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Liability, compensation and financial security for offshore oil and gas operations**European Parliament resolution of 1 December 2016 on liability, compensation and financial security for offshore oil and gas operations (2015/2352(INI))**

(2018/C 224/25)

The European Parliament,

- having regard to the Commission's report to the European Parliament and the Council on liability, compensation and financial security for offshore oil and gas operations pursuant to Article 39 of Directive 2013/30/EU (COM(2015)0422),
- having regard to the Commission staff working document entitled 'Liability, Compensation and Financial Security for Offshore Accidents in the European Economic Area' and accompanying the Commission report on this matter (SWD(2015)0167),
- having regard to Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC ⁽¹⁾ (Offshore Safety Directive — OSD),
- having regard to the impact assessment accompanying the document 'Proposal for a regulation of the European Parliament and of the Council on safety of offshore oil and gas prospecting, exploration and production activities' (SEC(2011)1293),
- having regard to Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law ⁽²⁾,
- having regard 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 damage ⁽³⁾ (Environmental Liability Directive — ELD),
- having regard to the international and regional acquis on claims for damages from an offshore oil or gas incident and in particular the International Convention on Civil Liability for Oil Pollution Damage (Civil Liability Convention) of 27 November 1992, the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) of 27 November 1992, the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Oil Pollution Convention) of 23 March 2001, the Nordic Environmental Protection Convention between Denmark, Finland, Norway and Sweden, and the Offshore Protocol to the Barcelona Convention for the protection of the marine environment and the coastal region of the Mediterranean (Offshore Protocol),
- having regard to the judgment of 13 September 2005 of the Court of Justice of the European Union ⁽⁴⁾,
- having regard to Article 83(2) of the Treaty on the Functioning of the European Union (TFEU),

⁽¹⁾ OJ L 178, 28.6.2013, p. 66.

⁽²⁾ OJ L 328, 6.12.2008, p. 28.

⁽³⁾ OJ L 143, 30.4.2004, p. 56.

⁽⁴⁾ Case C-176/03, *Commission v Council*, ECLI:EU:C:2005:542.

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- having regard to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾ (the recast Brussels I Regulation),
 - having regard to the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽²⁾ (the 2007 Lugano Convention),
 - having regard to Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ⁽³⁾ (the Rome II Regulation),
 - having regard to the final report prepared for the Commission by the consultancy BIO by Deloitte on 'Civil liability, financial security and compensation claims for offshore oil and gas activities in the European Economic Area' ⁽⁴⁾,
 - having regard to its resolution of 13 September 2011 on facing the challenges of the safety of offshore oil and gas activities ⁽⁵⁾,
 - having regard to the April 2010 Deepwater Horizon disaster in the Gulf of Mexico,
 - having regard to the incidents related to the castor platform off the coast of Castellón and Tarragona provinces in Spain, which include 500 earthquakes that have directly affected thousands of European citizens,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on the Environment, Public Health and Food Safety (A8-0308/2016),
- A. whereas Article 194 TFEU explicitly upholds Member States' right to determine the conditions for the exploitation of their energy resources, while respecting solidarity and environmental protection;
- B. whereas indigenous sources of oil and gas can contribute significantly to Europe's existing energy needs and are particularly important for energy security and energy diversity;
- C. whereas offshore oil and gas operations are progressively taking place in increasingly extreme environments and could potentially have major and devastating consequences for the environment and economy of the sea and coastal areas;
- D. whereas although North Sea oil and gas production has been in decline over the past years, the number of offshore facilities is likely to rise in Europe in the future, especially in the Mediterranean and the Black Sea;
- E. whereas accidents caused by offshore oil and gas rigs have damaging cross-border consequences, and EU action to prevent and mitigate and to seek to combat the consequences of such accidents is therefore necessary and proportionate;
- F. whereas it is important to remember the tragic loss of 167 oil workers who died in the Piper Alpha disaster off the coast of Aberdeen (Scotland) on 6 July 1988;

⁽¹⁾ OJ L 351, 20.12.2012, p. 1.

