



# ECSA

European Community Shipowners' Associations

## **2015/2352 Liability, compensation and financial security for offshore oil and gas operations**

### **ECSA position paper**

*April 2016*

The European Community Shipowners' Associations (ECSA) supports the conclusions of the European Commission report COM(2015) 422 (hereafter the 'European Commission report') investigating how liability, insurance and compensation for offshore oil and gas operations is handled in the EU/EEA area. ECSA notes that the latter was conducted as per art.39 of the Directive 2013/30/EU on safety of offshore oil and gas operations (hereafter the "OSD"). Any conclusions that the liability regimes, compensation and financial security instruments in place are not adequate enough in pursuing the OSD's objectives would be premature as the transposition deadline of the OSD provisions into National law was rather recent, on 19 July 2015.

#### **In brief, ECSA supports that:**

- **It is premature to evaluate the need to harmonize at European level national liability regimes in advance of the OSD European Commission Implementation Report expected to be released in 2019. We urge the European Parliament to support this conclusion.**
- **Every reasonable precaution to prevent accidents, damage and environmental pollution should be taken. The very low frequency of serious incidents and accidents in the European offshore sector shows that measures that are implemented to that effect are working.**
- **Should subsequent analysis demonstrate the need for a European liability approach, care must be taken not to undermine existing well-functioning liability regimes. We fully support the European Commission in concluding that sharing of best practices must be encouraged.**
- **The international nature of offshore industry must always be kept in mind so as not to undermine the flexibility and mobility of the European offshore fleet.**

#### **Considering criminal liability for offshore accidents is premature**

We share the conclusions of the European Commission that it is too early to assess the need for specific criminal law measures as regards offshore oil and gas accidents falling within the scope of the OSD. The OSD already ensures a proper legal framework and as pointed out in the report, major European offshore oil and gas states have built on it solid and effective regulatory frameworks that can serve as best-practice examples.

We agree with the European Commission that it is too early – and in all likelihood unnecessary- to estimate whether criminal law measures, such as imprisonment, fines and other non-custodial punishments are necessary to achieve the stated objective of the OSD. The penalties that Member States give under OSD are adding a sufficient layer of deterrence, further incentivizing ever-safer operations.

The European Commission is pointing out that a decision to include breaches of the OSD under the scope of criminal law would have to be subject to a necessity and proportionality test. We remain firm in our opinion that such a test would demonstrate that offshore activities are sufficiently regulated.

### **Civil liability**

OSD is establishing an important liability aspect: the channelling of liability to the licensee. This creates an incentive for the licensee to choose high-quality, safety-conscious operators that will minimize the operational risks entailed. It also ensures prompt and satisfactory compensation as well as cost-effective use of limited insurance capacity worldwide.

The report of the European Commission poses the question of broadening liability provisions at EU level, and points to the example of the Norwegian Petroleum Act which includes fisheries. Respecting the principle of proportionality, it is our opinion that such considerations are best left to Member States, as this level is best placed to make decisions on how to balance the given country's economic interests.

On the basis of the report and existing rules that are already in place, we share the conclusions of the European Commission that it is too early to assess the need for specific EU civil law measures as regards offshore oil and gas accidents falling within the scope of the OSD. The reason is that although the liability regimes for bodily injury and property damage in Focal States differ from each other, there is no concrete case that one is less effective than other in fulfilling the OSD's aim of ensuring safety of offshore oil and gas operations across the EU.

### **Financial security and compensation**

Again, we support the conclusion of the European Commission that it is indeed too early to assess the effectiveness of the OSD in this domain. We share the analysis, and the comments related to existing financial instruments and its ability to finance damages. Throughout the process leading up to the OSD, our industry has argued against the establishment of an EU-wide compensation fund/mechanism. Given the differences between the EU offshore states, a one-size fits all-approach is likely to do more harm than good, an argument that is recognized in the conclusions of the European Commission.

Instead, ECSA urges the European Commission to make the full implementation of article 4 of the OSD a priority area of scrutiny when conducting conformity checks as per the OSD to ensure that market needs for financial security instruments covering offshore accident risks are sufficiently met.

## Conclusion and recommendations

The European Commission has produced a comprehensive report that can be very valuable for Member States. The overarching conclusion – that it is too early to review the need for an harmonisation of liability rules – reflects a prudential approach to policy-making in line with the Better Regulation-agenda and is a conclusion that we fully endorse.

The OSD already sets a concrete and sufficient regulatory framework which may have not shown yet its full effect due to its recent transposition at National law. However, should the OSD Implementation Report due in July 2019 demonstrate the need to take new European-wide measures to ensure safety of operations, it will be of the utmost importance that legislators seek to leverage existing well-functioning systems, and that close dialogue with industry actors is maintained.

The European Community Shipowners' Associations (ECSA), formed in 1965, comprises the national shipowners' associations of the EU and Norway. ECSA aims at promoting the interests of European shipping so that industry can best serve European and international trade and commerce in a competitive and free business environment, to the benefit of both shippers and consumers. The European Economic Area maintains its very prominent position with a controlled fleet of 40% of the global commercial fleet.

Several ECSA members also have company Members that are active in the offshore service and supply vessel industry but also operate installations used for offshore oil and gas operations that fall under the scope of the Directive 2013/30/EU on safety of offshore oil and gas operations. The vast majority of these companies operate both on European but also global basis. Back in 2012, ECSA established an ad hoc ECSA offshore group which was involved in the negotiations that lead into the establishment of the adoption of the Directive 2013/30/EU. The group was operational until 2013. In 2014, ECSA established a permanent ECSA offshore group within the ECSA structure, comprised of national associations' representatives but also offshore company members following all EU offshore related policy initiatives.

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