



International Association of Oil & Gas Producers

Annexes to

OGP Position Paper on

**EU Commission proposal for a Regulation of Safety on Offshore oil and gas
prospection, exploration and production activities (COM (2011) 688 Final)**

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Attachment 1 – Subject, Scope & Definitions and Third Party Verification

Article 1 Subject and Scope

Text proposed by the Commission	OGP proposed amendment
<p>1. This Regulation establishes minimum requirements for industry and national authorities involved in offshore oil and gas operations performed following the award of an authorisation pursuant to Directive 94/22/EC.</p>	<p><i>Due consideration should be given to choosing a Directive rather than a Regulation as the legislative form.</i></p>
<p>Justification:</p> <p>The upstream industry wishes to record its concern that in choosing to legislate through a Regulation rather than a Directive, there is a clear risk that rules at a European level will conflict with existing national rules, providing for duplication, confusion and uncertainty (and possible delays) for the upstream industry. The upstream industry believes this risk has not yet been sufficiently assessed.</p> <p>Furthermore, the Commission's proposals incorporate all aspects of the upstream industry from exploration, through production to decommissioning and field abandonment, rather than addressing a 'significant well control incident' that was the starting point of this process. A compelling reason for this broadening of scope has not been provided.</p>	

Article 2 Definitions

Text proposed by the Commission	OGP proposed amendment
<p>For the purpose of this Regulation:</p> <p>1. 'acceptable' shall mean: rendering a risk of a major accident tolerable to the furthest extent beyond which no significant reduction of the risk is derived from the input of further time, resources or cost;</p>	<p>For the purpose of this Regulation:</p> <p>1. 'acceptable' shall mean: rendering a risk of a major accident as low as reasonably practicable (ALARP) tolerable to the furthest extent beyond which no significant reduction of the risk is derived from the input of further time, resources or cost 'ALARP' shall mean: a residual risk that must be</p>

<p>12. 'independent third party verification' shall mean: an assessment and confirmation of the validity of particular written statements by a natural or legal person that is not under the control or influence by the author of the statements;</p> <p>13. 'industry' shall mean: private companies that are directly involved in offshore oil and gas activities pursuant to this regulation or whose activities are closely related to those operations;</p> <p>18. 'major accident' shall mean: an occurrence such as fire or explosion, significant loss of well control or significant escape of hydrocarbons to the environment, significant damage to the installation or equipment thereon, loss of structural integrity of the installation, and any other event involving death or major injury to five or more persons on or working in connection with the installation;</p> <p>21. 'offshore oil and gas operations' shall mean: all activities related to exploring for, producing or processing of oil and gas offshore. This includes transport of oil and gas through offshore infrastructure connected to an installation or subsea installation;</p>	<p>insignificant in relation to the sacrifice (in terms of money, time or trouble) required to avert or further reduce it;</p> <p>12. 'independent third-party verification' shall mean: an assessment and confirmation of validity of that which is being examined by a competent person/body that is independent from the work under review, and the management lines of those whose work is being checked; an assessment and confirmation of the validity of particular written statements by a natural or legal person that is not under the control or influence by the author of the statements;</p> <p>13. 'industry' shall mean: undertakings private companies that are directly involved in offshore oil and gas activities pursuant to this Regulation or whose activities are closely related to those operations;</p> <p>18. 'major offshore accident' shall mean: an occurrence such as fire or explosion, significant loss of well control or significant escape of hydrocarbons to the environment resulting from uncontrolled developments in the course of the operation of any installation and leading to significant damage to the installation or equipment thereon, loss of structural integrity of the installation, and any other event involving death multiple fatalities or major injury to five or more casualties to persons on or working in connection with the installation or connected installations;</p> <p>21. 'offshore oil and gas operations' shall mean: all activities on installations related to exploring for, producing or processing of oil and gas offshore. This includes transport of oil and gas through connected offshore infrastructure connected to an installation or subsea</p>
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<p>22. 'operator' shall mean: the operator of a production installation or the owner of a non-production installation and the well operator of a well operation. Operator and licensee both come under the definition of Article 2(6) of Directive 2004/35/EC;</p> <p>30. 'risk' shall mean: the likelihood of a specific effect occurring within a specific period or in specified circumstances;</p> <p>33. 'well operator' shall mean: the person appointed by the licensee to plan and execute a well operation.</p>	<p>installation-</p> <p>22. 'operator' shall mean:</p> <ul style="list-style-type: none"> - the holder of a relevant authorisation or permit issued by a public authority; or - the co-holder of an authorisation or a permit issued by a public authority and designated operator by virtue of an operating agreement concluded with the other authorisation or permit holder(s), or - an entity not the holder of an authorisation or a permit issued by a public authority, but instead designated operator by virtue of an operating agreement concluded with the authorisation or permit holder(s). <p>the operator of a production installation or the owner of a non-production installation and the well operator of a well operation. Operator and licensee both come under the definition of Article 2(6) of Directive 2004/35/EC;</p> <p>30. 'risk' shall mean: the likelihood that a hazard will actually cause its adverse effects, together with a measure of the effect of a specific effect occurring within a specific period or in specified circumstances;</p> <p>33. 'well operator' shall mean: the person appointed by the licensee to plan and execute a well operation.</p>
<p>Justification</p> <p>OGP believes any kind of legislation brings with it an onus for setting out clear and unambiguous definitions. In the proposed Regulation there are several examples where the drafting needs to be tightened, or changed so that the intent of the Regulation is reflected in practice.</p> <p>The proposed Regulation is intended to describe 'minimum requirements'. A requirement to adopt 'best practice' as a common denominator in formal legislation will not be consistent with Regulation in North Sea waters required standard for legal compliance. Hence, a new requirement to adopt 'best practice'in EU legislation would be a major</p>	

departure from this.

Additionally, OGP believes that 'best practice' would normally only be applied for a very specific subject by the best in class, whereas other contractors or operators still have a number of different options in the field. When shared within the upstream industry, best practice may become good practice if adopted by the majority of players, or be adopted via recognised standards, guidelines and procedures. As the term 'best practice' is misleading, OGP suggests to use instead the term 'good (oilfield) practice' which can be described as locally, nationally, regionally or internationally recognised standards, guidelines and procedures, frequently applied by the majority of the players in the oil and gas industry.

