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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on safety of offshore oil and gas prospection, exploration and production activities

(Text with EEA relevance)

{SEC(2011) 1292 final}

{SEC(2011) 1293 final}

{SEC(2011) 1294 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the Proposal

Oil and gas exploration and production is taking place increasingly offshore, also in complex geographical and geological environments such as deep waters. The scale and characteristics of recent offshore oil and gas accidents¹ and 'near misses'² reported worldwide, including the Union, demand action. They expose the disparity between the increasing complexity of operations and the inadequacies in the current risk-management practices. Amongst individual companies there are reported wide disparities in safety performance and attitudes. Moreover, the incidents have highlighted the challenges that regulators face in ensuring adequate oversight of offshore activities, and a lack of transparency and data sharing regarding the safety performance of the offshore industry.

In Europe, most oil and gas is produced offshore. A major accident at any one of Europe's offshore installations is likely to entail material losses, damage to the environment, the economy, local communities and society, while the lives and health of workers may be put at risk. The likelihood of a major accident in Union waters needs to be reduced.

Studies, stakeholder consultations and risk analyses conducted since 2010 have identified the main problems for the Union as:

1. The risk of a major offshore oil or gas accident occurring in Union waters is significant and the existing fragmented legislation and diverse regulatory and industry practices do not provide for all achievable reductions in the risks throughout the Union.
2. The existing regulatory framework and operating arrangements do not provide for the most effective emergency response to accidents wherever they occur in Union waters, and the liabilities for clean-up and conventional damages are not fully clear.

Therefore, the general objectives of this proposal are to (i) reduce the risks of a major accident in Union waters, and (ii) to limit the consequences should such an accident nonetheless occur.

General context for a regulatory initiative

The Commission responded to the disaster in the Gulf of Mexico already last year by a gap analysis on offshore practices and the legislative framework in the Union and the subsequent Communication "Facing the challenge of the safety of offshore oil and gas activities"³ (adopted in October 2010). It gave a first indication of areas for action in the Union.

¹ Examples: Deepwater Horizon in the US in 2010 (11 killed), Montara in Australia 2009, Usumacinta in Mexico in 2007 (22 killed)

² Such as oil & gas leaks, failures of production process safety and drilling well control; failure due to invalid design change; high number of maintenance backlogs of safety critical elements. Recent incidents examples: Gullfaks C in May 2010, Gannet F, 2011; both in the North Sea

³ COM(2010) 560 final

There are considerable disparities and fragmentation amongst Member States' laws and practices applying to offshore activities (e.g. licensing, liability provisions, equipment safety standards, public transparency and information sharing). This reflects the virtual absence of international law instruments and gaps in relevant Union law.

Whereas some Member States have offshore regulatory systems considered world class, all have room for improvement. Importantly, the control of major hazard risks in the offshore industry needs to be raised to consistently high standards throughout the Union.

Based on frequency analysis of industry performance in Europe to date and on documented costs of past accidents, the estimated average annual economic losses and damage from offshore oil and gas accidents in the Union range from €05M to €15m. This range is used as the empirical basis of baseline risk in the impact assessment.

It is estimated that the benefits accruing to the Union and Member States significantly outweigh the costs of introducing higher standards. The greater part of any additional costs will be met by the industry, which will benefit from risk reduction. However, experience shows that robust regulation and clear liability are needed to bring about the culture change in industry that will deliver the reduction in risk this regulation intends to achieve.

The general objectives mentioned earlier are developed into four specific objectives:

1. Ensure a consistent use of best practices for major hazards control by oil and gas industry offshore operations potentially affecting Union waters or shores;
2. Implement best regulatory practices in all European jurisdictions with offshore oil and gas activities;
3. Strengthen Union's preparedness and response capacity to deal with emergencies potentially affecting Union citizens, economy or environment;
4. Improve and clarify existing Union liability and compensation provisions.

Based on Commission research and consultations with stakeholders, practical delivery measures are derived. In addition, policy options have been identified grouping the measures in different combinations and means of implementation. These policy options are described in Chapter 2.

Existing Union law provisions in the area of the proposal

The Union has no sector specific offshore oil and gas legislation; however there is broader Union acquis that, often only partially, applies to the offshore sector. This proposal complements primarily the following pieces of Union legislation:

- i. Environmental liability. Environmental Liability Directive (ELD) 2004/35/EC addresses liability for damages to the environment also in connection with offshore oil and gas. The operator of activities causing significant environmental damage to protected species, natural habitats or water is strictly liable to prevent and remedy the damage and to bear the full costs of it. This proposal aims to expand the current territorial applicability of ELD, currently limited to the coastal strip and territorial sea in relation to water damage to cover also all marine waters under the jurisdiction of the Member States.

- ii. Environmental Impact Assessment: Directive 85/337/EEC⁴, as amended by Directives 97/11/EC⁵, 2003/35/EC⁶ and 2009/31/EC⁷, on the assessment of the effects of certain public and private projects on the environment, has harmonised the principles of the environmental impact assessments of projects by introducing general minimum requirements. In addition, the UN/ECE Espoo Convention on EIA in a transboundary context, which is part of the environmental acquis, is relevant as regards the assessment of projects likely to have transboundary effects. Its application is, however, discretionary for some drilling operations.
- iii. Waste law: Directive 2008/98/EC on waste (Waste Framework Directive). This Directive applies fully to oil spills, as upheld by the Court of Justice of the EU. Thus, oil escaping from an offshore installation is covered by the EU definition of waste, thus imposing the obligation to the polluter of cleaning up.
- iv. Health and safety of workers at work: - Directive 92/91/EEC (complementing the Framework Directive 89/391/EEC) is the principal piece of Union legislation relevant for protection of offshore workers and working environment. This proposal reinforces the regime of the Directive 92/91/EEC to include, inter alia, environmental assessment, to require the risk assessment to be submitted to the regulator for consent, to establish notification scheme for well operations and to require independent verification of critical risk control elements.
- v. Major hazards: The Seveso Directive 96/82/EC does not apply to the offshore sector but some of its elements served as a good practice example for this proposal. However this proposal goes beyond Seveso, notably in requiring regulator's consent for risk assessment, stronger verification of technical and financial capability at licensing stages or provisions for evacuation escape and rescue of workforce.
- v. Granting hydrocarbon prospection, exploration and production authorisations: Directive 94/22/EC is a principal legal framework for granting licences for exploration and production. This proposal does not change the Directive itself but strengthens obligations of relevant authorities during the licensing process in order to improve assessment of technical and financial capacity of the applicants.
- vi. Emergency response: The proposal introduces new requirements on emergency response for the Member States and the industry to be complemented by existing Union capacities both inside and outside the Union. The EU Civil Protection Mechanism (Council Decision 2007/779/EC), the Monitoring and Information Centre (MIC)⁸ and the European Maritime Safety Agency⁹ (EMSA) are principal Union tools for emergency response. Steps were already taken to expand EMSA's competence to cover also accidents of offshore installation (beyond its primary focus on maritime shipping).

⁴ OJ L 175, 5.7. 85, p. 40.

⁵ OJ L 73, 14.3. 97, p.5.

⁶ OJ L 156, 25.6.03, p.17.

⁷ OJ L 140, 5.6.2009, p.114.

⁸ The operational center of the Civil Protection Mechanism.

⁹ EMSA was established in the aftermath of the Erika (1999) and Prestige (2002) tanker disasters for the purpose of ensuring a high, uniform and effective level of safety, security, prevention of pollution and response to pollution at sea.

Consistency with other policies and objectives of the Union

This regulation is consistent with the Energy Strategy for 2020¹⁰, viz. Priority 3, the element for sustainable, secure and competitive energy in Europe.

In addition, this regulation is consistent with the Union's environmental legislation and policy and its main tenets such as pollution prevention, control and the polluter pays and precautionary principles. It is fully coherent also with marine policy, notably the goal of achieving by 2020 the Good Environmental Status of the marine environment (Marine Strategy Framework Directive 2008/56/EC).

2. RESULTS OF CONSULTATION WITH INTERESTED PARTIES IN THE REGULATION, AND THE IMPACT ASSESSMENTS OF POLICY OPTIONS

Consultation of interested parties

An on-line public consultation was carried out between 16 March and 20 May 2011 to ascertain the views of interested parties on the need for Union action in various policy fields.

The Commission received a total of 64 contributions, encompassing well over 350 disaggregated replies from stakeholders

Summary of responses and how they have been taken into account

The consultation produced broad support for tightening measures for prevention of, and responding to, offshore major incidents, however, the means to this end varied. National authorities in the North Sea Region felt that changes at Union level should not put in question their current goal setting regulatory approaches, which the proposal indeed intends to promote. While acknowledging improvement needs in general terms, the industry was the most conservative towards regulatory changes while preferring goal setting approaches and industry initiatives. On the other hand NGOs and the specialised companies (e.g. classification societies) were the most active in calling for changes at Union level).

The main aspects were as follows.

Authorisations

Licensees should be held liable for any damages they cause. Most national regulators and industry consider the licensing and permitting currently applied in certain Member States sound but that the Union should work with others to improve their standards. They feel that decisions on awards must remain exclusively with the Member State concerned, however, information could be shared with neighbouring states where there is potential for transboundary pollution. Various recommendations were made by individual companies (e.g. harmonising and simplifying authorisation procedures and separating regulators for licensing and safety. Some NGOs and citizens are in favour of obligatory consultation or consent of a neighbouring state in case of cross-border pollution potential.

¹⁰ SEC (2010) 1346: Energy 2020, A strategy for competitive, sustainable and secure energy.

The legislative instrument foresees stronger and risk based assessment of technical and financial capacity. It introduces also environmental element in the control and prevention of major hazards in addition to the safety element.

Prevention of accidents

The industry needs to be challenged to do even better in major incident prevention, whilst not risking a reduction in accident prevention standards where Member States already have a strong offshore regulatory regime. Industry maintains generally that it can improve the situation by self regulation and industry initiatives. NGOs and, to varying degrees, some regulators feel that existing regulations should be strengthened and extended to cover all offshore operations in Union waters.

Verification of compliance and liability for damages

High levels of compliance with robust and sensible requirements are essential. Whereas industry argues that compliance is always a high corporate priority, many stakeholders see an overarching need to adopt a stronger safety culture across the industry. Compliance and the achievement of a reliable and strong safety culture are addressed in the regulation.

Stronger physical inspections were called for by NGOs and some classification societies. National regulators and industry were generally opposed to this citing potential resource shortages or risks of destabilising current systems. Requirements for independent third party verifications received some support also among the two latter groups.

Extension of the scope of environmental liability was most favoured by NGOs while the regulators and the industry did not take clear positions... Industry and insurers tended to be against changes such as obligatory insurance without capping liability internationally while the NGOs would strongly require it.

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

NGOs first but also industry and regulators felt that a higher level of transparency would enable the industry and public authorities to demonstrate that offshore oil and gas activities are appropriately managed and controlled. All National Authorities should work closely together, building on the example set by the North Sea Offshore Authorities Forum (NSOAF) and the informal meetings of the EU-NSOAF group.

Emergency response

Emergency response is the primary responsibility of the operator and the Member State concerned, but the effectiveness and efficiency of oil spill response capacities existing in Europe can be further enhanced by cooperation and sharing of expertise and other assets. EMSA have a role in clean-up if requested via the EU Civil Protection Mechanism by the Member States concerned.

