installation, additional information as follows:
 - (a) a description of **any environmental, meteorological and seabed limitations on safe operations, and arrangements for identifying risks from seabed and marine hazards such as pipelines and the moorings of adjacent installations**;
 - (b) a description of environmental conditions that have been taken into account within the internal emergency **response** plan for the installation;

- (c) a description of emergency response arrangements including arrangements for responding in cases of environmental incidents that are not described in the *report on major hazards* █, and;
 - (d) a description of how the management systems of the █ operator *of the well and the owner* are to be coordinated to ensure effective control of major hazards at all times.
- (11) *a report with findings of the independent well examination, including a statement by the operator of the well that, after considering the report and findings of independent well examination by the independent verifier, the risk management relating to well design and its barriers to loss of control are suitable for all anticipated conditions and circumstances;*
- (12) *the information relevant to this Directive obtained pursuant to the major accident prevention requirements of Directive 92/91/EEC;*
- (13) *in respect of the well operations to be conducted, any information relevant to other requirements under this Directive obtained pursuant to Directive 2011/92/EU relating to the prevention of major accidents resulting in significant or serious damage to the environment.*

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5. **INFORMATION TO BE SUBMITTED RELATING TO A VERIFICATION SCHEME**

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Descriptions to be submitted pursuant to point (d) of Article 11(1) in relation to schemes of independent verification to be established pursuant to Article 17(1) shall include:

- (a) a statement *by the operator or owner, made after considering the report of* the independent ■ verifier, that the record of safety critical elements and *their* scheme of maintenance ■ as specified in the *report on* major hazards ■ are or will be suitable;
- (b) a description of the verification scheme including the selection of independent ■ verifiers, the means of verification that safety *and environmental* critical elements and any specified plant in the scheme remain in good repair and condition;

- (c) ***a description of the means of verification referred to in point 5(b) that shall include details of the principles that will be applied to carry out the functions under the scheme and to keep the scheme under review throughout the lifecycle of the installation including:***
- (i) ***the examination and testing*** ■ ***of the safety and environmental critical elements by independent and competent verifiers;***
 - (ii) ***verification of the design, standard, certification or other system of conformity of the safety and environmental critical elements ;***
 - (iii) ***examination of work in progress;***
 - (iv) ***the reporting of any instances of non-compliance ;***
 - (v) ***remedial actions taken by the operator or owner.***

6. INFORMATION TO BE PROVIDED IN RESPECT OF A *MATERIAL* CHANGE TO AN INSTALLATION, INCLUDING REMOVAL OF A FIXED INSTALLATION

Where *material* changes are to be made to the installation as referred to in Article 12(6) and Article 13(4), the amended report on major hazards incorporating the material changes to be submitted pursuant to point (f) of *Article 11(1)* shall contain at least *the* following information:

- (1) the name and address of the operator *or the owner*;
- (2) a summary of any worker involvement in the preparation of the revised *report on major hazards*;
- (3) **■** sufficient details to fully update the earlier *report on major hazards* and associated internal emergency *response* plan for the installation and to demonstrate major hazard risks are reduced to an acceptable *level*;

- (4) in the case of taking a fixed production installation out of use:
- (a) means of isolating all hazardous substances and in the case of wells connected to the installation, the permanent sealing of the wells from the installation and the environment;
 - (b) a description of major hazard risks associated with the *decommissioning* of the installation *to workers and the environment*, the total exposed population, and the risk control measures;
 - (c) emergency response arrangements to secure safe evacuation and *rescue* of personnel and to *maintain control systems for preventing* a major accident to the environment.