In addition, there are a number of terms used in the Regulation that need more formal definition for the sake of clarity. Therefore OGP proposes the following:

Ad 2.1.:

OGP holds the opinion that the definition of "acceptable" as it currently stands, is ambiguous and contains a number of words that themselves are in need of definition, for the purpose of the Regulation (such as 'tolerable', 'significant' and 'reduction'). In some interpretations the definition would imply that an operator would need to take measures beyond those that render the risk 'tolerable'. This is self-serving and the upstream industry would greatly prefer 'acceptability' to be based on the well-known and understood ALARP principle (As Low As Reasonably Practicable). The upstream industry recognises that there is no unique and fully comprehensive definition of ALARP, but the principle has been used with considerable success in the North Sea.

Ad 2.12.:

OGP suggests including internal resources in the definition of third party (see in addition suggestions for amendments to Article 15).

Ad 2.13.:

As the definition of 'industry' does not include state-owned entities, OGP suggests defining it broader in the form of 'undertakings'.

Ad 2.18.:

The definition of "major accident" is ambiguous. OGP suggests amendments that are in line with the existing definition for 'major accident' already enshrined in EU law (Seveso Directive).

Ad 2.21.:

OGP suggests adding installations and connected infrastructure into the definition of 'offshore oil and gas operations' as these are closely linked to upstream activities. OGP suggests making clear that 'offshore oil and gas operations' means those activities taking place on installations and in connected infrastructure. Otherwise the definition could, for example, include onshore support facilities, e.g. waste reception at ports.

Ad 2.22.:

OGP believes that the definition for 'operator' needs to consider the following logical distinction between (i) the (collective) parties who bear liability for the purposes of the

ELD - which liability can then be apportioned or held jointly (as provided for in national legislation) and (ii) the single person responsible for performing obligations linked to operations, such as risk assessment and emergency response. Therefore, the definition of operator should be different for each. OGP does not think the ELD definition, which permits multiple parties to be operators, is appropriate and prefer a definition properly tailored to fit the circumstances. The ELD definition is also very opaque. The concept of who "controls" an occupational activity is not entirely clear - this could, for example, be a drilling contractor; whilst the operator appointed under a Joint Operating Agreement may in actual fact *not* be the party with 'decisive economic power' (if that implies ability to control Operating Committee decisions). For operational obligations, there needs to be absolute clarity as to which *single* party is responsible.

The Regulation needs to reflect this.

The definition of "exploration licence" (2.10.) and "production licence" (2.27.) deliberately establishes the requirement for the separation of licences for exploration and production. It is not clear if the proposal is consistent with current Member States' practices that allow, but do not mandate, different phases of activities to be licensed or if Member States will be required to modify existing processes, which are compliant with the Hydrocarbon Licensing Directive (94/22/EC).

Ad 2.30.:

OGP suggests that the definition for 'risk' needs further clarification as the size of a spill does not necessarily describe the extent of a potential impact, for example on the environment.

Ad 2.33:

The definition of well operator is ambiguous. As written, it suggests that only a licensee can appoint a well operator, which is not always the case. It can also be a contractor appointed by an operator.

Article 15

Independent ~~Third-Party~~ Verification

Text proposed by the Commission	OGP proposed amendment
1. Operators shall establish a scheme for independent third party verification and well examination and shall describe such schemes within the major accident policy integrated into the Major Hazards Reports pursuant to Article 18.	1. Operators shall establish a scheme for independent third-party verification for and well examination and shall describe such schemes within the major accident policy integrated into the Major Hazards Reports pursuant to Article 18.
2. The selection of the independent third party verifier and the design of schemes for independent third party verification and for independent well examination shall	2. The selection of the independent third party verifier and the design of schemes for independent third-party verification and for independent well design examination

<p>meet the criteria of Annex II, part 5.</p> <p>3. The scheme for independent third party verification in respect of production and nonproduction installations shall be established:</p> <p>(a) in respect of installations to give independent assurance that the specified systems and safety critical elements identified in the risk assessments and safety management system for the installation are suitable and up to date, and the schedule of examination and testing of the major hazards control system is suitable, up to date and operating as intended;</p> <p>(b) in respect of well plans to give independent assurance that the well design and well control measures are suitable to the anticipated well conditions and kept as the basis if the well design changes for whatever reason.</p> <p>4. Operators shall ensure that outcomes of the independent third party verification scheme pursuant to this Article under paragraph 3(a) are available to the competent authority upon its request.</p> <p>7. Non-production installations operated in Union waters shall meet the requirements of relevant international conventions as defined in Regulation 391/2009/EC of the European Parliament and of the Council of 23 April 2009 or the equivalent standards of the Code for the construction and equipment of mobile offshore drilling units (2009 MODU CODE). They shall be certified by an organisation that is recognised by the Union in accordance with the aforementioned Regulation.</p>	<p>shall meet the criteria of Annex II, part 5.</p> <p>3. The scheme for independent third party verification of well design in respect of production and nonproduction installations shall be established:</p> <p>(a) in respect of installations to give independent assurance that the specified systems, and where appropriate safety critical elements, as identified in the risk assessments and safety management system for the installation, are suitable and up to date, and the schedule of examination and testing of the major hazards control systems are is suitable, up to date and operating as intended;</p> <p>(b) in respect of well plans, to give independent assurance that the well design and well control measures are is suitable to for the anticipated well conditions and is kept updated as the basis if the well design changes for whatever reason.</p> <p>4. Operators shall ensure that outcomes of the independent third party verification scheme pursuant to this Article under paragraph 3(a) are available to the competent authority upon its request.</p> <p>7. Non-production installations operated in Union waters shall meet the requirements of relevant international conventions as defined in Regulation 391/2009/EC of the European Parliament and of the Council of 23 April 2009 or. New mobile offshore drilling units (MODUs) whose construction began after 1st January 2012 shall meet the equivalent standards of the Code for the construction and equipment of mobile offshore drilling units (2009 MODU CODE). They shall be certified as meeting the necessary requirements by an organisation that is recognised by the Union in accordance with the aforementioned Regulation.</p>
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Justification:

Ad 15.1., 15.2. and 15.4.:

Operators take responsibility for safety. Well design and well procedures aimed at prevention and resilience begin with a three-tier review process to further assure that a company is adhering to its own processes and procedures within the framework defined by the local regulator. This means two levels of review for the operator, plus the regulator. Member States should require operators to define those well operations subject to the three-tier review process based on due consideration of the level of risk/hazard.