International activities

Union based companies should endeavour, and are expected, to follow the policies outlined in this regulation and not lower standards when operating outside the Union

Collection and use of expertise

Engagement with international and Union stakeholders (offshore industry, NGOs) and Member States representing, regulating or administering the offshore sector began in April 2010, culminating in the October 2010 Communication.

Both written and meeting-based stakeholder consultations have been expanded further since then. Apart from the public consultation, national regulatory/supervisory authorities have met on eight occasions hosted jointly by the Commission and the NSOAF. Offshore safety has been raised also in the meetings of the Berlin Forum Indigenous Fossil Fuels Working Group¹¹. In addition, numerous meetings have taken place with international and national industry associations, individual enterprises, NGOs and independent verification companies and insurers. Furthermore, the Commission has regularly attended national (e.g. the Oil Spill Prevention and Response Advisory Group in the UK) and international initiatives (e.g. GMEP working group in G-20). These meetings have been maintained until the present time. Similarly, other Commission services (e.g. JRC) with relevant transferrable experience and expertise have been consulted on a continuous basis. Two national experts were hired by the Commission from national offshore safety authorities. The expert inputs have been fully considered in the formulation of this Regulation.

Policy options and assessment of their impacts

Distinct policy options are derived from the general and specific objectives described in Chapter 1. There are four policy options in addition to the do-nothing baseline option (option 0) as follows.

Option 0 would preserve the status quo.

It has no additional cost nor impact on the baseline cost range €205-915m.

Option 1 ("North Sea basic") is the basic level for meaningful Union intervention. It introduces in Union law the Major Hazards Report (MHR) based upon the safety and health document required by Directive 92/91/EC but goes further in requiring the regulator to be satisfied with it prior to starting operations. An inspections and penalties regime would be required to underpin the measures described in the MHR. Option 1 would be implemented through new law.

Option 1 introduces additional running costs on industry of ca **€36m/year** and a reduction in risk expressed against the baseline cost at ca **€7 – 30m/yr**, an average **3% decrease** in baseline risk.

Option 1+ ("North Sea +") goes further by introducing soft law guidelines for: tightening consideration of the technical capacity of applicants for offshore oil and gas licenses; converging national emergency response plans; developing compatible national and industry owned response assets and making them available to other countries at need; and clarifying the scope of the environmental provisions relevant to the liability of operators (e.g. applicability of waste legislation) as regards the offshore oil and gas accident. The Union would propose to Union based companies voluntary agreements on using EU standards beyond EU waters.

¹¹ The Berlin Forum (aka. Fossil Fuels Forum) is an annual stakeholder meeting convened by the Commission. Between the annual plenary sessions, three working groups hold regular meetings to discuss topical issues.

Option 1+ introduces additional running costs on Member States of ca. €3m and compliance costs on industry (cumulative with option 1) of ca €52m. The cumulative effect of Options 1 and 1+ is €25 - €109m/yr, an average **12% reduction** in baseline risk.

Option 2 ("Union Best practice") develops further the reforms of option 1+ in a comprehensive package. Recognised global best practice in major hazard risk control would be mandated, and environmental risk assessment would be incorporated into the MHR. Also, best regulatory practice and required organisational standards would be introduced in arrangements for national competent authorities. This holistic risk assessment for safety and environment, would integrate emergency preparedness and response inventory management into law. A Union-wide Offshore Authorities Group would be created and the Licensing and ELD directives reinforced by regulation.

Option 2 introduces cumulative operating costs on industry of ca €122m (from €52m) and ca €12-18m (from €3m) on Member States, plus one-off administration costs of ca €18-€44m. The costs for the Commission to establish and run the EUOAG would be ca €1m. The additional measures cuts the baseline risk costs by between €103 – 455m/year - a **50% reduction** in baseline risk.

Option 3 ("EU Agency") further reinforces the impact of Option 2 by introducing an Union agency to institutionalise and thereby consolidate the reforms achieved by option 2. It would undertake inspections and investigations, monitor and enforce consistency in performance, develop intervention capacity and assist capacity building in adjacent non Union countries.

Option 3 introduces cumulative annual running costs on the Commission of ca. €35m/yr (from €1m) and €18-44m one-off start-up costs plus €10's million for purchase of essential response assets. There would be no further costs to industry.

The options are compared for the extent to which they address the measures in Table 1

No.	Measure	Option 0	Option 1	Option 1+	Option 2	Option 3
1	Detailed verification of the technical capacity of potential operator	0	0	G	L	Union
2	Establishing regular inspections and a penalties regime	0	L	L	L	Union
3	Submission of formal safety assessments for acceptance by the regulator	0	L	L	L	Union
4	Extension of MHR into a comprehensive risk management model	0	0	0	L	L
5	Extending Union practices to overseas operations	0	0	G	G	Union
6	Establishing a Competent Authority	0	0	0	L	Union
7	Establishing a platform for regulatory dialogue	0	0	0	L	Union
8	Comprehensive information sharing and transparency	0	0	0	L	L

No.	Measure	Option	Option	Option	Option	Option
		0	1	1+	2	3
9	Preparedness for effective emergency response to major offshore accidents	0	0	G	L	Union
10	Ensuring cross-border availability and compatibility of intervention assets	0	0	G	L	Union
11	Clarifying the scope of environmental liability	0	0	G	L	L

Table 1

0 = not implemented in this option; G = guidelines/soft law; L = law; Union = Union agency responsible

A measure can be implemented by different means, often offering a trade-off between effectiveness and practicality. As result, each of the policy options is characterized on one hand by the set of measures retained in the option and by the preferred implementation means for each measure under that option.

The **preferred policy option** is Option 2, i.e. a comprehensive offshore reform raising throughout Union, through new law, the level of risk management and emergency preparedness in the offshore industry. Apart from consistency, this option provides for greater transparency of industry and regulator performance.

This option can reduce the baseline risk by 50% through enhanced prevention and mitigation should an incident nonetheless occur. The risk reduction in average monetary terms (ca. €103m - 455m/year) compares favourably with the estimated cumulative costs of its implementation (€134 – 140m/year). It is more affordable administratively and economically as the additional running costs of Option 3 (ca €34M p.a.) fail to bring corresponding decrease in risks. Option 1+ is a choice with modest positive impact (12%) and enforcement possibilities while the benefits of Option 1 are insufficient to justify the (albeit small) costs.

3. LEGAL ELEMENTS OF THE REGULATION

The proposed regulation creates duties for operators, Member States and the Commission as follows.

Operator

The Operator is to organise his activities around a best practice model; prepare a major hazards report (MHR) and to submit this to the competent authority for assessment. In addition the Operator is to submit a notification for each well operation to the regulator. For both MHR's and well notifications, independent verification of the safety critical elements is required. Operators will prepare internal emergency response plans; promote interoperability and compatibility of response assets and report incidents and other specified information to the relevant Member State in a standard format. Union-based major companies would commit to demonstrating Union offshore safety standards wherever they work overseas.

Member States

Member States licensing authorities would assess in an appropriate manner the potential safety and environmental performance (and financial capacity to deal with safety failures) of applicants when considering awards for exploration or production licenses. Member States would establish competent authorities for supervision of safety, environmental protection and emergency preparedness and introduce robust standards for inspection and investigation, underpinned with appropriate penalties for breaches of duty by operators. Member States will make information routinely available concerning their offshore sectors, and report all major incidents and lessons learned to the Commission. External emergency response plans would be prepared by Member States, collaborative with adjacent MS. Measures will be taken to ensure interoperability of expertise and physical assets to support cross Union intervention including by EMSA. Member States and the industry will prepare and periodically test emergency response plans...

Commission

The Commission is to establish an EU Offshore Authorities Group with representatives from the competent authorities responsible for offshore oil and gas activities in Union Member States. The Commission is to amend Environmental Liability Directive (2004/35/EC) within the regulation.

Legal basis

The draft Regulation is based on TFEU Article(s) 192 (Environment) for its environmental protection purposes and 194 (Energy) for minimising adverse effects on Union security of energy supply and the functioning of the internal energy market.

Subsidiarity principle

Union action has been considered only where it can achieve the objective more effectively than the Member States or where actions by Member States alone may not deliver optimal improvements.

Companies operate and drilling rigs like Deepwater Horizon are being moved across borders but face very different regulatory regimes along the lines of national jurisdictions. Recent reactions of the Member States suggest, that without Union action these differences are going to exacerbate as countries mainly only in the most advanced regions individually plan improvements while international initiatives make very slow progress. Moreover, without Union action, existing difficulties for comparing industry performance and sharing of intelligence and incident data will remain.

Action by Member States alone would be inadequate to achieve consistent protection (including liability for pollution) of the environment, a common good, a commitment of the Union and its Member States as per the Marine Strategy Framework Directive.

The likelihood and consequences of major offshore incidents remain significant everywhere in the Union based on national reports, and risk analysis conducted by the Commission in 2011. Offshore production occurs increasingly also in the Mediterranean, the Black and even the Baltic Seas where some countries in some of these marine regions have less experience in

regulating offshore operations. Still, even in the advanced regions (mainly North Sea) national action has failed to achieve common standards and comparability of data.

Overall, despite the measures already foreseen by Union legislation, such as in the field of health and safety at work, a failure to take action at Union level is likely to deprive Member States of the most suitable means to reduce risks of major offshore major incidents in a consistent and timely manner.

Proportionality principle

Article 5 of the Treaty requires "Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty". In achieving the requisite balance between the objectives and the means proposed to achieve them this Regulation takes into account:

- i. The costs from the Deepwater Horizon incident were estimated by BP to be in excess of \$40bn; costs of a similar event in Union waters could be of this magnitude
- ii. Incidents of the magnitude of Deepwater Horizon occur in the offshore industry at a frequency of decades which is high for extreme major accident hazards
- iii. The value of the Union offshore sector is very high in terms of national economies (revenues and employment) and its contribution to security of supply
- iv. The offshore sector generates relatively high revenues for the companies involved
- v. The public has developed an aversion to further major incidents risks

The cost of the measures proposed in this regulation (ca €134-140m/year) is modest in comparison to the risk reduction they will secure (ca €103 – 455m/year). Therefore they are proposed as enabling measures.

Choice of instrument

A **Regulation** is proposed to implement Option 2. It has advantages over a Directive due to its clarity, consistency and speed of implementation through direct application¹². By acting directly on the industry, the Regulation would also provide for a more level playing field. It would also cater well for emergency planning to combat transboundary pollution.

With regard to the interinstitutional agreements concerning the Commission advisory and expert groups, the EU Offshore Authorities Group should be established by a standalone Commission Decision.

4. BUDGETARY IMPLICATION

The budgetary implication of the proposal is approx 2.5 m€ in the period 2013-2016, including compensations for committee participation. EMSA's assistance is primarily related to a) use of its satellite surveillance system which is active regardless of offshore accidents b)

¹² In other legal acts covering high risk/ high value industries, there has been a past preference for Directives e.g. IPPC or SEVESO II Directive), whereas narrower high risk sectors, such as civil aviation, often use Regulation for their legal framework.

use of emergency vessels organised by EMSA. The emergency vessels are only contracted for the purpose and the operational costs are covered by the affected coastal State that requests the intervention. Regulation (EC) 2038/2006 puts in place a multi-annual financial framework for pollution response for the years 2007-2013. The Commission does not foresee any changes to this framework. In conclusion: no increase of costs for EMSA is foreseen for the period 2007-2013. Should any additional costs arise for EMSA during the period 2014-2020 they should primarily be covered by redeployment of the already agreed resources.

