

Safety of offshore exploration and exploitation activities in the
Mediterranean: creating synergies between the forthcoming EU
Regulation and the Protocol to the Barcelona Convention

Contract Nr. No 070307/2012/621038/SER/D2

Final Report



May 2013



This Final Report has been prepared by Milieu Ltd. for DG Environment of the European Commission under contract number 070307/2012/621038/SER/D2.

The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission. The authors of this report are Claire Dupont, Karolina Jurkiewicz, Stella Kaltsouni, Niall Lawlor, and Nienke van der Burgt. We acknowledge Prof. Raftopoulos for his input to this study.

As per agreement with DG Environment, this study is based on the version of the EU draft Regulation as available at the start of this study (May 2012). This means that recent changes in the legal status of the draft Regulation are not reflected in this document (reference is made to ‘the EU draft Regulation’) and (proposed) changes in the text are not discussed in detail.

Milieu Ltd. (Belgium), rue Blanche 15, B-1050 Brussels, tel: +32 2 506 1000; fax: +32 2 514 3603; Claire.DuPont@milieu.be and nienke.vandenburgt@milieu.be; web address: www.milieu.be.

Acknowledgement picture (tuna): Oceana and Keith Ellenbogen.

Table of contents

List of abbreviations	2
Executive summary	7
1 Introduction.....	12
1.1 Objectives of the study.....	12
1.2 Policy context for the study	13
1.3 Structure of the Final Report.....	15
2 Overview of current and future offshore activities in the Mediterranean	16
2.1 Objective and method	16
2.2 Findings: overview of current and future offshore activities	18
3 The identification of synergies among corresponding provisions of the Offshore Protocol and EU draft Regulation	24
3.1 Objective and method	24
3.2 Synergies and differences (Offshore Protocol versus the EU draft Regulation).....	25
4 The possible involvement of EMSA in the implementation of the Offshore Protocol	64
4.1 Objective and method	64
4.2 Description of current and future EMSA & REMPEC activities.....	65
4.3 Possible synergies between EMSA & REMPEC activities	75
4.4 Possible adaptation of current EMSA mechanisms to assist in implementation of the Offshore Protocol.....	83

Concluding remarks

Annexes:

Annex I:	Stakeholder list
Annex II:	Overview of current and future offshore activities
Annex III:	Comparative analysis between the Offshore Protocol and the EU draft Regulation
Annex IV:	EU <i>acquis</i> (relevant to Offshore Protocol obligations)
Annex V:	National reports EU Mediterranean countries (and Croatia)

List of abbreviations

BAT	Best Available Techniques
CECIS	Common Emergency Communication and Information System
CPM	Civil Protection Mechanism
CS	Continental Shelf
CSN	CleanSeaNet
CTS MPPR	Consultative Technical Group for Marine Pollution Preparedness and Response
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
ELD	Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage
EMSA	European Maritime Safety Agency
ENP	European Neighbourhood Policy
GES	Good environmental status
HNS	Hazardous and Noxious Substances
IMO	International Maritime Organisation
IPPC	Integrated pollution prevention and control
MAR-ICE	Marine Intervention in Chemical Emergencies Network
MARPOL 73/78:	The International Convention for the Prevention of Pollution from Ships, 1973 and its 1978 Protocol, in its up-to-date version
MEDESS-4MS	Mediterranean Decision Support System for Marine Safety
MGICAP	Mediterranean Government Industry Co-operation Plan
MHR	Major Hazard Report
MIC	Monitoring and Information Centre
MOIG	Mediterranean Oil Industry Group
MOON	Mediterranean Operational Oceanography Network
MSFD	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
REMPEC	Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea
SSN	SafeSeaNet
UNCLOS	United Nations Convention on the Law of the Sea
UNEP/MAP	United Nations Environment Programme/Mediterranean Action Plan

Executive summary

1. Context of the study

It was in the aftermath of the Deepwater Horizon accident in the Gulf of Mexico (US) that the Commission reviewed the existing regulatory frameworks on offshore safety of the Member States and proposed new legislation to ensure high health and safety standards as well as environmental standards. This was perceived necessary as a serious accident at any of Europe's offshore installations would be likely 'to entail material losses, damage to the environment, the economy, local communities and society, while the lives and health of workers might be put at risk'.¹ The lack of a comprehensive legal framework at the EU level led to the development of different regulatory frameworks and practices by the Member States, in particular regarding licensing practices, safety and environment protection regimes. With the proposed EU draft Regulation, the Commission intends to overcome these differences by providing a clear, comprehensive and transparent system through which the safety and sustainability of offshore operations can be ensured.

With the recent accession of the European Union to the Offshore Protocol and the advanced debate on the adoption of the proposal for a Regulation (now Directive) on safety of offshore oil and gas prospecting, exploration and production activities, the EU is expected to soon deal with the implementation of these two highly related instruments, both aiming at regulating offshore oil and gas activities. While their ultimate objectives are often similar, the two legal acts have a different focus: the Offshore Protocol, negotiated and adopted in 1994, aims at *protecting against pollution from offshore activities* and provides general obligations for daily operations, whereas the recent EU draft Regulation intends to ensure the *safety of offshore activities* by providing a detailed regulation of major accident prevention. The parallel adoption of these two legal acts provides a unique momentum to further develop and align actions and measures undertaken to implement the core requirements of these acts.

This provides the context of this study, which main objective is to conduct a comparative analysis of the EU draft Regulation (text May 2012) and the Offshore Protocol in order to identify possible synergies and potential areas where additional national measures might be required. The study further examines the possibility of involving EMSA in implementing the Offshore Protocol by covering also accidents of offshore installations.

The study also provides an overview of on-going and future offshore (oil and gas) activities in the Mediterranean. Overall, about 75 activities (either on-going or planned) have been identified on the basis of desk review and stakeholder consultation (including non-governmental organisations, industry and competent authorities). Limited feedback on the stakeholder consultation demonstrates the lack of information on offshore activities available in the public domain and the potential need to address this gap, such as through Article 5 of the EU draft Regulation on public participation in licensing procedures.

2. Synergies and potential additional national measures by EU Mediterranean countries

The analysis of the Offshore Protocol and the EU draft Regulation focused on the areas where no requirements similar to those set forth by the Offshore Protocol were identified in the EU draft Regulation or the relevant EU *acquis*, or where the requirements set by the EU draft Regulation or the *acquis* are broader and, consequently, further specifications are necessary to ensure an effective

¹ Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospecting, exploration and production activities, Brussels, 2.10.2011, COM(2011) 688 final. p. 1.

application to oil and gas offshore installations. The EU Mediterranean Member States will need to implement both instruments at the same time. Although it will depend on the existing national legal framework of the Member States, this study identified some areas where additional national measures might need to be taken by EU Mediterranean countries to ensure the parallel implementation, such as:

– *Authorisation system*

A general difference between the two instruments that needs to be taken into consideration relates to the authorisation system. The Offshore Protocol regulates the so-called ‘work authorisation’, (exploration and exploitation), whereas the EU draft Regulation covers the licensing (defined pursuant to Directive 94/22/EC as *the exclusive right to prospect or explore for or produce hydrocarbons in a geographical area*).

– *Waste and harmful or noxious substances and materials*

Section III of the Offshore Protocol comprehensively regulates the release and management of any wastes and harmful and noxious substances in relationship to the exploration/exploitation activity. No such requirements have been identified in the proposed EU Regulation, which relates to the fact that Section III was negotiated and adopted before the 1995 revision of the Barcelona Convention. The Protocol uses a black and grey list system to either prohibit disposal or requiring a special permit; a system that was replaced after the 1995 revision of the Barcelona Convention. The EU makes of the ‘reverse’ approach rather than the black-grey list approach.

– *Monitoring*

The Offshore Protocol requires the operator to measure the effects of the activities on the environment in the light of the nature, scope, duration and technical methods employed in the activities and of the characteristics of the area – a requirement that is not covered by the EU draft Regulation or otherwise covered directly by the applicable EU *acquis*.

– *Removal of installations*

The EU draft Regulation deals with the removal of installations and ‘installations’ technically fall under the definition of ‘waste’ (Article 3 of the Waste Framework Directive) removal and are therefore covered by the EU *acquis*. No clear rules or guidelines are however specified on how to remove such complex offshore installations.

– *Compulsory insurance or other financial guarantees*

Although the objective of both legal documents is to put in place mechanisms to cover potential damage and both require verification of financial capacity of the operators, a difference in approach is that the Offshore Protocol mentions mandatory financial security measures to do so, while the draft Regulation and EU *acquis* does not impose certain tools or methods to ensure sufficient financial capacity (which is left to the Member State).

In addition to the differences between the two legal instruments, several complementarities and synergies have been identified. These include:

– *Chemical Use Plan*

The Major Hazard Report (MHR) has a broader set up than the Chemical Use Plan as it covers the drawing up of a plan with the identified major hazards, their likelihood and assessment of consequences, whereas the Chemical Use Plan specifically sees on the use of chemicals. The two documents however provide opportunities for synergies as some of the requirements of the MHR could cover the use of chemicals by the operator. From an efficiency point-of-view, there are potential synergies in preparing both the Chemical Use Plan and the MHR. The Chemical Use Plan could even be included in the MHR when available i.e. for Mediterranean countries. EU Mediterranean Member

States should make sure that the Chemical Use Plan reflects key requirements of the EU *acquis*, in particular requirements stemming from REACH.

– *Coordination of contingency planning*

Under both instruments, operators are required to have a contingency plan to combat accidental pollution. Despite differences in specific requirements, both the contingency plan under the Offshore Protocol and the internal emergency plan under the EU draft Regulation serve the same purpose and shall be the same document. Hence the requirements of both the Offshore Protocol and the draft Regulation could be streamlined to ensure compliance with both legal acts. In terms of efficiency, the development of regional contingency plans may assist in preparedness and response to emergencies.

– *Safeguards*

Although no similar requirement have been identified in the proposed EU Regulation on the establishment of safety measures, part of the requirements on the content of the emergency plan call for arrangements for the survival of persons, the description and maintenance of equipment and the procedures for response to an emergency. Further, measures aimed at the protection of human life (health and safety of workers) are provided by Directive 92/91/EC,² which contains detailed provisions to ensure that the equipment used during the operations does not pose any danger to workers' health and safety.

– *Competent authorities*

While the Competent Authority may be the same under both legal acts, the responsibilities might be different (as Article 26 of the Offshore Protocol list tasks that are not all covered by the EU draft Regulation, such as issuing and registration of permits in relation to harmful or noxious substances, or sewage). In any case, coordination would be crucial between permitting the Competent Authority and the ones in charge of safety. The definition of such coordination mechanisms can be part of follow-up activities, and can include mechanisms, such as mutual consultation, streamlining of reporting and the sharing of information.

Overall, where synergies are identified, the cost-effective coordination in the parallel implementation can be improved through the harmonising or streamlining of procedures.

Concluding remarks

As logically follows from the different scope of the legal instruments, differences have been identified that will need to be addressed during the parallel implementation of the two legal instruments. However, the need to establish additional measures ultimately depends on the national legislation of the EU Mediterranean countries. Review of their regulatory framework shows that in some of the identified issues that require additional measures, follow up is needed, such as concrete regulation on the removal of offshore installations. However, in other cases, such as liability, risk assessment related to health risk, contingency planning or monitoring, Member States in general have legislation in place.

Overall, it can be concluded that, although the provisions of the Offshore Protocol have not been transposed (yet) in all the Mediterranean Member States, the majority of the provisions are covered by the existing EU *acquis*. The *acquis* does not only cover the majority of the Offshore Protocol's requirements; in many cases it provides more detailed (and more recent) provisions that can contribute to the further strengthening of the implementation of the Protocol in the Mediterranean Sea.

² 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).

The parallel adoption of these two legal acts provides a unique momentum to further develop and align actions and measures undertaken to implement their core requirements.

Although the Commission initially proposed a ‘Regulation’, which is directly binding upon the Member States, the European Parliament and the Council on 21 February 2013 agreed to recommend the adoption of a Directive, which establishes similar objectives while leaving the means to the Member States. This avoids the need to redraft existing national legislation while leaving Member States more margins for interpretation in the process of transposition. A concrete consequence of the agreement to adopt a directive rather than a regulation on the issue of offshore safety is that this will provide a certain leeway in the implementation of the provisions, which allows the Mediterranean Member States to ensure a better coordination and cooperation with the parallel implementation of the Offshore Protocol.

3. The possible involvement of EMSA in the implementation of the Offshore Protocol

The main responsibility for preventing, preparing for and responding to marine pollution from ships and offshore facilities lies with producers and Member States. However, as such incidents may have cross-border consequences, there is a role for regional and pan-European actors such as REMPEC and EMSA to play in this area. The role of EMSA, which is the focus of this study, until now has not specifically included assisting non-EU or non-EEA countries. However, with the introduction of the revised EMSA Regulation, its geographical scope will extend to countries neighbouring the EU and which share a sea basin with its Member States, such as the Mediterranean. Likewise, EMSA will see its duties extend to covering certain duties relating to offshore installations. In addition, the proposed EU Regulation will change the regulatory framework for offshore operators and Member States in the areas of safety and environment. These changes will impact on EMSA. Finally, with the coming into force of the Offshore Protocol in the Mediterranean, REMPEC may be tasked with some of its implementation. In the context of these changes, this study aims to provide *suggestions for possible EMSA assistance in implementing the Offshore Protocol*.

Potential Areas for Co-operation between EMSA and REMPEC

– Emergency response

This is the main area in which both organisations have the most competencies, and therefore have the most scope to co-operate. With regards to how EMSA can provide assistance, it has signalled that it can provide ENP countries with substantial assistance most notably through the use of services related to satellite surveillance and oil recovery vessels. These services could be provided directly to the Offshore Protocol parties and do not require co-ordination with REMPEC. In terms of coordination of operational response to emergencies, REMPEC is the only central body which can contact and coordinate response from both EU and non-EU parties to the Offshore Protocol. It is not expected that this role will change with the implementation of the Protocol. Finally, while EMSA may now provide assistance to neighbouring countries, the draft Oil and Gas Regulation partially links such assistance to ‘reciprocity’ between EU MS and non-MS. What this means in reality is unclear and how it could affect such assistance would have to be clarified.

– Preparedness

The extent to which EMSA can provide assistance in the area of pollution preparedness is not clear given the fact that operators and Member States/Parties are responsible for preparedness. Nevertheless, preparedness is an area where both EMSA, and indeed REMPEC, possess considerable expertise. In the Mediterranean, and aside from maintaining significant databases on past pollution incidents and current response capabilities, both are involved in one or more projects aimed at ensuring that pollution response capability is based on linking offshore threats/risks with available response resources. For instance, REMPEC is co-operating with industry group MOIG on developing

an ‘oil spill risk assessment’ tool by the end of 2013 and both EMSA and REMPEC are active in promoting the ‘Mediterranean Decision Support System for Marine Safety’ (‘MEDESS-4MS’) project. While co-operation on preparedness is primarily for the European Commission and its Member States, and the Parties, to agree on, this is an area where both EMSA and the other regional agreements have experience and could possibly assist and work together with REMPEC and the Parties to the Offshore Protocol. EMSA could also possibly benefit, from an operational perspective, from cooperating to better understand the risks posed by offshore installations, given the fact that its Network of Response vessels are presently geared towards responding to the risks posed by ships, and not from offshore installations. Such cooperation could also help EMSA to support the Commission in assessing the risks posed by certain offshore installations in the Mediterranean. Specifically, the following cooperation could also be considered:

- Sharing of Information on Response Capacities: A clear sharing of information on the response capacities of all Parties to the Offshore Protocol, and EMSA, may also help in the further development of preparedness for spills from offshore facilities in the Mediterranean.
- Common Regional Approach: to help best allocate response resources, and to help ensure that the same level of preparedness is in place in the non-EU section of the Mediterranean as in the EU once the proposed EU Regulation is implemented, it might be beneficial for EMSA and other EU actors – such as the MIC – to work together with REMPEC and the Parties to develop a common regional Mediterranean approach to preparing for cross-border spills. Member States which are parties to the Offshore Protocol should ideally take the lead here.
- Co-operation in the area of Response Drills: EMSA conducts a considerable number of drills and participates in international exercises. The exercises which take place in the Mediterranean could possibly be co-ordinated with REMPEC and the Parties.

