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**COMMISSION STAFF WORKING PAPER**

**Results of the public consultation on  
Improving offshore safety, health and environment**

*Accompanying the Commission's proposal for a*

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**On safety of offshore oil and gas prospection, exploration and production activities**

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In spring 2011, between 16 March and 20 May 2011, the Commission organised an on-line public consultation on the possible improvement of offshore safety in Europe, providing stakeholders with the opportunity to submit their views before the Commission develops any legislative or non-legislative proposals in the various policy fields. The consultation was based on a document that gave the background to the regulatory framework for offshore safety in the EU. The consultation outlined the key issues that need to be addressed and included 18 open questions, arranged in the following five topics:

1. *Authorisations.*  
Under this topic, the public was requested to give their views on the authorisation practices and conditions for offshore prospection, exploration or production activities.
2. *Prevention of accidents.*  
This section requested the public's opinion on prevention of accidents, affecting both the health and safety of workers as well as damage to the environment.
3. *Verification of compliance and liability for damages.*  
In this section the public was presented with questions regarding compliance by industry with applicable offshore legislation, regarding the supervision and compliance verification of the industry by competent authorities and on liability for environmental and traditional damage caused by offshore accidents.
4. *Transparency, sharing of information and state-of-the-art practices.*  
This section requested the public's opinion on what information on offshore oil and gas activities should be made available to the public, what information should be shared amongst the industry and amongst regulators and on the use of state of the art practices to protect health and safety of offshore oil and gas operations and damage to the environment cause by these operations.
5. *Emergency response and international activities.*  
This section presented questions on emergency response to offshore oil and gas accidents, cooperation with non-EU countries regarding oil and gas operations and on the application of EU standards by oil and gas companies in their activities outside the EU.

In total, 64 contributions were received from all segments of the stakeholder community: Member State authorities, industry, NGOs, insurers and citizens. In addition to the oil and gas industry, companies and industry associations from other, related sectors (e.g. shipping, classification societies) also submitted replies. Taking into account the member companies that each industry body/association represents, the Commission has received well over 350 disaggregated replies from stakeholders. The table below shows the composition of the direct respondents.

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In the following paragraphs, an analysis is provided of the contributions received. All responses were carefully reviewed by the Commission, which included an assessment whether the content of the responses reflected the actual questions and/or had a bearing on the policy topic of the question. During this process, similar responses were combined and some of the responses – although valuable in a broader context – were regarded as having limited bearing on the specific policy topic; these responses were either re-allocated to the appropriate policy topic and combined with other responses or otherwise set aside. The analysis below shows the responses for each of the policy topic listed in the consultation document, for each of the respondents category listed above. If a category of respondents did not have any comments on one of the policy topics, these respondents are not included under the specific policy topic.

### ***Authorisations***

#### *Oil and gas industry*

The industry is of the opinion that the authorisation processes currently applied in certain Member States are considered to be sound, ensuring the application of state-of-the-art technology and procedures. It was mentioned that Directive 94/22/EC already requires the demonstration of technical and financial capability before a licence can be obtained. Most respondents in this category do not recommend any changes to the authorisation conditions for offshore prospection, exploration and production activities, citing stringent licensing procedures and safety case legislation in place in most member states. The safety case approach must however be combined with robust inspections and auditing of those cases, combined with an independent review by an external party or independent function within the company. It is however recognised that in countries with less experience in offshore oil and gas operations, there could be less solid safety case regulations in place. The EU should work with those countries individually, to bring standards up to those of the best performing countries. Most respondents also agree that the EU should promote setting up a consultative and advisory body of national regulators, e.g. modelled on NSOAF, in which best practises are shared and to ensure MS with less experience in offshore oil and gas activities apply same high standards as more experienced ones. An industry association stated that, while authorisation should account for full liability for damages, it should also balance particular MS needs e.g. to not discourage smaller players. It as also emphasised as essential to secure independence of expert safety regulation from the licensing function. Whilst in favour of financial capability criteria, industry and industry associations stated emphatically that these should not preclude companies of different sizes from entering the market. There is also broad agreement amongst industry respondents that neighbouring Member States should be informed of any authorisation decisions, however there is no need to actively consult those countries during the authorisation process. It is also felt that most legislation is best placed at

the national level, as national authorities are best placed to judge applications for permits based on local conditions.