5. ADDITIONAL INFORMATION

Amendment of existing legislation

Adoption of the regulation includes an amendment to Directive 2004/35/EC (Environmental liability)

Delegation

The Regulation foresees the development of technical details of a common reporting format through a delegated act and potential updates to technical annexes via an implementing act.

European Economic Area and Energy Community

The proposal has potential relevance for the EEA and the Energy Community.

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REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(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 Committee¹³,

Having regard to the opinion of the Committee of the Regions¹⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 191 of the TFEU establishes the objectives of preserving, protecting and improving the quality of the environment and creates an obligation for all Union action to be supported by a high level of protection based on the precautionary principle and preventive action and to prudent and rational utilisation of natural resources.
- (2) The objective of this Regulation is to reduce the occurrence of major accidents related to offshore oil and gas activities and to limit their consequences, thus increasing the protection of the marine environment and coastal economies against pollution as well as establishing minimum conditions for safe offshore prospection, 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 Regulation should apply not only to future installations and operations but, subject to transitional arrangements, also to existing installations

¹³ OJ C , , p. .

¹⁴ OJ C , , p. .

- (4) The accidents related to offshore oil and gas activities in 2010, notably the Gulf of Mexico, have sparked a review of policies aimed at ensuring the safety of offshore activities. The Commission launched a review of and expressed its initial views on the safety of offshore oil and gas operations 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 Energy Council Conclusions on 3 December 2010.
- (5) The risks of a major offshore oil or gas accident are significant. By reducing the risk of pollution of marine waters, this initiative should therefore contribute to the protection of the marine environment and in particular to the achievement of good environmental status by 2020 at the latest, as set out in Article 1(1) of 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)¹⁵.
- (6) The Marine Strategy Framework Directive, which requires addressing the cumulative impacts from all activities on the marine environment, is the environmental pillar of the Integrated Maritime Policy. This Policy is relevant to offshore oil and gas operations as it requires linking the particular concerns from each economic sector with the general aim of a comprehensive understanding of the oceans, seas and coastal areas, with the objective to develop 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.
- (7) Offshore oil and gas industries are established in a number of regions of the Union, and there are prospects for new regional developments in Union waters. Production of offshore oil and gas is a significant element in EU security of energy supply.
- (8) The existing fragmented regulatory framework applying to safety of offshore activities in Europe and current industry safety practices do not provide an adequate assurance that risks from offshore accidents are minimised throughout the Union, and that in the event of accident occurring in Union waters, the most effective response would be timely deployed. Under existing liability regimes, the responsible party may not always be clearly identifiable and/or may not be able, or liable, to pay all the costs to remedy the damage it has caused.
- (9) Pursuant to Directive 1994/22/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 hydrocarbons[1] offshore oil and gas activities in the Union may be performed subject to the obtainment of an authorisation. In this context the competent 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 licenses. There is the need to ensure that when examining the technical and financial capability of the licensee the competent authorities thoroughly examine also its capability for ensuring continued safe and effective operations under all foreseeable conditions.

¹⁵ OJ L 164, 25.6.2008, p. 19.

- (10) There is a need to clarify that holders of authorisations for offshore activities pursuant to Directive 94/22/EC are also potential 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 damage¹⁶, and may not be entitled to delegate their responsibilities in this regard to third parties contracted by them.
- (11) While general authorisation pursuant to Directive 94/22/EC guarantees to the licensees exclusive rights for exploring for or producing oil and/or gas within a given area, actual operations within that area need to 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.
- (12) In accordance with Directive 85/337/EEC, as amended, which applies to exploration and exploitation of oil and gas activities, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to an assessment with regard to their effects and a requirement for development consent. In line with Directive 85/337/EEC when an activity is subject to development consent an effective public participation should be provided in accordance with the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters
- (13) Within the Union, there are already examples of good standards in national regulatory practices related to offshore oil and gas activities. However, these are inconsistently applied throughout the Union and no Member State has yet incorporated all of the best regulatory practices in their legislation for preventing major offshore accidents or limiting their consequences to persons and the environment. Best regulatory practices are to secure effective regulation on safety and environment by integrating related functions into a joint competent authority ("the competent authority") that may draw resources from one or more national agencies.
- (14) After the licensed operator is granted rights to explore for, or extract oil and gas, the competent authority should be legally empowered and adequately resourced by the Member State to take enforcement action, including cessation of operations in order to attain suitable workers and environment protection.
- (15) The effectiveness of the competent authority in verifying adequacy of major hazard controls by the licensee or operator is directly related to the major hazard regulatory policy, systems, and expertise of the competent authority. Notwithstanding the licensed operators' rights to explore for, or extract oil and gas, the competent authority should be empowered to take enforcement action, including cessation of operations in order to attain suitable workers and environment protection. In order to perform these functions the competent authority needs adequate resources to be provided by the Member State.

¹⁶ OJ L 143, 30.4.2004, p. 56

- (16) To maintain an appropriate distinction between economic development and environmental and safety regulation the competent authority should be demonstrably independent from national economic sponsorship.
- (17) The complex 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 require targeted and tailor made regulation addressing the specific hazards of the offshore oil and gas sector.
- (18) This Regulation should apply without prejudice to any requirements under any other Union legislation, notably in the field of health and safety of workers at work, in particular Council Directive 89/391/EC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work¹⁷ and 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)¹⁸.
- (19) An offshore regime needs to apply to operations carried out on both fixed and mobile installations, and apply to the lifecycle of exploration and production activities from design to decommissioning and permanent abandonment.
- (20) The best operational practices currently available for major accident prevention in offshore oil and gas operations are based on achieving desirable outcomes through thorough risk assessment and reliable management systems.
- (21) Union best operating practices require owners and/or operators of installations, including mobile drilling rigs, to establish effective corporate policy and suitable arrangements for major accident prevention and to comprehensively and systematically identify all major hazard scenarios relating to all hazardous activities that may be carried out on that installation. These best practices require also assessing the likelihood and consequences and the necessary controls of such scenarios, within a comprehensive safety management system. Such policy and arrangements should be clearly described in a document ("the Major Hazard Report – MHR"). The MHR should be comparable and complementary to the safety and health document referred to in Directive 92/91/EC and it should also include provisions on environmental risk assessment, emergency plans. The MHR should be required to be submitted to the competent authority for consenting procedure.
- (22) In order to maintain the effectiveness of major accident risk controls in Union waters, Major Hazard Reports need to be prepared in respect of any significant aspect of the lifecycle of a production installation, including design, operation, operations when combined with other installations, major modifications, and final abandonment. The report needs to be submitted to the competent authority so that the operations may not proceed unless the competent authority has accepted the Major Hazards Report by means of an appropriate consenting procedure.

¹⁷ OJ L 183, 29.6.1989, p. 1

¹⁸ OJ L 348, 28.11.1992, p. 9

- (23) Drilling and repairing oil and gas wells should only be undertaken by an installation technically capable of controlling all the foreseeable hazards at the well location, and which has an accepted MHR.
- (24) In addition to utilising a suitable installation, the well operator should prepare detailed plans pertinent to the particular circumstances and hazards of each well operation and in accordance with best practices in the Union provide for independent expert examination of the well design. The well operator should send a notification of his 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.
- (25) To ensure safety in design and continuous safe operations, the industry is required to follow the best available practices defined in authoritative standards and guidance, and these require to be updated with new knowledge and invention and pursuant to continuous improvement so that operators 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 significant offshore accidents, and should commission the preparation of the highest priority guidance and standards without delay.
- (26) In view of the complexity of offshore oil and gas operations, the implementation of the best practices by the operators requires a scheme of independent third party verification of safety critical elements.
- (27) Best practices that are required to be applied in the Union are to meet the requirements of Regulation 391/2009/EC on common rules and standards for inspections and survey organisations in relation to mobile non-production installations, and its equivalent standard adopted by the International Maritime Organisation¹⁹,
- (28) Risk assessment in the MHR should take into account risk to the environment, including the impacts climatic conditions and climate change have on the long term resilience of the installations; and given that offshore oil and gas activities 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 Convention on Environmental Impact Assessment in a Transboundary Context.
- (29) In order to ensure effective response to emergency situations, operators should prepare site-specific emergency response plans based on risks and hazard scenarios identified in the MHR, submit them to competent authorities, and maintain such resources as are necessary for prompt execution of those plans when needed.
- (30) To ensure that no relevant safety concerns are overlooked or ignored, it is important to establish and encourage adequate means for the reporting of those concerns and the protection of whistleblowers.
- (31) 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 data reporting format for reporting by operators to the Member

¹⁹ Code for the construction and equipment of mobile offshore drilling units, 2 December 2009 (2009 MODU Code)

State would provide transparency of the safety and environmental performance of operators and would provide public access to relevant and Union-wide comparable information on safety of offshore oil and gas activities and assist in disseminating lessons learned from major accidents and near misses.

- (32) In order to ensure uniform conditions for sharing information and encouraging transparency of performance of the offshore sector, implementing powers should be conferred on the Commission. 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 powers²⁰.
- (33) The advisory procedure should be used for the adoption of relevant implementing acts in order to ensure consistent exchange of relevant data across the Union.
- (34) To facilitate public confidence in the authority and integrity of EU wide offshore activity, Member States should provide reports of activity and incidents and shall inform the Commission of major accidents without delay, and the Commission should publish reports periodically on levels of EU activity and trends in safety and environment performance of the offshore sector.
- (35) Experience shows that ensuring the confidentiality of sensitive data is necessary to foster an open dialogue between the competent authority and the operator. To that effect the dialogue between offshore operators and all Member States should be based on relevant existing international instruments and EU acquis on access to environmentally relevant information subject to any overriding requirement for safety and environment protection.
- (36) The value of collaborations between offshore authorities has been clearly established by the activities of the North Sea Offshore Authorities Forum and the International Regulators Forum. Similar collaboration should be formally established across the Union to promote efficient collaboration between national representatives and the Commission at the working level.
- (37) Emergency response and the contingency planning for major offshore disasters will be made more effective by a systematic and planned cooperation between Member States and between Member States and industry, as well as by the sharing of compatible assets including expertise. Where appropriate, those arrangements should also make use of the existing resources and assistance available from within the Union, in particular through the European Maritime Safety Agency and the EU Civil Protection Mechanism.
- (38) The implementation of the obligations under this Regulation should consider that marine waters covered by the sovereignty or jurisdiction of Member States form an integral part of the four marine regions identified in the Article 4(1) of Directive 2008/56, namely the Baltic Sea, the North-east Atlantic Ocean, the Mediterranean Sea and the Black Sea. For this reason, coordination should be strengthened with third

²⁰ OJ L 55, 28.2.2011, p. 13

countries having sovereignty or jurisdiction over waters in such marine regions. Appropriate cooperation frameworks include regional sea conventions, as defined in Article 3(10) of Directive 2008/56.

