IUMI Policy Agenda

5. EU Offshore Safety Directive

Brief description

The European Commission (EC) proposed in October 2011 a Regulation on the safety of offshore oil and gas prospection, exploration and production activities aiming amongst others to extend the scope of the Environmental Liability Directive (ELD) to include "all waters under the jurisdiction of the Member States" and mandating financial security. A study was commissioned on *liability security schemes for offshore environmental risks*, drafted by the University of Maastricht.

Joint industry efforts were made to prevent some of the more controversial suggestions of the Regulation and explain the practical implications – and impracticability – of extending the ELD due to:

- most likely an inability to quantify the damages in a longer term, and
- scale of potential loss and selectivity by insurers.

In October 2012, the Industry, Research and Energy Committee (ITRE) of the European Parliament voted in favour of transforming the proposal from a Regulation to a Directive. The Directive was formally adopted in June 2013.

Article 4 of the new Directive states that evidence of provisions to cover potential liabilities shall be included in the application for a licence.

With reference to financial security, the Directive states that:
"(63) Operators should ensure they have access to sufficient physical, human and financial resources to prevent major accidents and limit the consequences of such accidents. However, as no existing financial security instruments, including risk pooling arrangements, can accommodate all possible consequences of major accidents, the Commission should undertake further analysis and studies of the appropriate measures to ensure an adequately robust liability regime for damages relating to offshore oil and gas operations, requirements on financial capacity including availability of appropriated financial security instruments or other arrangements. This may include an examination of the feasibility of a mutual compensation scheme. The Commission should submit a report to the European Parliament and to the Council on its findings, accompanied if appropriate, by proposals."

Following up on this request, two studies on civil liability, financial resources and compensation claims for offshore oil and gas activities were presented in October 2014 and August 2014. IUMI was consulted as part of the studies, explaining the practical implications, limitations and how the market functions from an offshore energy insurance perspective.

A report on the Commission's assessment of the effectiveness of the liability regimes in the EU in respect of the damage caused by offshore oil and gas operations was released in September 2015. The report concludes that a broadening of liability provisions through EU legislation does not appear appropriate at this juncture. In case new national laws fail to improve the availability of financial security instruments and put in place procedures for ensuring prompt and adequate handling of compensation claims, the Commission informs that it will reassess whether and what further EU action could achieve these objectives.

In March 2016, the European Parliament's Committee on the Environment, Public Health and Food Safety (ENVI) issued a draft opinion, recommending that the (responsible) Committee on Legal Affairs calls on the Commission to consider the establishment of a legislative compensation mechanism for offshore accidents with minimum requirements. Responding to these discussions, IUMI presented in April 2016 a position paper to members of the relevant parliamentary committees. The report of the Committee on Legal Affairs was presented in October with only some minor modifications to the ENVI opinion. The report recognised 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 cos*t". The possibility of finding an international solution was also encouraged. IUMI remains unpersuaded 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.

In September 2018, the Commission launched a public consultation to gather views on the implementation of the Directive. IUMI responded to the consultation in December 2018.
An assessment of the implementation of the Directive was presented in a report to the European Parliament in November 2020. Concerning liability and the handling of compensation claims, the EC intends to follow-up with further analysis and/or research. The intention will be to assess whether a uniform regime on, for example, the principle of strict liability of installation operators and owners that go beyond the minimum requirements of the Directive would benefit the safety of offshore operations and the follow-up of accidents.

Relevant authority / organisations and documents

- **European Commission**
  - ***Proposed EC Regulation*** 27 October 2011.
  - ***University of Maastricht*** – Civil liability, financial security and compensation claims for offshore oil and gas activities, 22 October 2013.
  - ***BioIS study*** – Civil liability, financial security and compensation claims for offshore oil and gas activities in the EEA, 14 August 2014.
  - ***COM(2015) 422 final*** – Report from the EC to the EP and Council on liability, compensation and financial security for offshore oil and gas

operations pursuant to Article 39 of Directive 2013/30/EU, 14 September 2015.
    - ***Consultation:*** Evaluation of the Directive on safety of offshore oil and gas operations, 19 September 2018. IUMI response 19 December 2018.
    - ***Annual Reports*** on the Safety of Offshore Oil and Gas operations in the European Union
    - ***COM(2020) 732*** – Report from the EC to the EP, the Council and the European Economic and Social Committee: Assessing the implementation of Directive 2013/30/EU of the European Parliament and the Council of 12 June 2013 of the safety of offshore oil and gas operations and amending Directive 2004/35/EC & SWD(2020) 260 Commission Staff Working Document, 16 November 2020.
- **European Parliament** – Environment, Public Health and Food Safety Committee (ENVI) & Industry, Research and Energy Committee (ITRE).
    - ***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.
    - ***ENVI Committee:*** Draft Opinion, 22 March 2016, final version 12 July 2016.
    - ***Committee on Legal Affairs:*** Plenary report, 19 October 2016.
- **Position papers – industry**:
    - ***Insurance Europe***: 2012.
    - ***Norwegian maritime/oil & gas industries***: 30 January 2012.
    - ***UK maritime industry:*** 18 April 2012.
    - ***ECSA*:**
        - 2 October 2014**.**
        - April 2016.
        - 8 May 2017, together with EADC and IMCA.
    - ***IUMI****:*
        - 24 September 2012.
        - 14 April 2016 – EU Directive

Timeline / important dates

- Directive 2013/30/EU applies through national laws/regulations from 19 July 2016 for new installations, and 19 July 2018 for existing ones.
- European Parliament resolution 2015/2353(INI), adopted 1 December 2016.

IUMI will:

- Support a voluntary financial security system rather than a legislative compensation system over and above existing provisions.
- Explain the capabilities and limitations of insurance as a financial security instrument, and require a cost-benefit analysis cross-referred with insurance market capabilities if further investigations are to take place.