

## Annex IV: EU Acquis (relevant to Offshore Protocol obligations)

The lack of a comprehensive EU legal framework for the regulation of offshore oil and gas activities does not mean that this sector is not regulated at all. To the contrary, several EU legal instruments apply to the offshore sector. This Annex briefly presents these legal instruments and explains their relevance and applicability to the offshore oil and gas sector. It also includes three regional/international agreements which are also relevant to the offshore sector.

- Explanatory memorandum to the EU draft Regulation
- **Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage (*Environmental Liability Directive* or *ELD*)**<sup>1</sup>

The overall the objective of the ELD is to ‘establish a common framework for the prevention and remedying of environmental damage at a reasonable cost to society’<sup>2</sup>. Directive 2004/35/EC addresses pure ecological damage in terms of ‘protected species and natural habitats’ (biodiversity damage), ‘water damage’ and ‘land damage’. It applies to waters covered by Directive 2000/60/EC<sup>3</sup> according to which the term ‘surface waters’ also includes territorial waters (Article 2(1) of Directive 2000/60/EC<sup>4</sup>). This means that liability may be attributed for environmental damage occurring only within 12 nautical miles from shore, and not within the totality of waters under Member States’ jurisdiction, i.e., within their Exclusive Economic Zone (which can be up to 200 nautical miles from shore)<sup>5</sup> or their continental shelf (which can be up to 350 nautical miles from shore)<sup>6</sup>.

Building upon the existing legal framework, the EU draft Regulation extends the scope of ‘water damage’ under the ELD to cover not only ‘biodiversity damage’ but also ‘water damage’ occurring offshore up to the EEZ and continental shelf. This is of particular importance as many offshore oil and gas installations are located further than 12 nautical miles from shore and, currently, environmental damage occurring therein is only covered by the ELD as regards damage to protected species and natural habitats (‘biodiversity damage’). The connection between the two legal instruments is also evident from the wording used by the draft EU Regulation: ‘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’<sup>7</sup>.

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<sup>1</sup> Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 30.4.2004, p. 56–75.

<sup>2</sup> Recital 3 of Directive 2004/35/EC.

<sup>3</sup> Article 2(5) of Directive 2004/35/EC.

<sup>4</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1–73.

<sup>5</sup> Article 57 of the United Nations Convention on the Law of the Sea of 10 December 1982 (‘UNCLOS’).

<sup>6</sup> Article 76(5) of UNCLOS.

<sup>7</sup> Article 7 of the EU draft Regulation.

- **Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (*Environmental Impact Assessment Directive* or *EIA Directive*)**<sup>8</sup>

The original EIA Directive (85/337/EEC<sup>9</sup>) came into force in 1985; it has been amended three times through Directive 97/11/EC, Directive 2003/35/EC and Directive 2009/31/EC and was eventually codified by Directive 2011/92/EU of 13 December 2011. According to Article 1 of the Directive, it shall apply to the assessment of the environmental effects of those public and private projects, which are likely to have significant effects on the environment. The EIA Directive applies to a wide range of public and private projects, which are defined in Annexes I and II. Projects included in Annex I are considered as having significant effects on the environment and require an EIA. For projects listed in Annex II the national authorities have to decide whether an EIA is needed through a screening procedure.

Concerning oil and gas extraction, the EIA Directive provides that the conduct of an EIA is mandatory for the ‘extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas’ (Annex I (14) EIA Directive) and ‘pipelines with a diameter of more than 800mm and a length of more than 40km for the transport of gas and oil’ (Annex I (16)). In addition, Annex I makes EIA mandatory for ‘any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex’ (Annex I (24)). It is subject to discussion whether all oil and gas activities below the threshold are covered by Annex II(2)(d) which would mean that, in accordance with Article 4, the Member State determines whether the activity is subject to EIA (screening).

The offshore oil and gas sector has to comply with the provisions of the EIA Directive when the amounts of oil and gas extracted exceed those specified in Annex I of the EIA Directive. The EU draft Regulation also incorporates operators’ obligation to consider environmental impacts: it explicitly states that one of the conditions for operating offshore installations is the submission of a Major Hazard Report which shall contain, amongst others, ‘a description of the aspects of the environment likely to be significantly affected, an assessment of the identified potential environmental effects, in particular releases of pollutants to the environment, and a description of the technical and non-technical measures envisaged to prevent, reduce or offset them, including monitoring’ (Articles 9(1)(b), 10(1), 11(1) and Annex II Part 2(13) of the EU draft Regulation).