- (39) In relation to the Mediterranean Sea, in conjunction to the current Regulation, the necessary actions are being undertaken for 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 ('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 approved by Council Decision 77/585/EEC²¹.
- (40) The serious environmental concerns relating to the Arctic waters, a neighbouring marine environment of particular importance for the Community, require special attention to ensure the environmental protection of the Arctic in relation to any offshore activities, including exploration.
- (41) National external emergency plans should be based on risk assessments carried out with a view to preparing the MHR. Related site specific emergency plans for the containment of accidents should take into account the most up to date Risk Assessment and Mapping Guidelines for Disaster Management (Commission Staff Working Paper SEC(2010) 1626 final of 21.12.2010).
- (42) Effective response to emergencies requires immediate action by the operator and close cooperation with competent authorities which coordinate the introduction of additional emergency response resources as the situation develops. It also includes a thorough investigation of the emergency which should commence without delay so as to ensure minimum loss of relevant information and evidence. Following the incident, competent authorities should draw appropriate conclusions and take any necessary measures.
- (43) In order to ensure effective implementation of the requirements of this Regulation, effective and proportionate sanctions should be put in place.
- (44) In order to adjust the proposed minimum requirements to the latest development in technology and relevant practices, the Commission should be empowered to amend the requirements in the Annexes to this Regulation in accordance with the procedure referred to in Article 4 of the Regulation (EU) No 182/2011.
- (45) Consequently, in order to prevent major accidents related to offshore oil and gas activities and to limit their consequences, the power to adopt acts in accordance with Article 4 of the Regulation (EU) No 182/2011 should be delegated to the Commission in respect of the definition of the minimum basic requirements related to those operations according to the principles stated by this Regulation, notably in its Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

²¹ OJ L 240, 19.9.1977, p. 1.

- (46) 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 Council.
- (47) Apart from the measures introduced in this Regulation, the Commission should explore other appropriate means of improving the prevention of offshore oil and gas accidents and mitigation of their effects.
- (48) As no existing financial security instruments, including risk pooling arrangements, can accommodate all possible consequences of extreme accidents, the Commission should proceed with further analysis and studies of the appropriate measures to ensure adequately robust liability regime for damages related to offshore oil and gas operations, requirements on financial capacity including availability of appropriated financial security instruments or other arrangements .
- (49) At Union level, it is important that technical standards are complemented by a corresponding legal framework of product safety legislation that apply to all offshore installations in Union waters, and not just non-mobile production installations. The Commission should therefore proceed with further analysis of the product safety standards applicable to offshore oil and gas operations

HAVE ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1 *Subject and Scope*

1. This Regulation establishes minimum requirements for industry and national authorities involved in offshore oil and gas operations performed following the award of an authorisation pursuant to Directive 94/22/EC.
2. This Regulation applies to all offshore oil and gas operations defined in Article 2.
3. This Regulation applies to all related installations, subsea installations and connected infrastructure in the waters of Member States including their exclusive economic zones and on their continental shelves within the meaning of the United Nations Convention on the Law of the Sea (UNCLOS).
4. This Regulation aims to contribute to the achievement of the objectives of Directive 2008/56/EC of the European Parliament and the Council establishing a framework for community action in the field of marine environment policy.
5. The provisions of this Regulation shall apply without prejudice to relevant Union legislation, in particular concerning health and safety of workers at work, notably Council Directives 89/391/EEC and 92/91/EEC.
6. This Regulation shall apply without prejudice to Directives 85/337/EC, 2008/1/EC and Directive 2003/4/EC.

Article 2 *Definitions*

For the purpose of this Regulation:

1. 'acceptable' shall mean: rendering a risk of a major accident tolerable to the furthest extent beyond which no significant reduction of the risk is derived from the input of further time, resources or cost;
2. 'acceptance' shall mean: the conveyance in writing to the operator by the competent authority of the positive conclusions of its examination of the operator's Major Hazards Report pursuant to the requirements of this Regulation;
3. 'authorisation' shall mean: an authorisation pursuant to Directive 94/22/EC;
4. 'combined operation' shall mean: an operation carried out from a non-production 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;
5. 'commencement of operations' shall mean: the point in time when the installation for is involved the first time in the operations for which it is designed for.
6. 'competent authority' shall mean: the authority appointed pursuant to this Regulation and responsible for duties related to its scope;
7. 'connected infrastructure' shall mean: an offshore equipment, pipeline or some other installation above or below the water surface used for transporting oil and gas to another installation nearby, onshore processing or storage facility or for transporting and loading oil to a shuttle tanker;
8. 'consenting procedure' shall mean: a procedure of thorough assessment of all relevant information concerning planned offshore oil and gas operation by the competent authority, concluded by acceptance of the major hazard report by the competent authority and absence of objections to well or combined operations notifications submitted by operators;
9. 'exclusion zone' shall mean: area surrounding the installation established by the Member State in which unrelated activities are prohibited;
10. 'exploration license' shall mean: an authorisation granted by the Member State to explore for oil and gas in the underground strata of the licensed area, but not to produce oil and gas for commercial purposes;
11. 'external emergency response plan' shall mean: local, national or regional strategy to prevent escalation or limit consequences of an accident related to offshore oil and gas operations using all available resources in addition to those described in internal emergency response plans;
12. 'independent third party verification' shall mean: an assessment and confirmation of the validity of particular written statements by a natural or legal person that is not under the control or influence by the author of the statements;

13. 'industry' shall mean: private companies that are directly involved in offshore oil and gas activities pursuant to this regulation or whose activities are closely related to those operations;
14. 'installation' shall mean: either a production or a non-production installation;
15. 'internal emergency response plan' shall mean: an overview prepared by operators pursuant to requirements of this Regulation of the measures to prevent escalation or limit consequences of an accident related to offshore oil and gas operations within an exclusion zone around the installation;
16. 'licensed area' shall mean: the geographical area covered by the authorisation pursuant to Directive 94/22/EC;
17. 'licensee' shall mean: the holder of authorisation to carry out offshore operation pursuant to Directive 94/22/EC;
18. 'major accident' shall mean: an occurrence such as fire or explosion, significant loss of well control or significant escape of hydrocarbons to the environment, significant damage to the installation or equipment thereon, loss of structural integrity of the installation, and any other event involving death or major injury to five or more persons on or working in connection with the installation;
19. 'major hazard' shall mean: a situation with a potential for resulting in a major accident;
20. 'non-production installation' shall mean: an installation other than a production installation used both for exploratory drilling and as a support installation for production ;
21. 'offshore oil and gas operations' shall mean: all activities related to exploring for, producing or processing of oil and gas offshore. This includes transport of oil and gas through offshore infrastructure connected to an installation or subsea installation;
22. 'operator' shall mean: the operator of a production installation or the owner of a non-production installation and the well operator of a well operation. Operator and licensee both come under the definition of Article 2(6) of Directive 2004/35/EC ;
23. 'operator of production installation' shall mean: a person appointed by the licensee to manage and control the main functions of a production installation;
24. 'owner' shall mean: a person legally entitled to control the operation of a non-production installation;
25. 'production of oil and gas' shall mean: extraction, for commercial purposes, of oil and gas from the underground strata of the licensed area including offshore processing of oil and gas and its transportation through connected infrastructure including pipes and structures and well heads on the sea bed and/or storing gas in subsurface formations for the purposes of recovering the gas;
26. 'production installation' shall mean: an installation used for production of oil and gas;
;

27. 'production license': shall mean: an authorisation granted by the Member State for production of oil and gas. .
28. 'public' shall mean: one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;
29. 'relevant authority' shall mean (in the context of emergency response to an offshore accident): primary emergency responder organisation of a Member State, responsible for initiating the emergency response to a major offshore oil and gas accident;
30. 'risk' shall mean: the likelihood of a specific effect occurring within a specific period or in specified circumstances;
31. 'suitable' shall mean: fully appropriate for a given requirement or situation and 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;
32. 'well operation' shall mean: the drilling of a well for exploration or production purposes, including suspension of operations, repairing or modifying wells, permanent abandonment, or any operation concerning a well that can result in the accidental release of fluids or risk of major accident;
33. 'well operator' shall mean: the person appointed by the licensee to plan and execute a well operation.

CHAPTER II

PREVENTION OF MAJOR HAZARDS RELATED TO OFFSHORE OIL AND GAS ACTIVITIES

Article 3

General principles of risk management in offshore oil and gas activities

1. Operators shall take all suitable measures to prevent major accidents from offshore oil and gas operations. Competent authorities shall oversee that operators meet this obligation.
2. Operators shall ensure that all entities , that are contracted to carry out specific tasks at the installations concerned, will likewise act in accordance with the requirements set out in this Regulation, in particular with its Annexes IV and V. Operators shall not be exonerated from their responsibilities under this Regulation by the fact that actions or omissions leading or contributing to major accidents, were carried out by such entities or their personnel.
3. Should a major accident nonetheless occur, operators and competent authorities shall take all suitable measures to limit their consequences for human health and the environment and where possible to avoid serious disruptions of oil and gas production withing the Union.

4. Offshore oil and gas activities covered by this Regulation shall be performed on the basis of a systematic assessment of the likelihood of hazardous events and their consequences, and the implementation of control measures so that the risks of major accidents to people, the environment, and offshore assets are acceptable.

Article 4

Safety considerations within authorisation of offshore oil and gas activities pursuant to Directive 94/22/EC

1. Decisions on granting authorisations for offshore oil and gas activities pursuant to Directive 94/22/EC shall take into account the capacity of applicants to meet requirements for specific activities within the framework of that authorisation as required by the relevant provisions of Union law, notably in this Regulation.
2. In particular, when assessing the technical and financial capacity of the entities that apply for authorisation for offshore oil and gas activities, due account shall be taken of the risk, hazards and any other relevant information related to the area concerned and the particular stage of exploration and production operations and also of the applicants' financial capacities, including any financial security and capacity to cover liabilities potentially deriving from offshore oil and gas activities in question, in particular liability for environmental damages.
3. Authorisations for for offshore oil and gas exploration operations, and for production operations shall be granted separately.
4. Licensing authorities pursuant to Directive 94/22/EC shall, when assessing the technical and financial capacity of the entities that apply for authorisation for offshore oil and gas activities, take into account the risks, hazards and any other relevant information related to the location concerned and the particular stage of exploration and production operations.

Article 5

Public participation in licensing procedures

1. Member States shall ensure that the public shall be given early and effective opportunities to participate in procedures concerning licensing procedures in their jurisdiction in accordance with the requirements of Annex I to this Regulation. The procedures shall be those laid down in Annex II of Directive 2003/35/EC.
2. The Member States may lay down more detailed arrangements for informing the public and for consulting the public concerned.
3. Public participation shall be organised so as to ensure that disclosure of information and involvement of the public shall not pose risks to safety and security of offshore oil and gas installations and their operation.