⁽²⁾ OJ L 339, 21.12.2007, p. 3.

⁽³⁾ OJ L 199, 31.7.2007, p. 40.

⁽⁴⁾ BIO by Deloitte (2014), Civil liability, financial security and compensation claims for offshore oil and gas activities in the European Economic Area, Final Report prepared for European Commission — DG Energy.

⁽⁵⁾ OJ C 51 E, 22.2.2013, p. 43.

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- G. whereas a number of studies, including one by the European Parliament Research Service and one by the Joint Research Centre, estimate in the thousands (more precisely, 9 700 between 1990 and 2007), the number of incidents in the EU oil and gas sector; whereas, further, the cumulative impact of these incidents, including those which are only small in scale, has serious and lasting repercussions for the marine environment and should be taken into account in the directive;
- H. whereas, in accordance with Article 191 TFEU, all EU action in this area must be underpinned by a high level of protection based inter alia on the precautionary, preventive action, 'polluter pays' and sustainability principles;
- I. whereas there has not been a major offshore accident in the EU since 1988 and whereas 73 % of oil and gas production in the EU comes from the North Sea Member States, which are already recognised as having the world's best performing offshore safety systems; whereas it is important to underline that the EU has roughly 68 000 kilometres of coastline and that the number of offshore facilities is likely to rise significantly in the future, especially in the Mediterranean and the Black Sea, which makes it a matter of urgency to fully implement and enforce Directive 2013/30/EU and to ensure that a proper legal framework to govern all offshore activities is in place before a serious accident happens; whereas, under Article 191 TFEU, Union environmental policy has to be based on the precautionary principle and the principle of preventive action;
- J. whereas liability regimes constitute the principal means through which the 'polluter pays' principle is applied, ensuring that firms are held accountable for any damage caused in the course of business and incentivising them to adopt preventive measures, develop practices and carry out actions that minimise the risks of such damage;
- K. whereas, although the OSD makes offshore licensees strictly liable for the prevention and remediation of any environmental damage resulting from their operations (Article 7 read in conjunction with Article 38, extending the scope of the ELD to Member States' continental shelves), it has not enabled a comprehensive EU framework for liability to be put in place;
- L. whereas it is of the utmost importance to have effective and adequate compensation mechanisms and prompt and adequate claims handling mechanisms for damage caused by offshore oil and gas operations to victims and to animals and the environment, and also to have sufficient recourses to restore major ecosystems;
- M. whereas the OSD has not provided for harmonisation with respect to civil damage from offshore accidents, and the existing international legal framework makes it difficult to make successful transboundary damage claims in civil matters;
- N. whereas the OSD sets out preconditions for licensing aimed at ensuring that licensees never find themselves technically or financially unable to deal with the consequences of their offshore operations, and also requiring Member States to establish procedures for the prompt and adequate handling of compensation claims, including for transboundary incidents, and to facilitate the use of sustainable financial instruments (Article 4);
1. Welcomes the adoption of the Offshore Safety Directive 2013/30/EU (OSD), which complements the Environmental Liability Directive 2004/35/EC (ELD) and the Environmental Impact Assessment Directive 2011/92/EU, as well as the ratification of the Offshore Protocol of the Barcelona Convention by the Council, as first steps for the protection of the environment, human activities and the safety of workers; calls on those Member States which have not yet transposed the aforementioned directives into national law to do so as soon as possible; calls also on Member States to guarantee the independence of the competent authorities as provided in Article 8 of the OSD, and calls on the Commission to assess the appropriateness of introducing further harmonised rules on liability, compensation and financial security with a view to preventing any further accidents with cross-border implications;

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2. Deplores the fact that under the OSD and ELD, incidents are defined as 'serious' only if they give rise to deaths or serious injuries, with no reference to the consequences for the environment; emphasises that even if it does not give rise to deaths or serious injuries, an incident may have a serious impact on the environment, by virtue of its scale or because it affects, for example, protected areas, protected species or particularly vulnerable habitats;