7. INFORMATION TO BE SUBMITTED IN A NOTIFICATION OF COMBINED OPERATIONS

The notification of combined operations to be prepared pursuant to Article 16 and submitted pursuant to point (i) of Article 11(1) shall contain at least *the* following information:

- (1) the name and address of the operator *submitting* the notification;
- (2) in the event that other operators *or owners* are involved in the combined operations their names and addresses, including a confirmation that they agree with the contents of the notification;
- (3) a description, *in the form of a bridging document authorised by all parties to the document*, of how the management systems for the installations involved in the combined operation will be coordinated so as to reduce the risk of a major accident *to an acceptable level*;

- (4) a description of any equipment to be used in connection with the combined operation but which is not described in the current *report on major hazards* for any of the installations involved in the combined operations;
- (5) a summary of the risk assessment carried out by all operators *and owners* involved in the combined operations, which shall include:
 - (a) a description of any *operation* during the combined operation which may involve hazards with the potential to cause a major accident on or in connection with an installation;
 - (b) a description of any risk control measures introduced as a result of the risk assessment;
- (6) a description of the combined operation and a programme of work.

8. INFORMATION TO BE SUBMITTED IN RESPECT OF A CORPORATE MAJOR ACCIDENT PREVENTION POLICY

The corporate major accident prevention policy to be prepared in accordance with Article 19(1) and submitted pursuant to point (a) of Article 11(1) shall include but not be limited to:

- (1) the responsibility at corporate board level for ensuring, on a continuous basis, that the corporate major accident prevention policy is suitable, implemented, and operating as intended;*
- (2) measures for building and maintaining a strong safety culture with a high likelihood of continuous safe operation;*
- (3) the extent and intensity of process auditing;*

- (4) *measures for rewarding and recognising desired behaviours;*
- (5) *the evaluation of the company's capabilities and goals;*
- (6) *measures for maintenance of safety and environmental protection standards as a corporate core value;*
- (7) *formal command and control systems that include board members and senior management of the company;*
- (8) *the approach to competency at all levels of the company;*
- (9) *the extent to which particulars (1) – (8) are applied in the company's offshore oil and gas operations conducted outside the Union.*

9. INFORMATION TO BE PROVIDED IN RESPECT OF A SAFETY AND ENVIRONMENTAL MANAGEMENT SYSTEM

The safety and environmental management system to be prepared pursuant to Article 19(3) and submitted pursuant to point (b) of Article 11(1) shall include but not be limited to:

- (1) organisation structure and personnel roles and responsibilities;*
- (2) identification and evaluation of major hazards as well as their likelihood and potential consequences;*
- (3) integration of environmental impact into major accident risk assessments in the report on major hazards;*
- (4) controls of the major hazards during normal operations;*
- (5) management of change;*
- (6) emergency planning and response;*
- (7) limitation of damage to the environment;*
- (8) monitoring of performance;*
- (9) audit and review arrangements; and*
- (10) the measures in place for participating in tripartite consultations and how actions resulting from those consultations are put into effect.*

10. INFORMATION TO BE PROVIDED IN AN INTERNAL EMERGENCY RESPONSE PLAN

Internal emergency response plans to be prepared pursuant to Article 14 and submitted pursuant to point (g) of Article 11(1) shall include but not be limited to:

- (1) names and positions of persons authorised to initiate emergency response procedures and the person directing the internal emergency response;*
- (2) name or position of the person with responsibility for liaising with the authority or authorities responsible for the external emergency response plan;*
- (3) a description of all foreseeable conditions or events which could cause a major accident, as described in the report on major hazards to which the plan is attached;*
- (4) a description of the actions that will be taken to control conditions or events which could cause a major accident and to limit their consequences;*
- (5) a description of the equipment and the resources available, including for capping any potential spill;*
- (6) arrangements for limiting the risks to persons on the installation and the environment, including how warnings are to be given and the actions persons are expected to take on receipt of a warning;*

- (7) *in the case of combined operation, arrangements for coordinating escape, evacuation and rescue between the installations concerned, to secure a good prospect of survival for persons on the installations during a major accident;*
- (8) *an estimate of oil spill response effectiveness. Environmental conditions to be considered in this response analysis shall include:*
- (i) *weather, including wind, visibility, precipitation and temperature;*
 - (ii) *states, tides, and currents;*
 - (iii) *presence of ice and debris;*
 - (iv) *hours of daylight; and*
 - (v) *other known environmental conditions that might influence the efficiency of the response equipment or the overall effectiveness of a response effort;*

