



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Legal Affairs*

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**2011/0309(COD)**

19.9.2012

## **OPINION**

of the Committee on Legal Affairs

for the Committee on Industry, Research and Energy

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

Rapporteur (\*) : Eva Lichtenberger

(\*) Associated committee – Rule 50 of the Rules of Procedure

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## SHORT JUSTIFICATION

The proposed Regulation on safety of offshore oil and gas prospection, exploration and production activities 2011/0309 (COD) is a very important piece of legislation, a unique chance for the EU to address serious gaps, and above all create a true EU safety culture. Your rapporteur for opinion supports the appropriateness of a Regulation as its legal basis will guarantee consistent, quick and direct implementation across Europe. By ensuring a level playing field and reducing room for national/regional interpretations, the desired objective of the Regulation can be effectively achieved, ultimately benefiting the industry, national administrations and EU citizens. Nevertheless, your rapporteur is convinced that a more comprehensive reform and stringent provisions for risky activities should be put in place. With regards to the choice of Policy Option, a more institutionalised approach should be followed resulting in an increased European role in the oversight of oil and gas offshore operations (Policy Option 3), preferably through the European Maritime Safety Agency (EMSA). In that respect, the Agency's role should not be restricted to emergency response only. On the contrary, Europe should capitalise on the EMSA's experience in oil spill prevention (audits, detection, inspections, and trainings) and in monitoring the proper implementation of EU rules. In more general terms, your rapporteur for opinion calls on the European Parliament, as co-legislator, to rebalance the text in relation to coastal communities, workers and environmental concerns.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a regulation

##### Recital 1

###### *Text proposed by the Commission*

(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

###### *Amendment*

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prudent and rational utilisation of natural resources.

prudent and rational utilisation of natural resources. ***According to Article 191(2) full liability in relation to any damage caused by activities under this Regulation has to respect the polluter pays principle.***

## Amendment 2

### Proposal for a regulation Recital 2

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(2) The objective of this Regulation is to ***prevent and*** 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.

## Amendment 3

### Proposal for a regulation Recital 8

#### *Text proposed by the Commission*

(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,

#### *Amendment*

(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. ***It should be ensured that under***

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.

existing liability regimes, the responsible party *should* always be clearly identifiable *before operations start and should* be able to pay all the costs to remedy the damage it has caused, *eventually through mutual compensation schemes*.

#### Amendment 4

##### Proposal for a regulation Recital 10

###### *Text proposed by the Commission*

(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 damage, and **may not be** entitled to delegate **their** responsibilities in this regard to third parties contracted by **them**.

###### *Amendment*

(10) There is a need to clarify that **the holder of an authorisation** for offshore activities pursuant to Directive 94/22/EC **is** also **the** liable ‘**operator**’ 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 damage, and **is** not entitled to delegate **his** responsibilities in this regard to third parties contracted by **him**.

***With regard to other liabilities, it should be established without ambiguity who the liable parties should be prior to the commencement of offshore activities.***

#### Amendment 5

##### Proposal for a regulation Recital 48

###### *Text proposed by the Commission*

(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

###### *Amendment*

(48) ***Member States should ensure that operators in their jurisdiction demonstrate their ability to pay for the consequences of damage caused by their operations, through the provision of financial security, and should decide what***

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.

*instruments (such as funds, bank guarantees, insurance and/or risk pooling) are appropriate for this purpose.*

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 *a* robust liability regime for damages related to offshore oil and gas operations, *and* requirements on financial capacity including *improving the* availability of financial security instruments *and* arrangements.

## Amendment 6

### Proposal for a regulation Article 4 – paragraph 2

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 *licensed* 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 *all* liabilities potentially deriving from *the* offshore oil and gas activities in question, in particular liability for environmental damages. *Accidents or incidents in which the applicant was proven to be liable or negligent, including the transparency and effectiveness of any response measures shall also be taken into account.*

## **Amendment 7**

### **Proposal for a regulation**

#### **Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The applicant shall supply evidence that it has provided adequate financial security to cover all liabilities deriving from its offshore oil and gas activities, in particular liability for environmental damage. The financial security shall be valid and effective before the commencement of well operations.***

## **Amendment 8**

### **Proposal for a regulation**

#### **Article 4 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. Member States shall ensure that the licensing authority does not grant an authorisation unless it is satisfied that the applicant has supplied evidence that adequate provision has been or will be made, by way of financial security, on the basis of arrangements to be decided by the Member States, to cover liabilities deriving from its offshore oil and gas activities, in particular liability for environmental damage. The financial security shall be valid and effective before the commencement of well operations.***

## **Amendment 9**

### **Proposal for a regulation**

#### **Article 4 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

4. Licensing authorities pursuant to

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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.

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.

***Licensing authorities shall ensure that financial provisions for liabilities provided pursuant to paragraph 2a is proportionate to such risks, hazards and any other relevant information related to the location concerned and stage of operations.***

## **Amendment 10**

### **Proposal for a regulation**

#### **Article 4 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Member States shall encourage and facilitate the creation of sustainable financial security products.***

## **Amendment 11**

### **Proposal for a regulation**

#### **Article 4 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***4b. The Commission shall, by [one year after adoption of regulation], transmit to the European Parliament and to the Council a report on the availability of financial security products and proposals for arrangements to facilitate the provision of financial security pursuant to paragraph 2a.***



## **Amendment 12**

### **Proposal for a regulation**

#### **Article 4 – paragraph 4 c (new)**

*Text proposed by the Commission*

*Amendment*

***4c. Entities applying for authorisation for offshore oil and gas activities shall fully disclose evidence of financial and technical capacity and any other relevant information related to the area concerned and the particular stage of exploration and production operations, and make such evidence publicly available.***