There were two industry respondents that mentioned areas where current legislation/ practises could be improved: 1) some national licensing systems are extremely cumbersome and should be simplified, 2) there is a benefit in a more standardised approach in the EU which should be promoted, i.e. the harmonisation of procedures and standards and equipment taking into account current best practises. For example a drilling contractor should then be granted a certificate to operate in all EU waters. There are also still different local certification and authorisation processes for use of equipment and machineries, making it difficult to employ them cross border. The definition of a general EU framework could be useful to assess and ensure both technically and organisationally relevant HSE standards. Another company highlighted that a licensing process that separates responsibility for authorising drilling permits from rig safety and well operations oversight should be viewed as best practise and where not yet the case, separate regulators for licensing and safety should be established.

#### *Other industry*

There is a general view, that the current system for licensing is adequate, with sufficient information publicly available on operational techniques. Respondents were of the opinion that other criteria of the technical assessment of a licensee were e.g. the implementation of a safety management system, the field development plan, contingency measures, primary measures on accident prevention and asset integrity and environmental assessments. Another respondent recommended considering other parameters in the licensing process, e.g. location (of the installation), lifecycle stage (prospection/ exploration/ production), type of company/ operation/ asset. The respondent also suggested considering limitations on license, e.g. duration and scope of the license, options to revoke a license and options for a temporary license.

On the consultation of other MS during the licensing process, opinions in this category varied. Some respondents felt that with consistent high standards applied in the authorisation processes, there was limited benefit of international consultations on authorisations with such a requirement introducing additional bureaucratic burden. Another respondent was of the opinion that existing arrangements and contacts between neighbouring states would already ensure effective authorisation structures.

#### *Public authorities*

Two regulators state that more information is available once programmes have started than at the time of applying for exploration licences, so it would be best to assess information at a later stage too. In addition, companies should undergo regulator checks (including financial provisions) before key activities start at each stage of the operation. These checks should include safety, environmental control, and technical and financial capability. Two regulators feel that authorisations should be approved by two different regulators e.g. environment and health. One regulator requested that there should not be an additional layer of EU regulation as this could divert scarce human resources away from core tasks. A blanket approach to all MS is not advisable due to different national circumstances e.g. cultural, legal and geological. National regulators especially argued that the international global framework which is applicable now and any new EU legislation must be compatible. There is concern that the EU, through its actions, might inadvertently undermine the effectiveness of the existing regulatory and supervisory regimes in the oil-producing countries, especially around the North Sea.

Their view is that safety regulations will continue to be handled most effectively on a national state level.

For technical capacity, the main comments concerned staff qualifications and experience (especially that of management), lines of responsibility, company experience, management of contractors, and staff audits. Additionally, health and safety, equipment certificates, and environmental protection were mentioned. For financial capability, balance sheets for three years should be provided, along with guarantees, warranties, and proof of sufficient funds or indemnity provisions to meet any kind of incident. With regard to state-of-the-art authorisation practices, best practice, health and safety, and environmental concerns should be advised to the EU with a view to modifying legislation. Many regulators stated that neighbouring MS should be informed but not involved in authorisation decisions. Regulators expressed concern with respect to Member States that are just beginning to develop offshore oil and gas activities. A permanent working group of national regulators could be established, based on the North Sea Offshore Authorities Forum (NSOAF).

### *NGOs*

Several NGOs commented that loopholes in regulatory regimes need to be closed. Whilst UK legislation is held up as a good example, it is considered by some that it is not robust enough. Authorisation processes should be transparent, including environmental impact assessment with possibility of public consultation. One NGO specifically stated that adoption of safety case legislation as a possible minimum standard for the EU is in itself not sufficient, citing various incidents in the UK sector of the North Sea. One NGO requested that the regulator should be separate from any authority that handles energy development/security of supply. All NGOs requested that companies be required to cover all accident costs, without which no licence would be given. The majority of NGOs respondents would only like authorisations to go to companies that can carry full financial liability for any incident, including future decommissioning of systems. Failing that, there were suggestions to replicate the Offshore Pollution Liability Association (OPOL) agreement, or to have an industry-led mutualisation scheme or an EU-wide compensation fund. Licences should comply with EU-monitored minimum binding standards; it was suggested by many that the remit of European Maritime Safety Agency (EMSA) could be extended in this respect. Several NGOs felt that neighbouring countries should be consulted and should also be involved in the authorisation. Some NGOs requested the implementation of best available techniques (BAT) e.g. regular maintenance including requirements for upgrading installations as technology evolves.

