December 2011

Non Paper

Norway: Comments to the European Commission proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on
safety for offshore oil and gas prospection, exploration and production activities

Introduction: In this Non-paper, Norway presents some basic views on the above Commission proposal. The comments are given without prejudice to the relevance of the proposal as regards the scope of the EEA Agreement.

- **General:** The background for the proposal is the common objective of avoiding major accidents resulting from offshore petroleum activities, and limiting the consequences of any such accident. Norway does, however, have concerns regarding the content as well as the format of the Commission proposal. Unfortunately, the proposal may reduce the safety level for offshore petroleum activities in areas where safety regulations are already well developed and national circumstances taken into account. This is, among others, due to the fact that the proposal would result in unclear distribution of responsibility – both for safety in general, for emergency planning and, as appropriate, clean-up operations.

  We fully recognise the magnitude and complexity of the Commissions' ambitious task to establish a relevant regulatory framework to address major hazard risks in offshore petroleum activities, while at the same time obtaining a comparable level of safety in all Member States. However, it should be observed that there are European states with more than forty years of experience and well functioning safety regimes, while others are in the initial stages of their petroleum activities. A governing principle for the Commission should, in the opinion of Norway, be to avoid distortions to existing, well functioning safety regimes.

  Assessing the contents of the proposal, Norway is concerned about the placing of responsibility and division of roles which are key factors for the well functioning safety regimes in the North Sea region. We are especially worried that a role for authorities as approving agencies indicates a transfer of responsibilities which are, in our experience, best handled by the industry itself.

- **<u>The overriding and ultimate responsibility for safety in offshore petroleum activities should always clearly rest with the operator/ licensee</u>:** A fundamental principle of a robust and efficient safety regime is the operator's duty to ensure his and his employees' compliance with all relevant HSE-requirements (internal control), as well as his duty to also ensure that any contractor or sub-contractor of his is both qualified and in compliance with relevant legal requirements. In our experience, the unambiguous placing of responsibility is a necessity when pursuing the best level of safety. The proposed regulation does not correspond with this on several specific issues.

- **Goal-setting vs. prescriptive legislation:** The proposal states that safety legislation in offshore petroleum activities shall be based on goal-setting rules – while in itself being very prescriptive. The system of prescriptive safety legislation was abandoned in Norway in 1985 and was substituted for an internal control system, leaving the operator and the licensees with all responsibility for obtaining the necessary safety level in their own petroleum activities. The proposal would represent a step backwards and may compromise the safety levels of petroleum activities in areas with well functioning safety regimes.

- **<u>Major Hazards Report (MHR)</u>:** The concept of an MHR is introduced in the proposal – requiring the operator of a production installation to describe in great detail the technical characteristics of the installation as well as his own safety management systems. All these requirements are in place in Norway and have been so for a long time, but without the requirement to actually compile all of this in a report to be submitted to the competent authority. On the contrary, such information is at all times available to the authorities on request. This ensures that the responsibility for conducting all relevant risk analyses and obtaining the necessary safety level is solely a matter for the operator – not the authorities.

  Also when it comes to an MHR relating to non-production installations, it seems to be unclear who has the responsibility to submit the report.

  In respect of both requirements, Norway cannot subscribe to the proposed obligation to submit the MHR to the competent authority for "acceptance". It is also unclear what such an "acceptance" entails as compared to, for instance, an approval or a consent. In fact it seems that the authorities are expected to conduct a total quality assessment of technical, operational and organisational solutions chosen by the operator. In any case, this requirement blurs responsibilities and could be understood to imply that parts of the responsibility for safety in offshore petroleum activities are transferred to the competent authority. This will, however, reduce the competent authorities' possibility to address the industry with regard to safety concerns and needs for improvement of safety levels.

- **Third party verification**: The requirement for an independent third party verification may undermine the operator's responsibility. An independent verification is also required under Norwegian law in certain cases. However, the operator is responsible for the verification method and its degree of independence, and shall in no respect be relieved of his overriding responsibility for safety through the third party role.

- **Emergency preparedness and response**: In Norwegian offshore petroleum activities the operator/licensee has the undivided responsibility for contingency planning and response to accidents. The role of the competent authorities is to monitor that emergency planning is carried out, and that the operator (or several operators together) has the equipment necessary to meet and reduce the effects of any accident. In case of an accident, the operator is responsible for any clean-up operation and is strictly liable in this respect. The proposed regulation blurs the responsibility of the operator to ensure that equipment is in place to meet and handle accidents, as the Member State seems to be given a role in this respect. This will lead to a transfer of responsibility from the operator to the authorities. Such unclear division of roles and responsibilities would not be consistent with the aim of limiting the consequences of accidents. It may also remove incentives from the operator to prevent accidents.