- **Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (*Waste Framework Directive*)**<sup>10</sup>

The explanatory memorandum to the EU draft Regulation refers to existing Union legal instruments, which are of relevance to the proposed Regulation. In relation to waste, it mentions Directive 2008/98/EC (‘Waste Framework Directive’), noting that ‘this Directive applies fully to oil spills, as upheld by the Court of Justice of the EU. Oil escaping from an

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<sup>8</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, p. 1–21.

<sup>9</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985, p. 40–48.

<sup>10</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3–30.

offshore installation is covered by the EU definition of waste, thus imposing the obligation for the polluter of cleaning up'<sup>11</sup>. The Offshore Protocol also regulates the disposal of harmful or noxious substances and materials, oil and oily mixture and drilling fluids and cuttings, sewage and garbage, which fall under the definition of waste as per Article 3(1) of the Waste Framework Directive.

The Waste Framework Directive provides the overarching legislative framework for the collection, transport, recovery and disposal of waste. Waste is defined as 'any substance or object which the holder discards or intends or is required to discard'<sup>12</sup>, while 'treatment of waste' is defined as 'recovery or disposal operations, including preparation prior to recovery or disposal'<sup>13</sup>. According to Recital (15) of the Waste Framework Directive, a distinction should be made between:

- The preliminary storage of waste pending its collection;
- The collection of waste; and
- The storage of waste pending treatment.

Recital (15) continues that 'establishments or undertakings that produce waste in the course of their activities should not be regarded as engaged in waste management and subject to authorisation for the storage of their waste pending its collection'. This implies that offshore installations only need to obtain a permit if they treat waste (sewage, garbage) themselves.

Further distinction between collection and treatment is provided in Recital (16) which notes that 'preliminary storage of waste within the definition of collection is understood as a storage activity pending its collection in facilities where waste is unloaded in order to permit its preparation for further transport for recovery or disposal elsewhere. The distinction between preliminary storage of waste pending collection and the storage of waste pending treatment should be made, in view of the objective of this Directive, according to the type of waste, the size and time period of storage and the objective of the collection. The Member States should make this distinction. The storage of waste prior to recovery for a period of three years or longer and the storage of waste prior to disposal for a period of one year or longer is subject to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste'.

Note that Article 2(2)(d) of the Waste Framework Directive provides that, to the extent covered by other EU legislation, 'waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries covered by Directive 2006/21/EC' is excluded from its scope. Nonetheless, according to Article 2(2)(b) of Directive 2006/21/EC on the management of waste from extractive industries (and amending Directive 2004/35/EC)<sup>14</sup> 'waste resulting from the *offshore prospecting, extraction and treatment of mineral resources*' (italics added) are *excluded from its scope*.<sup>15</sup> Consequently, since waste produced on offshore installations (and brought onshore) are not covered by the more specific Directive concerning waste from extractive industries, operators of offshore oil and gas installations would have to comply with the requirements of the more general Waste Framework Directive. This would mean that the 'original waste producer or other holder' (in practice: the operator) would be obliged to carry out the treatment of waste himself or have

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<sup>11</sup> Explanatory Memorandum to the EU draft Regulation.

<sup>12</sup> Article 3(1) of Directive 2008/98/EC.

<sup>13</sup> Article 3(14) of Directive 2008/98/EC.

<sup>14</sup> Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC, OJ L 102, 11.4.2006, p.15.

<sup>15</sup> See also Recital 6 providing that this Directive only applies to 'waste from land-based extractive industries' and Recital 9, stating that 'nor should this Directive apply to waste resulting from the offshore prospecting, extraction and treatment of mineral resources'.

the treatment handled by a dealer or establishment or undertaking which carries out waste treatment operations arranged by a private or public waste collector in accordance with Articles 4 and 13 (Article 15(1))<sup>16</sup>.