The upstream industry is of the opinion that independent verification can be carried out by a credited or authorized person or body, including such a person or function within the operator's organisation where the appropriate organisational arrangements are made to maintain that person or function's independence. The reviewer/verifier shall be a competent person/body that is independent from the work under review, and the management lines of those whose work is being checked. This has been the accepted practice in a number of Member States within the upstream industry, as well as other industries such as the petrochemical industry. There has been no justification why this would need to be changed.

Ad 15.3. (a):

The suggestion for amendment reflects the fact that not all systems that might be identified in the risk assessments and safety management system for an installation would comprise safety critical elements.

Ad 15.7.:

As proposed by the Commission, this has the impact of limiting the pool of drilling rigs which can be used. Many units currently working in the North Sea do not meet the 2009 Code requirements. The 2009 MODU Code was updated from the 1989 and 2001 IMO-MODU Codes, and is primarily intended for new drilling rigs built after 2009. If this is applied to older units there is a strong risk that most of MODUs in EU waters would be rendered unusable, due to significant and unfeasible changes required to bring them in line with the 2009 requirements.

The 2009 Code is only applicable to units whose construction begins after 1 January 2012, therefore a mandate to apply the 2009 MODU Code to all existing rigs would be extremely disruptive with regard to both current and planned operations within the EU.

Many of the changes required by the 2009 Code may not materially contribute to the reduction of major safety or environmental risks. Further, in the case of those European countries where a Safety Case type regime is in place, any deficiencies in the earlier versions (1989 and 1979) of the MODU Code with respect to fire and blast resistance, or escape and evacuation, should be addressed, and the associated risks reduced to "as low as reasonably practicable" and meet approximately the same risk level of new rigs built in accordance with the 2009 Code.

Attachment 2 – Risk and Liability

Article 4

Safety considerations within authorisation of offshore oil and gas activities

Text proposed by the Commission	OGP proposed amendment
<p>4.3. Authorisations for offshore oil and gas exploration operations, and for production operations shall be granted separately.</p>	<p>4.3. Authorisations for offshore oil and gas exploration operations and for production operations shall be granted separately in accordance with Article 1.3 of Directive 94/22/EC.</p>
<p>Justification</p> <p>Clarification is needed whether ‘authorisations’ refers to or includes granting of licenses or subsequent consents under a license. It is normal in many Member States to grant licences in a staged approach, with subsequent consents issued for different phases of activities. On the grounds of offshore safety there is no reason to amend this practice. The Commission’s text is consistent with current practice as proposed in Directive 94/22/EC.</p> <p>The offshore exploration phase entails significant upfront investments, typically consisting of the gathering of seismic data and drilling of extensive exploration wells; all with an uncertain outcome. It would be extremely difficult for companies to make a decision to embark on financially high-risk exploration activity without, at the same time, having the assurance that given a positive outcome during the exploration phase, the same companies may secure the right to participate also in the revenue-generating production phase.</p>	

Article 7

Liability for environmental damage

Text proposed by the Commission	OGP proposed amendment
<p>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.</p>	<p><i>OGP suggests deferring Article 7, together with Article 37, for further consideration of the costs, benefits and impact assessment, including the potential impact on liability provisions to be made by licensees.</i></p> <p><i>Ultimately, it might be best to withdraw these both from the proposed Regulation and include them in the ongoing Commission review of risks and liability provisions.</i></p>
<p>Justification</p> <p>Together with Article 37, Article 7 may have a significant impact on liabilities for offshore operations and these should be carefully assessed in the ongoing Commission assessment of risk and liability provision pursuant to Recital 48 of this Regulation. Introducing and implementing legislation in this area, until the broader question of liability has been assessed, makes little sense and raises the level of legal uncertainty for undertakings engaging in offshore oil and gas activities.</p>	

Attachment 3 – Major Hazard Report

Article 13

Notification of well operations

Text proposed by the Commission	OGP proposed amendment
<p>1. No less than 21 days prior to the start of a well operation, the well operator shall send to the competent authority a notification containing details of the design of the well and its operation in accordance with the requirements of Annex II, part 4.</p>	<p>1. No less than 21 days prior to the start of a well operation, or such shorter period as the competent authority may specify, the well operator shall send to the competent authority a notification containing details of the design of the well and its operation in accordance with the requirements of Annex II, part 4.</p>
<p>Justification</p> <p>OGP believes that, under certain circumstances, there may be a need for some flexibility to the time scale, with the approval of the competent authority, to allow for unforeseen well operations to be done without undue delay.</p>	

Article 16

Power to prohibit activity

Text proposed by the Commission	OGP proposed amendment
<p>1. The competent authority shall prohibit the operation or bringing into operation of any installation or any part thereof where the measures proposed by the operator for the prevention and mitigation of major accidents pursuant to Articles 10, 11, 13 and 14 are considered seriously deficient.</p>	<p>1. The competent authority shall have the power to prohibit the operation or bringing into operation of any installation or any part thereof where the measures proposed by the operator for the prevention and mitigation of major accidents pursuant to Articles 10, 11, 13 and 14 are considered seriously deficient.</p>
<p>Justification</p> <p>OGP believes that any decision by a competent authority to prohibit upstream activities can only be taken following a process of dialogue with the installation operator. Furthermore it needs clear criteria to enable a transparent decision-making process. The power to prohibit operations seems to exist with most, if not all, established regulatory authorities. In regions like the North Sea, competent authorities follow a transparent</p>	

enforcement protocol. For this reason clear criteria need to be formalised by the competent authorities for how this power would be executed. Finally, OGP would have concerns if the Regulation came into force before the necessary inspection staff were competent to use the power, when justified, to enforce MHR requirements.