- (9) *arrangements for providing early warning of a major accident to the authority or authorities responsible for initiating the external emergency response plan, the type of information which shall be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available;*
 - (10) *arrangements for training personnel in the duties they will be expected to carry out, and where necessary coordinating this with external emergency responders;*
 - (11) *arrangements for coordinating internal emergency response with external emergency response;*
 - (12) *evidence of prior assessments of any chemicals used as dispersants that have been carried out to minimise public health implications and any further environmental damage.*
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ANNEX II

Reports of well operations to be submitted pursuant to Article 15(4)

The reports to be submitted to the competent authority pursuant to Article 15(4) shall contain at least the following information:

- (1) the name and address of the operator of the well;*
 - (2) the name of the installation and the name and address of the operator or owner;*
 - (3) details that identify the well and any association with installations or connected infrastructure;*
 - (4) a summary of the operations undertaken since the commencement of operations or since the previous report;*
 - (5) the diameter and true vertical and measured depths of:*
 - (a) any hole drilled; and*
 - (b) any casing installed;*
 - (6) the drilling fluid density at the time of making the report; and*
 - (7) in the case of operations relating to an existing well, its current operational state.*
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ANNEX III

Provisions relating to the appointment and functioning of the competent authority pursuant to Articles 8 and 9

1. PROVISIONS RELATING TO MEMBER STATES

- (1) For the purposes of appointing a competent authority responsible for the *duties set out in Article 8*, Member States shall *as a minimum undertake* the following **■** :
- (a) *make* organisational arrangements which allow *for the* duties *assigned to the competent authority* in this *Directive* to be effectively discharged, including arrangements for regulating safety and environmental protection in an equitable manner;
 - (b) *prepare a* policy statement *describing* the aims of oversight and enforcement, and *the obligations on* the competent authority *to* achieve transparency, consistency, proportionality and objectivity in its regulation of offshore oil and gas *operations*.

■

- (2) Member States **shall** make the necessary provisions to bring the arrangements **in point 1** into effect, including:
- (a) **funding** sufficient specialist expertise available internally or by **formal agreements with third parties or both in order that the competent authority may** inspect and investigate **operations**, take enforcement action, and to handle **reports on major hazards** and notifications;
 - (b) where there is reliance on external sources of expertise, **funding the preparation of** sufficient written guidance and oversight to maintain consistency of approach and to ensure the legally appointed competent authority retains full responsibility under this **Directive**;

- (c) ***funding*** essential training, communication, access to technology, travel and subsistence of competent authority personnel ***for the carrying out of their duties, and to facilitate*** the active cooperation between competent authorities pursuant to Article 27;
- (d) where appropriate, requiring operators ***or owners to reimburse*** the competent authority for the cost of carrying out its duties pursuant to this ***Directive***;
- (e) ***funding and encouraging*** research pursuant to the competent authority's duties under this ***Directive***;
- (f) ***providing funding for reports by*** the competent authority.

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2. PROVISIONS RELATING TO THE FUNCTIONING OF THE COMPETENT AUTHORITY

(1) For the purposes of carrying out its duties pursuant to Article 9 effectively, the competent authority shall prepare:

- (a) a written strategy that describes its duties, priorities for action i.e. in design and operation of installations, integrity management and in emergency preparedness and response, and how it is organised;**
- (b) operating procedures that describe how it will inspect and enforce the execution of the duties of operators and owners under this Directive, including how it will handle, assess and accept reports on major hazards, handle notifications of well operations and how the intervals between inspection of major hazard risk control measures, including to the environment, for a given installation or activity are to be determined;**
- (c) procedures for carrying out its duties without prejudice to other responsibilities, for example onshore oil and gas operations, and arrangements pursuant to Directive 92/91/EEC;**