In terms of financing this co-operation, ‘preparedness’ activities could possibly be undertaken within the SAFEMED project or alternatively within any initiative taken by the Commission in accordance with Article 32 (‘Transboundary emergency preparedness and response’) of the EU draft Oil and Gas Regulation. Another option is the use of the EU’s Horizon 2020 plan, wherein one of the objectives is to tackle pollution in the Mediterranean.

– *Prevention*

Aside from training activities (referred to below) as neither is likely to be significantly involved in the prevention of offshore pollution, there does not appear to be much scope for co-operation in this area.

– *General*

Finally both engage in extensive cross the board training and sharing information and expertise in all three areas of prevention, preparedness and response. EMSA has many resources in this area, and has indicated that there is the potential for the expansion of training to ENP countries. These could possibly be provided in the areas where REMPEC does not currently provide capacity-building to the parties. Another possibility would be to involve members in each other’s expert groups. How this would be paid for, however, is not certain.

Overall, EMSA could possibly assist in the implementation of the Offshore Protocol, in the area of emergency response in the form of satellite surveillance, oil recovery vessels as well as technical advice, and in the area of preparedness in terms of expertise on assessment of risks and corresponding response capabilities, for example. Assistance could also conceivably be extended to include REMPEC and non-EU Parties in expert networks maintained and training offered by EMSA.

1 Introduction

This Final Report is submitted to DG Environment of the European Commission by Milieu Ltd. It is the last deliverable for the study ‘Safety of offshore exploration and exploitation activities in the Mediterranean: creating synergies between the forthcoming EU regulation and Protocol of the Barcelona Convention’. In agreement with the Commission, this deliverable is submitted nine months after signature of the contract.

The preliminary results of this study have been discussed in a workshop (5 December 2012) on the implementation of the Offshore Protocol and the EU draft Regulation. The objective of the workshop was to discuss the preliminary results of the comparative analysis and options for cost-effective fulfilment of the obligations arising from the Offshore Protocol and the forthcoming EU Regulation on safety of offshore oil and gas prospection, exploration and production activities. A broad range of stakeholders (international organisations, Member States representatives, industry, non-governmental organisations, academics) participated in the workshop.

It is emphasised that, in agreement with the Commission services, this study is based on the EU draft Regulation as available at the start of this study (May 2012). Consequently, the study refers to the ‘EU draft Regulation’ and the text of the draft Regulation as per the proposal of the Commission of October 2011’ although the Council and the European Parliament on 21 February 2013 agreed to recommend the adoption of a Directive rather than a Regulation, which does not alter the essential goals and elements of the original Commission proposal. At the same time, in some key areas (such as authorisations and liability) in order to increase the value of this report as an implementation tool, latest developments, as reflected in the Directive text have been considered and this is explicitly mentioned. As at the moment of submission of this study, the text of the Directive is not yet available, these comments are based on the information provided by the Commission.

1.1 Objectives of the study

As stated in the Technical Specifications, the overall objective of this study was to technically assist the Commission services during the decision making process for EU accession to the Protocol for the Protection of the Mediterranean Sea Against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (‘Offshore Protocol’) and to recommend ways to maximise synergies in follow up actions for the implementation of the Protocol and the proposed EU Regulation on safety of offshore oil and gas prospection, exploration and production activities³ (‘EU draft Regulation’). Consultation with all relevant stakeholders throughout the course of the study is considered as particularly important.

The study is built up on five elements:

- The identification of the current offshore activities in the Mediterranean, as well as expected trends having regard to the latest exploration activities.
- An overview of the existing national regulatory framework for such activities (including those covering liability and compensation for damage arising from offshore oil and gas activities) in the EU Mediterranean countries, i.e., Italy, Greece, Spain, France, Slovenia, Malta and Cyprus, including the relevant candidate country Croatia.
- A thorough comparative analysis of the EU draft Regulation and the Offshore Protocol in

³ Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities, COM(2011) 688 final - 2011/0309 (COD).

order to identify possible synergetic effects.

- A workshop on the practical implementation of the two legal instruments, which shall support the decision-making process for EU accession to the Offshore Protocol.
- An analysis of the potential involvement of EMSA in implementing the Offshore Protocol by covering also accidents of offshore installations.⁴

Finally, the Technical Specifications list stakeholder consultation as an objective. The stakeholder consultation took place in three phases and shall in this report mainly be discussed in relation to the overview of offshore activities in the Mediterranean.

1.2 Policy context for the study

Offshore activities, including oil and gas exploration and exploitation activities, are taking place in a large scale in the Mediterranean. Oil spills arising from accidents in offshore oil or gas installations can have direct, severe and almost irreversible effects in the Mediterranean Sea due to its semi-closed configuration and the significant seismic activity in the region. In order to reduce the risk of such accidents, regulatory initiatives have been undertaken at both the regional and the EU level.

At the regional level, the Offshore Protocol is one of the seven Protocols to the Barcelona Convention system. It was adopted in 1994 and focuses on the implementation of the 1976 *Convention for the Protection of the Marine Environment and Coastal Region of the Mediterranean* ('Barcelona Convention'). The Offshore Protocol has been signed by the majority of the EU Mediterranean countries (i.e., Cyprus, Greece, Italy, Malta, Slovenia and Spain);⁵ however, apart from Cyprus, no other EU country has ratified this legal instrument. The Offshore Protocol entered into force in 2011, after its ratification by Syria. Signatory countries that have not ratified the Protocol are still bound to respect its spirit. On 20 November 2012, the European Parliament adopted a legislative resolution on the draft Council decision on the Accession of the EU to the Offshore Protocol, giving its consent to accession to the Protocol.⁶ On 17 December 2012, the Council adopted a decision approving the accession of the European Union to the Protocol.⁷

At the EU level, in the aftermath of the major disaster in the Gulf of Mexico in April 2010, in October 2011 the Commission adopted the draft *Regulation on safety of offshore oil and gas prospection, exploration and production activities* (hereinafter 'EU draft Regulation').⁸ The lack of a comprehensive legal framework at the EU level led to the development of different regulatory frameworks and practices by the Member States, in particular regarding licensing practices, safety and environment protection regimes. Therefore, the EU draft Regulation intends to overcome these differences by providing a clear, comprehensive and transparent system through which the safety and sustainability of offshore operations can be ensured. The absence of an international legal instrument regulating specifically the operation of offshore installations further highlights the need for developing a comprehensive regulatory system at the EU level.

⁴ In this context it is noted by EMSA that after revision of the EMSA Founding Regulation, EMSA has the task to assist in responding to pollution from offshore installations (See discussion in Section 4).

⁵ On 31 December 2011, France has not signed the Offshore Protocol.

⁶ See : [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0304\(NLE\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0304(NLE)&l=en).

⁷ Council Decision of 17 December on the accession of the European Union to the Protocol of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil (2013/5/EU). Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:004:0013:0014:EN:PDF>.

⁸ Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities, Brussels, 2.10.2011, COM(2011) 688 final.

The EU draft Regulation was recently considered by the Council and the European Parliament. At the Council, the configuration in charge is the Transport, Telecommunication and Energy Council. At the European Parliament, responsible for the proposal is the Industry Research and Energy (ITRE) Committee whereas the Committees on Budgets (BUDG), Employment and Social Affairs (EMPL), Environment, Public Health and Food Safety (ENVI) as well as the Legal Affairs Committee (JURI) shall render an opinion. At the European Commission, DG Energy is in charge of the EU draft proposal.

In February 2012, the European Economic and Social Committee adopted an opinion on the Proposal for a Regulation.⁹ On 21 June 2012, the ITRE Committee issued its draft Report on the draft Regulation proposing amendments to the original text¹⁰. The European Parliamentary Committee ENVI convened on 19 September 2012 to consider amendments to the proposed EU draft Regulation, where in particular an amendment that would transform the regulation into a directive, giving the Member States more flexibility in implementing the proposals. On 9 October 2012, the ITRE Committee of the European Parliament voted in favour of a Directive on Offshore Health and Safety, therewith supporting the amendments introduced on 19 September 2012.

The Cyprus Presidency had placed the Directive proposal high on its priorities and undertook significant efforts to obtain the approval to officially begin negotiations with the Parliament. The next informal triologue will be held under the Irish presidency in the beginning of 2013.¹¹

On 3 December 2012, a debate took place at the Council, where the deliberations concerning the state of play of the draft Regulation have been presented.¹² According to the Council's report (on the 29 November meeting) on the 'Regulation or Directive discussion', 'a redrafting of the draft Council text into a Directive format was undertaken while noting that a few delegations still favour a Regulation'.¹³

On 21 February 2013, the European Parliament and the Council reached a political agreement on the Commission's legislative proposal on the safety of offshore oil and gas operations in the EU. Although the Commission initially proposed a 'Regulation' – which is directly binding upon the Member States – the European Parliament and the Council agreed to recommend the adoption of a Directive – establishing objectives while leaving the means to the Member States – to avoid redrafting of similar existing national legislation.¹⁴ An important observation is that Member States will have more leeway for interpretation when transposing a Directive. Where a Regulation on offshore health and safety would have led to a centralised European safety regime, forming part of the national law in all EU Member States, a Directive would provide the Member States much more flexibility in the implementation process.¹⁵ It is the opinion of the Member States in favour of a transformation to a

⁹ Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospecting, exploration and production activities COM(2011) 688 final – 2011/0309 (COD); available at: <http://eescopinions.eesc.europa.eu/eescopiniondocument.aspx?language=EN&docnr=484&year=2012>.

¹⁰ Draft Report on the proposal on the proposal for a regulation of the European Parliament and of the Council on safety of offshore oil and gas prospecting, exploration and production activities (COM(2011)0688 – C7-0392/2011 – 2011/0309(COD)), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-491.285+01+DOC+PDF+V0//EN&language=EN>.

¹¹ http://europa.eu/rapid/press-release_PRES-12-500_en.htm.

¹² See: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/trans/133974.pdf.

¹³ Available at: <http://register.consilium.europa.eu/pdf/en/12/st16/st16604.en12.pdf>.

¹⁴ The provisionally agreed text was adopted by the Committee of Permanent Representatives (COREPER) on 27 February 2012 and was put to vote for the Energy Committee (ITRE) on 19 March 2013. A plenary session (European Parliament) is foreseen in May 2013 (provisional timetable).

¹⁵ See: <http://www.law-now.com/law-now/2012/epcommitteeoct12.htm?cmckreg=true>.

Directive that ‘the effect of a Directive would target countries where the standard is not currently fit-for-purpose and bring them into line with the current practices in the North Sea’.¹⁶

1.3 Structure of the Final Report

After this short introduction setting the context and main elements of the study, Section 2 provides an overview of current and future offshore activities in the Mediterranean. It presents, in addition to Annex II, the findings on the establishment of the overview of activities.

Section 3 then aims at the identification of synergies between the Offshore Protocol and the draft EU Regulation. It provides an overview and description of the EU *acquis* that is used in the comparative table to assess whether EU Mediterranean countries have legislation in place – in addition to the draft Regulation - to comply with the requirements of the Offshore Protocol. In addition, the assessment of the scope and definitions is shortly discussed. Finally, this section provides a summary of the areas where the Protocol requirements are covered by general EU *acquis* or are not covered and where the EU Mediterranean countries (depending on their national legislation) may need to adopt additional measures.

Section 4 goes on to provide observations on the review of EMSA’s and REMPEC’s scope of activities as part of overall task to study the potential involvement of EMSA in the implementation of the Offshore protocol. It presents an overview of the activities of the EMSA in the area of ship-source pollution and briefly outlines the new powers it would assume under the 2010 Commission proposal. Further, a comparative analysis of the powers and activities of EMSA on the one hand and UNEP/REMPEC on the other is provided. Finally, it provides for the possible adaptation of current EMSA mechanisms to support the implementation of the Offshore Protocol.

¹⁶ *Ibid.*

2 Overview of current and future offshore activities in the Mediterranean

2.1 Objective and method

- Objective

The objective of this section is to identify the current offshore activities in the Mediterranean as well as expected trends having regard to latest exploration activities. The activities that fall within the scope of the Offshore Protocol are all activities concerning exploration and/or exploitation of mineral resources of the seabed and its subsoil. The EU draft Regulation similarly covers all activities related to exploring for, producing or processing of oil and gas offshore. Information sought on current and prospective offshore activities therefore focused on mineral exploration and exploitation, namely oil and gas activities.

Providing an overview of offshore activities in the Mediterranean was a challenging but necessary task in order to set a context for this study.

- Methodology

The starting point of this research was the development of a template in which all relevant information for the overview was gathered. In order to include all relevant aspects of offshore permitting, exploration and production in the Mediterranean, the table compiling the projects is organised around the following categories:

- The name of the project;
- Its operator or contractor;
- The Mediterranean country in charge of the permit granting;
- The type of exploitation (oil or gas);
- The status (exploration or production);
- The (foreseen) start and end dates; and
- Sources or links.

In addition a column for technical notes is added.

Information on the offshore activities in the Mediterranean, that is included in the overview table, has been obtained from the following sources:¹⁷

- Desk review;
- Organisations (EMSA / REMPEC/ UNEP MAP);
- Stakeholder consultation;
- Interview of Competent Authorities (EU Mediterranean countries).

The overview covers the whole Mediterranean. All first three sources (desk review, REMPEC/EMSA and the stakeholder consultation) encompassed the whole Mediterranean, whereas the interviews with the national authorities focused on Mediterranean EU Member States.

¹⁷ There are few databases available by companies on offshore activities – it was however agreed during the Inception Meeting that the budget for this study does not foresee subscription.

The information gathering started with a desk review. Newspapers articles, websites of regional and/or specialised associations, industry and NGOs provided a first idea of the number of offshore projects. The information obtained from these sources could be double checked in most cases: indeed, the ministries in charge of offshore developments in France¹⁸, Italy¹⁹ and Spain²⁰ keep updated a database and/or a map displaying offshore installations. The level of details available varies from one project to another: relevant details on e.g. the status of a permit request or technicalities were included in an additional column 'technical notes'. Finally, the desk review also covered the national reports, submitted under the Marine Strategy Framework Directive (MSFD).²¹

Secondly, both EMSA and REMPEC have been asked to provide input to the overview of offshore activities. The availability of information was discussed with REMPEC (June 2012). REMPEC received country reports from its parties (data collected 2010-2011) and agreed to share this information.²² Although it was originally foreseen by REMPEC that this information would be available in September 2012, it was at a later stage confirmed that these countries reports would not become available during the time frame of this study. EMSA had no such information available.

A comprehensive stakeholder list has been established in coordination with the Commission. The process of stakeholder consultation has taken place in three phases. Phase 1 (beginning July 2012 – end October 2012) aimed to request input from stakeholders on the overview of current and prospective offshore activities in the Mediterranean. Stakeholders were sent the overview table on offshore activities and invited to provide information on any current or prospective exploration or exploitation activities (oil and gas) in the Mediterranean as well as to check whether the information already collected was accurate. The objective was to establish as complete an overview of offshore activities in the Mediterranean as possible. To provide further background information to the stakeholders, a website was set up and communicated to the stakeholders.²³

Phase II (5 December 2012) involved the organisation of a workshop (by DG Environment) on the practical implementation of the Offshore Protocol and the EU draft Regulation. The discussion between selected stakeholders and representatives of Mediterranean Member States provided a second opportunity for stakeholders to give feedback on the preliminary results of the study.