Article 18

Major accident prevention by operators

Text proposed by the Commission	OGP proposed amendment
<p>1. Operators shall prepare a document setting out their major accident prevention policy, and ensure that it is implemented throughout the organisation of their offshore operations, including by setting up appropriate monitoring arrangements to assure effectiveness of the policy.</p> <p>2. The document pursuant paragraph 1 shall be submitted to competent authorities as a part of the Major Hazard Report pursuant to Articles 10 and 11 or as the notification of well operations pursuant to Article 13.</p> <p>5. Operators shall establish, and regularly consult with the representatives of the relevant Member States pursuant to Article 27, the industry priorities for preparing and/or revising standards and guidance for best practice in control of offshore major accident hazards throughout the design and operation lifecycle of offshore operations, and as a minimum shall follow the outline in Annex IV.</p>	<p>1. Operators shall have prepare a document setting out their major accident prevention policy and ensure that it is implemented throughout the organisation of their organisation, including offshore operations, including by setting up along with appropriate monitoring arrangements to assure effectiveness of the policy.</p> <p>2. The document pursuant paragraph 1 shall be submitted to competent authorities as a part of the Major Hazard Report pursuant to Articles 10 and 11 or as part of the notification of well operations pursuant to Article 13.</p> <p>5. Operators Competent authorities shall establish, and regularly consult with the industry representatives of the relevant Member States pursuant to Article 27, the industry priorities for preparing and/or revising standards and guidance for best practice in control of offshore major accident hazards throughout the design and operation lifecycle of offshore operations, and as a minimum, shall follow the outline in Annex IV.</p>
<p>Justification</p> <p>Ad 18.1. and 18.2.: OGP supports the importance of preventing major accidents by improving safety performance during production and well operations. The upstream industry presumes that safety management includes environmental considerations, although environmental management is not explicitly covered in the article itself.</p>	

Ad 18.5.:

OGP considers that it is not the operator who establishes standards and guidance for best practice. The competent authorities do this in consultation with the operators.

Annex IV

Provisions by operators for prevention of major accidents

Text proposed by the Commission	OGP proposed amendment
<p>4. Operators shall ensure that hazardous substances are at all times contained within the pipelines, vessels and systems intended for their safe confinement. In addition, operators shall ensure that no single failure of a barrier to loss of containment can lead to a major hazard incident.</p>	<p>4. Operators shall ensure in so far as is reasonably practicable that hazardous substances are at all times contained within the in pipelines, vessels and systems intended for their safe confinement. In addition, operators shall ensure in so far as is reasonable practicable that no single failure of a barrier to loss of containment can lead to a major hazard incident.</p>
<h4>Justification</h4>	
<p>This is one of a number of instances throughout the draft where operators are required to "ensure" particular outcomes. It is the view of OGP that this would impose an absolute obligation which could be breached despite operators having taken all such precautions as they might reasonably be expected to take in the circumstances, applying good industry practice. This would seem to be unnecessarily harsh in light of the fact that in Member States, such as the UK, sanctions for non-compliance with Health, Safety and Environment Regulations (HSE) typically take the form of criminal offences and in others may impose equally serious sanctions. OGP notes that other EU Directives, such as the Health and Safety Directive, couple a requirement to "ensure" an outcome with defences that have the effect of limiting liability where incidents occur despite the exercise of all due care. The current draft Regulation does not include any comparable qualification. Imposing an unqualified absolute requirement on operators in this manner would be a significant departure from the UK regime, which applies the standard that operators must ensure safety "in so far as is reasonably practicable".</p>	
<p>Additionally, the proposed Regulation, notably Annex 4 (4) would appear to prohibit the use of HIPS instrumentation systems. This needs to be clarified, as HIPS systems are in widespread use offshore. These may be acceptable if they have been assessed against BS EN 61508/61511 requirements. You could also argue that the pressure envelope (a pipe or vessel) is a single barrier to loss of containment, and this will always be the case.</p>	

Attachment 4 - Competent Authorities

Article 27

Cooperation between Member States

Text proposed by the Commission	OGP proposed amendment
<p>3. Clear priorities and procedures should be established for the preparation and updating of guidance documents in order to identify and facilitate the implementation of the best practices in areas pursuant to paragraph 2.</p>	<p>3. Clear priorities and procedures should be established by competent authorities for the preparation and updating of guidance documents in order to identify and facilitate the implementation of the best practices in areas pursuant to paragraph 2.</p>
<p>Justification</p> <p>It is not clear who would be responsible for establishing 'priorities and procedures'. Given that the Regulation has direct effect, it is important to specify whose responsibility it would be to establish those priorities and procedures.</p>	

Article 28

Coordinated approach towards the safety in adjacent regions and international activities

Text proposed by the Commission	OGP proposed amendment
<p>3. The Commission shall promote high safety standards for offshore oil and gas operations at international level at appropriate global and regional fora, including those related to Arctic waters.</p>	<p>3. The Commission shall promote high safety standards for offshore oil and gas operations at international level at appropriate global and regional fora. including those related to Arctic waters.</p>
<p>Justification</p> <p>OGP believes it inappropriate to single out particular maritime regions and proposes deleting the reference in Article 28 'arctic waters' as it is already covered implicitly within the existing text.</p>	