- (d) where the competent authority is comprised of more than one body, a formal agreement establishing the necessary mechanisms for joint operation of the competent authority, including senior management oversight and monitoring and reviews, joint planning and inspection, division of responsibilities for handling reports on major hazards, joint investigation, internal communications, and reports to be published jointly externally.**
- (2) The detailed procedures for assessment of reports on major hazards shall require all factual information and other particulars required under this Directive to be provided by the operator or the owner. As a minimum the competent authority shall ensure that the requirements for the following information are clearly specified in guidance to operators and owners:**

 - (a) all foreseeable hazards with the potential to cause a major accident, including to the environment, have been identified, their risks evaluated and measures identified, including emergency responses, to control the risks;**
 - (b) the safety and environmental management system is adequately described to demonstrate compliance with this Directive;**

- (c) *adequate arrangements have been described for independent verification, and for audit by the operator or owner.*
- (3) *In undertaking a thorough assessment of reports on major hazards, the competent authority shall ensure that:*

 - (a) *all factual information required is provided;*
 - (b) *the operator or the owner has identified all reasonably foreseeable major accident hazards that apply to the installation and its functions, together with potential initiating events, and that the methodology and evaluation criteria adopted for major accident risk management are clearly explained, including factors for uncertainty in the analysis;*
 - (c) *the risk management have taken into consideration all relevant stages in the lifecycle of the installation and have anticipated all foreseeable situations including:*

 - (i) *how the design decisions described in the design notification have taken account of risk management so as to ensure inherent safety and environmental principles are incorporated;*

- (ii) how well operations are to be conducted from the installation when operating;*
 - (iii) how well operations are to be undertaken and temporarily suspended before production is commenced from a production installation;*
 - (iv) how combined operations are to be undertaken with other installation;*
 - (v) how the decommissioning of the installation will be undertaken.*
- (d) how risk reduction measures identified as part of the risk management are intended to be implemented if necessary to reduce risks to an acceptable level;*
- (e) whether, in determining the necessary measures to achieve acceptable levels of risk, the operator or owner has clearly demonstrated how relevant good practice and judgment based on sound engineering, best management practice, and human and organisational factors principles have been taken into account;*

- (f) whether the measures and arrangements for the detection of, and the rapid and effective response to, an emergency are clearly identified and justified;*
 - (g) how escape, evacuation and rescue arrangements and measures to limit escalation of an emergency and reduce its impact on the environment are integrated in a logical and systematic manner, taking account of the likely emergency conditions in which they will be operated;*
 - (h) how the requirements are incorporated in the internal emergency response plans and whether a copy or an adequate description of the internal emergency response plan has been submitted to the competent authority;*
 - (i) whether the safety and environmental management system described in the report on major hazards is adequate to ensure control of the major hazard risks at each stage of the installation lifecycle, and ensures compliance with all relevant legal provisions, and provides for auditing and implementing audit recommendations;*
 - (j) whether the scheme for independent verification is clearly explained.*
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ANNEX IV

Provisions by operators *and owners* for prevention of major accidents *pursuant to Article 19*

1. *Member States shall ensure that operators and owners:*
- (a) pay particular attention to evaluation of the reliability and integrity requirements of all safety *and environmental* critical systems and base their inspection and maintenance systems on achieving *the required* level of safety *and environmental* integrity;
 - (b) *take appropriate measures to ensure as far as reasonably practicable that there is no unplanned escape of hazardous substances from pipelines, vessels and systems intended for their safe confinement. In addition, operators and owners shall ensure that no single failure of a containment barrier can lead to a major accident;*
 - (c) *prepare an inventory of available equipment, its ownership, location, transport to and mode of deployment at the installation and any entities relevant to the implementation of the internal emergency response plan. The inventory shall identify measures in place to ensure equipment and procedures are maintained in operable condition;*