### *Citizens*

Citizens in general felt that if a company can't afford to clean up after an accident, it shouldn't be drilling. All citizen respondents would only like authorisations to go to companies that can carry full financial liability for any incident. Strong legislation should ensure that companies are held liable, with mandatory requirements to provide necessary financial security in the event of an accident. One respondent felt that on granting authorisations, a company's past record on health and safety and environmental impacts, both within and outside the EU, should be taken into account. Oil and gas projects should follow public deliberations on permit application. Citizen stakeholders generally suggested that there is a need to involve other countries in authorisation, where cross-border issues are at stake.

## *Others*

One respondent urged that there should be a clear separation between the authority that grants and issues granting instruments and the authority that regulates the operations of those instruments, in view of conflicting demands on officials charged with those separate tasks. However, the respondent cautions that there should not be multiple separations of those authorities. On the issue of the financial capability, the respondent felt that the current system is functioning well, albeit guidance from the Commission could be appropriate and useful on criteria for assessment of financial capability. The respondent also feels that any consultation provisions of other neighbouring MS on authorisations would require careful consideration.

## ***Prevention of accidents***

### *Oil and gas industry*

The good historical record of the sector was highlighted in this respect; nevertheless, even industry stakeholders admit that there is a need to challenge the industry to do better. Companies in general support the Commission's review of the current EU framework governing offshore operations. They are equally supportive of the Commission's recommendations for reviews of current safety cases by operators and MS and updates as necessary. Most companies agree that for the protection of the environment a robust and interlocking network of international, EU and national rules is in place, e.g. SEA Directive, EIA Directive, ESPOO Convention, Barcelona Convention, Black Sea convention etc. Any changes to this system risk being sub-optimal and creating a gap in currently applied legislation. Furthermore, such a change should not result in reduced safety standards in those Member States which already have a strong offshore regulatory regime. Most respondents urge the Commission to avoid adopting detailed prescriptive legislation or regulation at EU level, but instead promote the implementation of a goal-setting regime, including dissemination of relevant international standards. One industry association suggested a 'safety case' regime that is goal-setting and includes formal acceptance by the regulator. On product safety, industry is of the opinion that any proposals for action need to be done in close cooperation between the Commission, individual MS/national regulators, industry and the relevant standardisation bodies. Most respondents are against setting-up a centralised EU enforcement/control authority. In order to make improvements in this area at least 2 companies clearly stated that this will not be achieved by new regulations, but by better application of existing standards and best practise. It is felt by most operators that the 'ALARP'<sup>1</sup> concept represents a robust regulatory tool to ensure that adequate prevention measures are in place. One suggestion made was that drilling equipment and other safety critical infrastructure be inspected by insurance providers. Also, the performance of the national regulator should in turn be assessed by another national auditing body.

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<sup>1</sup> ALARP refers to 'risks as low as reasonably practicable'. It is at the centre of UK health and safety law and as such is referred to by a number of respondents. For a risk to be ALARP it must be demonstrated that the cost involved in reducing the risk further would be grossly disproportionate to the benefit gained. In its most general (European wide) sense it is a best common practice of judgement of the balance between risk in absolute terms, and societal benefit - deciding at which point further expenditure to reduce the residual risk is unreasonable

### *Other Industry*

Some respondents recommended the application of goal-setting regulations combined with the Safety Case regime (including third party verification), identical to the one used in the UK and Norway, to all jurisdictions. This would include approval or acceptance of the safety case by the regulator. Respondents are of the opinion that the Safety Case approach can provide a useful tool in addressing some of the areas of weakness in offshore regulation identified by the Commission. In this context it was recommended that future European regulations should require all offshore installations (including rigs) to develop and have approved an EU compliant integrated Safety & Environment Case (which would include IPPC requirements) prior to commencing operations in EU waters. On approval of a safety & environmental case, the respondent suggested that strict regulator guidance should be made available, aiming to deliver harmonisation between regulators so that a safety & environmental case approved in one state would likely receive approval in another MS, should the installation move across borders. Respondents highlighted the requirement for awareness structures and for training in all levels in organisations, to focus on prevention of accidents. Health and safety issues should become a natural element of the offshore industry and must not be perceived as being overbearing or unnecessary. One respondent mentioned the requirement that not only companies that purchase and apply equipment to ensure that environmental damage is prevented (e.g. BOP systems) is subject to a regulatory framework, but also the companies that are manufacturing and selling the components are subject to a similar framework. This should prevent companies from buying cheaper and more unsafe components. Another respondent suggested that the EU may enhance or propose directives which the industry can use as basis of their performance standards, on pressure equipment, electrical devices used in explosive environments, lifting equipment and well control equipment.