Article 38

Requirements on documents related to consenting procedure

Text proposed by the Commission	OGP proposed amendment
<p>Operators of installations shall comply in full with this Regulation within 2 years of it coming into effect, with the following exceptions:</p> <p>(a) Operators for non-production installations that are under contract but not yet established on location shall comply in full with this Regulation within 1 year of it coming into effect, or earlier by agreement with the competent authority.</p> <p>(b) Operators of planned installations shall comply in full with this regulation unless otherwise agreed with the competent authority, and in any case no later than within 1 year of it coming into effect.</p> <p>(c) Well operators shall comply in full with this Regulation within 3 months of it coming into effect, or earlier by agreement with the competent authority.</p>	<p>Operators of installations shall comply in full with this Regulation within 3 2 years of it coming into effect, with the following exceptions:</p> <p>(a) Operators for non-production installations that are under contract but not yet established on location shall comply in full with this Regulation within 2 1 years of it coming into effect, or earlier by agreement with the competent authority.</p> <p>(b) Operators of planned installations shall comply in full with this Regulation unless otherwise agreed with the competent authority, and in any case no later than within 2 1 years of it coming into effect.</p> <p>(c) Well operators shall comply in full with this Regulation within 12 3 months of it coming into effect, or earlier by agreement with the competent authority.</p> <p>(d) Where the competent authority identifies existing installations presenting lower risks, these will be subject to longer transition periods to be notified to the Commission by the relevant competent authority.</p>
<p>Justification</p> <p>OGP believes that the transitional periods foreseen in Article 38 should be extended as the limited time available might be insufficient to complete the update of the Major Hazard reports by the deadline. This could lead to the unintended consequence of a <i>de facto</i> moratorium on drilling and production activities.</p> <p>An extension of the transition periods would also promote consistency between national legislations and the Regulation and compliance therewith by all parties. There are potentially significant changes required to national legislation in order to avoid overlap or misalignment with the proposed Regulation. Additionally, meeting the suggested</p>	

requirements would constitute a significant effort in those Member States with large oil and gas industry and a high number of existing installations.

Any transition timeline should follow a risk-based approach to allow the prioritisation of effort on higher risk activities and not to follow a 'one-size-fits-all' approach. In addition, competent authorities should take responsibility for notifying to the Commission.

OGP would also like to recall that the changes in the UK legislation after the Piper Alpha disaster took four years to be implemented. The British 'Safety Case' is now considered in the Impact Assessment of the proposal as Option 1. In OGP's view, it is clear that two years to achieve a more ambitious goal (Option 2) are not enough.

Additionally, the upstream industry is concerned that Member States, particularly those which are only beginning to develop offshore oil and gas activities, would need to establish a competent authority in a very short timeline. Member States without a competent authority yet in place, would need to appoint its staff before any assessments could be completed – and might not be able to find enough skilled and experienced staff assessors. This could trigger a drain on already-established regulators to assist in new-agency formations in the Adriatic, Baltic and Black Sea. A lack of competent staff would subsequently delay the review of Major Hazard Reports.

Annex III

Provisions by competent authorities for regulation of major hazards operations

Text proposed by the Commission	OGP proposed amendment
<p>2. Member States should make the necessary provisions to bring the above arrangements into effect, including:</p> <p>(d) where appropriate, to require operators and/or installation owners to indemnify the competent authority for the cost of its functions carried out pursuant to this regulation;</p>	<p>2. Member States should make the necessary provisions to bring the above arrangements into effect, including:</p> <p>(d) where appropriate, to require operators and/or installation owners to compensate the competent authority for services (e.g. inspectors' visits) rendered on fees or rates which are calculated on basis of objective, transparent and proportionate criteria so as to ensure fair contribution by those involved in all existing and future operations. indemnify the competent authority for the cost of its function carried out pursuant to this regulations</p>

Justification

OGP sees the appointment of competent authorities by Member States as a positive step. The responsibility for setting up and funding these institutions must lie with the Member States.

A problem may exist when a Member State with no established competent authorities attempts to appoint its own and cannot provide competent staff assessors. This could place a drain on established regulators to assist in setting up any new agency.

Currently in Annex III, 2 (d) a provision is included, indicating that operators might be required to 'indemnify the competent authority' for the cost of its functions carried out pursuant to this Regulation. It is not clear at all how such an indemnity might be calculated. In addition, in countries where there is only one operator, or a limited number, the operator should not bear the full costs of the competent authority to comply with this Regulation.

It is not uncommon for operators to pay fees to the regulatory authorities, to cover for instance inspectors' visits, but these fees need to be clearly and fairly specified and neither the entire share of the burden, nor the entire scope of actions of a safety regulator should be shouldered by a single operator alone. In any case, the calculation criteria need to be objective and proportionate to ensure a fair contribution of all existing and future operators.

Attachment 5 – Emergency Response

Article 12

Internal emergency response plans

Text proposed by the Commission	OGP proposed amendment
<p>1. Operators shall prepare internal emergency response plans taking into account the major accident risk assessments undertaken during preparation of the most recent major hazard report. In the case of drilling a well from a mobile non-production installation, the risk assessment pursuant to the well notification should be incorporated into the emergency response plan for the installation.</p> <p>2. For production and non-production installations, the internal emergency response plan shall be submitted to the competent authority as part of the Major Hazard Report.</p>	<p>1. Operators shall prepare internal emergency response plans taking into account the major accident risk assessments undertaken during preparation of the most recent major hazard report. In the case of drilling a well from a mobile non-production installation, the risk assessment pursuant to the well notification should be incorporated into the emergency response plan for the installation.</p> <p>2. For production and non-production installations, the operator shall submit to the competent authority the internal emergency response plan shall be submitted to the competent authority as part of the Major Hazard Report.</p>
<p>Justification</p> <p>Provision of internal emergency plans is current common practice in the upstream industry and OGP supports this as an example of good oilfield practice.</p> <p>In OGP's experience, there are different definitions or usages with regard to the role of operators within Member States. Article 12 does not follow exactly the definitions in Article 2. This needs further clarification.</p> <p>Ad 12.1.: 'Notification' needs to be deleted as the risk assessment relates to the well, not to the notification.</p> <p>Ad 12.2.: There is a need for clarity on the scope of the emergency plan (definition 2. 15 – 'requires an overview') which is to be included within the MHR, as well as the relationship between internal and external emergency plans, OPEP's (Oil Pollution Emergency Plans), and national contingency plans.</p> <p>For wells, the OPEP is usually owned by the well operator in the case of a non-production installation. Guidance is required on how these well plans are to be</p>	

integrated into a non-production installation emergency plan. For example, in the UK responsibility for spill response rests with well operator, not the rig operator.