Phase III (end December 2012 – end January 2013) provided another opportunity for stakeholders to share their views on the synergies and differences identified in relation to the parallel implementation of the Offshore Protocol and the EU draft Regulation, proposed cost-effective options and possibilities for involvement of EMSA in the implementation. In addition, stakeholders were provided a last opportunity to add to or check the accuracy and completeness of the information (regarding

¹⁸ <http://www.developpement-durable.gouv.fr/-Permis-de-recherche-carte-des-.html>, last accessed on 7 September 2011

¹⁹ http://www.sviluppoeconomico.gov.it/images/stories/energia/cartatitoli_2009.pdf, last accessed on 7 September 2011

²⁰ <http://www.minetur.gob.es/energia/petroleo/Exploracion/Mapa/Paginas/mapSondeos.aspx>, last accessed on 7 September 2011.

²¹ According to Article 5(2)(a) of the MSFD, Member States sharing a marine region or subregion shall 'prepare an initial assessment, to be completed by 15 July 2012, of the current environmental status of the waters concerned and the environmental impact of human activities thereon, in accordance with Article 8 [on assessment]'. The reports are submitted at <http://cdr.eionet.europa.eu/>.

²² It was noted that the information from the country studies of the Contracting Parties can only be shared after a cross-check with data provided by an external supplier contracted by REMPEC (information which is as such not shared).

²³ See: <http://www.milieu.be/offshore-activities>. In order to increase the feedback from stakeholders, the deadline for stakeholders to reply, which originally was set in August, was shifted to end of October.

their own activities or known activities) listed in the overview table. Limited feedback was received on this request (three stakeholders replied). This low level of response, as well as the desk review, demonstrate the lack of information on offshore activities available in the public domain and the potential need to address this gap, such as through Article 5 of the EU draft Regulation on public participation in licensing procedures, aiming to ensure that the public shall be given early and effective opportunities to participate in licensing procedures.

Finally, as part of the national reports drafted for all EU Mediterranean countries (except Slovenia) and for Croatia, the Competent Authorities of the EU Mediterranean countries were interviewed to assess their regulatory framework in relation to offshore activities. The interview also covered the question as to whether or not the Competent Authority could provide an overview of the current and expected offshore activities for its country. The competent authorities have been requested to validate the national reports, assessing the national regulatory framework on offshore oil and gas exploration and exploitation. Feedback was received from the Competent Authorities in France, Greece, Italy and Spain.

2.2 Findings: overview of current and future offshore activities

As described above, the main findings of this overview are captured in an overview table, which is annexed to this report (Annex II). A first observation is that it has been difficult to establish a complete picture on the on-going and planned offshore activities in the Mediterranean. This relates to the limited information available, as well as a low response rate from stakeholders to the various consultation mechanisms set up to gather information on this topic.

Although the EU is still reliant on oil and gas imports, local production currently constitutes a significant contribution to the EU energy consumption. In 2009, the total oil production of the EU and Norway was 196 million tonnes whereas gas production amounted to 269 million tonnes of oil equivalent.²⁴ Overall, around 90% of oil and 60% of gas produced in the EU comes from offshore activities, in majority from the North Sea.²⁵ Oil and gas offshore activities in the Mediterranean Sea contribute substantially to the total EU oil and gas production.

The recent Council Decision on the accession of the EU to the Offshore Protocol (17 December 2012) estimates that ‘there are more than 200 active offshore platforms in the Mediterranean and more installations are under consideration [and] hydrocarbon exploration and exploitation activities are expected to increase after the discovery of large fossil fuels reserves in the Mediterranean’.²⁶

Estimations provided in the Commission Staff Working Document accompanying its 2010 Communication on the safety of offshore oil and gas activities show that, among the Mediterranean countries, Italy has the largest amount of offshore installations (123). They are located in the Adriatic Sea, in the Ionian Sea and the Sicily Channel and mainly produce gas. Spain has in total four installations, of which two are located in the Mediterranean Sea. In Greek waters, there are currently

²⁴ Commission Staff Working Document, *Accompanying document to the Communication from the Commission to the European Parliament and the Council, Facing the challenge of the safety of offshore oil and gas activities*, COM(2010) 560 final, p. 3.

²⁵ *Ibid.*

²⁶ Council Decision of 17 December 2012 on the accession of the European Union to the Protocol for the Protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil, Recital 4. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:004:0013:0014:EN:PDF>.

two operating installations (in North Aegean Sea).²⁷ The report continues ‘no operating installations are reported in the Cypriot, French, Maltese and Slovenian sectors but some of these countries had drilling activities in the past (France) or plan to start drilling activities in the near future (Cyprus and Malta)’.²⁸ These estimates have been overall confirmed by the desk review and stakeholder consultation, whereas for some Member States (France, Cyprus and Spain) new activities or permits were identified.

The EU also needs to pay attention to offshore activities in the close vicinity of the EU, i.e. off the coasts of Egypt, Israel, Libya and Tunisia. Although the production operations are relatively modest in the waters of these countries, exploration activities are quite advanced. Several international companies, such as BG Group, BP, ENI, GDF Suez, Shell, Statoil or Total are active in this region.²⁹ In the Mediterranean Sea, significant part of the marine space consists of High Seas and the cooperation between authorities of riparian states needs to be coordinated and reinforced.³⁰

In the Mediterranean Sea, current offshore operations usually take place at sea depth of less than 200 meters. However, drillings from deeper waters have been registered. For instance, the Aquila oil field (Italian waters) is operating at depth of 800 meters of sea level.³¹ The depth of the offshore installations matters, especially from the emergency perspective, as divers can only operate in a maximum depth of 200-250 meters.³²

In the previous years, a number of offshore oil and gas accidents occurred in EU waters, the most serious ones being the Piper Alpha (1988) and Alexander Kielland (1980). In 2009, 22 offshore accidents were recorded globally; two of them took place in Europe.³³ The Deepwater Horizon disaster in the Gulf of Mexico on 20 April 2010 has initiated the discussion on the future EU legislative framework regulating offshore activities in the European waters, but also ‘near-misses’ in EU waters have reminded to the need for a stringent safety regime.³⁴

Based on the information gathered through the stakeholder consultation (see overview table in Annex II), offshore exploration and exploitation developments in the Mediterranean are discussed below. As exposed in the coming paragraphs, the level of details available and the amount of projects depend on the country concerned and the information currently accessible.

Cyprus

Cyprus discovered natural gas at sea in December 2011 (Aphrodite Field). On 24 January 2013, it licensed Italy's ENI and South Korea's Kogas for offshore gas exploration. The US company Noble Energy reported discovering between 141 - 226 billion cubic metres in Cyprus's first attempt to find

²⁷ Commission Staff Working Document, *Accompanying document to the Communication from the Commission to the European Parliament and the Council, Facing the challenge of the safety of offshore oil and gas activities*, COM(2010) 560 final, p.5.

²⁸ *Ibid.*

²⁹ *Ibid.*, p.6.

³⁰ Communication from the Commission to the European Parliament and the Council, *Facing the challenge of the safety of offshore oil and gas activities*, SEC(2010) 1193 final, p.22.

³¹ Commission Staff Working Document, *Accompanying document to the Communication from the Commission to the European Parliament and the Council, Facing the challenge of the safety of offshore oil and gas activities*, COM(2010) 560 final, p. 7.

³² See : http://europa.eu/rapid/press-release_MEMO-10-486_en.htm?locale=en

³³ Safety performance indicators – 2009 data, OGP Report No. 439, available at: <http://www.ogp.org.uk/pubs/439.pdf>.

³⁴ Speech Commissioner Oettinger (21 February 2013), available at http://europa.eu/rapid/press-release_IP-13-149_en.htm.

natural resources offshore in December 2011.³⁵ There are expectations for further finds: an on-going licensing round attracted interest, including Premier Oil and Cairn Energy. Moreover, Cyprus and Israel, who are cooperating on possible expert plans, are discussing the establishment of a liquefied natural gas (LNG) plant on Cyprus to export frozen gas by tanker.³⁶

Croatia

According to the data accessible on the website of the Ministry of Economics of Croatia,³⁷ there currently are three active oil exploitation fields (North Adriatic, Marica and Izabela), for all of which the operator is INA Zagreb.

France

Offshore France, in the Mediterranean, TGS Nopec, Noble Company, Melrose Mediterranean Limited in consortium started exploring oil and gas in 2002. In 2010, the renewal of the permit for the next five years was requested but the decision is still pending (as of mid-July 2012).³⁸ The Ministry for Ecology, Sustainable Development and Energy keeps track and publishes on its website all permit requests and granting, for offshore and onshore (majority of the cases) installations.³⁹

France mentioned in its initial assessment on the basis of Article 5(2)(a) MSFD (completed July 2012)⁴⁰ that some oil prospection took place close to Spain (Ebre river mouth) until the 90's. In 2002, one licence was granted to Melrose Resources for gas exploration in the Maritime Rhone area. The search area was diminished from 25,000 km² to 12,500 km² after 2005 as originally mentioned in the permit. No other permits have been delivered or requested.

With regard to future perspectives, the initial assessment mentions that the Algeria-Sardigna-Italia gazoduc (GALSI project), which is to start by 2015, is currently under public inquiry.

Greece

Greek territorial seas seem promising for both oil and gas reserves. Since the late 1960s exploration activities for hydrocarbons have been taking place in Northern Greece. Offshore oil and gas exploration in Greece almost ceased after 2001.⁴¹ A well was drilled though in the Prinos field in January 2010, nearly two years after the permit granting in April 2008. The Ministry of Environment, Energy and Climate Change (YPEKA) published an international call for proposals for participation

³⁵ <http://www.euractiv.com/energy/cyprus-licences-eni-south-korea-news-517351>.

³⁶ <http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/9514049/Global-energy-companies-set-their-sights-on-the-Mediterranean.html>.

³⁷ See (link in Croatian):

<http://www.mingo.hr/userdocsimages/rudarstvo/POPIS%20ISTRAŽNIH%20PROSTORA%20I%20EKSPLOATACIJSKIH%20POLJA%20MINERALNIH%20SIROVINA-28.09.12.pdf>, accessed on 12 November 2012

³⁸ This information was provided by IFREMER, the French Institute for Exploration of the Sea, when we contacted them as part of our stakeholders' list (cfr Annex II).

³⁹ <http://www.developpement-durable.gouv.fr/-Permis-de-recherche-carte-des-.html>, last accessed on September 7, 2011

⁴⁰ According to Article 5(2)(a) of the MSDF, Member States sharing a marine region or sub-region shall 'prepare an initial assessment, to be completed by 15 July 2012, of the current environmental status of the waters concerns and the environmental impact of human activities thereon, in accordance with Article 8 [on assessment]'. The reports are submitted at <http://cdr.eionet.europa.eu/>.

⁴¹ 'Prospecting, Exploration and Exploitation of Hydrocarbons, Ministry of Environment', Energy and Climate Change website available at <http://www.ypeka.gr/Default.aspx?tabid=765&language=en-US>.

in non-exclusive seismic survey off the coasts of Western and Southern Greece,⁴² which was eventually awarded, to the Norwegian Petroleum Geo Services (PGS) company.⁴³ At the same time, the granting of the State's oil and gas exploration and exploitation rights in three regions (Patraikos Gulf, Ioannina and Western Katakolo) following the procedure of 'open door' is under public consultation.⁴⁴

The Greek initial assessment on the environmental impact of human activities in (July 2012) as required by the MSFD,⁴⁵ confirms in relation to the extraction of oil that 'today in Greece there is one group of companies active in the extraction of oil. The principle actor is Kavala Oil (now Energean Oil & Gas) with facilities in New Karvali and mining platforms in Prinos, in North Aegean Sea'.⁴⁶

Italy

As of 31 December 2011, 121 explorations permits were granted in Italy, out of which 96 are onshore and 25 offshore.⁴⁷ One hundred ninety nine exploitation licenses were granted, out of which 133 onshore and 66 offshore. Oceana highlighted that exploration permits were requested or granted in sensitive areas, such as offshore Sicily and Puglia.

Information was identified concerning four rigs and ten projects pending currently on Italian offshore. Three of the rigs concern current exploration activities and one of them is performing workover or well servicing operations at an offshore site.⁴⁸ Out of the ten projects, seven are engaged in gas activities, whereas five in oil offshore actions. ENI is an active operator in the area concerned.

Malta

Malta counts twelve gas fields and four oil fields,⁴⁹ offshore Tunisia and Libya. Mediterranean Oil & Gas and Heritage Oil are interested by this area and Malta has opened its territorial waters to exploration. One rig (Noble Paul Romano) is currently undergoing a survey or an inspection.

Slovenia

No offshore activities are taking place in Slovenia at this moment or are foreseen in the near future.

⁴² International call for proposals No D1/20472/5.9.2011 for participation in the non-exclusive seismic survey off the coasts of western and southern Greece (Notice Number 2011/C 353/09), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:353:0010:0014:EN:PDF>.

⁴³ Press Release 'Announcing the contractor for the conduct of geophysical surveys in the Ionian sea and south of Crete' (in Greek) (Ανακοίνωση αναδόχου για έναρξη γεωφυσικών ερευνών σε Ιόνιο & νότια της Κρήτης), 5 September 2012, available at <http://www.ypeka.gr/Default.aspx?tabid=785&snid=524=1994&language=el-GR>.

⁴⁴ 'Prospecting, Exploration and Exploitation of Hydrocarbons, Ministry of Environment', Energy and Climate Change website available at <http://www.ypeka.gr/Default.aspx?tabid=765&language=en-US>.

⁴⁵ According to Article 5(2)(a) of the MSDF, Member States sharing a marine region or subregion shall 'prepare an initial assessment, to be completed by 15 July 2012, of the current environmental status of the waters concerned and the environmental impact of human activities thereon, in accordance with Article 8 [on assessment]'. The reports are submitted at <http://cdr.eionet.europa.eu/>.

⁴⁶ MSFD initial assessment, Greece (2012), p. 308.

⁴⁷ National study Italy (Milieu).

⁴⁸ See: http://www.rigzone.com/data/rig_statusdescriptions.asp.

⁴⁹ This information was provided by OCEANA, when we contacted them as part of our stakeholders' list (cf Annex II).

Spain

The map established by the Spanish Ministry for Industry, Tourism and Trade (30 June 2012) shows valid offshore permits in the Mediterranean (e.g. offshore Cadiz, Tarragona, Granada) and in the Atlantic (e.g. Gulf of Biscay or Canary Islands).⁵⁰ These installations are made for oil, gas and, to a lesser extent, storage. Oceana, one of the stakeholders that provided feedback,⁵¹ mentioned that it recently pointed out the environmental risks posed by some of these installations, including drilling projects in the Canary Islands and the Sirocco project, located offshore Andalucía and for which permits have been granted.

Nineteen projects operating in the offshore of Spain have been identified, which number is higher than the Commissions 2010 estimations. Due to the insufficient data accessible, it is not possible to deliver precise information pertaining to all those projects. However, it may be stated that six of the projects concern gas operations, three of them are currently engaged in production activities and two of them obtained valid permits for offshore exploration while one is still awaiting such permit. Moreover, one operator has applied for a permit for storage which is currently examined.