- (d) ensure they have a suitable framework for monitoring compliance with all relevant statutory provisions by incorporating their statutory duties in respect of major hazards **control** and environmental protection into their standard operating procedures; **and**
- (e) pay particular attention to building and maintaining a strong safety culture with a high likelihood of continuous safe operation, including **with regard to securing cooperation of the workers through, inter alia:**
 - (i) **visible commitment to tripartite consultations and actions arising therefrom;**
 - (ii) **encouraging and rewarding reporting of accidents and near-misses;**
 - (iii) **working effectively with elected safety representatives;**
 - (iv) **protecting whistleblowers.**

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2. **Member States shall ensure that industry cooperates** with █ competent **authorities** to establish and implement a priority plan for the development of standards, guidance and rules which will give effect to best practice in major **accident** prevention, and limitation of consequences of major **accidents** should they nonetheless occur. █

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ANNEX V

Selection of the independent verifier and the design of schemes for independent verification pursuant to Article 17(3)

1. *Member States shall require the operator or owner to ensure the following conditions are fulfilled with regard to the verifier's independence from the operator and the owner:*
 - (a) *the function does not require the independent verifier to consider any aspect of a safety and environmental critical element or any part of an installation or a well or a well design in which the verifier was previously involved prior to the verification activity or where his or her objectivity might be compromised;*
 - (b) *the independent verifier is sufficiently independent of a management system which has, or has had, any responsibility for any aspect of a component covered by the scheme for independent verification or well examination so as to ensure objectivity in carrying out his or her functions under the scheme.*

2. *Member States shall require the operator or the owner to ensure that, in respect of the scheme for independent verification relating to an installation or a well, the following conditions are fulfilled :*
 - (a) *the independent verifier has suitable technical competence, including where necessary, suitably qualified and experienced personnel in adequate numbers who fulfil the requirements of point 1 of this Annex;*

- (b) *tasks under the scheme for independent verification are appropriately allocated by the independent verifier to personnel qualified to undertake them;*
 - (c) *suitable arrangements are in place for the flow of information between the operator or owner and the independent verifier;*
 - (d) *the independent verifier is given suitable authority to be able to carry out the functions effectively.*
3. *Material changes shall be referred to the independent verifier for further verification in accordance with the scheme for independent verification, and the outcomes of such further verification shall be communicated to the competent authority, if requested.*
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ANNEX VI

Information relating to priorities for cooperation between operators and owners and competent authorities pursuant to Article 19(7)

1. *The matters to be considered for establishing priorities for the development of standards and guidance shall give practical effect to major accident prevention and limitation of their consequences. The matters shall include:*
 - (a) *improving well integrity, well control equipment and barriers and monitoring their effectiveness;*
 - (b) *improving primary containment;*
 - (c) *improving secondary containment that restricts escalation of an incipient major accident, including well blow-outs;*
 - (d) *reliable decision making;*

- (e) management and supervision of major hazard operations;*
 - (f) competency of key post holders;*
 - (g) effective risk management;*
 - (h) reliability assessment for safety and environmental critical systems;*
 - (i) key performance indicators;*
 - (j) effectively integrating safety and environmental management systems between operators and owners and other entities involved in oil and gas operations.*
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ANNEX VII

Information to be provided in emergency response plans pursuant to Article 29

1. **External emergency response plans prepared pursuant to Article 29 shall include but not be limited to:**
 - (a) names *and* positions of persons authorised to initiate emergency procedures, and of persons authorised to direct the external emergency response;
 - (b) arrangements for receiving early warning of major accidents, and the associated alert and *emergency response* procedures;
 - (c) arrangements for coordinating resources necessary to implement the external emergency *response* plan;
 - (d) arrangements for providing assistance to the internal emergency *response*;

- (e) a detailed description of the *external* emergency response arrangements;
 - (f) arrangements for providing persons and organisations that may be affected by the major accident with suitable information and advice relating to it;
 - (g) arrangements for the provision of information to the emergency services of other Member States and the Commission in the event of a major accident with possible transboundary consequences;
 - (h) arrangements for the mitigation of the negative impacts on wildlife both onshore and offshore including the situations where oiled animals reach shore earlier than the actual spill.
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ANNEX VIII