### *Public authorities*

For health or safety of workers, there should be a rigorous safety culture with robust training for disaster management involving all staff/subcontractors. It was recommended that legislation proposals should include elements on well design, well construction well and control, as these issues are not or only very limited addressed in Directive 92/91/EC. In addition, it was suggested to introduce goal-setting elements on safety culture in legislation. EU legislation should be based on best practice in NSOAF countries. Others expressed the view that there is a need to take steps to improve the safety culture offshore and ensure that the knowledge and experience of the offshore workforce is effectively used by operators when addressing health and safety. One stakeholder cautioned against a rush to adopt new legislation before lessons emerge from the investigations into the Deepwater Horizon incident that indicate a need for change. Another stated that using worldwide standards in the EU would make it easier for multinationals. With regard to the equipment, this should be certified by the manufacturer or another body, as should safety systems. The UK system includes Safety Cases which are submitted before operations start, and Notifications are sent to the regulator at various operational stages. Finally, there was a request to implement ILO guidelines on occupational safety and health management systems (OSH). In terms of the natural environment, best practice, incident reporting and lessons learned in other industrial activities could be replicated.

### *NGO's*

Additional training is considered necessary by several NGOs, and worker rights should be strengthened to avoid harassment in the event of whistle blowing. Respondent mentioned the

need to raise standards in the EU, with the highest safety and environmental standards applied to industrial activities. One respondent feels that industry should invest more on research and development for preventing oil spills. Sanctions could be taken by competent authorities were worker rights are not respected. There could also be an independent regulator to examine and approve well design etc, while some NGOs recommended stress tests of installations, equipment and procedures. Ratification of the Barcelona Convention was mentioned by a few NGOs, as was the extension of Seveso II and the Industrial Emissions Directive (IED) to cover offshore drilling. Two NGOs requested specific funding for R&D, and the EU should monitor abandoned wells.

### *Citizens*

Citizens commented that existing regulations should be strengthened and extended to cover all drilling operations in EU waters. A respondent mentioned that the track record of industry on incidents did not show any improvement in recent years and felt that EU standards should be established to prevent environmental disasters like Deepwater Horizon. Respondents felt that the use of highest standards for equipment should be made mandatory in EU legislation. Old platforms must be updated to the best environmental standards or stop production. A respondent recommended that when drilling a well, a back-up rig should be available within 1 – 2 days travel of the exploration time, should a relief well be required. The respondent also suggested that abandoned wells should be regularly monitored by national and/or EU regulators, and that companies be required to reduce their discharges and spills of hydrocarbons.

### *Others*

One respondent is of the opinion that the most appropriate approach for the offshore industry is a goal-setting approach and the safety case. It is precisely this approach that makes best use of the expertise within the industry and that significantly frees up the regulator to see the bigger picture and emerging problems. Based on experiences in the UK, the respondent cautions for any move toward greater prescription in either EC Directive 92/91/EEC or in entirely new EU legislation. Any greater specificity driven by the Deepwater Horizon disaster may be solely applicable to that incident and thus reduce the openness of the industry and regulators to the need for vigilance with respect to other scenarios. On the prevention of damage to the environment, the respondent feels that the best approach is to continue to work to reduce accidents on a safety case basis.

### ***Verification of compliance and liability for damages***

#### *Oil and gas industry*

Industry representatives argued that compliance is an issue to which companies devote significant efforts and resources and constantly strive to improve. They are also of the opinion that the current system of inspections is working well. Any proposed changes to the current system should demonstrate how they would ensure the necessary competence and coordination to the rigorous and proven systems that are in place today. Industry cites strong, expert regulators with adequate resources as essential for securing compliance. Regarding potential liability, most respondents do not support a mandated industry-wide pre-loss mutual fund, but rather allow companies to make their own differentiated decisions how to meet their financial obligations. Voluntary compensation schemes like OPOL should be taken as a model. This and similar schemes should be promoted by the Commission. Any EU initiative



seeking to improve on national verification systems must demonstrate thoroughly how this would be achieved. The industry stresses that a voluntary financial security scheme is more appropriate for the development of market-driven solutions in which a certain level of insurance capacity can be maintained and developed. The industry also pointed out that the creation of a further liability regime could create unnecessary duplication and legal uncertainty over which regime is immediately applicable. It was highlighted by one respondent that in order to assess any damage caused by an oil spill incident, a baseline condition must first be established against which changes can then be measured. Such baseline metrics are currently not available to all marine waters. Any extension of the current ELD is thus difficult to envisage. One of the companies suggested that a supranational EU safety agency with directive functions, similar to EMSA, could be a useful step forward. A very useful measure would be to ensure there are consistent methods for calculating compensation awards across Europe.