3. Stresses that the effective application of the 'polluter pays' principle to offshore oil and gas operations should extend not only to the costs of preventing and remedying environmental damage — as currently achieved to a certain extent via the OSD and ELD — but also to the costs of remedying traditional damage claims, in line with the precautionary principle and the principle of sustainable development; calls on the Commission, therefore, to consider the establishment of a legislative compensation mechanism for offshore accidents, along the lines of that provided for in the Petroleum Activities Act in Norway, at least for sectors that may be severely affected, like fisheries and coastal tourism and other sectors of the blue economy; recommends in this context that abuses or incidents that come about following activities carried out by companies should be quantitatively and qualitatively assessed, in such a way as to cover all the secondary effects for communities; also underlines, with regard to environmental liability, the divergences and shortcomings in the transposition and application of the ELD, as outlined also in the Commission's second implementation report; calls on the Commission to ensure that the ELD is implemented in an effective manner and that liability for environmental damage from offshore accidents applies to an adequate extent throughout the EU;

4. Regrets, in this context, that the OSD does not deal with liability for civil damage to either natural or legal persons, be it bodily injury, property damage or economic loss, whether direct or indirect;

5. Also regrets the fact that the way civil liability is handled varies considerably from one Member State to another; stresses that there is no liability in many of the Member States with offshore and gas activities for most third-party claims for compensation for traditional damage caused by an accident, no regime in the vast majority of Member States for compensation payments, and no assurance in many Member States that operators or liable persons would have adequate financial assets to meet claims; stresses, moreover, that there is often uncertainty as to how Member States' legal systems would deal with the diversity of civil claims that could result from offshore oil and gas incidents; believes, therefore, that an European framework is needed, which should be based on the legislation of the most advanced Member States, should cover not only bodily injury and property damage but also pure economic loss, and should ensure effective compensation mechanisms for victims and for sectors that may be severely affected (e.g. fisheries and coastal tourism); calls in this respect on the Commission to assess whether a horizontal European framework of collective redress would be a possible solution, and to pay particular attention to this when drawing up the OSD implementation report;

6. Stresses, in this perspective, that compensatory and remedial claims for traditional damage are further obstructed by civil procedure rules on time limitations, financial costs, non-availability of public interest litigation and mass tort claims, as well as by provisions on evidence, which differ considerably from one Member State to another;

7. Highlights that compensatory regimes must be able to address transboundary claims effectively, rapidly, within a reasonable timeframe and without discrimination between claimants from different EEA countries; recommends that they cover both primary and secondary damage caused in all the affected areas, given that such incidents affect wider areas and may have a long-term impact; stresses the need for neighbouring countries which are not members of the EEA to respect international law;

8. Is of the opinion that strict civil liability rules should be established for offshore accidents in order to facilitate access to justice for victims (both legal and natural persons) of offshore accidents, as this can provide an incentive for the offshore operator to properly manage the risks of operations; believes that financial liability caps should be avoided;

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9. Invites the Member States and the Commission to consider the special situation of workers and employees in the offshore oil and gas industry, especially of small and medium-sized enterprises (SMEs); points out that offshore oil and gas incidents may have particularly serious implications for the fisheries and tourism industries, as well as for other sectors that rely on the good condition of the shared marine environment for doing business, since these sectors, which include many SMEs, could suffer significant economic loss in the event of a major offshore accident;

10. Emphasises, therefore, that it is of the utmost importance to update existing liability systems in the Member States in order to ensure that should an incident occur in their waters it would not adversely affect the future of the offshore oil and gas operations of the state in question, nor that of the EU as a whole were it to occur in an area that is largely dependent on tourism for revenue; calls, therefore, on the Commission to revisit the need to introduce common EU standards for remedial and compensatory claim systems;

11. Underlines the need to include the victims of collateral damage linked to prospecting, surveys and the operation of offshore facilities, as well as those likely to be eligible for the compensation envisaged;

