



Position Paper

From IUMI - Secretary General's Office
Subject COM (2015) final 14.9.2015 re Offshore Safety Directive
Date 14 April 2016

1) IUMI notes the recent Commission report on liability, compensation and financial security for offshore oil and gas operations, COM (2015) 422 final which focuses on the implementation of Directive 2013/30/EU, the Offshore Safety Directive (OSD). It describes at length the legal position and in our view rightly concludes this will be an issue for Member States.

2) IUMI is pleased to note the report acknowledges that there has been no serious oil pollution incident from offshore activity since 1988 in the EU. It remains unclear where the EU believes that operators have not been able to respond effectively to claims with a combination of their own and insurance resources. Given the recognition that North Sea Member States already have “the world’s best performing offshore safety regimes”, IUMI is slightly surprised that these should be considered to be in need of further review. This is particularly so as the report states “it is difficult to clearly identify any (Focal State) as being less effective in dealing with possible claims arising from offshore accidents”. It is reassured that any such decision about wider criminalisation would be subject to a necessity and proportionality test.

3) In the Suggestions piece, the EU “regrets the lack of uptake of financial security instruments” but does not appear to consider that this may be a function of commercial appetite – there is always reluctance to pay premiums, especially for something that is only a remote possibility. This is even more the case when as now, the oil industry and its supporting industries are in recession so that take-up of any such financial instruments would be minimal and small producers could be forced out of business if they were mandated.

4) As IUMI stated in 2012, the (further) investigation of the availability of financial security instruments still requires a cost-benefit analysis cross-referred with insurance market capabilities and as the report agrees, “limiting liability is a practical necessity”. Aspirations to harmonise legislation may be a goal but may well be unrealistic. Whilst under existing liability regimes, the responsible party may not always be clearly identifiable, able or liable to pay all the costs to remedy the damage it has caused, this would be true under any regime.

5) It is also worth restating that biodiversity damages offshore are not quantifiable and thus not easily insurable. There is, so far, no market available. Moreover in any offshore operation there are many different parties, with complex legal responsibilities to third parties and to each other. It would be very difficult to balance the interaction between existing Convention(s) (including those dealing with the right to limit liability) and any proposed additional legislation.

6) Whilst the Staff Working Document (SWD) is a useful information paper which poses some interesting hypothetical questions, IUMI is somewhat concerned by the inclusion of the SOSCover (pp36-38) as an example model. The SWD states rather blandly that this joint-venture did not meet “widespread interest” but it would be more accurate to say that it failed completely as a commercial product and was never viable in terms of aspirational limits as the notional \$10-20bn of capacity does not exist and never has. The creativity of an idea for one region (US) is no indicator of its effectiveness for its target area, nor its applicability to the European context.

7) IUMI is not persuaded that a legislative compensation system over and above the existing provisions is needed and continues to believe that a voluntary financial security system is likely to be most effective. It would be better to enhance the management of offshore oil risks by the operators, rather than to mandate an insurance cover/compensation umbrella as such cover does not in itself improve behaviours.

IUMI welcomes any future dialogue or request for industry input with respect to the above.

Yours sincerely,

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Secretary General