- **Council Directive 92/91/EEC concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industry through drilling (eleventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (*Health and safety of workers Directive*)**<sup>17</sup>

Directive 92/91/EEC establishes the minimum requirements for protecting the health and safety of workers in extractive industries. In applying Directive 92/91/EEC, employers are required to: apply safety considerations to workplaces right from the design stage; ensure that there is a supervisor in charge; entrust work involving a special risk only to suitably qualified staff; ensure that safety instructions are comprehensible to all the workers concerned; provide first aid facilities and run safety exercises at regular intervals. This Directive is directly relevant with regard to the safety measures and emergency plans mentioned in the Offshore Protocol as well as the conditions for operating offshore installations laid down in the EU draft Regulation.

- **Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (*Seveso II Directive*)**<sup>18</sup>

The Seveso II Directive requires EU Member States to identify high-risk industrial sites, take appropriate measures to prevent major accidents involving dangerous substances and limit their consequences for man and the environment. However, Article 4(f) stipulates that the Directive does not apply to ‘the offshore exploration and exploitation of minerals, including hydrocarbons’ and therefore, the analysis does not cover this Directive.

- **Directive 94/22/EC of the European Parliament and the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons (*Hydrocarbons Directive*)**<sup>19</sup>

Directive 94/22/EC introduces a set of common rules to ensure non-discriminatory access to the prospection, exploration and production of hydrocarbons. Since Member States have sovereign rights over hydrocarbon resources within their territories, they also have the power to determine and authorise the geographical areas where such rights may be exercised. Article 1(3) defines authorisation as ‘any law, regulation, administrative or contractual provision or instrument issued thereunder by which the competent authorities of a Member State entitle an entity to exercise, on its own behalf and at its own risk, the exclusive right to prospect or explore for or produce hydrocarbons in a geographical area’. The Directive provides that the authorisations must be introduced in a transparent manner based on objective, non-discriminatory criteria. An authorisation may be granted for each activity separately or for several activities at a time. Member States have the right to make access and the exercise of

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<sup>16</sup> Article 4 deals with waste hierarchy, whereas Article 13 requires measures for the protection of human health and the environment.

<sup>17</sup> Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (eleventh individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 348, 28.11.1992, p.9.

<sup>18</sup> Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, OJ L 10, 14.1.1997, p. 13–33.

<sup>19</sup> Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons, OJ L 164, 30.6.1994, p. 3–8.

these activities subject to considerations for certain reasons including the protection of the environment and public health.

The EU draft Regulation is closely linked to the Hydrocarbons Directive. Already in its first article, the EU draft Regulation states that it ‘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*’ (italics added). Reference to the Hydrocarbons Directive is made throughout the text EU draft Regulation (Recitals (9), (10) and (11); Article 2 paragraphs (3), (16) and (17); Article 4 paragraphs (1) and (4), Annex I).

– **Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism**<sup>20</sup>

The main purpose of the Civil Protection Mechanism is to provide, on request, support in the event of major emergencies and to facilitate improved coordination of the assistance provided by the Member States and the EU, taking into account the special needs of the isolated, outermost and other regions or islands in the EU. In effect, the Mechanism is an embodiment of European solidarity since it allows for the development of a rapid European response (Recital 4). The protection ensured by the Mechanism covers primarily people but also the environment and property (Article 1(2)). Note that the Commission Decision does not affect Member States’ existing obligations under EU or international law.

The EU draft Regulation explicitly refers to the possibility for a Member State faced with a major accident which exceeds its national response capacities to request additional assistance from other Member States and EMSA through the EU Civil Protection Mechanism (Article 31(3))<sup>21</sup>.

- Other relevant EU legislation

In addition to the EU legislation discussed in the explanatory memorandum to the EU draft Regulation, this study also looked into other EU legislation relevant for the implementation of the requirements of the Offshore Protocol and reviewed its relevance for and application to offshore activities. These include:<sup>22</sup>

– **Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (*Marine Strategy Framework Directive*)**<sup>23</sup>

This Directive establishes common principles on the basis of which Member States have to draw up their own strategies, in cooperation with other Member States and third countries, to achieve a good ecological status (GES) in the marine waters for which they are responsible. Member States must first assess the ecological status of their waters and the impact of human activities. This Directive is relevant to offshore oil and gas exploration and exploitation activities to the extent that such activities are included in the indicative lists of pressures and

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<sup>20</sup> 2007/779/EC, Euratom: Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism (recast), OJ L 314, 1.12.2007, p. 9-19. Note that the Decision is currently being revised. See 2011 Proposal for a Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism, expected to be adopted this year.