#### *Other industry*

Respondents are of the opinion that the current goal-setting regime including the safety case mechanism, as is the current practice in the UK, is the desired framework and best suited for the future. Respondents further mention that the framework should be supported by inspections and assessments by regulators and by third party verification against performance standards, and recommend that the EU establish such a process incorporating the fundamental elements of the UK process for major accident hazards and extends this to health and environmental issues. One respondent felt there should also be a qualification process in place for the independent third parties. In the context of performance standards, one respondent felt that these should also include standards on behavioural aspects; this would require additional competencies of the independent verification bodies in human factors, management of change and organisational behaviour. It was also suggested that the verification process included the possibility for direct feedback from the verification body to the regulator, in stead of only to the owner / operator of the installation. One respondent is in favour of one regulatory body for offshore oil and gas activities in MS; in countries where more regulatory bodies are involved the respondent feels that a single 'umbrella' body for offshore E&P activities should be established, which would draw on expertise from the existing regulatory bodies. Respondents further urge that regulators have adequate enforcement methods and authority to ensure compliance of legislation or permit conditions.

Respondents feel that responsible parties should be able to meet the costs of an incident, as part of their initial license application. Some respondents commented that the current application of the ELD (in the UK) is appropriate to its intended role and should only be extended if robustly justified; others felt that environmental liability should cover environmental damage to all marine waters. Some respondents in this category cautioned that, when extending the ELD, the current exceptions in this Directive on pollution damage arising from ships should remain unchanged, as it would otherwise cause serious disruption in the international regime and create legal uncertainty. On liability for traditional damage, one respondent is of the opinion that a more stringent legal framework is required owing to the increased risk (in the UK) as a result of smaller operators with limited financial strength buying and operating mature assets than the larger operators. In this context, it was recommended that a system like OPOL is developed within the EU to ensure that operators have access to adequate funds to cover remedial damages as a result of an accident. Other suggestions included establishing an EU Emergency Response Fund, in which all operators should contribute.

### *Public authorities*

With regard to compliance, minimum standards and best practice should be shared in the EU with strong cooperation between trade associations and operators. There are requests for greater sharing of information between the different stakeholder groups (regulators, companies, works councils). Respondents mentioned the need to improve safety culture offshore and ensure that worker knowledge and experience of health and safety must be used by the companies, while internal audits and reporting should be part of an environmental management system. One MS requires companies to provide annual public statements on operations and environmental performance. Respondents also stressed the need to ensure that an appropriate regulator is in place, with sufficient resources, well trained and competent staff and with adequate powers to intervene. Key measures proposed to monitor compliance include an independent, regular inspection system with sharing of well-educated inspectors between MS. One respondent mentioned that regulators should also focus on a company's implementation and adherence to its own management system. It was also suggested that there could be a dedicated and qualified company employee working on site with close supervision from the authorities. One regulator suggested that individual MS regulators should be introduced that would share information with the EU. MS with considerable experience of offshore operations should support those that are now starting to develop these activities.

One respondent suggested that costs for environmental assessments and inspections could be borne by the applicants. If environmental liability legislation is to be extended to cover all marine waters under EU jurisdiction, the polluter pays principle could be extended to offshore oil and gas industry. Yet this might encourage some companies to move away from the EU. With regard to handling claims for traditional damage, the legislative framework could be improved according to one regulator, while another says that it is sufficient. It is important, however, to ensure that small companies with a skilled workforce are not discouraged from operating in the market. Costs for covering the environmental damages of an oil spill should include mandatory insurance linked to risk of operation. There could also be a communal fund like the Offshore Pollution Liability Organisation (OPOL), which could be extended to cover other seas.

### *NGO's*

On compliance with regulations, one respondent suggested that MS consider adopting of strengthening disincentives for negligence such as fines, removal of licenses and individual criminal liability. Respondents felt that companies must be liable for all damages, both environmental and traditional damages. EU-wide compliance should be mandatory, and the Environmental Liability Directive should be extended to cover environmental damage to all marine waters under MS' jurisdiction. One respondent recommended exploring arrangements for compulsory third party insurance, to ensure financial guarantees. In this context, the respondent expressed doubts if the current insurance level under OPOL would be sufficient to compensate for the full range of environmental damage and remediation costs. Some respondents recommended a supra-national regulator to oversee national regulators, with powers to ban operators temporarily. Inspections should be regular and unannounced. In terms of individuals, criminal liability is considered essential, as is the need to strengthen the rights of victims impacted by an incident. Finally, finances should be mobilised quickly after a disaster to assist those affected.