- **Separate licences for exploration and production**: In Norway, exclusive rights to explore for and produce oil and gas are granted in one and the same licence. This is in accordance with the EU licensing directive as it is presently worded. The obligation to grant separate licences for exploration and production in the proposal is strongly discouraged by Norway, as oil companies are not ensured the exclusive right to produce what they discover .

- **Public consultation before the granting of a licence**: Norway questions the system resulting from this provision. In our system, public consultation is carried out before blocks are announced for application to ensure that the areas where petroleum activities are to be carried out are compatible with local/ regional interests, business interests and environmental values. As required by the licensing directive, any restrictions to petroleum activities resulting from this consultation process shall be included in the announcement of the invitation to companies to apply for licences, and not after applications have been filed. Further, the decision on which companies are to be granted a licence is taken on the basis of the application and subsequent negotiations with the applicants, and all the relevant information in this respect is subject to confidentiality on the part of the authorities.

- **International regulation:** It is important to uphold a clear distinction between the offshore regime and the maritime regime. Mobile units operate in a global market, and international transit requires maritime certificates. Regional standards and transfer of "best practice" to adjacent regions cannot substitute

UN/IMO as the appropriate body to develop standards for international maritime certificates. Thus, we understand the provisions in the proposal relating to the "operator of a non-producing installation" to apply to mobile facilities when they are conducting petroleum activities under the coastal state regime.

- **The Arctic:** Norway questions the relevance of having a specific reference to the Arctic in Article 28 (3) of the proposal, which is otherwise giving the Commission the task of promoting high safety levels at the international level and in regional fora. Ensuring high safety levels should be a priority in all geographical areas. Therefore, the text should be more general.

- **Delegation to the Commission:** Norway questions the proposal to grant the Commission a delegated authority to adopt changes to the annexes of the proposal. Such delegation leaves a too open-ended competence to the Commission in setting safety regulations for offshore petroleum activities.

- **Assumptions and implications:** We take note of the Commission's frequency analysis, major oil spill cost estimates and assumed risk reductions that are expected to follow from the proposed regulation. We do not necessarily share the Commission's view in this respect.

- **Definitions:** Several of the proposed definitions are unclear:
    - Article 2 (9): "Exclusion zone": This term is unusual in the petroleum sector. Normally, and according to UNCLOS Article 60, the requirement would be for a "safety zone" around and above all installations – in Norway this zone is 500 meters.
    - Article 2 (13): "Industry": In the proposal, this term is limited to "private companies…" . However, in the licensing directive (Directive 94/22/EC) to which the Regulation shall apply defines) "entity" as "any natural or legal person or group of persons which applies for or holds an authorisation", cf. Article 1 (2). The definition in the licensing directive includes companies that are wholly or partly State owned, while these companies would seem to be excluded from the proposal.
    - Article 2 (22): "Operator": The proposal defines "Operator" in three different ways: "operator of a production installation", "owner of a non-production installation" and the "well operator of a well operation". All these actors have separate and individual obligations according to the proposal. In addition, the definitions seem to apply to *persons,* which is not at all recommendable. In the Norwegian petroleum legal regime, the term "operator" is defined as the *company* appointed by the Government to manage the day-to-day operations on behalf the licensees, and in all cases on the Norwegian Continental Shelf this is one of the licensees. The result of the proposed definition is, in our view, that the overall responsibility/ duties of the operator become fragmented, and the proposed regulation

could in itself create a risk that the responsibility is not clearly and unambiguously placed with the relevant licensee companies.

- **Regulation vs. directive:** Norway is of the firm view that safety regulations in offshore petroleum activities are most effectively handled by the national state. We understand that the Commission's intention by proposing a regulation in this respect is to obtain the same level of safety in all Member States with offshore petroleum activities. A regulation would possibly achieve this in Member States where the regulatory framework is not well developed. However, if the proposed regulation were to be implemented for offshore activities in geographical areas where robust safety principles and legal frameworks have been carefully developed over a long period of time, it represents a step backwards.

  A regulation leaves little room for adaptation to existing legal frameworks. Any new EU measures on offshore safety should therefore be in the form of new or amended directive(s). Further, in states having developed robust safety principles and legal frameworks, a detailed review of existing legislation in light of an adopted regulation – with a view to adjusting the former to the extent necessary – would create a massive administrative burden and – possibly – also raise complicated legal questions. This seems particularly futile when the proposed regulation could lead to a less effective safety system.