Article 6
Consenting to offshore oil and gas operations within licensed areas

1. Installations shall only be operated in licensed areas by licensees, or entities they contract and appoint for that purpose and that are approved by Member States.
2. Where the competent authority considers that the person appointed by the licensee is not competent to act as operator of an installation or as a well operator, the licensee shall be notified thereof and shall assume all responsibilities of an operator pursuant to this Regulation.
3. Installations pursuant to paragraph 1 may not commence or continue operations without submission of a Major Hazards Report pursuant to conditions and deadlines specified in Articles 10 and 11 and its acceptance by the competent authority pursuant to this Regulation.
4. Well and combined operations may not be undertaken unless the Major Hazards Report for the installation has been accepted pursuant to paragraph 3 of this Article. Furthermore, operations may not be commenced and conducted without submission of a well or combined operations notification pursuant to conditions and deadlines specified in Articles 13 and 14 to the competent authority or if the competent authority expresses objections to the content of the notification.

Article 7
Liability for environmental damage

1. The licensee is liable for the prevention and remediation of environmental damage , pursuant to Directive 2004/35/EC, caused by offshore oil and gas activities carried out by the licensee or any entity participating in the offshore oil and gas operations on the basis of a contract with the licensee. The consenting procedure for operations pursuant to this Regulation shall not prejudice the liability of the licensee.

Article 8
National competent authority

1. Member States with offshore oil and gas activities under their jurisdiction shall appoint a competent authority responsible for duties laid down in this Regulation.
2. The competent authorities appointed pursuant to paragraph 1 shall be responsible for the following tasks:
 - (a) assessing and accepting Major Hazards Reports, assessing design notifications, and assessing notifications of wells or combined operations, and other such documents that are submitted to it;
 - (b) performing inspections, conducting investigations and taking enforcement action;
 - (c) producing reports pursuant to this Regulation.

3. The competent authority shall be organised in accordance with the provisions of Article 19 so as to ensure independent performance of potentially conflicting tasks, expertise and general effectiveness in regulating offshore oil and gas activities.
4. Member States shall ensure that competent authority have adequate resources to perform its tasks according to this Regulation.
5. The competent authority shall endeavour to prepare and implement coordinated or joint procedures as required to undertake the functions pursuant to this Regulation and to fulfill the requirements under any other applicable Union legislation. Where several agencies comprise the competent authority, they should avoid duplication of regulatory functions.

CHAPTER III

PREPARATION FOR AND CONDUCT OF OFFSHORE OIL AND GAS ACTIVITIES BASED ON RISK ASSESSMENT

Article 9 *Conditions for operating offshore installations*

1. Subject to the transitional provisions in Article 39, the operator of a production or a non-production installation shall submit to the competent authority the following documents:
 - (a) in the case of a planned production installation, a design notification in accordance with the requirements of Annex II, part 1;
 - (b) a Major Hazard Report containing the details specified in Article 10 or Article 11;
 - (c) an internal emergency response plan pursuant to Article 12, integrated into the Major Hazards Report;
 - (d) an overview of operator's major accident prevention policy pursuant to Article 18, integrated into the Major Hazards Report.
2. The competent authority shall receive the design notification no later than 24 weeks before the intended submission of a Major Hazards Report for the planned operation.
3. The Major Hazard Report shall be notified to the competent authority within a deadline set out by the competent authority and no later than 12 weeks before the planned commencement of operation .

Article 10 *Major Hazard Report for a production installation*

1. The Major Hazard Report for a production installation shall contain the details specified in Annex II, parts 2 and 5.

2. A Major Hazard Report for a production installation may be prepared in relation to a group of installations subject to the agreement of the competent authority.
3. Where significant modifications are made to the production installation, or it is intended to dismantle the installation, the Major Hazard Report for a production installation shall be amended in accordance with Annex II, part 6 and submitted to the competent authority.
4. Where further information is necessary before a Major Hazard Report can be accepted, the competent authority shall request further information or changes to the documents submitted.
5. The amended Major Hazard Report for a production installation pursuant to paragraph 3 shall be submitted to the competent authority within a deadline specified by the competent authority and no later than 6 weeks before the planned works are commenced. The planned works shall not be commenced until the competent authority has accepted the amended Major Hazard Report for the production installation.
6. The Major Hazard Report for a production installation shall be subject to periodic review by the operator at least every 5 years or more frequently as required by the competent authority, and the results of the review shall be notified to the competent authority.

Article 11

Major Hazard Report for a non-production installation

1. The Major Hazard report for a non-production installation shall contain the details specified in Annex II, parts 3 and 5.
2. Where significant modifications are made to the non-production installation, or it is intended to dismantle the installation, the Major Hazard Report for a non-production installation shall be amended in accordance with Annex II, part 6 (excluding paragraph 4) and submitted to the competent authority.
3. For a fixed non-production installation, an amended Major Hazard Report pursuant to paragraph 2 shall be submitted to competent authority within a deadline specified by competent authority and no later than 2 weeks before the planned works are to be commenced. The planned works shall not be commenced until the competent authority has accepted the amended Major Hazard Report for a non-production installation.
4. For a mobile non-production installation, an amended Major Hazard Report pursuant to paragraph 2 shall be submitted to the competent authority within a deadline specified by competent authority and in no case later than 2 weeks before the installation is due to commence operations. The installation may not be operated until the competent authority has accepted the amended Major Hazard Report for a non-production installation.

5. Where further information is necessary before a Major Hazard Report can be accepted, the competent authority shall request further information or changes to the documents submitted.
6. The Major Hazard Report for a non-production installation shall be subject to periodic review by the operator at least every 5 years or more frequently as required by the competent authority. The results of the review shall be notified to the competent authority.

Article 12

Internal emergency response plans

1. Operators shall prepare internal emergency response plans taking into account the major accident risk assessments undertaken during preparation of the most recent major hazard report. In the case of drilling a well from a mobile non-production installation, the risk assessment pursuant to the well notification should be incorporated into the emergency response plan for the installation.
2. For production and non-production installations, the internal emergency response plan shall be submitted to the competent authority as part of the Major Hazard Report.
3. Non-production installations undertaking well operations where the internal emergency response plan is amended due to the particular nature of the well location, should notify the competent authority of said amendment to the internal emergency response plan when submitting the well notification.

Article 13

Notification of well operations

1. No less than 21 days prior to the start of a well operation, the well operator shall send to the competent authority a notification containing details of the design of the well and its operation in accordance with the requirements of Annex II, part 4.
2. The competent authority shall consider the notification and take action it considers necessary before the well operation may commence.
3. The well operator shall immediately notify the competent authority of any significant change to the details of the well notification and simultaneously inform the independent well examiner pursuant to Article 15(3b).

Article 14

Notification of combined operations

1. An operator of an installation which is to be involved in a combined operation shall send to the competent authority a notification containing details of the combined operation in accordance with the requirements of Annex II, part 7. The operators of concerned installations may agree for one of them to prepare the notification of

combined operations on their behalf. The notification shall be submitted no later than 21 days before combined operations commence.

2. The competent authority shall consider the notification and take action it considers necessary before combined operation may commence.
3. The operator who prepared the notification shall without delay inform the competent authority of any significant change to the details of thereof.

Article 15

Independent third party verification

1. Operators shall establish a scheme for independent third party verification and well examination and shall describe such schemes within the major accident policy integrated into the Major Hazards Reports pursuant to Article 18.
2. The selection of the independent third party verifier and the design of schemes for independent third party verification and for independent well examination shall meet the criteria of Annex II, part 5.
3. The scheme for independent third party verification in respect of production and non-production installations shall be established:
 - (a) in respect of installations to give independent assurance that the specified systems and safety critical elements identified in the risk assessments and safety management system for the installation are suitable and up to date, and the schedule of examination and testing of the major hazards control system is suitable, up to date and operating as intended;
 - (b) in respect of well plans to give independent assurance that the well design and well control measures are suitable to the anticipated well conditions and kept as the basis if the well design changes for whatever reason.
4. Operators shall ensure that outcomes of the independent third party verification scheme pursuant to this Article under paragraph 3(a) are available to the competent authority upon its request.
5. Operators shall ensure that the findings and comments of the independent well examiner pursuant to this Article under paragraph 3(b) are included in the well notification pursuant to Article 13.
6. For production installations, the verification scheme shall be in place prior to submission of the Major Hazards Report to the competent authority. In the case of a non-production installation, the scheme shall be in place prior to the non-production installation being brought into a particular operation.
7. Non-production installations operated in Union waters shall meet the requirements of relevant international conventions as defined in Regulation 391/2009/EC of the

European Parliament and of the Council of 23 April 2009²² or the equivalent standards of the Code for the construction and equipment of mobile offshore drilling units (2009 MODU CODE). They shall be certified by an organisation that is recognised by the Union in accordance with the aforementioned Regulation.

Article 16
Power to prohibit activity

1. The competent authority shall prohibit the operation or bringing into operation of any installation or any part thereof where the measures proposed by the operator for the prevention and mitigation of major accidents pursuant to Articles 10, 11, 13 and 14 are considered seriously deficient.
2. Where the Major Hazards Report pursuant to Articles 10 and 11, or notifications pursuant to Articles 13 and 14 are not submitted on time, the competent authority may, in exceptional situations and where it considers safety and environmental protection are not compromised, agree a reduction in the time limit for submission of the Major Hazards Report or notification.
3. The competent authority shall require the operator to take any suitable complementary measures that the competent authority considers necessary to restore compliance pursuant to Article 3 paragraph 1.
4. The competent authority shall prohibit the use of any installation or any part thereof where the outcome of an inspection, periodic review of Major Hazards Report pursuant to Article 10 and 11 or changes to notifications pursuant to Articles 13 and 14 show that the requirements of this Regulation are not met or there are reasonable concerns about the safety of operations or installations.

Article 17
Transboundary effects

1. Where a Member State considers that a well operation or the operation of an installation may have significant negative effects on waters of another Member State in the case of an accident, or where a Member State likely to be significantly affected so requests, the Member State in whose jurisdiction the operations are to take place, shall forward to the affected Member State the relevant information and shall endeavour to adopt joint preventive measures to prevent damages.
2. Application of paragraph 1 is without prejudice to other relevant provisions of Union Law, in particular Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment²³ and the Convention on Environmental Impact Assessment in a Transboundary Context.

²² OJ L 131, 28.5.2009, p. 11

²³ OJ L 175, 5.7.1985, p. 40

CHAPTER IV

BEST PRACTICE FOR CONTROL OF MAJOR HAZARDS

Article 18

Major accident prevention by operators

1. Operators shall prepare a document setting out their major accident prevention policy, and ensure that it is implemented throughout the organisation of their offshore operations, including by setting up appropriate monitoring arrangements to assure effectiveness of the policy.
2. The document pursuant paragraph 1 shall be submitted to competent authorities as a part of the Major Hazard Report pursuant to Articles 10 and 11 or as the notification of well operations pursuant to Article 13.
3. Operators shall describe their organisational arrangements for control of major hazards in a safety management system, including the arrangements for preparing and submitting major hazard reports, and well notifications as appropriate, pursuant to Articles 10, 11 and 13 and their schemes for independent third party verification of their major hazard controls pursuant to Article 15, and Annex II part 5.
4. The policy and safety management systems shall be prepared in accordance with the requirements set out in Annex IV and shall make clear the operator's primary responsibility for control of major hazard risks, which are a result of its activities.
5. Operators shall establish, and regularly consult with the representatives of the relevant Member States pursuant to Article 27, the industry priorities for preparing and/or revising standards and guidance for best practice in control of offshore major accident hazards throughout the design and operation lifecycle of offshore operations, and as a minimum shall follow the outline in Annex IV.
6. Licensees, operators and major contractors based in the Union shall endeavour to conduct their offshore oil and gas operations when outside the Union in accordance with the principles set out in this Regulation.