The Spanish initial assessment on the environmental impact of human activities in (July 2012) as required by the MSFD⁵² mentioned that ‘investigation’ (seismic survey or acquiring and seismic processing) is currently taking place in 10 sites in the Demarcacion del Estrecho y Alboran (Algeciras, Malaga and Almeria), whereas no activities related to the extraction or storage of hydrocarbon take place.⁵³ In addition, there are four oil extraction sites in the Demarcación Levantino-Balear (Valencia and Tarragona) region,⁵⁴ as well as seven investigation sites (seismic registration, processing and interpretation; seismic survey). Finally, Spain has one site for the storage of gas (Castor).

Non-EU Mediterranean countries

In offshore Egypt, BG Group, Petronas and Edison International have commenced gas production activities in 2009. The field is expected to have a life of 25 years. Moreover, BG Egypt is engaged in oil exploration in the offshore Nile Delta.

In Israel, two offshore projects and four rigs have been identified. Since 2010, the TAMAR project is engaged in gas production and it has also planned further gas exploration. Oil drilling has been carried out in the Leviathan Oil Field, since 2010 and from 2017 oil production is scheduled. Noble Company is responsible for the two projects.

In Tunisian offshore, PA Resources is currently engaged in oil production activities. The activities have commenced in 1998 and are scheduled to end in 2014. A number of offshore oil and gas projects (being currently carried out or planned for the following years) have been also identified on Libyan offshore.

⁵⁰ <http://www.minetur.gob.es/energia/petroleo/Exploracion/Mapa/Paginas/mapSondeos.aspx>, , last accessed on 7 September 2011.

⁵¹ See Annex II (list of stakeholders).

⁵² According to Article 5(2)(a) of the MSFD, Member States sharing a marine region or subregion shall ‘prepare an initial assessment, to be completed by 15 July 2012, of the current environmental status of the waters concerned and the environmental impact of human activities thereon, in accordance with Article 8 [on assessment]’. The reports are submitted at <http://cdr.eionet.europa.eu/>.

⁵³ Details are provided in Annex II providing an ‘Overview of current and future offshore activities’.

⁵⁴ Ayoluengo (LENI GAS & OIL), Casablanca y Barracuda, including also Angula y Montanazo (RIPSA), Rodaballo y Chipiron (RIPSA) and Boqueron (unknown).

Currently, EU waters, including certain areas of the Mediterranean Sea, are being intensively exploited for the production and exploration of oil and gas and more offshore activities (also in waters of non-EU states) are in the pipeline. Exploration is moving towards more complex environments characterised by high pressure/high temperature reservoirs, deep waters and/or difficult climatic conditions that may complicate the control of sea installations and incident response.⁵⁵ Therefore, coordinated action on the EU level in the field of offshore oil and gas operations is indispensable for the protection of both human health and marine environment.

⁵⁵ Commission Staff Working Document, *Accompanying document to the Communication from the Commission to the European Parliament and the Council, Facing the challenge of the safety of offshore oil and gas activities*, COM(2010) 560 final, p. 11.

3 The identification of synergies among corresponding provisions of the Offshore Protocol and EU draft Regulation

3.1 Objective and method

- Objective

The objective of this section is the identification of the synergetic effects among corresponding provisions of the Offshore Protocol and the forthcoming EU Regulation. According to the Technical Specifications to the study, this requires a thorough comparative analysis of the Offshore Protocol and the EU draft Regulation that examines the individual articles of both texts to identify and comment on common points and differences. The analysis aimed to identify any potential additional requirements for the EU Mediterranean countries (which are also Parties to the Barcelona Convention) stemming from the Offshore Protocol in comparison with what will be required by EU Member States or operators through the EU draft Regulation. The Technical Specifications further required the development of options for cost-effective fulfilment of obligations arising from both texts, including the identification of cases where future follow-up developments inside the EU, as a consequence of the Regulation, could benefit future activities planned in the Barcelona framework, as a means for enhanced coherence, and vice versa.

- Methodology

The assessment was conducted on the basis of a comparative table, which ensured a comprehensive and thorough article-by-article analysis of both instruments. The table covered the following elements, which are included in Annex III to the report:

- Offshore Protocol Requirement;
- Forthcoming EU Regulation Requirement and other EU requirements
- Synergies and differences between EU Regulation and Offshore Protocol;
- Possible additional measures needed at national level (stemming from the Offshore Protocol) and their cost-effective follow-up (taking into consideration the national requirements in place in the EU Mediterranean countries).

To conduct the comparative analysis between the provisions of the Offshore Protocol and the forthcoming EU Regulation (as well as the relevant EU *acquis*), it has been examined whether the draft Regulation provides obligations similar to the provisions of the Offshore Protocol. Where these were not found in the draft Regulation (which is more specific in scope), the relevant EU *acquis* has been examined. Also, relevant international obligations were looked at (such as the UN Law of the Sea Convention, MARPOL and the IMO Code for the construction and equipment of mobile offshore drilling units (MODU Code)). Through the examination of the individual provisions, the table structures corresponding articles with similar content and identifies common points and differences (synergies and differences column).

In addition, the table identifies potential measures that can be taken at the national (EU Mediterranean Member State) level to implement the requirements of the Offshore Protocol. Such measures would highly depend on the national legislation in place in the Member States. National studies have explored the existing national regulatory system of the EU Mediterranean countries (and Croatia). The available information on the legislation regulating offshore oil and gas exploration and exploitation has been integrated in the last column of the comparative table (Annex III). The national reports, of which the reports for France, Greece, Italy and Spain were validated by the competent authorities, are

included in Annex V.

The cost-effective options mainly consist in harmonising or streamlining of procedures.

As part of Phase I of the stakeholder consultation, all stakeholders (see Annex I for an overview) have been provided with the opportunity to submit their (preliminary) views on the parallel implementation of the two legal documents on the basis of the following questions:

- Are there changes needed for the implementation of the Offshore Protocol to existing legislation and regulations? Which ones?
- Do you see synergies between the Protocol and the EU draft Regulation in terms of implementation? Which ones?
- Do you foresee any specific difficulties/challenges in the implementation of the Protocol and the Regulation? Which ones?
- Could you see existing organisations (as EMSA or REMPEC) to be involved in the implementation of requirements of the Offshore Protocol? If so, how?

Only one stakeholder (NGO) provided feedback to these questions. In a later stage (Phase III of the stakeholder consultation), stakeholders were given the opportunity to provide feedback to the interim findings of this study. Also here, one stakeholder (academic) provided feedback.

3.2 Synergies and differences (Offshore Protocol versus the EU draft Regulation)

With the recent accession of the European Union to the Offshore Protocol and the advanced debate on the adoption of the proposal for a Regulation on safety of offshore oil and gas prospection, exploration and production activities, the EU is expected to soon deal with the implementation of these two related instruments, which both aim at regulating offshore oil and gas activities. The EU Mediterranean Member States will need to implement both instruments at the same time.

While their ultimate objectives are often similar, the two legal acts have a different focus: the Offshore Protocol aims at *protecting against pollution from offshore activities* whereas the EU draft Regulation intends to ensure the *safety of offshore activities*.

The parallel adoption of these two legal acts provides a unique momentum to further develop and align actions and measures undertaken to implement their core requirements. The Decision of the Parties to the Barcelona Convention at their 17th meeting (February 2012) to endorse the preparation of an Action Plan to effectively implement the Offshore Protocol,⁵⁶ covering a 10-year period underlines the need for harmonisation and guidance for effective implementation.⁵⁷

The EU Mediterranean Member States are the ones most impacted by the parallel implementation, as

⁵⁶ See: <http://www.themedpartnership.org/med/pfpublish/p/doc/2effff2ece5a6add0614bbfb89c528d9>.

⁵⁷ UNEP(DEPI) MED IG 20/1, Draft Decision IG.20/12. Action Plan to implement the Protocol of the Barcelona Convention concerning the Protection of the Mediterranean Sea Against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil. The main objectives of the Action Plan are to 'identify the scope of the work of MAP for a 10 year period, objectives, key activities and major outputs, priorities, timeframe, mid-evaluation and related indicators and resources needed for the effective implementation of the Protocol; address governance related issues with regard to the role of MAP components for facilitating the implementation of the Offshore Protocol Action Plan; and address necessary partnerships with other organizations, industry and other actors to be established including the MAP Partners to support the successful implementation of the Offshore Protocol'.

they have to transpose the requirements from both legal acts in their national legislation. One of the objectives of this study was to compare the requirements set by the Offshore Protocol with the requirements of the proposed draft Regulation to examine what the potential additional national measures are that (depending on their national legislation in place) need to be taken by EU Mediterranean countries.

The Offshore Protocol, with its broad objective to *protect against pollution from offshore activities*, covers a wide range of activities, such as permit requirements, the removal of abandoned or disused installations, the use and removal of harmful and noxious substances, safety, and contingency planning and monitoring. The EU draft Regulation, having a more specific scope, namely to ensure the *safety of offshore activities*, sets clear rules for the EU Member States that cover ‘the whole lifecycle of exploration and production activities, from design to the final removal of an oil or gas installation’.⁵⁸ In other words, both texts cover the exploration and exploitation activities including removal of installations but the content and level of details vary from one text to another. Consequently, the risk-related obligations that are addressed in the Offshore Protocol are mainly covered by the EU draft Regulation. Examples are the requirements to use best practices or establish contingency plans. The ‘environmental requirements’ set in the Offshore Protocol are to a great extent covered by the applicable EU *acquis*. An important example is the EU waste legislation, where the ‘waste’ definition covers the different types of waste regulated by the Protocol. As also underlined in the Council Decision of 17 December 2012, the Offshore Protocol concerns a field, which ‘is in large measure covered by Union law. This includes, for instance, elements such as the protection of the marine environment, environmental impact assessment and environmental liability. Subject to the final decision of legislators on the proposed Regulation, the Offshore Protocol is furthermore consistent with the objectives thereof, including those concerning authorisation, environmental impact assessment and technical and financial capacity of operators’.⁵⁹ However, the EU *acquis* is broad and not always adapted to ensure an effective application to oil and gas offshore installations. Again, an example can be found in the waste legislation, where more detailed and specific rules would be necessary to clarify the application of the waste legislation overall obligations to the removal of offshore installations. Finally, some obligations that are required by the Offshore Protocol are not covered by the EU draft Regulation or *acquis*, such as monitoring.

The main objective of this section is to discuss the areas where the Protocol requirements are covered by the EU *acquis* but where the requirements set by the EU draft Regulation or the *acquis* are broader and, consequently, further specifications are necessary to ensure an effective application, or are not covered at all and therefore may require that the EU Mediterranean countries (depending on their national legislation) adopt additional measures. Where possible, the assessment proposes options for a cost-effective fulfilment of the obligations arising from both texts. As mentioned, this depends to a high extent on the national legislation in place in the EU Mediterranean countries. This study has been mapping the main issues of the existing national regulatory framework for offshore activities in EU Mediterranean countries and Croatia; on that basis, where relevant, national input is provided in the comparative analysis.

On the one hand, the Offshore Protocol provides a detailed list of requirements that need to be fulfilled in order to be granted a working authorisation. The majority of these requirements are covered by the EU *acquis* (rather than the EU draft Regulation) – although not in the same level of detail as the *acquis* is rather general and does in most cases not specifically relate to the offshore

⁵⁸ EU, 2012, Mediterranean offshore activities: enhancing their environmental safety. Available at: <http://ec.europa.eu/environment/marine/pdf/FLYER%20offshore%20web.pdf>.

⁵⁹ Council Decision of 17 December on the accession of the European Union to the Protocol of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil, recital 12. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:004:0013:0014:EN:PDF>.

exploration or exploitation of oil and gas. However, Member States would typically have in place a regulatory system that provides for a work authorisation.

On the other hand, the EU draft Regulation establishes detailed requirements to ensure the safety of offshore installations, while also covering environmental protection. To implement the EU draft Regulation (now Directive) the Member States will need to build on their existing permitting systems to include these requirements (such as the Major Hazard Report).

Changes in the new Directive text (Commission services feedback)

Taking also into account the final Directive text, it is argued by the Commission services that while the Directive establishes a generic framework for major accident prevention and response for all EU offshore waters based on the attainment of goals through major hazards risk assessment, the Protocol is more detailed in specifying the steps to be taken rather than the goals to be attained. The Protocol is focused on activities, the Directive on the installations only when stationed for drilling or production. The Protocol addresses all offshore activity on a day-to-day preventive basis for the control of emissions and discharges, while the Directive targets high consequence low frequency events. Further, the Directive does not address spill risks during transport, transport of hydrocarbons from production platforms by shuttle tankers or export by pipeline to coasts (only infra connecting the installations to each other or to the well heads). All of these distinctions need to be clear to EU Member States when transposing the Protocol and the Directive. Overall, there is scope for synergy in the use of similar sources of risk assessment, which does not mean that identical documents and plans can be used in all cases.

Rather than the identification of potential additional national measures, in most cases it is more appropriate to identify what are the requirements and what are the options to streamline permits (or their requirements). Here, the coordination between ‘environmental’ and ‘risk’ related requirements is a key element. It can then be done through different mechanisms e.g. the permitting authorities are the same for environmental and risk-related aspects or, if not, close coordination is required between the responsible authorities.

Before however discussing the ‘differences’ and ‘potential additional measures’, this section starts, in order to provide a context, with a brief overview of the geographical and functional scope. The full comparative assessment can be found in Annex III to this study (comparative table), which identifies the synergies and differences between the two legal instruments on an article-by-article basis.

- Geographical Scope

The Offshore Protocol in its Article 2(1) provides that it will apply in the Mediterranean Sea Area, including the continental shelf, and the seabed and its subsoil as well as waters, including the seabed and its subsoil, on the landward side of the baselines from which the breadth of the territorial sea is measured and extending, in the case of watercourses, up to the freshwater limit. In practice, this means that the Protocol covers the whole Mediterranean seabed, as ‘there is no point located to a distance exceeding the 200 nautical miles from the nearest land or island’.⁶⁰ The Offshore Protocol also applies to internal waters, (up to the freshwater limits in case of watercourses). Further, wetlands or coastal areas *may* be included by the Parties (Article 2(2)).⁶¹ Finally, the Protocol does not prejudice the Parties’ rights concerning the delimitation of the continental shelf (Article 2(2)).

The EU draft Regulation applies to installations in ‘the waters of Member States, including their

⁶⁰ Raftopoulos, E., (2010) Sustainable Governance of Offshore Oil and Gas Development in the Mediterranean: Revitalizing the Dormant Mediterranean Offshore Protocol, in: Mepielan Bulletin.

⁶¹ This is considered of particular importance, since a great part of offshore activities of oil and gas exploration and exploitation are carried out in this area - although there is a noticeable trend of drilling deeper.

exclusive economic zones and on their continental shelves' within the meaning of the United Nations Convention on the Law of the Sea (UNCLOS). The term 'waters' is not defined in the EU draft Regulation. Further insight into this term can be found in the Marine Framework Strategy Directive (MFSFD), according to which the term 'marine waters' (Art. 3(1)) includes:

- (a) waters, the seabed and subsoil on the seaward side of the baseline from which the extent of territorial waters is measured extending to the outmost reach of the area where a Member State has and/or exercises jurisdictional rights, in accordance with UNCLOS, with the exception of waters adjacent to the countries and territories mentioned in Annex II to the Treaty and the French Overseas Departments and Collectivities; and
- (b) coastal waters as defined by the Water Framework Directive, their seabed and their subsoil, in so far as particular aspects of the environmental status of the marine environment are not already addressed through that Directive or other Community legislation;

Article 2(7) of the Water Framework Directive defines *coastal water* as surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters. According to Article 2(1) of the MSFD, territorial waters also fall within the scope of the Water Framework Directive in respect of its 'chemical status'.