Article 29

Requirements for internal emergency response plans

Text proposed by the Commission	OGP proposed amendment
<p>1. Internal emergency response plans shall be prepared by the operator so as to:</p> <p>(a) be initiated to contain an incipient major accident within the installation, or within the exclusion zone established by the Member State around the perimeter of the installation, or subsea wellhead;</p> <p>3. The internal emergency plan shall be prepared in accordance with the provisions of Annex V, and updated in line with any change to the major hazard risk assessment in the well plan or Major Hazards Report as appropriate. Any such updates shall be advised to the authority responsible for preparing the external emergency response plans for the area concerned.</p>	<p>1. Internal emergency response plans shall be prepared by the operator so as to:</p> <p>(a) be initiated to contain an incipient major accident within the installation, or prevent escalation or limit consequences of an accident related to offshore oil and gas operations within the an exclusion zone established by the Member State around the perimeter of the installation, subsea wellhead or pipeline;</p> <p>3. The internal emergency plan shall be prepared in accordance with the provisions of Annex V, and updated in line with any change to the major hazard risk assessment in the well plan or Major Hazards Report as appropriate. Any such Material updates shall be advised to the authority responsible for preparing the external emergency response plans for the area concerned.</p>
<p>Justification</p> <p>OGP generally supports the requirements for internal emergency response plans outlined in Art. 29. However this article is not in line with the requirements of some existing Regulations at Member State level.</p> <p>Ad 29.1.: OGP believes that the article needs clarification with regard to what is meant by 'incipient major accidents', and has suggested the text from Art 2.11.</p> <p>Ad 29.3.: OGP does not believe that all updates of internal plans need to be reflected in updates to the external emergency plans.</p>	

Article 30

External emergency response plans and emergency preparedness

Text proposed by the Commission	OGP proposed amendment
<p>2. External emergency response plans shall be prepared with the cooperation of relevant operators and, as appropriate, licensees, and aligned with the internal emergency response plans of the installations stationed or planned in the subject area. Any update to the internal plans advised by an operator should be taken into account.</p> <p>6. Member States shall keep updated records of emergency response resources available in their territory or jurisdiction by both public and private entities. Those records shall be made available to the other Member States and, on a reciprocal basis, with neighbouring third countries, and to the Commission.</p> <p>7. Member States and the operators shall regularly test their preparedness to respond effectively to offshore oil and gas accidents.</p>	<p>2. External emergency response plans shall be prepared with the cooperation of relevant operators and, as appropriate, licensees. , and aligned with the internal emergency response plans of the installations stationed or planned in the subject area. Any update to the internal plans advised by an operator should be taken into account.</p> <p>6. Member States shall ensure they have sufficient keep updated records of emergency response resources available in their territory or jurisdiction by both public and private entities. Information These records shall be made available to the other Member States and, on a reciprocal basis, with neighbouring third countries, and to the Commission.</p> <p>7. Member States and the operators shall regularly periodically test their preparedness to respond effectively to offshore oil and gas accidents.</p>
<p>Justification</p> <p>External plans are generally in place in the North Sea. The proposed Regulation seeks to mandate 'external emergency response' plans, which are defined as a local, national or regional strategy to 'limit consequences' of an accident related to offshore oil and gas operations.</p> <p>Elements of the proposed Regulation (contingency planning, transboundary response and the need for the cooperation of states) are already described in the Emergency and Mediterranean Offshore Protocols of the Barcelona Convention. Further requirements on spill response preparedness are also given in the 1990 OPRC convention, which has a section relating to offshore facilities.</p> <p>Ad 30.2.:</p> <p>OGP believes that the external emergency plan should be based on the potential worst-case scenario arising from the installation to which it relates, and this needs to be taken into account in the internal plans of adjacent installations rather than trying to cover all</p>	

installations within a given area. The upstream industry questions how this article would be complied with if there are many installations referenced within the external plan. External plans need only take into account the generic content of the installation plans – not the detail. Internal plans need to align with the external plan, not the other way round.

Ad 30.6. and 30.7.:

OGP considers that it is impractical for full details of emergency response resources to be maintained at a Member State level, due to the wide variety of resources available and the changing nature of what will be available at any time. Some of this information may also be proprietary and have a commercial value to the owner.

Article 31

Emergency response

Text proposed by the Commission	OGP proposed amendment
2. In the event of an accident, the relevant authorities, in cooperation with operators concerned, shall take all measures necessary to prevent escalation of the accident and to mitigate its consequences.	2. In the event of an accident, the relevant authorities operators in cooperation with operators relevant authorities concerned, shall take all the measures necessary to prevent escalation of the accident and to mitigate its consequences.
4. In the course of the emergency response, the Member State shall collect the information necessary for a full analysis of the accident.	4. In the course of the emergency response, the Member State shall collect ensure that the information necessary for a full analysis of the accident is collected .
Justification	
Ad 32.2. and 32.4.:	
OGP believes the primary responsibility for taking measures to prevent escalation of an accident lies with the operator in conjunction with the relevant authorities of the Member States. Current national legislation defines satisfactorily the operators' responsibilities, which should not increase.	