Article 19

Requirements for the competent authorities

1. The competent authority shall make suitable arrangements to ensure its independence from conflicts of interest between regulation of safety and environmental protection, and functions relating to economic development of the Member State, in particular licensing of offshore oil and gas activities, and policy for and collection of related revenues.
2. The competent authority shall make clear the extent of its responsibilities and functions so as to not confer on itself primary responsibility for control of major hazard risks, pursuant to Article 18, paragraph 3.

3. The competent authority shall establish a policy for thorough assessment of Major Hazard Reports and notifications pursuant to Articles 10,11, 13 and 14, inspection, investigation and enforcement of the major hazard aspects of the offshore oil and gas operations in its jurisdiction.
4. The competent authority shall base its organisation and operational procedures on the principles set out in Annex III.

Article 20

Securing compliance with the regulatory framework for major accident prevention

1. Operators shall comply with this Regulation, and with the measures established in the Major Hazards Report for production and non-production installations and in the plans referred to in the well notification and combined operations notification prepared, pursuant to Articles 10, 11, 13 and 14.
2. Where non compliance with the provisions of paragraph 1 to this Article poses an immediate danger to human health or threatens to cause an immediate significant adverse effect upon safety and/or the environment, the operation of the installation or operation of relevant part thereof shall be suspended by the operator, until compliance is restored.
3. Where measures are taken as referred in paragraph 2 to this Article, the operator shall, without delay, notify the competent authority accordingly.
4. The competent authority shall develop annual plans for effective oversight, including inspections, of major hazard activities based on risk and paying particular regard to, and verifying, compliance with the documents submitted to it pursuant to Article 9, and shall monitor its effectiveness and shall take any necessary measures to effect improvements thereto.

Article 21

Anonymous reporting of safety concerns

1. Competent authorities shall establish procedures for allowing anonymous reporting of safety and/or environmental concerns related to offshore oil and gas operations. Competent authorities shall also establish procedures to investigate these reports while maintaining anonymity of the individuals concerned.
2. Operators shall communicate details of the national arrangements pursuant to paragraph 1 to their employees, and to employees to relevant subcontractors, and ensure that reference to anonymous reporting is included in relevant training and notices.

CHAPTER V TRANSPARENCY AND SHARING OF INFORMATION

Article 22 Sharing of information

1. Operators and competent authorities shall share, as a minimum, the information described in Annex VI.
2. The Commission shall determine by means of an implementing act a common data reporting format and the details of information to be shared. This implementing act shall be adopted in accordance with the advisory procedure referred to in Article 4 of Regulation (EU) No 182/2011.
3. Member States shall keep updated records of emergency response resources available in their jurisdiction by both public and private entities. Those records shall be made available to other Member States or potentially affected third countries and to the Commission.

Article 23 Transparency

1. The information pursuant Annex VI shall be made publicly available without a need for request pursuant to applicable provisions of Union legislation on access to environmental information.
2. The Commission shall by means of an implementing measure also determine a common publication format that shall enable easy cross-border comparison of data. This implementing act shall be adopted in accordance with the advisory procedure referred to in Article 4 of the Regulation (EU) No 182/2011. While remaining accessible to general public, the common publication format shall be developed in view of the allowing for a reliable comparison of national operations and regulatory practices pursuant to this Article and Article 24.
3. When publishing their national emergency response plans pursuant to Article 30 the Member States shall ensure that disclosed information does not pose risks to safety and security of offshore oil and gas installations and their operation.

Article 24 Reporting on safety and environmental impact of offshore oil and gas activities

1. The Member States shall prepare an annual report concerning:
 - (a) the number, age and location of installations in their jurisdiction;
 - (b) the number and type of inspections and investigations performed, any enforcement actions, decided prosecutions;

- (c) incident data pursuant to the common reporting system required in Article 22;
 - (d) any major change in the offshore regulatory framework;
 - (e) the safety and environmental performance of offshore oil and gas operations in their jurisdiction.
2. Member States shall designate an authority to be responsible for exchanging information pursuant to Article 22 and publication of information pursuant to Article 23 and shall inform the Commission accordingly.
 3. Every two years, the Commission shall publish reports on the safety of offshore operations across the Union based on the information reported to it by Member States and the European Maritime Safety Agency. The Commission shall be assisted in this task by relevant Member States pursuant Article 26.

Article 25
Investigation following a major accident

1. Immediately following a major accident, the operator shall notify the competent authority of relevant information, including the circumstances of the accident, and its consequences.
2. Member States shall conduct thorough investigations of major accidents involving significant damage (to persons and environment) or involving major loss of assets. The report of the investigation shall include an assessment of the effectiveness of the competent authority's regulation of the installation concerned in the time preceding the accident and recommendations for adequate changes to the relevant regulatory practices where needed.
3. A summary of the investigation report prepared pursuant to paragraph 2 of this Article shall be made available to the Commission at the conclusion of the investigation or at the conclusion of legal proceedings, whichever is the later. A specific version of the report, that takes into account possible legal limitations, shall be made available publicly with regard to Articles 22 and 23.
4. Following its investigations pursuant to paragraph 2, the competent authority shall implement any recommendations of the investigation that are within its powers to act.

Article 26
Confidentiality

1. Competent authorities shall make information received pursuant to this Regulation available to any natural or legal person who so requests.

2. Requests for information obtained by the competent authority under this Regulation may be refused where the conditions laid down in Article 4(2) of Directive 2003/4/EC of the European Parliament and of the Council²⁴ are fulfilled.
3. Pursuant to paragraph 2, or for the purposes of public participation pursuant to Article 5, the operator shall supply to the competent authority, and make available to the public, a version of the document that excludes confidential information.

CHAPTER IV

COORDINATION AND COOPERATION

Article 27

Cooperation between Member States

1. The competent authorities shall regularly exchange knowledge, information and experience between themselves and shall engage in consultations on the application of relevant national and Union legal framework with the industry, other stakeholders and the Commission.
2. Information exchanged pursuant to paragraph 1 shall concern, in particular, the functioning of the measures for risk assessment, accident prevention, compliance verification and emergency response related to offshore oil and gas operations within the Union, as well as beyond its borders where appropriate.
3. Clear priorities and procedures should be established for the preparation and updating of guidance documents in order to identify and facilitate the implementation of the best practices in areas pursuant to paragraph 2.
4. A Member State may seek the opinion of other Member States participating in the exchange of information pursuant to paragraph 1 regarding any decision of another Member State that has potential negative cross border impact.

Article 28

Coordinated approach towards the safety in adjacent regions and international activities

1. The Commission, in close cooperation with the Member States, shall promote cooperation with third countries that undertake offshore oil and gas operations in the same marine regions as Member States including, where appropriate, within the framework of regional sea conventions.
2. The Commission shall assess the safety of oil and gas operations in the waters of the third countries adjacent to waters of Member States and support a coordinated approach to mutual exchange of experience and promotion of preventive measures and regional emergency response plans.

²⁴ OJ L 41, 14.2.2003, p. 26

3. The Commission shall promote high safety standards for offshore oil and gas operations at international level at appropriate global and regional fora, including those related to Arctic waters.

CHAPTER VII

EMERGENCY PREPAREDNESS AND RESPONSE

Article 29

Requirements for internal emergency response plans

1. Internal emergency response plans shall be prepared by the operator so as to:
 - (a) be initiated to contain an incipient major accident within the installation, or within the exclusion zone established by the Member State around the perimeter of the installation, or subsea wellhead;
 - (b) be operated in line with the external emergency plan where the accident has escalated beyond the installation .
2. The operator shall maintain equipment and expertise relevant to the plan to be available at all times, and shared as necessary with the Member State in the execution of the external emergency response plan.
3. The internal emergency plan shall be prepared in accordance with the provisions of Annex V, and updated in line with any change to the major hazard risk assessment in the well plan or Major Hazards Report as appropriate. Any such updates shall be advised to the authority responsible for preparing the external emergency response plans for the area concerned.
4. Internal emergency response plan shall be integrated with other provisions relating to protection and rescue of personnel from the stricken installation so as to secure a good prospect of survival.
5. The operator shall periodically test the effectiveness of the internal emergency response plans.

Article 30

External emergency response plans and emergency preparedness

1. Member States shall prepare external emergency plans covering all offshore oil and gas installations and potentially affected areas within their jurisdiction.
2. External emergency response plans shall be prepared with the cooperation of relevant operators and, as appropriate, licensees, and aligned with the internal emergency response plans of the installations stationed or planned in the subject area. Any update to the internal plans advised by an operator should be taken into account.

3. External emergency response plans shall be prepared in accordance with the provisions of Annex I and V, and made available to the Commission., and to the public as appropriate.
4. Member States shall take all 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 compatible response instruments in the spirit of this paragraph.
5. Operators shall cooperate with Member States in implementing the provisions of paragraph 4 of this Article.
6. Member States shall keep updated records of emergency response resources available in their territory or jurisdiction by both public and private entities. Those records shall be made available to the other Member States and, on a reciprocal basis, with neighbouring third countries, and to the Commission.
7. Member States and the operators shall regularly test their preparedness to respond effectively to offshore oil and gas accidents.

Article 31
Emergency response

1. The operator shall immediately notify the relevant authorities of a major accident or of a situation with immediate risk of major accident. Where necessary, relevant authorities shall assist the operator concerned with a view to preventing escalation of the risk or accident.
2. In the event of an accident, the relevant authorities, in cooperation with operators concerned, shall take all measures necessary to prevent escalation of the accident and to mitigate its consequences.
3. In the event of a major accident overwhelming the national response capacities, an affected Member State may request additional assistance from Member States and the European Maritime Safety Agency through the EU Civil Protection Mechanism established by the Council Decision 2007/779/EC.
4. In the course of the emergency response, the Member State shall collect the information necessary for a full analysis of the accident.

Article 32
Transboundary emergency preparedness and response

1. Where transboundary effects of offshore oil and gas accidents are foreseeable, Member States shall make information available to the Commission and potentially affected Member States or third countries on a reciprocity basis and take identified risks into account when preparing the external emergency plan. The Member States in question shall coordinate their emergency plans to facilitate joint response to an accident.

2. Member States shall coordinate measures related to areas beyond the boundaries of the Union in order to prevent potential negative affects of offshore oil and gas operations.
3. Member States shall regularly test their preparedness to respond effectively to accidents in cooperation with potentially affected Member States, relevant EU Agencies or third countries. The Commission may contribute to exercises focused on the test of cross-border and Union emergency mechanisms.
4. In the event of a major accident, or of an imminent threat thereof, which causes or is capable of causing transboundary effects, the Member State under whose jurisdiction the emergency has occurred shall, without delay, notify the Commission and those Member States which may be affected by the emergency.