Particulars to be included in the preparation of external emergency response plans pursuant to Article 29

- 1.* The authority *or authorities* responsible for *coordinating* emergency *response shall* make the following available:
 - (a) an inventory of available equipment, its ownership, location, *means of* transport to and mode of deployment at the *site of the major accident*;
 - (b) a description of the measures in place to ensure equipment and procedures are maintained in operable condition;
 - (c) an inventory of industry-owned equipment that can be made available in an emergency;

- (d) a description of the general arrangements for responding to major accidents, including competencies and responsibilities of all involved parties and the bodies responsible for maintaining such arrangements;
 - (e) measures to ensure that equipment, personnel and procedures are *available* and up to date *and sufficient members of trained personnel are available* at all times;
 - (f) *evidence of prior environment and health assessments of any chemicals foreseen for use as dispersants.*
2. External emergency response plans shall clearly explain the role of *the* authorities, emergency responders, coordinators and other subjects active in emergency response, so that cooperation is ensured in responding to major accidents.

3. Arrangements *shall* include provisions for responding to a major accident that potentially overwhelms the Member State or exceeds its boundaries by:
- (a) sharing *external emergency response* plans with adjacent Member States and the Commission;
 - (b) compiling *at cross-border level the* inventories of response assets, both industry and *publicly* owned and all necessary adaptations to make equipment and procedures compatible between adjacent countries and Member States;
 - (c) procedures for invoking the Union Civil Protection Mechanism;
 - (d) arranging *transboundary* exercises of external emergency response ■ .
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ANNEX IX

Sharing of information and transparency

1. *The* common data reporting format for major hazard indicators ■ shall make it possible to compare information from *competent authorities* and to compare information from individual operators and owners.
2. *The information to be shared by the competent authority and operators and owners shall include information relating to:*
 - (a) ■ unintended release of *oil, gas* or other hazardous substances, whether or not ignited;
 - (b) ■ loss of well control requiring actuation of well control equipment, or failure of a well barrier requiring its replacement or repair;
 - (c) failure of a *safety and environmental critical element*;
 - (d) significant loss of structural integrity, or loss of protection against the effects of fire or explosion, or loss of station keeping in *relation to a mobile* installation;
 - (e) vessels on collision course and actual vessel collisions with an offshore installation;

- (f) helicopter accidents, on or near offshore installations ■ ;
- (g) any fatal accident;
- (h) any serious injuries to 5 or more persons in the same accident;
- (i) any evacuation of ■ personnel;
- (j) a major *environmental incident*.

3. *The annual reports to be submitted by Member States pursuant to Article 25 shall contain as a minimum the following information:*

- (a) the number, age and location of installations;*
- (b) the number and type of inspections and investigations carried out, any enforcement actions or convictions;*
- (c) incident data pursuant to the common reporting system required in Article 23;*
- (d) any major change in the offshore regulatory framework;*
- (e) the performance of offshore oil and gas operations in relation to prevention of major accidents and the limiting of consequences of major accidents that do occur.*

4. The information referred to in point 2 shall consist of both factual information and analytical data regarding oil and gas operations, and shall be unambiguous. The information and data provided shall be such that the performance of individual operators and owners can be compared within the Member State and the performance of the industry as a whole can be compared between Member States.
 5. The **■** information *collected and assembled* referred to in point 2 *shall enable* Member States to provide advanced warning of *potential* deterioration of safety and environmentally critical barriers, *and shall enable them* to take preventive action. The information *shall* also *demonstrate* the overall effectiveness of measures and controls implemented by individual operators and owners, and industry as a whole, in particular to prevent major *accidents* and to minimise risks for the environment.
 6. In order to meet the requirements of Article 24, a simplified format shall be developed to facilitate publication of relevant data pursuant to point 2 of this Annex and preparation of reports pursuant to Article 25 in a way that is easily accessible to the public and facilitates transboundary comparison of data.
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