### *Insurers*

One respondent felt that when extending the scope of the Environmental Liability Directive (ELD), the current exceptions with respect to maritime transport/shipping should not be affected in any way, and that the proposed extension of the ELD to cover all marine waters under jurisdiction of EU Member States should be concerned only with the offshore oil and gas sector. The insurance industry further stated that oil and gas companies are in the best position to assess their own needs for insurance. The insurers alone cannot provide the sole solution to protect the EU against offshore oil spills. Insurance companies do not feel that the Environmental Liability Directive should be modified to cover all EU waters. Instead, the geographical scope of the guarantee system for offshore oil spills should be worldwide and not resolved through EU law. Respondents point out that several international liability regimes are already in place for losses caused by oil pollution. It is considered more appropriate to focus on these existing treaties and international legislation before introducing an EU-wide mandatory insurance scheme or revising the ELD. One respondent pointed out that European insurance solvency law requires insurance companies to charge adequate premiums to build up sufficient capital reserves. In the context of offshore oil/gas insurance, a small and specialised insurance market, it is very difficult for the industry to build up sufficient capital reserves. This is already very challenging to achieve in a worldwide context, and even more so if the geographical scope is Europe only. Moreover, many offshore oil companies have as much, if not more, financial capacity than insurers due to the amount of capital they regularly generate through their businesses. Their own ability to cover these risks independently of any financial security instruments should be one of the options considered. In this context, respondents refer to OPOL developed by the industry, from which claims for pollution damage are met and the cost of remedial measures are reimbursed.

### *Citizens*

A respondent felt that regulators should be adequately resourced and staffed, to ensure adequate monitoring to guarantee compliance with health, safety and environmental rules by industry. If EU countries cannot ensure this, EU monitors should assist. Citizens feel that legislation should cover all EU waters, not only within the 12 mile zone as most platforms are outside this zone, thus including all platforms and pipelines. Polluters should also pay for (methane) gas leaks which might occur when a well is not properly abandoned. To compensate for traditional damages, a respondent suggested that industry be required to make contributions and commitments to a Joint Fund as a condition for drilling in the region. Additional costs for recovery and compensation beyond the financial capability of the responsible party should then be covered by the Fund. The joint Fund should encourage the collective improvement of best practice and efforts to minimise damage.

### *Others*

One respondent feels that regulatory regimes should provide for both the reward and the punishment of operators in the offshore environment. This would encourage good operators to continually implement best practices and would discourage bad operators from unsafe practices. Operators should be required to demonstrate that it is implementing industry best practices in conjunction with an on-going inspection regime administered by the regulator. It should be done on a safety case basis rather than use a prescriptive formula. The respondent also feels that consistent environmental liability is required in all marine waters under the jurisdiction of EU Member States, so that operators have clear standards to meet. The respondent cautions against a strict liability system which would only allow companies with

the balance sheets to pay for any potential risk. Smaller and less financially strong companies should still be allowed to operate in existing areas of operation where the risks are well known and more easily managed.

### ***Transparency, sharing of information and state-of-the-art practices***

#### *Oil and gas industry*

Industry feels it is not in their remit to judge what information would be most important to citizens. However, the majority of respondents from the oil and gas industry have expressed an interest to work with national authorities and the EU to examine the most appropriate ways of sharing information provided that this does not impose requirements on companies to disclose commercially sensitive information. Industry is pointing to the exchange of information that is currently taking place in forums like NSOAF and IRF. Via SEA and EIA Directives, Espoo etc. a lot of data is already shared today. One respondent mentioned that the information most relevant to be shared is standards applied by operators to prevent major accidents and lessons learned from previous accidents and near misses. One respondent believed the reporting should also include positive aspects, e.g. industry's contribution to research, technology and economy in the EU. Industry supports establishing an advisory body of national experts, to exchange information between regulators and to promote the state-of-the-art practices across all MS to protect health and safety of workers and the environment.

#### *Other industry*

Respondents suggested that information like incident statistics, near misses and hazardous observations should become public. One respondent suggested that operators should be obliged to produce an annual HSE Public Statement which should communicate key elements of an operator's activities to the public in clear layman's terms. Complete transparency should be particularly the case in the event of an environmental disaster or a genuine public fear of one. Respondents from the UK pointed out that an industry network for sharing statistics and best practices was already in place. Respondents also referred to NSOAF and IRF as good platforms for sharing information to improve safety across the EU and worldwide, which could also be useful for countries with an emerging oil and gas sector. Others recommended that there should also be cross-referencing between the oil and gas industry and other industries, on safety issues (e.g. pressure equipment, lifting equipment etc.) and environmental issues (usage of chemical and effect on water etc.). Respondents are also of the opinion that national regulators should share the emergency response plans, to enable coordination of international response plans. One respondent suggested establishing industry state-of-the-art practices in a publicly available register. On environmental protection, one respondent recommended that EMSA's role should be extended to cover water pollution in general, air pollution, soil pollution and utilisation of chemicals.