CHAPTER VIII

CLOSING PROVISIONS

Article 33 *Penalties*

Member States shall establish penalties applicable to infringements of this Regulation by the industry and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 34 *Delegated powers of the Commission*

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 35 of this Regulation to adapt the requirements to the latest development of relevant technologies and procedures in Annex I-VI.
2. The Commission may also adopt delegated acts in accordance with Article 35 of this Regulation to precise application of the requirements of Regulation in relation to:
 - (a) details to be submitted in a Design notificaton or a Major Hazard Report as specified in Annex II points 1, 2, 3, 6;
 - (b) notification of well/combined operations as specified in Annex II, point 4 and 7;
 - (c) requirements related to verification by independent third party verification as specified in Annex II, point 5 (d) requirements for functioning and organisation of competent authorities as specified in Annex III and;
 - (d) requirements related to the prevention of major hazards by operators as specified in Annex IV .

Article 35
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 delegation of power referred to in Article 34 shall be conferred on the Commission for an indeterminate period of time from the date of the entry of this Regulation into force.
3. The delegation of power referred to in Article 34 may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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 simultaneously the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 34 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council.

Article 36
Committee procedure

1. The Commission shall be assisted by a committee. The committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 37
Amendment to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage²⁵

1. Article 2(1)(b) of that Directive shall be replaced by the following:

'(b) water damage, which is any damage that significantly adversely affects

²⁵ OJ L 154, 30.4.2004, p. 56

(i) the ecological, chemical and/or quantitative status and/or 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 the above paragraph within one year of the entry into force of this Regulation. They shall forthwith inform the Commission thereof.

Article 38
Transitional provisions

Operators of installations shall comply in full with this Regulation within two years of it coming into effect, with the following exceptions:

- (a) Operators for non-production installations that are under contract but not yet established on location shall comply in full with this Regulation within 1 year of it coming into effect, or earlier by agreement with the competent authority.
- (b) Operators of planned installations shall comply in full with this regulation unless otherwise agreed with the competent authority, and in any case no later than within 1 year of it coming into effect.
- (c) Well operators shall comply in full with this Regulation within 3 months of it coming into effect, or earlier by agreement with the competent authority.

Article 39
Entry into force

1. This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels [.....]

For the European Parliament
The President

For the Council
The President

ANNEX I

Public participation linked to authorisations under Directive 94/22/EC

1. Member States shall ensure that:
 - (a) the public is informed, whether by public notices or other appropriate means such as electronic media where available, about submission of licensing applications to Member States, and that relevant information about such proposals is made available to the public including inter alia information about the right to participate, and to whom comments or questions may be submitted;
 - (b) the public is entitled to express comments and opinions when all options are open before decisions on the licensing applications are made;
 - (c) in making those decisions, due account shall be taken of the results of the public participation;
 - (d) having examined the comments and opinions expressed by the public, the Member State makes reasonable efforts to inform the public about the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation process.

2. Reasonable time-frames shall be provided allowing sufficient time for each of the different stages of public participation. The Member State shall identify the public entitled to participate for the purposes of paragraph 1, including relevant non-governmental organisations meeting any requirements imposed under national law, such as those promoting environmental protection, or offshore safety.

ANNEX II
Requirements on documents related to consenting procedure

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

Design notification for a production installation pursuant to Article 9 shall contain at least following information:

- (1) the name and address of the operator of the installation;
- (2) a description of the process applied to the design activity, the relevant standards used, and the design options produced by this 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 reduces major hazard risks to an acceptable extent;
- (5) a description of the installation and the conditions at its intended location;
- (6) a description of the types of major hazard operations to be carried out;
- (7) a general description of the safety management system by which the intended major hazard risk control measures will be maintained in good effect, including the scheme of independent verification to be selected.

2. INFORMATION TO BE SUBMITTED IN A MAJOR HAZARD REPORT FOR OPERATION OF A PRODUCTION INSTALLATION

Major Hazard Report for a production installation pursuant to Article 10 shall contain at least following information:

- (1) a description of the account taken of the competent authority's response to the design notification;
- (2) a summary of any worker involvement in the preparation of the major hazards report;
- (3) a description of the installation and connected infrastructure and any other structures including wells connected to it;
- (4) demonstration that all the major hazards have been identified, their likelihood and consequences assessed, and that their control measures are suitable so as to reduce risks of a major hazard event to persons and the environment to an acceptable extent;
- (5) details 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;
- (6) details of plant and arrangements to ensure well control, process safety, containment of hazardous substances, prevention of fire and explosion, protection of the

workforce from hazardous substances, and protection of the environment from an incipient major hazard event (in line with the internal emergency plan pursuant to Annex V);

- (7) details of the arrangements to protect persons on the platform from major hazards, and to ensure their safe evacuation and recovery and for the maintenance of control systems to prevent damage to the installation and the environment in the event all personnel are evacuated;
- (8) relevant codes, standards and guidance used in the construction and commissioning of the installation;
- (9) information on the safety management system for operations, maintenance, modification, and verification schemes, including the main operational limitations of the installation to be controlled by the management system;
- (10) information relating to the verification scheme pursuant to section 5(2) to this Annex;
- (11) 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;
- (12) the information relevant to their requirements under this regulation obtained pursuant to other applicable Union legislation notably Directives 92/91/EC and 85/337/EEC;
- (13) a description of the aspects of the environment likely to be significantly affected, an assessment of the identified potential environmental effects, in particular releases of pollutants to the environment, 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 MAJOR HAZARDS REPORT FOR A NON-PRODUCTION INSTALLATION

Major Hazards Report for a non-production installation pursuant to Article 11 shall contain at least following information:

- (1) the name and address of the operator of the installation;
- (2) a summary of any worker involvement in the preparation of the major hazards report;
- (3) a description of the installation and, in the case of a mobile installation, details of its means of transfer between locations, and its stationing system;
- (4) details 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, and that their control measures are suitable so as to reduce risks of a major hazard event to persons and the environment to an acceptable extent;

- (6) details of plant and arrangements to ensure well control, process safety, containment of hazardous substances, prevention of fire and explosion, protection of the workforce from hazardous substances, and protection of the environment from an incipient major hazard event (in line with the internal emergency plan pursuant to Annex V);
- (7) details of the arrangements to protect persons on the platform from major hazards, and to ensure their safe evacuation and recovery, and for the maintenance of control systems to prevent damage to the installation and the environment in the event 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 activities the installation is capable of performing, and that the risks of a major hazard event to persons and the environment are reduced to an acceptable extent;
- (10) details of the environmental, meteorological and sea-bed limitations on safe operations, and the arrangements for identifying risks from sea-bed and marine hazards such as pipelines and moorings of adjacent installations;
- (11) information on the safety management system for operations, maintenance, and modification;
- (12) information relating to the verification scheme pursuant to section 5(2) to this Annex;
- (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) a description of the aspects of the environment likely to be significantly affected, an assessment of the identified potential environmental effects, in particular releases of pollutants to the environment, 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

Well notification pursuant to Article 13 shall contain at least the following information:

- (1) the name and address of the well operator;
- (2) the name of the installation to be used and the owner;
- (3) details that identify the well and any association with other wells or developments;
- (4) information on the well work programme, including the period of its operation, verification of barriers against loss of well control, and the intended status of the well at completion of the operation;

- (5) any details concerning safety equipment to be deployed that are not described in the current major hazards report for the installation;
- (6) a risk assessment incorporating a description of:
 - (a) the particular hazards associated with the well operation;
 - (b) the subsurface hazards;
 - (c) any surface or subsea activities which introduce simultaneous major hazard potential;
 - (d) suitable control measures;
- (7) details of well design, including barriers to loss of well control (equipment, drilling fluids, and cement etc), directional control of the well path, and limitations on safe operation in keeping with the risk assessment;
- (8) details of the well configuration at the end of operations – i.e. permanently or temporarily abandoned; and where completed for future use;
- (9) in the case of an existing well, pertinent information of its history, and conditionl
- (10) in the case of a modification to a previously submitted well notification, sufficient details to fully update the notification;
- (11) where a well is to be carried out by means of a non-production installation additional information as follows:
 - (a) details of the meteorological, marine and sea-bed conditions at the location, including any physical obstructions such as pipelines;
 - (b) details of environmental conditions that have been taken into account within the internal emergency plan for the installation;
 - (c) details of the provisions for emergency response including in the case of a major accident to the environment that are not described in the major hazards report, and;
 - (d) a description of how the management systems of the well operator and installation owner are to be coordinated to ensure effective control of major hazards at all times.
- (12) a statement of independent ell examination pursuant to part 5 (1) of this Annex;
- (2) the information relevant to ther requirements under this regulation obtained pursuant to other applicable Union legislation notably Directives 92/91/EC and 85/337/EEC.

5. MATTERS RELATING TO A VERIFICATION SCHEME

1. The independent third party shall meet the following requirements with regard to its independence from the operator of the installation, or the well operator:

- (a) his function does not require him to consider any aspect of a safety critical element or specified plant in which he has had prior involvement or where his objectivity might be compromised;
 - (b) he is sufficiently independent of a management system which has, or has had, any responsibility for any aspect of a component in the independent scheme of verification or well examination so as to ensure he will be objective in carrying out his functions within the scheme;
2. The independent third party shall meet the following requirements with regard to its competence:
- (a) technical competence, including suitably qualified staff in adequate numbers and with sufficient experience;
 - (b) suitable allocation of tasks by the operator to staff qualified to undertake them;
 - (c) suitable arrangements for the flow of information between the operator and the independent third party;
 - (d) sufficient authority given by the operator to the independent third party to be able to perform his functions adequately;
3. For the purposes of Article 13 paragraph 3, a significant change to a well notification will include:
- (a) any change having potential to infringe the original design intent of the well plan particularly in regard to well control and other barriers to flow and their verification;
 - (b) any material change to the plant or equipment, or management system or well operator notified pursuant to Annex II part 4;
 - (c) any change to the risk assessment, including where caused by conditions encountered during well operations.
- Significant changes should be referred to the independent well examiner for his further verification, and the outcomes of further verification should be advised to the competent authority.
4. In the case of a well notification, a statement shall be included from an independent well examiner that the risk assessment relating to well design and its barriers to loss of control are suitable for all anticipated conditions and circumstances.
5. In the case of operation of an installation, the Major Hazards Report shall include:
- (a) a statement from the independent third party verifier that the record of safety critical elements and the scheme of maintenance of them as specified in the major hazards report are or will be suitable;

- (b) a description of the verification scheme including the selection of independent third party verifiers, the means of verification that safety critical elements and any specified plant in the scheme remain in good repair and condition;
- (c) the means referred in subparagraph 5(b) shall include examination and testing as necessary of the safety critical elements by independent and competent persons, verification of the design, standard, certification or other system of conformance of the safety critical elements, examination of work in progress, the reporting of any non-compliances, and remedial actions taken by the operator;

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

Where major changes are to be made on the installation, the information provided to competent authority pursuant to Articles 10 and 11 shall contain at least following information:

1. the name and address of the operator of the installation;
2. a summary of any worker involvement in the preparation of the revised Major Hazards Report;
3. in the case of a major modification, sufficient details to fully update the earlier Major Hazard Report and associated internal emergency plan for the installation and to demonstrate major hazard risks are reduced to an acceptable extent;
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 dismantlement of the installation, the total exposed population, and the risk control measures;
 - (c) emergency response arrangements to secure safe evacuation and recovery of personnel and to prevent a major accident to the environment.