In conclusion, the totality of 'marine waters' under a Member State's jurisdiction, and therefore the area in which offshore activities take place, is covered by the MSFD in conjunction with the Water Framework Directive. Both instruments cover the seabed, subsoil and waters measured seaward from the baseline (based on UNCLOS). The Offshore Protocol applies also to internal waters and provides the opportunity to also cover wetlands and coastal zones.⁶²

- Functional Scope

Both the Offshore Protocol and the EU draft Regulation aim at regulating offshore oil and gas activities, which take place within the territories of their Parties; this however does not mean that the two legal documents have an identical functional scope.

Before engaging in the comparison between the relevant provisions of the Offshore Protocol and the EU draft Regulation, it should be noted that the Offshore Protocol does not contain a separate provision on its (functional) scope like the EU draft Regulation. First, its full title provides an indication of its scope by stipulating that it is directed against 'pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil.' In order to infer the functional scope of the Offshore Protocol, resort should be made to Article 1 containing the *definitions* of the various terms used in the Protocol.

On the other hand, the EU draft Regulation does contain a separate Article on its scope: it provides that the Regulation will apply to all offshore oil and gas operations (Article 1(2)) as well as to all related installations, subsea installations and connected infrastructure in the waters of Member States. The functional scope is further specified through Article 2 on definitions. This section focuses on the definitions provided for various terms in the Offshore Protocol, which are relevant to ascertain its functional scope, and their relation with the definitions of the same or equivalent terms contained in the EU draft Regulation and the EU *acquis*.

⁶² Article 8 of the UN Law of the Sea Convention defines that internal waters 'Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State'.

Article 1(c) of the Offshore Protocol defines ‘resources’ as ‘all mineral resources, whether solid, liquid or gaseous’. No definition of the term ‘resources’ has been identified in the EU draft Regulation or the *acquis*,⁶³ However, even though the EU draft Regulation does not provide a definition of ‘resources’, from its title it follows that it applies to oil and gas. On the other hand, the group of resources to which the Offshore Protocol applies is much broader. Consequently, the EU Mediterranean countries would have to apply the Offshore Protocol to the offshore mining of all mineral resources and not just oil and gas.

Article 1(d) of the Offshore Protocol provides a definition of ‘activities concerning exploration and/or exploitation of the resources in the Protocol Area’. The Protocol has a broad functional scope, covering the full activity-cycle of exploration and exploitation of resources, namely scientific research activities, exploration activities (such as seismological activities and exploration drilling) and exploitation activities (installations establishment, development drilling, recovery, treatment, storage, transportation to shore and maintenance). When defining ‘offshore oil and gas operations’ the proposed EU Regulation also refers to the exploration, processing and transportation of oil and gas. A difference in the definition appears as no reference is made to activities of ‘scientific research’ concerning the resources of the seabed and its subsoil. Overall, the Offshore Protocol defines in more detail the relevant activities (the terms ‘exploitation’ used in the Offshore Protocol and ‘processing’ used in the proposed Regulation cover similar activities). For example, the Offshore Protocol explicitly lists the ‘maintenance, repair and other ancillary operations’ to the installation or means of transport.

With respect to the term ‘installations’ a definition is provided in both the Offshore Protocol (Article 1(f)) and the EU draft Regulation (Article 2(14); 2(26); 2(21); 2(25)). The EU draft Regulation distinguishes between production and non-production installations whereas the Offshore Protocol first distinguishes between fixed and floating structures and then provides an indicative list of units that are considered as ‘installations’. A similar distinction between fixed and floating structures is made in Recital 19 of the EU draft Regulation. However, it refers to ‘fixed and mobile installations’⁶⁴ whereas Article 1(f) of the Offshore Protocol mentions ‘fixed and mobile offshore drilling units’ and ‘fixed or floating production units including dynamically-positioned units’. The Offshore Protocol moreover explicitly includes ‘ships’ as means of storage facilities. The EU Regulation does not provide this option. The EU draft Regulation defines ‘connected infrastructure’ as ‘offshore equipment, pipeline or some other installation above or below the water surface used for transporting oil and gas to another installation nearby, onshore processing or storage facility or for transporting and loading oil to a shuttle tanker’. It does not however specify whether the ‘shuttle tanker’ where the oil or gas is loaded is also considered part of the installation. Overall, the Offshore Protocol provides a more detailed and descriptive definition of what constitutes an ‘installation’ when compared to the EU draft Regulation, which uses more generic terms. Despite overlap in definition, the use of different approaches to define installation might lead to a certain degree of ambiguity. Questions, such as whether ships for storage purposes are covered or whether shuttle tankers are considered to be part of the installation require clarification as they might otherwise lead to conflicts in interpretation when implementing the Protocol and the EU legislation in a combined way.

‘Operators’ are defined in both the Offshore Protocol (Article 1(g)) and the EU draft Regulation (Article 2(22); 2(17); 2(24); 2(24); 2(33)). The Offshore Protocol provides a comprehensive definition, which not only includes persons authorised to carry out activities in accordance with the

⁶³ A definition of ‘mineral resource’ or ‘mineral’ is provided by Article 3(5) of Directive 2006/21/EC (on Mining Waste); however this Directive does *not* apply to offshore activities.

⁶⁴ With regard to *mobile units*, some clarification is provided by the IMO MODU CODE, which, alike the proposed EU Regulation refers to the exploration and exploitation activities and provides that a mobile unit is a *vessel* capable of engaging in drilling operations (exploration and exploitation of resources beneath the seabed).

Protocol (*license holders*) or persons who carry out these activities (*sub-contractors*) but also persons who are *de facto* in control of the activities in question even if they do not hold an authorisation. The EU draft Regulation follows a similar approach: it distinguishes between the operator and licensee – the operator being the person who carries out the activities and the licensee being the person authorised to carry out the offshore operation. Persons who are *de facto* in control of exploration and exploitation activities are not specifically mentioned as ‘operators’ in the EU draft Regulation. This is however covered by the cross-reference made by Article 2(2) of the EU draft Regulation to Article 2(6) of the ELD (Directive 2004/35/EC) which defines operators as any person ‘who operates or controls’ the relevant activities or any person to ‘whom decisive economic power over the technical functioning of such an activity has been delegated’.

In conclusion, although the Offshore Protocol and the EU draft Regulation both aim at regulating offshore oil and gas activities, they have a different functional scope. The Offshore Protocol, in contrast to the EU draft Regulation, does not specifically set out a functional scope. One of the main differences is reflected by the broader definition of resources in the Offshore Protocol. In addition, the Offshore Protocol defines in a broader way the activities concerning exploration and/or exploitation of the resources, covering the full activity cycle as well as providing a more detailed definition of what constitutes an ‘installation’ when compared to the EU draft Regulation, which uses more generic terms.

However, in the context of the parallel implementation of the Offshore Protocol and the EU draft Regulation, despite their differences in functional scope, the instruments provide sufficient overlap to complement each other in the process of implementing their core obligations. Where necessary, additional measures need to be identified (see sub-section below).

- Assessment of potential additional measures and synergies by EU Mediterranean countries

As discussed above, this section is primarily based on the comparative table (Annex III). It focuses on the areas where no requirements similar to those set forth by the Offshore Protocol have been identified in the EU draft Regulation or the relevant EU *acquis* or where the requirements set by the EU draft Regulation or the *acquis* are broader and, consequently, further specifications are necessary to ensure an effective application. This section is structured around the main themes where differences have been identified and where additional national measures may be required. It also identifies potential measures that are cost-effective or examples of measures that are already adopted by certain Member States.

A general comment is that the draft EU Regulation is still under discussion and some of its provisions might be amended. However, the Offshore Protocol, after its adoption by the EU, is now considered part of the EU *acquis*.

- **Authorisation system**

Different scope of authorisations

Article 4 of the Offshore Protocol requires that all activities in the Protocol Area shall be subject to prior written authorisation for exploration and exploitation. A general comment in relation to the authorisation systems is that there is a difference in scope between the two legal documents when discussing ‘authorisations’. The Offshore Protocol regulates the so-called ‘work authorisation’, (exploration and exploitation), whereas the EU draft Regulation covers both the licensing (defined pursuant to Directive 94/22/EC as *the exclusive right to prospect or explore for or produce hydrocarbons in a geographical area*) as well as the work authorisation.

In relation to Article 4(1) on ‘general principles’ of the Protocol, it is considered an issue that the Offshore Protocol regulates the ‘work authorisation’ (exploration and exploitation) for which process it requires the assessment of the financial and technical capacity of the operator, whereas the EU draft Regulation refers to the ‘licensing procedure’ in Directive 94/22/EC (exclusive right) and requires assessment of the operator’s financial and technical capacity in that perspective.

Possible additional measures: Authorisation procedure

As discussed above, the Offshore Protocol and the EU draft Regulation both operate under an authorisation regime for offshore installations, however their scope is different. The main issue is that the Offshore Protocol regulates the ‘work authorisation’ (exploration and exploitation) for which process it requires the assessment of the financial and technical capacity of the operator. The EU draft Regulation refers to the licensing procedure in Directive 94/22/EC (exclusive right) and requires the assessment of the operator’s financial and technical capacity in that perspective. According to the explanatory memorandum, the proposed Regulation ‘does not change the Directive (94/22/EC) itself but strengthens obligations of relevant authorities during the *licensing process* in order to improve assessment of technical and financial capacity of the applicants’.⁶⁵

National legislation would typically further specify how the operator can demonstrate its financial and technical capacity. When designing these requirements, the Member State should ensure that they are consistent and complementary under each authorisation procedure.

Member States may have the responsibilities for the implementation of the Offshore Protocol and the EU draft Regulation shared by different authorities, in which case coordination is required⁶⁶. Although there are two different procedures involved (license versus work authorisation), synergies are achievable between these processes, such as information sharing and streamlining of procedures.

Authorisation requirements

The Offshore Protocol conditions (renewal of) authorisation for oil and gas operations upon the submission of a project, which needs to contain specific information (Article 5). This requirement is not reflected in the EU draft Regulation. Although the proposed EU Regulation provides that installations cannot commence or continue their activities before a Major Hazards Report (MHR) is submitted to and accepted by the Competent Authority, this cannot be viewed as a work authorisation similar to one required by the Offshore Protocol. The key difference is that the Protocol prescribes a scheme whereby the operator obtains an authorisation for activities considering their environmental effects. The EU draft Regulation (now Directive) creates a framework in which the operator is required to control the risks in the most appropriate fashion, and is required to convincingly establish his case in a formal risk assessment (MHR). The acceptance is an indication by the Regulator that the measures are likely to achieve risks as low as reasonably practicable. Further, it is underlined that, as the purpose of the documents submitted within the authorisation process and the MHR is different, their content will not be the same. Also, the timing of submission would be different (before starting the works in the case of work authorisations and during the operations in the case of the MHR). This

⁶⁵ Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities, Brussels, 27.10.2011, COM(2011) 688 final, p.4.

⁶⁶ An example of the possible need for a separation of functions in implementing the different processes required by the Offshore Protocol and the EU Draft Regulation is that it would have to be clear that in investigating a potential breach of the draft Offshore Regulation, the Competent Authority did not rely on evidence of a breach to the Protocol that was not a duty under the draft Regulation – such as investigating a pollution event that did not rise from a major accident as defined in the draft text.

means that it cannot be concluded that the existing EU legislation covers all requirements. Synergies can however be identified as both procedures (authorisation process and the MHR) cover similar elements - in particular for environmental matters (which receive more emphasis in the new Directive text).

Even though installations may not commence or continue operations without submission of a Major Hazards Report (Article 6(3) draft Regulation), the scope of the authorisation requirements posed by the Offshore Protocol is very specific and need to be covered by the EU Mediterranean countries.

Possible additional measures: Authorisation requirements

A requirement that might need further elaboration is the Protocol's requirement to provide 'particulars of the professional and technical qualifications of the candidate operator and personal of the installation as well as the composition of the crew'. The proposed EU Regulation does not provide that operators of production or non-production installations need to submit to the Competent Authority information on the professional and technical qualifications of the candidate operator and personnel and the composition of the crew. This 'gap' can be explained by the different scope of the two legal documents. The Offshore Protocol focuses on daily operations laying down more general requirements, whereas the proposed Regulation is more specific with its aim to reduce major accidents related to offshore oil and gas activities.

The combination of these requirements however provides for synergies. It is important that there is agreement on how these similar requirements shall be implemented – such as on the basis of diploma or curriculum vitae.

According to Article 4(2) of the proposed Regulation the technical and financial capacity of applying entities is taken into account by competent authorities. This could imply that the relevant information should be provided in the file. The same requirement is also mentioned in Article 5(1)(a) of Directive 94/22/EC (*licence*). Nonetheless, under neither legal instrument is there a reference on the need to provide information on the professional qualifications of the candidate and the personnel as well as the composition of the crew.

While it is not clear what is specifically required here from the Offshore Protocol, an efficient way of approaching this could be for operator to provide non-confidential human resource files on staff to the competent authority and for the same operator to provide written assurance that the staff employed is competent, as provided in the draft Regulation. However, in order to ensure full and consistent compliance with the Offshore Protocol, another manner of reporting qualifications would be through the use by operators of standard/harmonised checklists to document their staff, such as that developed by the IMO.

Besides, there is room for streamlining requirements of both instruments throughout the development of rules and procedures specifically applicable for oil and gas offshore installations (see discussion below).

Refusal of authorisation (significant adverse environmental effects)

The Offshore Protocol (Article 4(2)) provides that authorisations shall be refused if there are indications that the proposed activities are likely to cause significant adverse effects on the environment.

Also here, the different authorisation processes in which the requirements are made need to be taken into consideration: the Offshore Protocol, which applies to both environmental and safety issues, covers the authorisation to start exploration or exploitation whereas the draft Regulation covers the authorisation (*licence*) for the exclusive right to prospect or explore (via Directive 94/22/EC). This

means that refusal of authorisation in the scope covered by the Offshore Protocol is not covered by the proposed draft Regulation.

It is noted that a similar restriction on competent authorities' right to refuse authorisation as established by the Protocol appears under Article 6(2) of Directive 94/22/EC (*licensing procedure*), which provides Member States with the opportunity to impose conditions and requirements on the exercise of activities of prospecting, exploring for and producing hydrocarbons, to protect the environment.

This requirement is also covered by the Environmental Impact Assessment (EIA) Directive, which applies '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 that 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 an 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)).

The EIA Directive uses the term *extraction*, which could be considered a synonym for *exploitation* and could imply that the EIA Directive does not cover *exploration* activities. The services of the European Commission have however put forward the opinion that 'both the exploration and exploitation of unconventional hydrocarbons fall within the scope of the EIA Directive [which] conclusion has been presented and discussed during the meeting of the Commission Group of EIA/SEA national experts, held in Budapest on 14-15 April 2011. During this meeting, the EIA/SEA national experts agreed with the views presented by the Commission. This position has also been confirmed by the Commission in the letter of 12/12/2011'.⁶⁷

Further, in the opinion of the services of the European Commission (see above), 'projects listed in Annex II of the EIA Directive are made subject to a *screening procedure*, in accordance with Articles 2(1), 4(2)-(4) and Annex III of the EIA Directive. This procedure determines whether projects are likely to have significant effects, requiring thus an EIA'. It continues that 'the screening procedure is necessary for projects below the daily extraction threshold of 500.000 m³ (Annex II.2.e of the Directive) or for exploration projects listed involving deep drillings (Annex II.2.d of the Directive). It should be recalled that Annex II.2.d refers to '*deep drillings*' and includes some indicative examples of deep drilling (i.e. geothermal drilling, drilling for the storage of nuclear waste material, drilling for water supplies). The text of the EIA Directive uses the term '*in particular*', which implies that the enumeration of examples is indicative. Hence, unconventional hydrocarbon projects, even exploratory ones, which use deep drillings, are covered by Annex II.2.d'.⁶⁸

⁶⁷ Guidance note on the application of Directive 85/337/EEC to projects related to the exploration and exploitation of unconventional hydrocarbon, available at: <http://ec.europa.eu/environment/eia/pdf/Annexe%202.pdf.pdf>.