## **Amendment 13**

### **Proposal for a regulation**

#### **Article 4 – paragraph 4 d (new)**

*Text proposed by the Commission*

*Amendment*

***4d. Special attention should be given to ecologically sensitive marine and coastal environments, in particular ecosystems which play an important role in mitigation and adaptation to climate change, such as salt marshes and seagrass beds; and marine protected areas, such as special areas of conservation pursuant to the Habitats Directive, special protection areas pursuant to the Birds Directive, and marine protected areas as agreed by the Community or Member States concerned in the framework of international or regional agreements to which they are parties.***

## Amendment 14

### Proposal for a regulation Article 7

#### *Text proposed by the Commission*

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.***

#### *Amendment*

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 ***ensure that the licensees guarantee their ability to cover any liabilities arising.***

## Amendment 15

### Proposal for a regulation Article 7 – paragraph 1

#### *Text proposed by the Commission*

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.

#### *Amendment*

1. The licensee is liable for the prevention and remediation of environmental damage, pursuant to Directive 2004/35/EC - ***and is deemed to be the operator as defined in that Directive*** - caused by offshore oil and gas ***operations*** carried out by the licensee or any ***operator*** 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.

## **Amendment 16**

### **Proposal for a regulation Article 8 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 8a**

##### ***Agency control of offshore safety***

***1. The European Maritime Safety Agency (EMSA) hereafter ‘the Agency’, shall provide the Commission and Member States with technical and scientific assistance in order to ensure risk minimisation and proper application of Union legislation in the field of offshore oil and gas safety.***

***2. The Agency shall review authorisations granted under this Regulation, shall audit competent authorities and have oversight of inspections as well as Member State arrangements for emergency response.***

***3. The Agency shall in addition have the following responsibilities:***

***(i) assisting Member States and the Commission in detecting and monitoring the extent and environmental impact of an oil spill and safety risks from installations or vessels operating around them;***

***(ii) assisting Member States with preparation and execution of emergency response plans following a major accident, especially when there are transboundary effects, including in the case of transboundary impacts beyond Union waters;***

***(iii) assisting Member States with remediation and clean-up and coordinating transboundary emergency response following a major accident, including in the case of transboundary impact beyond Union waters;***

*(iii) assisting Member States during accident investigations involving offshore oil and gas installations, including the screening of corrective measures;*

*The Agency shall promote high safety standards and best practice for offshore oil and gas activities internationally, through appropriate regional and global fora.*

## **Amendment 17**

### **Proposal for a regulation Article 10 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. The Major Hazard Report for a production installation shall contain the details specified in Annex II, parts 2 and 5, ***and show evidence that the views of workers' representatives and environmental groups have been taken into account.***

## **Amendment 18**

### **Proposal for a regulation Article 11 – paragraph 1**

*Text proposed by the Commission*

1. The Major Hazard report for a non-production installation shall contain the details specified in Annex II, parts 3 and 5.

*Amendment*

1. The Major Hazard report for a non-production installation shall contain the details specified in Annex II, parts 3 and 5, ***and show evidence that the views of workers' representatives and environmental groups have been taken into account.***

## **Amendment 19**

**Proposal for a regulation**  
**Article 28 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The Commission, the Union Offshore Authorities Forum and competent authorities concerned shall work with other international fora and Union operators to encourage the application of the highest possible safety and environmental standards globally.***

*Justification*

*There are significant enforcement issues with regard to mandating EU-based companies to operate globally according to EU standards, particularly as operators must comply with the legal framework of the country/jurisdiction in which they are operating. However operators must ensure that they apply recognised best practice in all their activities, whilst respecting local legal frameworks, and this must be carefully monitored by the Commission and the EU Offshore Authorities Forum.*

**Amendment 20**

**Proposal for a regulation**  
**Article 29 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The operator shall ***periodically test the effectiveness of the internal emergency response plans.***

5. The operator shall ***make the internal emergency response plans publicly available, including the results of effectiveness tests of response capacities.***

**Amendment 21**

**Proposal for a regulation**  
**Article 30 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

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.

public as appropriate *with due regard for data protection*.

## **Amendment 22**

### **Proposal for a regulation Article 33**

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 *to avoid distortion of sanctions between regions*. The penalties provided for must be effective, proportionate and dissuasive.

## **Amendment 23**

### **Proposal for a regulation Article 37 – paragraph 1a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

*1a. The following paragraph is inserted in Article 2:*

*"5a. 'marine waters' mean all waters covered by Directive 2008/56/EC;"*

## **Amendment 24**

### **Proposal for a regulation Article 37 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

#### *Article 37a*

*Amendment to Directive 2008/99/EC on the protection of the environment through criminal law*

***1. The following point is added to Article 3:***

***“(ia) a major oil pollution accident.”.***

***2. The following indent is added to Annex A:***

***“- Regulation XX/XX/EU of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities.”.***

## PROCEDURE

<b>Title</b>	Safety of offshore oil and gas prospection, exploration and production activities
<b>References</b>	COM(2011)0688 – C7-0392/2011 – 2011/0309(COD)
<b>Committee responsible</b> Date announced in plenary	ITRE 17.11.2011
<b>Opinion by</b> Date announced in plenary	JURI 17.11.2011
<b>Associated committee(s) - date announced in plenary</b>	24.5.2012
<b>Rapporteur</b> Date appointed	Eva Lichtenberger 19.12.2011
<b>Discussed in committee</b>	31.5.2012                      10.7.2012
<b>Date adopted</b>	18.9.2012
<b>Result of final vote</b>	+ :                      24 - :                      1 0 :                      0
<b>Members present for the final vote</b>	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Eva Lichtenberger, Angelika Niebler, Dagmar Roth-Behrendt, József Szájer
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Jacek Włosowicz