#### *Public authorities*

Citizens should be provided with information including, inter alia, pollution detection, emergency plans, risks, common indicators, operators, and timing. Views were split as to whether these data should be published by the EU or by individual MS. One respondent suggested the EU should take the initiative to define a common set of indicators, to be used by all MS, giving information on the outcome of safety and environmental effort in a particular MS. It was suggested that companies should be sharing information on, inter alia, emergency operating technologies, occurrence of H<sub>2</sub>S, best practice, lessons learned from incidents and

equipment failure. This information should also be shared with regulators and trade and industry associations to encourage industry buy-in. Workers should have access to occupational and safety-related documentation (OSH, responsibilities, hazards, risks, work-related injuries, health, incidents etc.). In addition, regulators should share best practice (regulation, standards, procedures and incidents), company-related HSE statistics and critical equipment failure. Forums like NSOAF, the International Regulators Forum, OSPAR, the Offshore Industries Committee and those that exist for Baltic and Mediterranean states could be used for sharing details of accidents, incidents, updates, national legislation etc.

For protecting occupational health and safety, best practice (regulation, standards, procedures, incidents) should be introduced, and information shared via a web-based EU database. Forums like NSOAF could be used, but its scope would need widening to allow new entrants.

Goal-setting regimes are best suited to state-of-the-art practices, while an effective regulator should support a robust regulatory framework. Comments on protecting the environment are identical to those for health and safety; in addition the Regional Seas Conventions could collect data etc. as currently done by OSPAR.

#### *NGOs*

NGOs requested that citizens be advised of, inter alia, all offshore rig incidents, environmental impact assessments (EIA), inspection reports, payments to governments and officials, and accident records. Companies should share information on accidents, safety measures, equipment, and conduct affecting health and safety. Regulators are asked to share details of EIA criteria, inspection processes, regulatory initiatives, training, sanctions, accidents, risks etc. Health and safety recommendations included comparison with other sectors, while environmental support included, inter alia, monitoring of the sea-bed and sub-surface waters.

#### *Citizens*

A respondent suggested that a wide variety of information be made available to the public by oil and gas companies, e.g. plans for any offshore infrastructure, volume of oil and gas extracted, reports on environmental monitoring, health and safety records, accident statistics, number of wells (active and abandoned), emergency response plans, demonstration of the companies technical ability etc. The respondent was also of the opinion that offshore workers should be able to raise concerns about dangerous practices or safety failures, without fear of intimidation.

#### *Others*

A respondent cautions that the need of the public to access information needs to be balanced against the need to ensure security of the facilities. Public information should thus focus on knowing what developments will impact the public and what measures have been taken to ensure the safety and protection of the environment, the workers and the public. The respondent is of the opinion that companies should share information in an on-going, consistent and uniform manner, on e.g. safety-related incidents, measures taken to prevent recurrence and best practice developed by companies. In the context the respondents refers to current practice of sharing information by OGP, on sharing of information in industry, and IRF and OSPAR, on sharing of information between regulators.

## *Emergency response and international activities*

### *Oil and gas industry*

Industry responded by highlighting that the Operators Co-operative Emergency Services (OCES) Agreement is the organisational framework employed in the North Sea and adjacent waters and that it works very well. Together with the Global Response Network (GRN), the OPRC convention of 1990, and the capping device currently being developed by OSPRAG, all critical elements are being covered by industry. Most respondents feel that rather than fundamentally changing the scope of EMSA, the EU could focus on strengthening the existing network of Regional Seas Conventions, to which non-EU countries are also contracting parties. Two companies stated that what is missing currently at EU level is a coordinated EU emergency response strategy that integrates different technologies and strategies adopted by individual countries. In this process it would be important to harmonise the authorisation procedures for use of product and technologies required to combat oil spills (especially for use of dispersants and in-situ burning). One respondent saw value in the EU promoting the creation of an integrated Emergency Agency at EU level, making participation of oil and gas companies mandatory. An industry association agreed that EMSA could help clean up but that its remit should not be formally extended.