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

The notification for combined operations pursuant to Article 14 shall contain at least following information:

- (1) the name and address of the operator preparing the notification;
- (2) in the event that other operators 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 of how the management systems for the installations involved in the combined operation will be coordinated so as to reduce the risks from a major accident;
- (4) details of any equipment to be used in connection with the combined operation but which is not described in the current Major Hazards Report for any of the installations involved in the combined operations;
- (5) a summary of the risk assessment performed by all operators involved in the combined operations, which shall include:
 - (a) a description of any activities 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, which shall include the dates on which the combined operation is expected to commence and finish and a copy of an agreement between the operators involved in the combined operations;

ANNEX III

Provisions by competent authorities for regulation of major hazards operations

1. For the purposes of appointing a competent authority responsible for the regulatory functions in this regulation relating to safety and environmental protection, Member States shall address the following minimum criteria:
 - (a) organisational arrangements which allow all duties in this regulation to be effectively discharged, including arrangements for regulating safety and environmental protection in an equitable manner;
 - (b) A policy statement addressing the aims of oversight and enforcement, and how the competent authority will achieve transparency, consistency, proportionality and objectivity in its regulation of offshore oil and gas activities. The competent authority should also make clear to the public the division of responsibilities of the regulator from the operator, the latter having primary responsibility for controlling risks, the former responsible for verifying that the operator has adequate measures in place that are likely to be effective in controlling major hazard risks;
 - (c) a strategy statement that describes the functions of the competent authority, its priorities for action (for example in design and operation of installations, integrity management and in emergency preparedness and response), and how it is organised;
 - (d) operating procedures that describe how the competent authority will inspect and enforce against the duties of operators under this regulation, including how it will handle, assess and accept major hazard reports, handle well notifications 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;
 - (e) procedures for discharging the functions of the competent authority under this regulation without prejudice to other responsibilities, for example onshore oil and gas operations, and arrangements pursuant to Directive 92/91/EC;
 - (f) where the competent authority comprises two or more agencies, 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 major hazards reports, joint investigation, internal communications, and external reporting.
2. Member States should make the necessary provisions to bring the above arrangements into effect, including:
 - (a) sufficient specialist expertise available internally or by an external arrangement to inspect and investigate activities, take enforcement action, and to handle major hazard reports and notifications;

- (b) where there is reliance on external sources of expertise, sufficient written guidance and oversight to maintain consistency of approach and to ensure the legally appointed competent authority retains full responsibility under this regulation;
 - (c) adequate resources for essential training, communication, access to technology, travel and subsistence of competent authority staff in their regulatory functions, and so as to permit the active cooperation between competent authorities pursuant to Article 27;
 - (d) where appropriate, to require operators and/or installation owners to indemnify the competent authority for the cost of its functions carried out pursuant to this regulation;
 - (e) to undertake or instigate research pursuant to the competent authority's functions under this regulation;
 - (f) for the competent authority to make reports.
3. Procedures for the assessment of the Major Hazards Report and notifications, internal emergency plans and other relevant documents shall include:
- (a) a quantitative risk assessment analysis;
 - (b) an assessment of operator's judgement on the relevant details of the location of operations;
 - (c) an assessment of the technical and organisational standards used;
 - (d) an assessment of engineering solutions;
 - (e) an assessment of operator's arrangements for management of changes to operational plans;
 - (f) a comparison of the solutions used with the solutions used in other comparable situations;
 - (g) an assessment of the consistency of the emergency plans with the risks identified;
 - (h) an assessment of the operator's arrangements for halting the operations in case of imminent risk;
 - (i) an assessment of the availability of emergency response equipment and adequacy of procedures to effectively put it in use;
4. Competent authorities should be clearly independent of any government organisation for industry sponsorship, or for licensing or revenue collection. The competent authority should not adopt any political stance regarding the oil and gas sector.

ANNEX IV

Provisions by operators for prevention of major accidents

1. For the purposes of implementing the operator's major accident prevention policy and safety management system pursuant to Article 18, account should be taken of the following:
 - (a) the major accident prevention policy should be established in writing and shall establish the overall aims and organisation for control of major accident hazards, and how these arrangements are put into effect at corporate level;
 - (b) the safety management system should be integrated within the overall management system for the operator and shall include organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the major hazards policy.
2. The safety management system shall include but not be limited to:
 - (a) organisation structure and personnel roles and responsibilities;
 - (b) identification and evaluation of major hazards – their likelihood and consequences;
 - (c) integration of environmental impact into major hazard assessments in the major hazards report;
 - (d) controls of the major hazards during normal operations;
 - (e) management of change;
 - (f) emergency planning and response;
 - (g) limitation of damage to the environment;
 - (h) monitoring of performance;
 - (i) audit and review arrangements.
3. Operators shall pay particular attention to evaluation of the reliability and integrity requirements of all safety critical systems and base their inspection and maintenance systems on achieving this level of safety integrity.
4. Operators shall ensure that hazardous substances are at all times contained within the pipelines, vessels and systems intended for their safe confinement. In addition, operators shall ensure that no single failure of a barrier to loss of containment can lead to a major hazard incident.
5. Operators shall ensure they have a suitable framework for monitoring compliance with all relevant statutory provisions by incorporating their statutory duties in respect of major hazards safety and environmental protection into their standard operating procedures.

6. Operators shall pay particular attention to building and maintaining a strong safety culture with a high likelihood of continuous safe operation including but not limited to:
 - (a) extensive process auditing;
 - (b) rewarding and recognising desired behaviours;
 - (c) regular evaluation of the organisations capabilities and goals;
 - (d) maintaining high standards as a corporate core value;
 - (e) formal command and control systems that include involving senior management and workforce, and;
 - (f) competency at all levels of the operation.

7. Industry shall cooperate with the competent authority to establish and implement a priority plan for the development of standards, guidance and rules which will give effect to best practice in major hazards prevention and limitation of consequences of major hazards should they nonetheless occur. The matters to be considered should include:
 - (a) improving well integrity, well control equipment and barriers and monitoring their effectiveness;
 - (b) improving primary containment in process safety systems;
 - (c) improving secondary containment that restricts escalation of an incipient major accident, including well blow-outs;
 - (d) reliable decision making in high pressure environments;
 - (e) management and supervision of major hazard activities;
 - (f) competency of key post holders;
 - (g) effective risk assessment for evaluating changing conditions;
 - (h) reliability assessment for safety critical systems;
 - (i) key performance indicators of safety system integrity;
 - (j) effectively integrating safety management systems between operators, well operators, rig owners and others involved in combined operations.

ANNEX V

Requirements related to emergency preparedness and response

1. INTERNAL EMERGENCY PLANS

1. Internal emergency plans should include but not be limited to:
 - (a) names or positions of persons authorized to initiate emergency procedures and the person directing the internal emergency response;
 - (b) name or position of the person with responsibility for liaising with the authority responsible for the external emergency plan;
 - (c) for all foreseeable conditions or events which could cause a major accident, as described in the major hazards report to which the plan is attached;
 - (d) a description of the actions which should be taken to control the conditions or events and to limit their consequences to within the installation and its exclusion zone;
 - (e) a description of the equipment and the resources available;
 - (f) arrangements for limiting the risks to persons on the installation, including how warnings are to be given and the actions persons are expected to take on receipt of a warning;
 - (g) arrangements that coordinate with the recovery arrangements described in the major hazards report for example as described in Annex II, part (2) (7), and part (3) (7) to secure a good prospect of survival for persons on the installation during a major accident;
 - (h) arrangements for providing early warning of the accident to the authorities responsible for initiating the external emergency plan, the type of information which should be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available;
 - (i) arrangements for training staff in the duties they will be expected to perform, and where necessary coordinating this with external emergency responders;
 - (j) arrangements for coordinating internal emergency response with external emergency response.
2. Operators should prepare an inventory of available equipment, its ownership, location, transport to and mode of deployment at the installation. The inventory should identify measures in place to ensure equipment and procedures are maintained in operable condition.

2. EXTERNAL EMERGENCY PLANS

1. External emergency plans shall include but not be limited to:

- (a) names or positions of persons authorized to initiate emergency procedures, and of persons authorized to direct the external emergency response;
 - (b) arrangements for receiving early warning of accidents, and the associated alert and callout procedures;
 - (c) arrangements for coordinating resources necessary to implement the external emergency plan;
 - (d) arrangements for providing assistance to the internal emergency plan which deals with events on the installation and in the exclusion zone around it;
 - (e) a detailed description of the offsite emergency response arrangements;
 - (f) arrangements for providing persons and organisations that may be affected by the accident with suitable information and advice relating to the accident;
 - (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.
2. The authority primarily responsible for emergency response should make the following provisions available:
- (a) an inventory of available equipment, its ownership, location, transport to and mode of deployment at the installation;
 - (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 offshore oil and gas emergencies, including competencies and responsibilities of all involved parties and the bodies responsible for maintaining such arrangements;
 - (e) measures to ensure that equipment, staff and procedures are ready to operate and up to date at all times.
3. External emergency response plans shall clearly explain the role of relevant authorities, emergency responders, coordinators and other subjects active in emergency response, so that cooperation is ensured in all emergencies.
4. Arrangements should include provisions for a major accident that potentially overwhelms the Member State or exceeds its boundaries by:
- (a) sharing plans with adjacent Member States and the Commission;

- (b) compiling cross-border inventories of response assets, both industry and nationally owned and all necessary adaptations to make equipment and procedures compatible between adjacent countries and Member States;
- (c) procedures for invoking the EU Civil Protection Mechanism (as established by Council Decision 2007/779/EC);
- (d) arranging cross boundary exercises of external emergency response exercises.

ANNEX VI
Sharing of information and transparency

1. A common data reporting format for major hazard indicators to be developed by the Commission pursuant to Articles 22 and 23 shall allow for comparing information between Member States and individual operators.
2. The defining reporting requirements referred to in paragraph 1 shall contain as a minimum the following information and data:
 - (a) information relating to unintended release of hydrocarbons or other hazardous substances, whether or not ignited;
 - (b) information related to 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 main component of the installation's process safety system;
 - (d) significant loss of structural integrity, or loss of protection against the effects of fire or explosion, or loss of station keeping in a floating installation;
 - (e) vessels on collision course and actual vessel collisions with an offshore installation;
 - (f) helicopter accidents, on or near offshore installations or en route to offshore installations;
 - (g) any fatal accident;
 - (h) any serious injuries to 5 or more people in the same accident;
 - (i) any evacuation of non essential personnel;
 - (j) a major accident to the environment.
3. The information referred to in paragraph 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 can be compared, not only within the Member State but also among the industry as a whole between Member States.
4. The aim of collecting and assembling the information referred to in paragraph 2 is to provide advanced warning for (further) deterioration of safety and environmentally critical barriers, in order to take proactive corrective measures. The information should also establish the overall effectiveness of measures and controls implemented by individual operators and industry as a whole, in particular to prevent major accident hazards and to minimize risks for the environment.
5. In order to meet the requirements of Article 23, a simplified format shall be developed to facilitate publication of relevant data pursuant to paragraph 2 and preparation of Reports pursuant to Article 24 in a way that is easily accessible to public and facilitates cross border comparison of data.