Attachment 6 – Public Participation

Article 5

Public participation in ~~licensing procedures~~ authorisation procedures

Text proposed by the Commission	OGP proposed amendment
<p>1. Member States shall ensure that the public shall be given early and effective opportunities to participate in procedures concerning licensing procedures in their jurisdiction in accordance with the requirements of Annex I to this Regulation. The procedures shall be those laid down in Annex II of Directive 2003/35/EC.</p> <p>2. The Member States may lay down more detailed arrangements for informing the public and for consulting the public concerned.</p> <p>3. Public participation shall be organised so as to ensure that disclosure of information and involvement of the public shall not pose risks to safety and security of offshore oil an gas installations and their operation.</p>	<p>1. Member States shall ensure that the public shall be given early and effective opportunities to participate in authorisation procedures for offshore oil and gas activities concerning licensing procedures in their jurisdiction in accordance with the requirements of Annex I to this Regulation. The procedures shall be those laid down in Annex II of Directive 2003/35/EC.</p> <p>2. The Member States shall identify those authorisation procedures refered to in paragraph 1 where the public shall be consulted and may lay down more detailed arrangements for informing the public and for consulting the public concerned.</p> <p>3. Public participation shall be organised so as to ensure that disclosure of information and involvement of the public shall not pose risks to safety and security of offshore oil an gas installations and their operation as well as the need to respect confidential, commercially sensitive and proprietary information.</p>
<p>Justification</p> <p>Activities in a petroleum basin are many and varied and likewise the need for authorisations. Public participation is important and should be supported, but needs to be appropriate to the circumstances of each Member State and of the activity involved while at the same time respecting confidential, strategic and proprietary information including on the geological potential of an area.</p>	

Article 23

Transparency

Text proposed by the Commission	OGP proposed amendment
<p>1. The information pursuant Annex VI shall be made publicly available without a need for request pursuant to applicable provisions of Union legislation on access to environmental information.</p> <p>3. When publishing their national emergency response plans pursuant to Article 30 the Member States shall ensure that disclosed information does not pose risks to safety and security of offshore oil and gas installations and their operation.</p>	<p>1. Member States or their competent authorities The information pursuant Annex VI shall make be made publicly available the information pursuant to Annex VI without a need for request pursuant to applicable provisions of Union legislation on access to environmental information.</p> <p>3. When publishing information pursuant to Annexes I, V and VI their national emergency response plans pursuant to Article 30 the Member States shall ensure that disclosed information does not pose risks to safety and security of offshore oil and gas installations and their operation.</p>
<p>Justification</p> <p>It is important to clarify the responsibility for making information available to the public. As Member States are recipients of information from the upstream industry, it is incumbent upon them, notably under Article 24, to publish it.</p> <p>When publishing data it is important that this does not pose a risk to the safety and security of oil and gas installations.</p>	

Article 24

Reporting on safety and environmental impact of offshore oil and gas activities

Text proposed by the Commission	OGP proposed amendment
<p>1. The Member States shall prepare an annual report concerning:</p> <p>(e) the safety and environmental performance of offshore oil and gas operations in their jurisdiction.</p>	<p>1. The Member States shall prepare an annual report concerning:</p> <p>(e) the safety and environmental performance of offshore oil and gas operations and, consequently, the pertinence of any suspension of such operations that might be of</p>

	application in their jurisdiction.
<p>Justification</p> <p>Member States with oil and gas activities have in place a number of reporting mechanisms in respect of safety and environmental performance of the upstream industry. Where Member States enforce suspension of oil and gas operations these should be reported and duly justified on the basis of European or national legislation.</p>	

Article 25

Investigation following a major accident

Text proposed by the Commission	OGP proposed amendment
<p>2. Member States shall conduct thorough investigations of major accidents involving significant damage (to persons and environment) or involving major loss of assets. The report of the investigation shall include an assessment of the effectiveness of the competent authority's regulation of the installation concerned in the time preceding the accident and recommendations for adequate changes to the relevant regulatory practices where needed.</p>	<p>2. Member States or competent authorities shall conduct thorough investigations of major accidents. involving significant damage (to persons and environment) or involving major loss of assets The results report of the investigations and the lessons to be learned shall include an assessment of the effectiveness of the competent authority's regulation of the installation concerned in the time preceding the accident and recommendations for adequate changes to the relevant regulatory practices where needed. be made promptly available to all relevant parties. A specific version of the report, that takes into account possible legal limitations, shall be made available publicly with regard to Articles 22 and 23.</p>
<p>3. A summary of the investigation report prepared pursuant to paragraph 2 of this Article shall be made available to the Commission at the conclusion of the investigation or at the conclusion of legal proceedings, whichever is the later. A specific version of the report, that takes into account possible legal limitations, shall be made available publicly with regard to Articles 22 and 23.</p>	<p>3. A summary of the investigation report prepared pursuant to paragraph 2 of this Article shall be made available to the Commission at the conclusion of the investigation or at the conclusion of legal proceedings, whichever is the later. A specific version of the report, that takes into account possible legal limitations, shall be made available publicly with regard to Articles 22 and 23.</p>

4. Following its investigations pursuant to paragraph 2, the competent authority shall implement any recommendations of the investigation that are within its powers to act.	3. Following its investigations pursuant to paragraph 2, the competent authority shall implement any recommendations of the investigation that are within its powers to act.
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Justification

In the experience of the upstream industry, the primary requirement from a major incident enquiry is to quickly and effectively communicate the key lessons learned. International and national associations are progressing this issue through specialist expert committees, such as the OGP Wells Expert Committee and Oil & Gas UK's Well Life Cycle Practices Forum. The initiative for reviewing the effectiveness of offshore safety and environmental legislation should remain with Members States and their competent authorities.

Article 26 Confidentiality

Text proposed by the Commission	OGP proposed amendment
3. Pursuant to paragraph 2, or for the purposes of public participation pursuant to Article 5, the operator shall supply to the competent authority, and make available to the public, a version of the document that excludes confidential information.	3. Pursuant to paragraph 2, or for the purposes of public participation pursuant to Article 5, the operator shall supply to the competent authority—and make available to the public , a version of the document that excludes confidential information.

Justification

For consistency reasons, the responsibility to publicly disclose information should reside with Member States and competent authorities. Disclosure of information by Member States or their competent authorities should be subject to compliance with other laws including competition and data protection requirements, and to any applicable rules of legal privilege.

Particular assurances are needed that the exemptions provided by Directive 2003/4/EC (Art. 4.2) give proper protection to the confidentiality of commercially sensitive information, for example those provided in Annex 2.4 (Notification of Well Operations), that calls for inclusion of inter alia the well work program (item 4), details of well design (item 7) and the design of well configuration at end of operations (item 8), would also mean releasing primary and secondary drilling targets. The security of such information is particularly important in the case of exploration wells.