<sup>21</sup> See also Annex V Number (2)(4)(c) of the EU draft Regulation.

<sup>22</sup> The second phase of the study shall continue to look into other relevant EU legislation that is relevant to and applies to offshore activities.

<sup>23</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (*Marine Strategy Framework Directive*), OJ L 164, 25.6.2008, p. 19–40.

impacts used for the initial assessment of marine waters, the determination of good environmental status, the establishment of environmental targets and the monitoring programs. Table 2 of Annex III, containing the indicative list of pressures and impacts, refers to physical damages, including damages caused from selective extraction (including exploration and exploitation of non-living resources on seabed and subsoil) and to contamination by hazardous substances, including introduction of non-synthetic substances and compounds (e.g., heavy metals, hydrocarbons, resulting, among others, from pollution by oil, gas and mineral exploration and exploitation).

- **Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)**<sup>24</sup>

The Habitats Directive (along with the Birds Directive discussed below) constitutes the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and a strict system of species protection. Even though the EU draft Regulation does not specifically refer to this Directive, the ELD – upon which the environmental liability framework for offshore activities under the EU draft Regulation is built – provides that it applies to 'damage to protected species and natural habitats' which is defined as the species mentioned in Annexes II and IV of the Habitats Directive.

- **Directive 2009/147/EC on the conservation of wild birds (Birds Directive)**<sup>25</sup>

Directive 2009/147/EC (which is the codified version of Directive 79/409/EEC as amended) is one of the most important pieces of EU nature legislation as it creates a comprehensive scheme for the protection of all wild bird species naturally occurring in the Union. The Birds Directive emphasises the protection of habitats for endangered as well as migratory species, in particular through the establishment of a coherent network of Special Protection Areas (SPAs), which comprise the most suitable territories for these species. Since 1994, all SPAs are part of the Natura 2000 ecological network. As with the Habitats Directive, the draft EU Regulation does not specifically refer to the Birds Directive; nonetheless, it is considered of relevance for offshore activities as the ELD – upon which the environmental liability framework for offshore activities under the EU draft Regulation is built – provides that it applies to 'damage to protected species and natural habitats'. Article. 2(3) of the ELD provides that 'protected species and natural habitats' means: (a) the species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annexes II and IV to Directive 92/43/EEC; (b) the habitats of species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annex II to Directive 92/43/EEC, and the natural habitats listed in Annex I to Directive 92/43/EEC and the breeding sites or resting places of the species listed in Annex IV to Directive 92/43/EEC; and (c) where a Member State so determines, any habitat or species, not listed in those Annexes which the Member State designates for equivalent purposes as those laid down in these two Directives.

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<sup>24</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7–50.

<sup>25</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, 26.1.2010, p. 7–25.

- **Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)**<sup>26</sup>

REACH, which entered into force on 1 June 2007, requires manufacturers and importers of chemicals to evaluate the risk arising from the use of chemicals and to manage such risks. REACH applies to the manufacture, placing on the market or use of substances on their own, in mixtures or in articles and to the placing on the market of mixtures. A 'substance' is defined as a chemical element and its compounds in the natural state or obtained by any manufacturing process. Key elements of REACH include registration requirements, whereby it is compulsory to register the manufacture or import of chemicals in quantities of one tonne or more per annum. Substances of extremely high concern are also subject to authorisation. A procedure of restriction is also put in place by REACH, setting out restrictions relating to the conditions of manufacture, use(s) and/or placing on the market of a substance, or alternatively an outright prohibition on the manufacturing, use or placing on the market of a substance. While the EU draft Regulation does not specifically refer to REACH, it is considered of relevance, as the Offshore Protocol requires the use of chemicals for the exploration and/or exploitation of resources to be regulated, limited or prohibited.