⁶⁸ *Ibid.*

In this regard, it is noted that the coverage by Annex II.2.e (Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale) could be subject to discussion as it refers to 'surface industrial installations' leaving the question whether this applies to offshore installations. Moreover, a question mark could be placed with regard to the application of Annex II.2.d, which depends on exploration/exploitation offshore development actually involving 'deep drillings'.

Finally, Article 9 of the EIA Directive explicitly provides the competent authorities with the option to refuse a 'development consent' if the project does not comply with the provisions of the Directive.

Annex IV on 'environmental impact assessment' to the Offshore Protocol lists the minimum requirements that are covered by an EIA. Overall, this list is covered by Directive 2011/92/EU (EIA).

Granting of authorisations by the Competent Authority

The Offshore Protocol and the EU draft Regulation both operate under an authorisation regime for offshore installations, albeit with different scopes. As discussed above, the authorisation referred to by the draft Regulation (via Directive 94/22/EC) relates to *the exclusive right to prospect or explore for or produce hydrocarbons in a geographical area*, and does not cover the requirements of the Protocol.

Further, the proposed EU Regulation states that the granting of authorisations under Directive 94/22/EC for offshore oil and gas activities (*license*) is conditioned on the applicant's *capacity to meet the requirements of the Regulation*; this implies that the Competent Authority needs to assess whether the requirements of Article 9 (conditions for *operating* offshore installations) have been complied with. These conditions focus on design notification, the Major Hazard Report, the emergency response and major accident's prevention policies. According to Article 6(1) of the Offshore Protocol, authorisations can only be granted when the requirements listed in Article 5 (requirements for authorisation) and Annex IV (environmental impact assessment) are fulfilled.

Possible additional measures: Granting of authorisations

Part of the follow up activities of the EU Mediterranean countries could be to amend the existing regime to integrate the requirements from both legal acts (while looking at synergies, such as on permitting). This shall mainly be relevant in terms of the Competent Authorities.

As such it would be preferable to integrate the requirements into one guidance / decision-process document and checklist. This would help streamline processes from both an administrative and operator point of view, especially where there is more than one authority involved (e.g. energy, environment, marine).

In addition, the streamlining process should take into account the requirements set by Article 28 of the Offshore Protocol, on the appointment of Competent Authorities (also discussed below). While the Competent Authorities may be the same under both legal acts, responsibilities can be different: the Offshore Protocol obliges each Contracting Party to appoint one or more competent authorities which, amongst others, will issue and register the special and general permits concerning harmful and noxious substances, issue the permits concerning oil and oily mixtures, drilling fluids and cuttings as well as approve the treatment system and certify sewage treatment plants (Article 28 (b), (c), (d) of the Offshore Protocol). In any case, coordination would be crucial between permitting Competent Authorities and the ones in charge of safety. The definition of such coordination mechanisms can be part of follow-up activities.

As the EU draft Regulation refers to 'one' responsible competent authority, there appears

to be greater scope for consistency in the application of the Regulation. The EU Mediterranean Member States could consider giving responsibility for the implementation of the Offshore Protocol to the same competent authority, or at least putting in place streamlined and coordinated mechanisms to implement arrangements.

The allocation of regulatory duties under the Protocol to the Competent Authority should take account of the need for that authority to have competence for both pollution prevention duties and major accident prevention duties.

Overall, synergies in the parallel implementation of the authorisation processes can be mainly achieved through the harmonising or streamlining of the different procedures as well as improved information sharing between different authorities involved.

- **Wastes and harmful or noxious substances**

Section III of the Offshore Protocol comprehensively regulates the release and management of any wastes and harmful and noxious substances in relationship to the exploration/exploitation activity.

The proposed EU Regulation does not set requirements similar to those contained in Section III of the Offshore Protocol have been identified in the proposed EU Regulation. Section III was negotiated and adopted before the 1995 revision of the Barcelona Convention. Through its Annexes I and II, the Protocol introduces a black and grey list, providing *differentiating control systems* – either prohibiting disposal or requiring a special permit. The disposal of the harmful and noxious substances and materials not listed in Annexes I and II requires a prior general permit. After revising the Barcelona Convention, the black and grey list system was replaced by an ‘integrated management system’.⁶⁹ A global trend towards precaution and prevention regarding waste is reflected by the shift from the grey-black list system to the so-called ‘reverse’ approach. Instead of prohibiting the dumping of certain (listed) hazardous materials or substances, the dumping of waste is prohibited if not listed in the ‘reverse list’. This approach is used in the 1976 Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft; where the 1976 Protocol originally used the black/grey list system; this was changed to the reverse list approach after the 1995 revision. A similar approach can be found in related legislation: the 1972 London Dumping Convention used the black/grey list approach, whereas the 1996 Protocol shifted towards the ‘reverse list’ approach where dumping is prohibited and exceptions must be clearly listed.⁷⁰

Provisions from the Offshore Protocol reflecting the grey/black list system are Articles 9 (4-7) regulating the disposal of harmful or noxious substances into the Protocol Area. Disposal is either prohibited (Annex I), subject to a prior special permit (Annex II) or subject to a prior general permit from the Competent Authority. Annex III lists the factors that need to be considered for the issuing of these permits.

The need to obtain a prior general or special permit from the Competent Authorities for the disposal of ‘harmful or noxious substances and materials resulting from the activities’ is not regulated by the draft Regulation. Differences in approach can be explained by the different scope of the legal documents: whereas the Protocol provides general rules on the daily operation, the draft Regulation

⁶⁹ See: Sustainable Governance of Offshore Oil and Gas Development in the Mediterranean: Revitalizing the Dormant Mediterranean Offshore Protocol, 19 August 2010, by Evangelos Raftopoulos, Professor of International Law, Panteion University of Athens, Director, MEPIELAN Centre, Greece. See: <http://www.mepielan-bulletin.gr/default.aspx?pid=18&CategoryId=4&ArticleId=29&Article=Sustainable-Governance-of-Offshore-Oil-and-Gas-Development-in-the-Mediterranean:-Revitalizing-the-Dormant-Mediterranean-Offshore-Protocol>.

⁷⁰ See Tanaka Y. (2012), *The International Law of the Sea*, Cambridge University Press, p. 298-301.

provides more specific rules on major accident prevention. However, as the actual implementation for both legal texts (the draft Regulation and the Offshore Protocol) will start soon, this is an important issue to be addressed in the drafting or revision process in order to align with the current approach in dumping of waste. It is therefore not likely that the EU Mediterranean Member States need to transpose the provisions provided by Annexes I, II and III in their national legislation.

No additional measures are foreseen for the EU Mediterranean countries as on the basis of Article 36(1) of the Waste Framework Directive, they are already obliged to ‘take the necessary measures to prohibit the abandonment, dumping or uncontrolled management of waste’. Taking into account the recent approaches towards waste disposal (not based on permitting systems) and the need to abide to the more stringent rules of the EU *acquis*, these general obligations could however be further specified as part of the implementation discussion, to answer to the needs of exploration and exploitation activities at offshore installations.

Further, the disposal of waste is, in principle, prohibited according to the London Convention and the Marine Framework Strategy Directive. Likewise under the Waste Framework Directive, waste must be properly treated. That said, when implementing waste-related requirements, EU Mediterranean Member States should pay particular attention to the EU *acquis* setting up prohibitions, restrictions or authorisation permit requirements for the use, discharge or disposal of specific substances (Water Framework Directive, Regulation 1907/2007 (REACH), Waste Framework Directive).

Specific types of waste

Section III of the Offshore Protocol moreover sets requirements for the disposal of specific types of wastes. These include oil and oily mixtures and drilling fluids and cuttings (Article 10); sewage (Article 11) and garbage (Article 12).

No specific regulations on disposal of these specific waste categories are provided by the EU draft Regulation. Article 3(1) of Directive 2008/98/EC defines waste as ‘any substance or object, which the holder discards or intends or is required to discard’, including the types of waste specified by the Protocol. According to Article 12 of the Waste Framework Directive, Member States shall ensure that where recovery is not undertaken ‘waste undergoes safe disposal operations which meet the provisions of Article 13 on the protection of human health and the environment’. As mentioned above, Article 36(1) of the Waste Framework Directive further requires Member States to prohibit the abandonment, dumping or uncontrolled management of waste. Another general obligation to avoid pollution of the marine environment is provided by Directive 2008/56/EC (Article 2 in relation to 3(8)).

Although no additional legislation is required, the EU Mediterranean countries might, in light of the parallel implementation process of the Offshore Protocol and the draft Regulation, develop specific implementation plans for these types of waste while specifying standards to the particular needs of offshore exploration and exploitation.

Possible additional measures: disposal of specific types of wastes
Although these substances are covered by the Waste Framework Directive, the EU Mediterranean countries might need to further develop harmonised standards for the disposal of oil and oily mixtures and drilling fluids and cuttings, sewage and garbage in the ‘Protocol Area’.
The development of common standards across the Offshore Protocol parties would go beyond what is already in place at EU level. Under EU legislation, industry has a role in developing standards, which are subsequently determined by the EU as to whether they meet certain conditions. A similar approach could be taken here, if

possible within the Offshore Protocol legal framework.

The provisions of Annex I to MARPOL could be used as an indication/baseline towards the establishment of the common standards, as required by the Offshore Protocol. It is noted that MARPOL provides more detailed requirements than those specified in the Offshore Protocol.

The requirement to take appropriate measures to enforce common standards relates very much to the reporting, monitoring and enforcement regime put in place (see comments below specifically on monitoring and reporting).

In Spain, oil, oily mixtures, fluids and cutting, garbage and sewage are required to be disposed onshore. In Croatia, the disposal of solid waste, including oils, in the sea during mining activities is prohibited. No other specific measures were highlighted by the Competent Authorities of the EU Mediterranean countries.

Annex V provides further guidance to Article 10 of the Offshore Protocol, which requires the Contracting Parties to formulate and adopt common standards for the use and disposal of oil and oily mixtures and drilling fluids and cuttings. As discussed above, no specific regulation on disposal of oil or oily mixtures and drilling fluid and cuttings is provided by the EU draft Regulation. Also regarding the implementation of Annex V it can be concluded that, although these substances are covered by the Waste Framework Directive, the EU Mediterranean countries will need to develop such harmonised standards for oil and oily mixtures and drilling fluids and cuttings.

Reception facilities

In close relation to the requirements for specific types of waste, as discussed above, the Offshore Protocol (Article 13) requires Parties to ensure that, amongst others, ‘operators dispose satisfactorily of all wastes and harmful or noxious substances and materials in designated onshore reception facilities, except as otherwise authorized by the Protocol’.

Here, synergies exist with Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues, which implement the 73/78 MARPOL Convention. The Directive focuses on ship operations in EU ports, which defines ships as seagoing vessels including floating craft. Mobile installations for offshore exploration and exploitation activities constitute floating craft and therefore Directive 2000/59/EC is applicable. Under the Port Reception Facilities Directive, Member States must ensure that they have adequate port reception facilities to meet the needs of the ships operating in their ports without causing undue delays to the ships. Offshore oil and gas activities usually do not take place in Member States’ ports but offshore. Nonetheless, some mobile units of these offshore installations may call at EU Member States’ ports to dispose of all generated waste, as required by Article 13(1) of the Offshore Protocol.

Only ship-generated waste (including sewage) and various kinds of residues (including cargo residues) are covered by the Directive. The discharge of *noxious liquid substances* carried in bulk and of *harmful substances* carried in packaged form is explicitly excluded from the scope of Directive 2000/59/EC.

Possible additional measures: Reception facilities

Unless otherwise indicated, waste and harmful or noxious substances shall be disposed in designated onshore reception facilities. Such requirement is not included in the draft Regulation. Although synergies are identified with Directive 2000/59/EC, harmful or noxious substances fall outside the scope of the Port Facilities Directive. Technically, ‘harmful and noxious substances’ fall under the definition of ‘waste’

(Article 3 of the Waste Framework Directive). However as no clear rules or guidelines are specified on how to remove these substances, the Mediterranean countries would have to provide for legislation on reception facilities for these substances.

The non-hazardous waste, normally produced at an offshore installation, can be considered to fall under the definition of ‘ship-generated waste’ provided by Directive 2000/59/EC.

For the development of follow up measures, synergies with the implementation of the Port Reception Facility Directive should be considered. Although there might be a scope issue, port reception facilities could be used for disposal from installations (provided of course they have the relevant waste treatment permit).

Use and storage of harmful or noxious substances

The Offshore Protocol (Article 9(1)) imposes an obligation on operators to obtain an approval from the Competent Authority to *use* and *store* chemicals for their activities (on the basis of the Chemical Use Plan), which is not regulated in the draft Regulation.

The EU *acquis* provides some general obligations on the treatment of hazardous waste. Directive 2008/98/EC regulates the management of (*hazardous*) *waste* and provides that Member States must ensure that its *production, collection transportation, storage* and *treatment* are conducted in conditions providing protection for the environment and human health – this however only applies to the chemicals *after* their use⁷¹. The Seveso Directive, which aims at the prevention of major-accident hazards involving dangerous substances as well as to limit the consequences of such accidents for persons (safety and health) and the environment, does not apply to offshore installations (as explicitly excluded in Article 4 of the Directive).

Further, the use, handling and disposal of chemicals are covered by Regulation 1907/2007 (REACH). REACH does not require Competent Authorities to *approve* the chemicals used and stored in the facilities where they are used. However, it requires the safety data sheet provided to users to contain specific information on the safe *storage, handling and disposal* of substances (which is of relevance to Article 9(1), (3), (4), (5), (6) of the Offshore Protocol). In addition, Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work, the employer has the obligation to ensure the protection of workers against chemical agents, including *storage, handling and segregation* of incompatible chemical agents.

In Cyprus, the Competent Authority approves the procedures for storage and use of chemicals. In the other EU Mediterranean countries, no requirements on approval by the Competent Authority have been identified.

Possible additional measures: use and storage of harmful or noxious substances

The EU Mediterranean countries might need to adapt their legislation to include a procedure to ensure *approval* to use and store the chemical substances they used by the *Competent Authority*.

A key issue here is that the SEVESO Directive does not apply to offshore installations⁷². Therefore, there may be a need for either the MHR to cover this, or

⁷¹ Directive 2008/98/EC defines ‘hazardous waste’ as ‘*waste* which displays one or more of the hazardous properties listed in Annex III’. Annex III to Directive 2008/98/EC lists the ‘properties of waste which render it hazardous’, such as ‘explosive or ecotoxic’.

⁷² As explained on p. 107 of the Annexes to the Commission’s Impact Assessment.

for the EU Mediterranean countries to put in place additional procedures for approval for using and storing chemicals.

From an efficiency point-of-view, there are potential synergies in preparing both the Chemical Use Plan and the MHR. The Chemical Use Plan could even be included in the MHR when available i.e. for Mediterranean countries. EU Mediterranean Member States should make sure that the Chemical Use Plan reflects key requirements of the EU *acquis*, in particular requirements stemming from REACH.

In addition, although the requirement by the Offshore Protocol to regulate, limit or prohibit the use of chemicals for the activities in accordance with guidelines to be adopted by the Contracting Parties is optional, this provides another possibility for the Competent Authorities to adopt guidelines.