On the issue of international activities, numerous operators in the oil and gas industry highlighted that they use the same high standards of safety and accident prevention worldwide. However, it is important to note that host governments may require changes in line with natural, legal or other local circumstances. One respondent saw this as an unattainable goal of the EU.

### *Other industry*

Some respondents felt that emergency response is the primary responsibility of operators and national governments. Local knowledge and expertise, as well as understanding response capabilities are most relevant at this level and will be far more conducive to swift, decisive and effective mitigation of the consequences of an incident. Others suggested that initiatives like OSPRAG in the UK are extended to other areas in the EU. On transboundary response, some respondent feel that joint working and coordination arrangement between neighbouring countries already exist. Other respondents were of the opinion that the EU should have a more active role on emergency response e.g. on planning, coordination and funding for managing emergency responses, and have agreements in place with EU countries and also non-EU countries. In this context it was also suggested to extend the remit for EMSA to also include offshore installations. Some recommend that EU response arrangements are reviewed (including onshore response) to ensure that they are adequate to protect to environment in light of a serious environmental incident.

Some respondents are of the opinion that the oil and gas industry already apply EU standards elsewhere in the world. They stress that any fiscal or punitive measure which might seek to ensure this would disadvantage EU-based companies when attempting to operate outside the EU. A more appropriate approach would be to ensure the existence of high quality standards within Europe, the core principle of these are then likely to be taken up by operators where possible without the need for coercion. Others feel that when a company applies for a license in the EU, that company's worldwide experience, asset integrity management and track record in safety and environmental protection should be taken into account.

### *Public authorities*

EMSA was mentioned by various regulators for (i) keeping inventories of response resources in each EU sea area, and (ii) helping to clean up pollution if asked for help by a MS. One regulator considers that emergency response is the responsibility of the operator and MS concerned. An emergency response centre could be financed by MS and companies working in EU waters; neighbouring countries could be invited to participate. For cooperation with non-EU countries, forums such as NSOAF would be useful, especially for MS with limited offshore experience. The International Regulators Forum was also mentioned as good for sharing experience. One comment was that EU law should promote exchange of best practice on offshore health and safety with international organisations, especially the ILO. Legislation should be standardised using best practice from MS that have robust regulatory regimes e.g. North Sea area. Any new EU legislation must be compatible with United Nations Convention on the Law of the Sea. For companies operating worldwide, it will be difficult but advisable to make them apply EU offshore safety standards and practices elsewhere, but perhaps API standards could be used. Alternatively global state-of-the-art standards could be introduced.

### *NGOs*

One NGO requested that there should be economic incentives to operators to act rationally with regard to emergency response, and another requested that the EU should have a co-ordinating role. One respondent was of the opinion, that the public should be given the opportunity to participate in the decision-making process concerning prevention and preparedness measures. The respondent also cautioned against the use of dispersants for oil spills and urged that more study on their environment and health impacts should be done. NGOs see potential in the significant experience of EMSA for also dealing with prevention. Most NGOs require that EU standards be applied wherever a company operates outside the EU, in transgression of which the EU could take sanctions e.g. revoking of licences. NGOs often mentioned that company structure should be changed so parent companies are liable for activities of subsidiaries and/or subcontractors. One NGO stresses the role of the Regional Seas Convention to foster cooperation emergency situations, in particular OSPAR which is well advanced in this regard.

### *Citizens*

A respondent felt that oil and gas companies should be compelled to produce site-specific response plans to deal with oil spills and other major incident, taking specific local conditions into account (temperature, winds, sea state etc.), in stead of the current generic response plans. Some citizens expressed the view that EU should sign agreements ensuring that no oil and gas operations are conducted at weaker-than-EU standards in bodies of water shared with non-EU countries. Oil and gas companies registered in the EU should apply EU standards when they operate abroad. Any party should be able to raise violations of EU standards by such companies in EU courts. Companies that do not adhere to EU standards outside the EU should not be awarded exploration or extraction licences within the EU. In other words, companies that apply one set of principles extra-EU and another set within the EU are not implementing comprehensive best practice.

### *Others*

A respondent mentioned that oil and gas companies must first comply with laws and regulations in which they operate. The respondent feels that when companies have operations

in another jurisdiction, they will naturally gravitate to applying the standards and practices of their originating jurisdiction since this are the one with which they are most familiar. However, in the event of a conflict between the standards and practices in their originating jurisdiction and their operating jurisdiction, the companies are obliged to apply the latter. The respondent urges that offshore jurisdiction should harmonise as much of their standards and practices as possible.