12. Notes that the Commission intends to undertake systematic data gathering through the EU Offshore Authorities Group (EUOAG), in order to carry out a more comprehensive analysis of the effectiveness and scope of national liability provisions;

13. Stresses the need for the Commission to perform regular conformity checks both of national legal systems and of enterprises with the relevant liability and compensation provisions in the OSD, including verification of offshore companies' financial statements, and to take action in the event of a breach of conformity, with the aim of preventing serious incidents and limiting their impact on persons and the environment; recommends creating a common mechanism at European level to deal with incidents and abuses;

14. Underlines that a balance needs to be struck between the swift and adequate compensation of victims and the prevention of payouts of illegitimate claims (also known as the 'floodgates' problem), through increased certainty regarding the levels of financial responsibility of many offshore firms and the avoidance of lengthy and expensive proceedings before the courts;

15. Regrets the fact that none of the Member States explicitly sets out a broad range of financial security instruments concerning compensation for claims for traditional damage from offshore oil and gas incidents; underlines in this context that over-reliance on insurance could potentially result in a closed market for financial security instruments, with the corollary potential for a lack of competition and increased costs;

16. Regrets the lack of uptake of financial security instruments in the EU to cover the damage caused by the most costly offshore accidents; notes that one of the reasons may be that the scope of liability for damages may not make such instruments necessary in certain Member States;

17. Calls on the Member States to provide detailed data regarding the uptake of financial instruments and adequate coverage for offshore accidents, including the most costly ones;

18. Considers that all cases of proven liability, as well as the details of penalties applied, should be made public in order to make the true cost of environmental damage transparent to all;

19. Urges the Commission to encourage the Member States to develop financial security instruments concerning compensation for traditional damage claims resulting from incidents linked to general offshore oil and gas activities or to offshore oil and gas transport, including in cases of insolvency; believes that this could limit the externalisation of operators' liability for accidental pollution to the public purse, which would otherwise be required to bear the compensation costs if the rules remain as they are; considers that in that context, the establishment of a fund based on fees paid by the offshore industry could also be assessed;

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20. Considers it necessary to analyse to what extent the introduction of criminal liability at EU level will add a layer of deterrence beyond civil penalties, which will improve protection of the environment and compliance with safety measures; welcomes, therefore, the EU's introduction of the Environmental Crime Directive 2008/99/EC (ECD), harmonising criminal penalties for certain infringements of EU environmental legislation; regrets, however, that the scope of the ECD does not cover all the activities of the OSD; regrets also that the definitions of the criminal offences and of minimum sanctions when it comes to offshore safety breaches are not harmonised in the EU; calls on the Commission to add major oil accidents to the scope of the ECD and to submit to Parliament its first implementation report on the OSD in a timely fashion, and no later than 19 July 2019;

21. Calls on the Commission to draw up the studies necessary to assess the economic risk to which individual Member States and their coastal regions might be exposed, taking into account the economic sectoral orientation of individual regions, the degree of concentration of offshore oil and gas operations in given areas, the operating conditions, climatic factors such as ocean currents and winds, and the environmental standards applied; recommends, therefore, introducing protection mechanisms and safety perimeters in the event that operations close down, and welcomes the building by the industry of four well capping stacks, which can reduce oil spill in case of an offshore accident;

22. Calls for a tailor-made Arctic environmental impact assessment for all operations taking place in the Arctic region, where the ecosystems are especially fragile and are closely connected to the global biosphere;

23. Asks the Commission and the Member States to consider the possibility of introducing further measures which would effectively safeguard offshore oil and gas operations before a severe accident takes place;

24. Invites the Commission and the Member States, in this context, to continue examining the possibility of an international solution, considering that many oil and gas companies operating in the EU are active across the world and that a global solution would ensure a global level playing field by strengthening controls on extraction companies outside the EU's borders; calls on the Member States to swiftly ratify the Paris Agreement on climate change of December 2015;

25. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.