On this particular point, the Offshore Protocol opens the possibility for the Competent Authorities to regulate, limit or prohibit the use of chemicals, which is also provided for by the REACH Regulation. This is therefore an example as to the need to make sure that any provision adopted by the Mediterranean country is in line with the EU *acquis*.

Chemical Use Plan

With the necessary use of chemicals for an efficient operation in the offshore industry, such as chemicals used in the drilling and production, another important requirement that relates to the use and storage of chemicals is the establishment of a *Chemical Use Plan* as required by the Offshore Protocol (Articles 1 and 9). A Chemical Use Plan is ‘a plan drawn up by the operator which shows (i) the chemicals which the operator intends to use in the operations; (ii) the purpose or purposes for which the operator intends to use the chemicals; (iii) the maximum concentrations of the chemicals which the operator intends to use within any other substances, and maximum amounts intended to be used in any specified period; and (iv) the area within which the chemical may escape into the marine environment’ (Article 1(k) Offshore Protocol).

A Chemical Use Plan as such is not provided for in the EU draft Regulation; the latter however requires the operators to submit a *Major Hazard Report* (Articles 9-11). No definition of a major hazard report is provided in the draft Regulation: Annex II to the Regulation sets out the specific requirements. The EU draft Regulation’s MHR has a broader set up than the Chemical Use Plan as it covers the drawing up of a plan with the identified major hazards, their likelihood and assessment of consequences, whereas the Chemical Use Plan specifically sees on the use of chemicals. The two documents provide for synergies as some of the requirements of the MHR could cover the use of chemicals by the operator, such as ‘identification of all major hazards (Annex II, 2, para 4) the details of the types of operations with major hazard potential to be carried out (Annex II, 2, para. 5) and the details on control, process safety and containment of hazardous substances (Annex II, 2, para 6).

REACH requirements are also relevant in relation to Chemical Use Plan. Therefore, despite the fact that under the EU *acquis* operators are not obliged to draft a Chemical Use Plan, still under REACH operators need to be in possession of much of the information that a Chemical Use Plan would include, i.e., information on the chemicals to be used, their intended uses and the maximum concentrations of the chemicals which the operator intends to use within any other substance.

Possible additional measures: chemical use plan

Although it can be argued that the Major Hazard Report (EU Draft Regulation), in combination with the safety datasheet requirements (REACH), covers the (intended) use of chemical substances and related dangers, the EU Mediterranean countries

would have to ensure that operators prepare a detailed plan on chemical use for any offshore installation as required by the Offshore Protocol.

Under the EU *acquis* operators are not required to have information on the maximum amounts to be used in a specified period and the area within which the chemical may escape into the environment.

In terms of maximising efficiency, the EU Mediterranean countries should look at ways in which the Major Hazard Report and Chemical Use Plans can be developed at the same time, and/or combined into one document, and/or administered by a single or one co-ordinating authority. Of importance here is that the process is streamlined so that, at least, both documents can inform each other.

Compound description on substances and materials (provided by the producing entity)

The need to provide a compound description for each substance and material used for the offshore activities, as required by Article 9(3) of the Offshore Protocol is not regulated by the draft Regulation. However, under the EU *acquis*, specific chemical substances or mixture need to be accompanied by a safety data sheet, which will identify the substance/mixture and the company/undertaking providing it.

Regulation 1272/2008 on the classification, labelling and packaging of substances and mixtures also applies to the substances and mixtures falling under REACH. The CLP Regulation 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). Although the EU draft Regulation does not specifically refer to the Classification, Labelling and Packaging (CLP) Regulation, it is considered of relevance to the labelling requirements to be established under the Offshore Protocol.

Possible additional measures: compound description on materials/substances

In principle, the requirements of this provision are covered by Article 31 of the REACH Regulation. Member States should however ensure that all 'substances and materials' are covered by the REACH requirement to establish a safety data sheet (Annex II to Regulation 1907/2006). If substances are not covered, additional measures are foreseen, such as setting specific requirements for those substances not covered by REACH through legislative or permit conditions.

Exceptions to the provisions of Section III of the Protocol

The provisions of Section III on wastes and harmful or noxious substances and materials shall not apply in case of (a) *force majeure* and for disposals to save human life, ensure the safety of an installations and in case of damage to the installation or its equipment on the condition are that all reasonable precautions have been taken, as well as (b) discharge into sea of harmful or noxious substances for the purpose of combating specific pollution incidents (Article 14).

The conditions under sub-paragraph (b) relate to Article 31 on emergency response of the draft Regulation, in the sense that both provisions aim at minimising damage due to pollution. However, there are some differences as to the nature of the requirement: while the Protocol requires prior authorisation, the draft Regulation uses a softer approach focusing on cooperation between the Competent Authority and the operators without requiring prior approval to discharge.

A general, however important, gap is that both legal documents do not cover the use of dispersant in case of oil spills.

Possible additional measures: exceptions to the prohibition of disposal

Overall, these specific conditions are not reflected in the EU draft Regulation. In relation to emergency response, the draft Regulation provides the operator, in coordination with the authorities, the option to ‘take all measures necessary to prevent escalation of the accident and to mitigate its consequences’.

The EU Mediterranean countries might need to further specify their requirements (and exceptions), building upon the provisions of MARPOL.

Further, there is no specific provision on disposal/use of chemicals for combating pollution in emergency situations. Synergies could be established by making use of existing guidelines, such as the ones developed by EMSA (*Manual on the applicability of oil spill dispersants*). The parallel implementation of the two legal texts would provide for an interesting opportunity to further develop guidelines or regulation on this topic.

- **Safeguards**

Section IV of the Offshore Protocol sets out several safeguards. Amongst others, it requires operators to have a contingency plan to combat accidental pollution (in coordination with the contingency plan of the Parties to the Emergency Protocol), to take safety measures with regard to the ‘design, construction, placement, equipment, marking, operation and maintenance of installations’ as well as to remove abandoned or disused installations, taking into account IMO guidelines and standards.

Safety measures

The Offshore Protocol (Article 15(1)) provides that Contracting Parties shall ensure that safety measures are undertaken concerning the *design, construction, placement, equipment, marking, operation and maintenance of installations* while the EU Regulation does not explicitly refer to this lifecycle of exploration and production activities.

The Offshore Protocol and the proposed EU Regulation follow a different approach concerning the adoption of safety measures. According to the Offshore Protocol, Contracting Parties must ensure that safety measures are taken with regard to activities of offshore oil and gas installations. The EU Regulation emphasises the responsibility of operators to develop safety measures. This is mainly formulated as part of the accident prevention policy. The emphasis of the safety measures is on the design of the installation.⁷³

As the Offshore Protocol, Directive 92/91/EC on the health and safety protection of workers also imposes an obligation on operators to adopt safety measures in order to ensure the safety of the operations. However, unlike the Offshore Protocol, the measures provided in the Directive aim at ensuring solely the health and safety of workers, i.e., in principle, they do not aim at protecting the environment from the impacts of operators’ activities. Furthermore, the text of Directive 92/91/EC is more detailed than that of the Offshore Protocol in view of their different function: the Offshore Protocol provides guidance on the measures to be adopted by its Parties whereas EU Directives aim at ensuring a minimum level of protection for workers throughout the EU.

Directives 2006/42/EC (on machinery)⁷⁴ and 97/23/EC (on the approximation of the laws of Member States concerning pressure equipment)⁷⁵ are examples of internal market measures placing

⁷³ In addition, Recital 25 requires industry to ‘ensure safety in design and continuous safe operations’ by following the best available practices defined in authoritative standards and guidance.

⁷⁴ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (recast). The requirements are listed in detail in Annex I to the Directive. The

requirements to manufacturers of machinery or pressure equipment, which is put on the market to satisfy health, safety, and where appropriate, environmental requirements.

The Offshore Protocol moreover requires (Article 15(2)) that the operator’s equipment is maintained in good working order, for protecting human life, preventing and combating accidental pollution and facilitating prompt response to an emergency and is in accordance with the best available environmentally effective and economically appropriate techniques.

Although no similar requirement have been identified in the proposed EU Regulation, part of the requirements on the content of the emergency plan call for arrangements for the survival of persons, the description and maintenance of equipment and the procedures for response to an emergency. Further, measures aimed at the protection of human life (health and safety of workers) are provided by Directive 92/91/EC⁷⁶, which contains detailed provisions to ensure that the equipment used during the operations does not pose any danger to workers’ health and safety.

At the national level, some Mediterranean Member States have put in place requirements for risk assessment generally linked to health risk as per Directive 92/91/EC.

Measures from EU MED countries on risk assessment	
CY	In addition to the EIA, the Minister may request the conduct of a study assessing risks for workers.
EL	In Greece, no specific requirements obliging operators to conduct risk assessments were identified. However according to the Presidential Decree 177/1997 on the safety of workers in the mineral extracting industries, transposing Directive 92/91/EEC into the national legal order, employers shall ensure that a health and safety document is drawn. This document demonstrates that the risks incurred by the workers at the workplace have been determined and assessed, the necessary safety measures have been identified and that the design, use and maintenance of the workplace and of the equipment is safe.
ES	A risk assessment on accidents is required in Spain, covering probability, effects study and worst case scenario.
FR	In France, a risk-study and security and health document are required: the ‘authorisation act’ for the start of (offshore) hydrocarbon mining works is subject to the issuance of a major hazard study. This includes a risk assessment, detailed information on prevention and protection measures. It also includes the establishment of an internal emergency plan. In addition, operators of mining activities must establish and up-date a health and safety document.
IT	In Italy the risk assessment aims to promote continuous improvement of health and safety and protection of workers and the environment. Operators are required to prepare a ‘Document of Health and Safety’ setting out its policy to prevent accidents, attached to the program for the implementation of safety management system. This document contains an external

Directive excludes from its scope seagoing vessels and mobile offshore units and machinery installed on board such vessels and/or units. Hence, the Directive applies only to the machinery on *fixed installations*.

⁷⁵ 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. The Directive excludes from its scope certain specific equipment utilized in oil and gas offshore activities. However, the Directive concerns items such as pressurised storage containers, heat exchangers, steam generators, boilers, industrial piping, safety devices and pressure accessories.

⁷⁶ 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).

	emergency plan that aims to define measures to protect the installation and its workers as well as the environment from the consequences of major accidents.
MT	The employer is required to draw up a ‘Health and Safety Document’, which should contain, <i>inter alia</i> , ‘an assessment of the risks to health and safety incurred by the workers at the work place’.
SL	In Slovenia, there are no other risk assessment procedures compulsory than the SEVESO requirements (that do not apply to offshore activities).
HR	No risk assessments (accidents) are required in Croatia.

The Offshore Protocol imposes upon operators an obligation to acquire a certificate of fitness from a recognised body (Article 15(3)). Such requirement cannot be identified in the EU draft Regulation.

Overall, the provisions regulating the major accident prevention plan within the MHR serve the same goal as they provide that operators must subject their safety policies to verification by an independent third party. A certificate of fitness to an installation by a third party certifier under the Protocol as such can however not be compared with the acceptance of a Major Hazard Report by the Competent Authority as the latter is a statement that there are no safeguarding objections to the risks and controls proposed in a document and not an ‘approval’ of the activity. The responsibility remains with the operator

No mention is made in the draft Regulation of a certificate as proof of inspection/verification. The Protocol provides a detailed description to which activities or parts of the installation the inspection applies. In relation, Directive 92/91/EC requires operators via a safety and health document to show that all relevant measures have been taken to protect the safety and health of workers.

Annex VI to the Offshore Protocol provides guidance to Article 15, requiring the establishment of safety measures by providing, amongst others, that installations are safe and fit for its purpose; all phases of activities must be properly prepared; and the most advanced safety systems are used. Overall, the relevant provisions of the proposed EU Regulation are not directly referring to the elements stipulated by Annex VI. However, as they require operators of the installations to ensure that the installations are designed and operated in such manner as not to pose risk of major hazard to persons and environment, they are considered to cover, in general terms, the scope of the provision of the Offshore Protocol and as such are applicable.

Both the Offshore Protocol (Article 15(4)) and the proposed EU Regulation require parties the right to perform inspections to ensure that the safety measures and the Major Hazard Reports (containing the major accident prevention policy) respectively are complied with. In the majority of the EU Mediterranean countries, inspections are carried out (Cyprus, France, Greece, Italy, Malta, Slovenia, Spain and Croatia). These inspections can be without prior notice (Cyprus, France and Greece) or at an irregular basis (Croatia). In Greece, ‘preventive, scheduled and unscheduled inspections are carried out, whereas in Italy several inspection are clustered by topic covering safety’s inspections’(inspection of the fire system, electric grounding networks, lifting equipment, pressure vessels and electrical systems) as well as environment’s inspections (covering emissions, waste discharges and water Reinjection).

Note: (Considering Commission services feedback about changes in the new Directive text)

This report considers that the certification requirements by third party certification bodies of the Protocol equates to the scheme for independent verification. Reference to third party was dropped from the text (early 2012) at which time it was agreed that second party verification could be acceptable in cases of large companies with independent safety verification departments. Further, the policies and management systems that are submitted to the Competent Authority are complementary to the MHR rather than a component of it and are not subject to independent verification.

Possible additional measures: safety measures

The Offshore Protocol requires that safety measures are undertaken concerning the *design, construction, placement, equipment, marking, operation and maintenance of installations*. The EU Regulation does not explicitly refer to this lifecycle of exploration and production activities and might need to specifically address measures per life cycle stage.

As the impact of any accident could affect several Member States and non-EU Mediterranean countries, a common high-level approach to risk assessment, inspections and monitoring could be an effective option to consider.

Regarding the requirement for a certificate of fitness, it is noted that the fact that the EU draft Regulation stipulates that the verification process should be independent would indicate that the implementation of the EU draft Regulation should suffice as long as it covers ‘production platforms, mobile offshore drilling units, offshore storage facilities, offshore loading systems and pipelines’.

In terms of consistency and efficiency, although different, these two processes can be streamlined into one common certification process.

Regarding the inspection requirements, it is noted that the EU draft Regulation’s provisions are more detailed than those found in the Protocol and could serve as input for the practical implementation of the Offshore Protocol requirements.

Coordination of contingency planning

Operators are required to have a contingency plan to combat accidental pollution, coordinated with the contingency plan of the Contracting Party. Further, each Contracting Party ‘shall establish coordination for the development and implementation of contingency plans. Such plans shall be established in accordance with guidelines adopted by the competent international organization. They shall, in particular, be in accordance with the provisions of Annex VII to this Protocol’ (Article 16(3)).

Both the Offshore Protocol and the proposed EU Regulation refer to the operator’s responsibility to put in place emergency response plans.⁷⁷ The EU draft Regulation requires both an internal and external emergency response plan (Articles 12, 29 and 30) and covers both environmental pollution and the protection of the health and safety of workers (Article 7 requires emergency response plans that aim at protecting workers’ health. Also, this applies only to hazardous chemical agents). The scope of the internal and external emergency plans are set out in Annex V to the EU draft Regulation. The internal emergency plan (required under Article 9 as a condition for operating offshore installations) is integrated in the Major Hazard Report (Articles 9(1)(c) and 12(2)). As regulated in Article 10(5) of the draft Regulation, planned works (production) shall not be commenced until the competent authority has accepted the MHR.

Overall, the EU draft Regulation goes beyond the scope of the Offshore Protocol, usually providing for transboundary emergency preparedness and response in case of foreseeable offshore oil and gas accidents and in order to prevent ‘potential negative effects’ to ‘areas beyond the boundaries of the EU’ (Article 32(2)).

⁷⁷ Note that the Offshore Protocol provides that such plans must be established in accordance with the Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency. This Protocol has been signed by the EU and therefore, EU Mediterranean Member States have to implement these requirements.