- **Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP Regulation)**<sup>27</sup>

The CLP Regulation entered into force on 20 January 2009 and aims to align EU law to the United Nations Globally Harmonised System criteria for classification and labelling of hazards at the global level, in order to facilitate trade while protecting human health and the environment. Title II of CLP puts in place procedures for classification. Title III provides rules for labelling of substances and mixtures according to any hazard identified. Title IV sets in place requirements for the packaging of hazardous substances or mixtures (design, materials, fastenings). Title V refers to the harmonised classification and labelling of substances and the classification and labelling inventory. CLP also establishes an inventory for classification and labelling of all substances subject to registration under REACH and other hazardous substances placed on the market (either by themselves or in mixtures). As with REACH, while the EU draft Regulation does not specifically refer to the CLP Regulation, it is considered of relevance to the labelling requirements to be established under the Offshore Protocol. The CLP Regulation is also important because it defines the scope of the offshore activity covered by strict liability pursuant to Annex III.7.(a) ELD.

- **Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC**<sup>28</sup>

Directive 2006/42/EC is an internal market measure and establishes essential health and safety requirements that the machinery covered by the Directive must satisfy before being placed on the market. In applying Directive 2006/42/EC manufacturers, when producing the

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<sup>26</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396, 30.12.2006, p.1.

<sup>27</sup> Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, OJ L 353, 31.12.2008, p. 1.

<sup>28</sup> Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC, OJ L 157, 9.6.2006, p. 24-86.

machinery, must take into account the following criteria, inter alia, principles for safety integration, characteristics of materials and products to construct machinery, design of machinery, ergonomics and control systems. Directive 2006/42/EC requires affixing of CE mark after the compliance of the machinery with the relevant requirements stipulated by the Directive has been established. The Directive is relevant for the safety measures taken with regard to the installations.

- **Directive 97/23/EC of the European Parliament and of the Council of 29 May 1997 on the approximation of the laws of the Member States concerning pressure equipment**<sup>29</sup>

Directive 97/23/EC is another internal market measure and requires Member States to take all appropriate measures to ensure that the pressure equipment covered by the Directive may be placed on the market and put into service only if it does not endanger the health and safety of persons. Health and safety requirements are listed in detail in Annex I to the Directive. The Directive excludes from its scope certain equipment utilized in oil and gas offshore activities, however it covers number of pressure equipment widely used in the oil and gas industry (pressurised storage containers, heat exchangers, steam generators, boilers, industrial piping, safety devices and pressure accessories). The Directive is relevant for the safety measures taken with regard to the installations.

- **Directive 94/9/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres**<sup>30</sup>

Directive 94/23/EC is also an internal market measure and applies to equipment and protective systems intended for use in potentially explosive atmospheres. It requires manufacturers of such equipment to satisfy certain health and safety requirements specified in Annex II to the Directive. The Directive provides for classification of the equipment into groups and categories. The Annex II requirements relate to both, all classes of equipment as well as to control systems and specify, inter alia, criteria for selection of materials, design and construction, requirements in respect of safety-related devices. The Directive is relevant for the safety measures taken with regard to the installations.

- Relevant agreements and conventions

- **The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991), (Espoo Convention)**

The Espoo Convention, which entered into force in 1997, requires Parties to assess the environmental impact of listed activities, including offshore hydrocarbon production, when they are 'likely to cause significant adverse transboundary impact' in another state. The EIA must be carried out prior to any decision to authorise or undertake the proposed activity. Appendix II lists a number of elements listed in Appendix II to be covered by the EIA. The Convention also requires the State of origin to notify the affected States.

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<sup>29</sup> Directive 97/23/EC of the European Parliament and of the Council of 29 May 1997 on the approximation of the laws of the Member States concerning pressure equipment, OJ L 181, 9.7.1997, p. 1-55.

<sup>30</sup> Directive 94/9/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres, OJ L 100, 1994, p. 1-29.

- **The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, 1998) (Aarhus Convention)**

The Convention sets requirements pertaining to the right of the public to access environmental information held by public authorities, the right to participate in environmental decision-making and access to justice in environmental matters. The Aarhus Convention has been implemented through Directives 2003/4/EC of 28 January 2003 on public access to environmental information and 2003/35/EC of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.

- **The United Nations Convention on the Law of the Sea (New York, 1982) (UNCLOS)**

UNCLOS places on Parties a general obligation to protect and preserve the marine environment and recognises their sovereign right to exploit their natural resources. It also requires the Parties to take all measures necessary to prevent, reduce and control pollution of the marine environment. In particular, Article 94(2) states that they shall 'take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention'. These measures include 'those designed to minimize to the fullest possible extent [...] pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices'.