Annex I: Public participation linked to authorisations under Directive 94/22/EC

Text proposed by the Commission	OGP proposed amendment
<p>ANNEX I</p> <p>Public participation linked to authorizations under Directive 94/22/EC</p> <p>1. Member States shall ensure that:</p> <p>(a) the public is informed, whether by public notices or other appropriate means such as electronic media where available, about submission of licensing applications to Member States, and that relevant information about such proposals is made available to the public including inter alia information about the right to participate, and to whom comments or questions may be submitted;</p> <p>(b) the public is entitled to express comments and opinions when all options are open before decisions on the licensing applications are made;</p> <p>(c) in making those decisions, due account shall be taken of the results of the public participation;</p>	<p>ANNEX I</p> <p>Public participation linked to authorisations under Directive 94/22/EC</p> <p>1. For the authorisations defined pursuant to Article 5.2 Member States shall ensure that:</p> <p>(a) the public is informed, whether by public notices or other appropriate means such as electronic media where available, about application for authorisations submission of licensing applications to Member States, and that relevant information about such proposals is made available to the public including inter alia information about the right to participate, and to whom comments or questions may be submitted;</p> <p>(b) the public is entitled to express comments and opinions when all options are open according to timelines and procedures defined by Member States or competent authorities and before decisions on the licensing applications authorisations are made granted;</p> <p>(c) in making granting those decisions authorisations, due account shall be taken of the results of the public participation;</p>
<p>Justification</p> <p>Activities in a petroleum basin are many and varied and likewise the need for authorisations. Public participation is important and should be supported, but needs to be appropriate to the circumstances of each Member State and of the activity involved while at the same time respecting confidential, strategic and proprietary information including on the geological potential of an area.</p>	

Attachment 7 – Delegated Acts

Article 34

~~Delegated powers of the Commission~~ Monitoring and review

Text proposed by the Commission	OGP proposed amendment
<p>1. The Commission shall be empowered to adopt delegated acts in accordance with Article 35 of this Regulation to adapt the requirements to the latest development of relevant technologies and procedures in Annex I-VI.</p> <p>2. The Commission may also adopt delegated acts in accordance with Article 35 of this Regulation to precise application of the requirements of Regulation in relation to:</p> <p>(a) details to be submitted in a Design notificaton or a Major Hazard Report as specified in Annex II points 1, 2, 3, 6;</p> <p>(b) notification of well/ combined operations as specified in Annex II, point 4 and 7;</p>	<p>1. Competent authorities shall monitor and seek to continuously improve the safety of offshore oil and gas activities under this Regulation, taking into account the latest development of relevant technologies and procedures in Annex I-VI.The Commission shall be empowered to adopt delegated acts in accordance with Article 35 of this Regulation to adapt the requirements to the latest development of relevant technologies and procedures in Annex I-VI.</p> <p>2. No later than [3] years following the completion of transitional periods as defined by Article 38, the Commission may, duly accounting for the efforts and experiences of competent authorities in accordance with paragraph 1, assess in a report the experience of the implementation of this Regulation and propose any appropriate amendments to this Regulation by way of ordinary legislative procedure.also adopt delegated acts in accordance with Article 35 of this Regulation to precise application of the requirements of Regulation in relation to:</p> <p>(a) details to be submitted in a Design notificaton or a Major Hazard Report as specified in Annex II points 1, 2, 3, 6;</p> <p>(b) notification of well/ combined operations as specified in Annex II, point 4 and 7;</p>

(c) requirements related to verification by independent third party verification as specified in Annex II, point 5 (d) requirements for functioning and organisation of competent authorities as specified in Annex III and;	(c) requirements related to verification by independent third party verification as specified in Annex II, point 5 (d) requirements for functioning and organisation of competent authorities as specified in Annex III and;
(d) requirements related to the prevention of major hazards by operators as specified in Annex IV.	(d) requirements related to the prevention of major hazards by operators as specified in Annex IV.

Justification

The competent authorities, which successfully promote continued improving and learning, are best-placed and qualified to assess the effectiveness of this Regulation. The Commission has an important role in receiving information from all Member States and competent authorities and can then assess the need for further changes to the Regulation. OGP believes that the ordinary legislative procedure allows for full engagement of all stakeholders.

Article 35

Exercise of the delegation

Text proposed by the Commission	OGP proposed amendment
<p>1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.</p> <p>2. The delegation of power referred to in Article 34 shall be conferred on the Commission for an indeterminate period of time from the date of the entry of this Regulation into force.</p> <p>3. The delegation of power referred to in Article 34 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated</p>	Deleted.

<p>acts already in force.</p> <p>4. As soon as it adopts a delegated act, the Commission shall notify simultaneously the European Parliament and to the Council.</p> <p>5. A delegated act adopted pursuant to Article 34 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.</p>	
<p>Justification</p> <p>Deletion justified by amendments to Article 34.</p>	

Article 36
Committee procedure

Text proposed by the Commission	OGP proposed amendment
<p>1. The Commission shall be assisted by a committee. The committee shall be a committee within the meaning of Regulation (EU) No 182/2011.</p> <p>2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.</p>	<p>Deleted.</p>
<p>Justification</p> <p>Deletion justified by amendments to Article 34.</p>	

Attachment 8 – Transboundary Effects

Article 18

Major accident prevention by operators

Text proposed by the Commission	OGP proposed amendment
<p>6. Licensees, operators and major contractors based in the Union shall endeavour to conduct their offshore oil and gas operations when outside the Union in accordance with the principles set out in this Regulation.</p>	<p>6. Licensees, operators and major contractors based in the Union shall, with Member States and competent authorities, contribute to sharing the principles in this Regulation for offshore oil and gas operations outside the Union. endeavour to conduct their offshore oil and gas operations when in accordance with the principles set out in this Regulation.</p>
<p>Justification</p> <p>OGP acknowledges the significance of high operating standards, whether in the EU or beyond. The effort rests not only with licensees, operators and major contractors, but to be wholly effective should include Member States and their competent authorities and the relevant authorities of the countries concerned. The term 'endeavour' has uncertain legal effect and should be removed. Article 18.6 in current wording establishes an obligation difficult to enforce.</p>	