At national level, EU Mediterranean Member States have in general set requirements on emergency plans.

Measures from EU MED countries on contingency planning (internal)	
CY	Prior to the commencement of any drilling operations, the holder of an authorisation must prepare and submit a contingency plan in case of hydrocarbon leakage and fire to the Minister for evaluation and approval.
EL	According to the legislation transposing Directive 96/82/EC on the control of major-accident hazards involving dangerous substances in Greece, offshore exploration and exploitation of minerals, including hydrocarbons does not fall within the scope of the legislation and, consequently, operators do not have to establish major accident prevention policies under these provisions. However, according to the 'National Contingency Plan' to address pollution from oil and other harmful substances, offshore oil extraction facilities are required to have emergency plans to address pollution incidents which are compatible with the relevant Local Contingency Plan and, as a consequence, with the National Contingency Plan. In addition, the 'Draft Model Lease Agreement' (which is not legislation) implies that lessees are obliged to have contingency plans.
ES	The operator is required to take suitable measures to prevent major accidents from offshore oil and gas operations. Operators have to prepare internal emergency response plans that contain measures to prevent escalation or limit the consequences of accidents. Taking into account the plans prepared by the operators, the Spanish government establishes external emergency response plans.
FR	The internal emergency response plan is part of the risk study (<i>etude de dangers</i>) required by the Environmental Code.
IT	Italian legislation requires that all production hydrocarbons sites must have an internal Emergency Response Plan available to manage any accidental events.
MT	An emergency plan can be required, however the regulation requiring this is not (yet) adopted.
SL	An emergency plan is not (yet) applicable.
HR	The operator is required to have an environmental interventions operational plan. However, the content of this plan is not stipulated in detail

The Offshore Protocol notes that each Contracting Party must establish coordination mechanisms for the development and implementation of contingency plans, which concerns internal coordination within the Contracting Parties. On the other hand, the proposed EU Regulation states that Member States must coordinate (amongst each other) their emergency plans where transboundary effects of offshore oil and gas accidents are foreseeable as well as coordinate their actions to prevent accidents in areas beyond the EU.

Further, with a focus on the health and safety of workers, Directive 92/91/EC provides for the adoption of a contingency plan; the provisions of the EU Directive (including its Annex) are detailed as to the content of these plans (e.g., communication, information and training of workers, specific provisions on safe assembly points and muster list, means of evacuation and escape, sanitary equipment, first-aid rooms and equipment, accommodation, helicopter operations).

Annex VII to the Offshore Protocol sets out the requirements for the operator's contingency plan as well as the requirements for national coordination and direction to the competent authorities. The obligations set for the operator under the Offshore Protocol are covered by the EU draft Regulation and Directive 91/92/EC concerning the minimum requirements for improving the safety and health protection of workers in the mineral extracting industry. The requirements to the competent

authorities are covered by the EU draft Regulation, including requirements to the Major Hazard Report.

Possible additional measures: coordination of contingency plans

The guidelines on the development and implementation of contingency or emergency plans (Article 16(3) of the Offshore Protocol) shall be in accordance with Annex VII to the Protocol, which provides a detailed list of the elements that need to be part of the operator's and the competent authorities plans. This level of detail is not reflected in the draft Regulation.

Despite differences in specific requirements, both the contingency plan under the Offshore Protocol and the internal emergency plan under the EU draft Regulation serve the same purpose and shall be the same document. Hence the requirements of both the Offshore Protocol and the draft Regulation could be streamlined to ensure compliance with both legal acts.

In terms of efficiency, the development of regional contingency plans may assist in preparedness and response to emergencies.

In general, guidance can be found in the 1990 International Convention on Oil Pollution, Preparedness, Response and Co-operation (OPRC Convention), which sets out in detail requirements for oil pollution emergency plans and reporting procedures, and national and regional systems for preparedness and response. In 2000, a protocol to the OPRC on hazardous and noxious substances was adopted. Although the EU is not a signatory to the Convention, the majority of its Member States are.

Whilst the EU draft Regulation draws a distinction between the major accident prevention and response requirements of emergency response plans and the more general pollution prevention focus of the protocol, there is significant scope for sharing information. A good example is in the Oil Pollution Emergency Plan required under the 1990 OPR Convention.

Monitoring

Article 19 of the Offshore Protocol requires the operator to measure the effects of the activities on the environment in the light of the nature, scope, duration and technical methods employed in the activities and of the characteristics of the area and to report on them periodically or upon request by the competent authority. Similar monitoring requirements are not set forth by the EU draft Regulation or the applicable EU *acquis*.

Article 18(1) of the EU draft Regulation establishes the obligation of monitoring for operators on their *prevention policy*, which is not the same as the effects on the environment as mentioned in the Protocol. Further, Article 18(3) requires operators to 'describe their organisational arrangements for the control of hazards'. Despite the fact that this obligation covers Article 10 (MHR) – including the consequences of the identified major hazards to the environment (Annex II, nr. 4) – it does not fulfil the specific requirements on 'periodical reporting' in relation to the effects of the activities 'on the environment in the light of the nature, scope, duration and technical methods employed in the activities and of the characteristics of the area'.

Requirements on monitoring will need to be established by the EU Mediterranean countries. Synergies could be explored with the forthcoming revision of the UNEP/MAP MEDPOL monitoring framework.

Measures from EU MED countries on reporting and monitoring	
CY	General reporting obligations were identified in Cyprus: the contractor shall regularly inform the Minister of the performance of hydrocarbons operations and immediately of the accidents or dangerous occurrences which have taken place. In addition, monitoring requirements are established by the 'Model Exploration and Production Sharing Contract', requiring the contractor to have documented management systems in place based on best international practice for health, safety and environmental management, as well as for normal day to day operations and should be made available for review by the Minister. It is however emphasised this is not legislation.
EL	The Decision Approving Environmental Conditions (AEPO) <i>may</i> oblige operators to monitor their activities. In addition, the 'Draft Model Lease Agreement' – which is not legislation - obliges lessees to ensure that exploration and exploitation activities are properly monitored with respect to their effects on the environment.
ES	No specific monitoring requirements are identified – information is mainly gathered via inspection. For example the Ministry of Industry and Energy granting exploitation licences or research permits may request the operators to submit the annual accounts, request them to be audited or request complementary audits for specific elements that are necessary of the exploitation activity.
FR	Monitoring requirements are determined on a case-by-case basis to ensure the appropriate preservation of the interests provided in the Mining Code.
IT	Specific monitoring requirements can be stipulated in the authorisation documents; however the competent authorities can carry out checks and controls of the installations without notice at any time. It is noted that even when the authorisation does not require monitoring actions, they are often carried out in accordance to voluntary standards (i.e. ISO 14001 and OHSAS 18001).
MT	The environmental audits in Malta are not (yet) made obligatory.
SL	Reporting obligations on safety and environmental impact of offshore oil and gas activities and accidents are not yet applicable in Slovenia. Regarding monitoring, it is noted that legislation in Slovenia prescribes monitoring for industry through environmental permits.
HR	In Croatia, monitoring is not obliged (however the operator is obliged to records during mining activities).

Possible additional measures: monitoring	
<p>The Regulation does not strictly refer to 'monitoring' by operators, other than in relation to their prevention policy. Therefore, a monitoring regime requiring periodical reporting covering the environmental effects, as listed in the Protocol, should be established by the EU Mediterranean countries.</p> <p>Complementarities can be sought with the reporting requirements established in the Major Hazard Report. The setting up of a monitoring system could build upon the Annex II requirement (information to be submitted in a major hazard report for operation of a production installation). The MHR for a (non) production installation shall at least contain '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</p>	

technical and non-technical measures envisaged to prevent, reduce or offset them, including monitoring'.⁷⁸

In developing a monitoring system, complementarities can be found between environment and safety monitoring. Environment monitoring should inform decisions on safety as a minimum. For example, if there is any requirement in the draft Regulation to update the emergency plans, the results of monitoring as required under the Offshore Protocol could inform such updating.

On the basis of Article 11 of the Marine Strategy Framework Directive, Member States are to 'establish and implement coordinated monitoring programmes for the ongoing assessment of the environmental status of their marine waters'. These are to be based on the indicative lists of elements set out in Annexes III and V to the Directive as well as by reference to the environmental targets established on the basis of Article 10. Annex III provides an indicative list of characteristics, pressures and impacts, which includes 'physical damage', such as 'selective extraction, e.g. exploration and exploitation of living and non-living resources on seabed and subsoil' and contamination by hydrocarbons resulting from oil, gas and mineral exploration and exploitation.⁷⁹ Monitoring programmes shall be compatible within marine regions or sub-regions and shall build upon, and be compatible with, relevant provisions for assessment and monitoring laid down by Community legislation, including the habitats and Birds Directives, or under international agreements.

In order for such monitoring programmes to be complete and cost-efficient, Member States could be supplied with the results of monitoring by operators, to inform and complement their monitoring programme, to comply with the MSFD.

Removal of installations

Part of the section on safeguards is the requirement 'to remove any installation which is abandoned or disused, in order to ensure safety of navigation, taking into account the guidelines and standards adopted by the competent international organisation. Such removal shall also have due regard to other legitimate uses of the sea, in particular fishing, the protection of the marine environment and the rights and duties of other Contracting Parties' (Article 20).

With respect to the Offshore Protocol, installations fall under the definition of 'waste' as provided in the framework of the related Dumping Protocol.⁸⁰ According to Article 4(2) of the Dumping Protocol, platforms and other man-made structures at sea constitute one of the four specific exceptions to the general prohibition of dumping in the Mediterranean Sea. Dumping can take place under the strict conditions stated in the 'Guidelines for dumping of platforms and other man-made structures at sea' adopted by the Contracting Parties (MOP) in 2003, where the requirements for granting an

⁷⁸ Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities, Brussels, 2.10.2011, COM(2011) 688 final, Annex II, nr. 2 (13) and 3(14).

⁷⁹ In July 2012, Cyprus, France, Greece, Italy and Spain completed their initial assessments for the MSFD. According to Article 5(2)(a) of the MSDF, Member States sharing a marine region or subregion shall 'prepare an initial assessment, to be completed by 15 July 2012, of the current environmental status of the waters concerned and the environmental impact of human activities thereon, in accordance with Article 8 [on assessment]'. The reports are submitted at <http://cdr.eionet.europa.eu/reports>. In the report from Cyprus, no offshore activities (oil and gas) were discussed. The reports from France, Greece, Italy and Spain discussed offshore activities (and their environmental impact). No report was submitted by Malta, whereas in Slovenia, no offshore activities are taking place or are foreseen. Croatia is to report by July 2013.

⁸⁰ Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, signed on 16 February 1976, entry into force on 12 February 1978 (revised on 10 June 1995).

authorisation for the dumping at sea of offshore installations are specified, including public review and participation in the permit evaluation process, consultation procedure with the other contract parties and monitoring operations for the disposal at sea of disused offshore installations.

The EU draft Regulation also deals with the removal of installations. In its Annex II(6) it provides for the case of ‘removal of a fixed installation’. When the fixed production installation is out of use, certain information is required to be provided to the competent authorities, such as the description of the major hazard risks associated with the dismantling of the installation and the risk control measures.

Technically, as ‘installations’ fall under the definition of ‘waste’ (Article 3 of the Waste Framework Directive) the removal of installations is covered by the EU *acquis*. However no clear rules or guidelines have been developed on how to remove such complex offshore installations.

Following the 1995 ‘Brent Spar’ affair, the Commission delivered a Communication on the removal and disposal of disused offshore oil and gas installations (Brussels, 18.02.1998, COM(1998) 49 final. The Communication emphasises that the area of waste legislation plays an important role, which, inter alia, ‘prohibits the abandonment of waste, require waste to be treated without using methods which could cause harm to the environment and without risk to water and require the separation of hazardous waste from non-hazardous waste and its subsequent safe treatment and disposal’.⁸¹

In 1998, the OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations was adopted (entry into force in 1999).⁸² According to the OSPAR Decision (Article 2) ‘the dumping, and the leaving wholly or partly in place, of disused offshore installations within the maritime area is prohibited’. Exemptions are however possible on the basis of an assessment in accordance with Annex 2, showing that there are significant reasons why an alternative disposal is preferable to reuse or recycling or final disposal on land.

In addition, the IMO Resolution A.672(16) on *Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone* (1989) might provide practical guidance in the development of specific rules⁸³. For example, the *guidelines* provide several indicators that guide the decision, based on a case by case evaluation by the coastal state with jurisdiction over the installation or structure, to allow an offshore installation, structure or parts thereof, to remain on the seabed. These include the potential effect on the safety of navigation or other uses at sea; the rate of deterioration of the material; the potential effects on the marine environment; the risk that the material shift position; cost and technical feasibility and risk of injury associated with removal and possible new use⁸⁴. In addition, *standards* that should be taken into account when a decision is made regarding the removal are provided.

It follows however from the assessment of the legislation in place in the EU Mediterranean countries, that several have rules in place to regulate the actual removal of an installation, which should be taken into consideration when (further) developing implementation measures.

⁸¹ Communication from the Commission to the Council and the European Parliament on Removal and Disposal of Disused Offshore Oil and Gas Installation, Brussels, 18.02.1998, COM(1998) 49 final, p. 16.

⁸² OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations, OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic, Ministerial Meeting of the OSPAR Commission, Sintra: 22-23 July 1998.

⁸³ Available at: [http://www.imo.org/blast/blastDataHelper.asp?data_id=22503&filename=A672\(16\)E.pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=22503&filename=A672(16)E.pdf).

⁸⁴ *Ibid.*, Guidelines 2.1.

Measures from EU MED countries on the removal of installations	
CY	The requirement of a 'plan' was not identified in the reviewed Cypriot legislation. However, the actual removal is addressed: the relevant legislation states that unless the Minister deems otherwise, on expiry of the time-period or termination of an authorisation, the holder of an authorisation must: (a) remove all equipment, installations, structures, plants, appliances and pipelines from the area in accordance with the abandonment (i.e., removal) plan provided by the contract; (b) perform all necessary site restoration activities in accordance with good international petroleum industry practice and take all other necessary measures to prevent hazards to human life or to the property of others or the environment.
EL	No requirement to provide 'plans' for removal or installations or to provide precaution measures for protected areas has been identified in the reviewed legislation. However, it is stated in the relevant legislation that after each exploration stage the lessee is obliged to remove his installations even though he does not have to provide a removal plan at the authorisation stage. The 'Draft Model Lease Agreement' (which is not legislation) imposes the same obligation upon lessees within six months from the date of termination of any phase of the exploration stage and prior to the expiration of the exploitation stage.
ES	Operators requesting an exploitation concession are due to provide an environmental impact assessment, and exploitation plan, investment plan, plan for <i>dismantling the facilities</i> or for their abandonment once exploitation is finished, a plan for the recuperation of the environment and an insurance guarantee covering all requested obligations.
FR	There is no such requirement in the French legislation; it is only required by law that the owner or the operators of hydrocarbon off-shore installations must totally remove installations that ceased to be used.
IT	It is mandatory to provide plans for removal of installations after the expiry of the mining concession through a dedicated decommissioning procedure, covering all the aspects in terms of health and safety and environmental impact.
HR	In Croatia, rehabilitation of the area by the operator is required after cessation of activities on the basis of the Law on Mining.

Although such requirements are generally covered in national legislation, further specifications and harmonisation could be needed.

Possible additional measures: removal of installations
<p>The Protocol is more specific and far-reaching than the draft Regulation and <i>acquis</i>. Despite the fact that 'installations' are covered by the waste-definition (Article 3 of the Waste Framework Directive), to meet the requirements of the Offshore Protocol, the EU Mediterranean countries may have to put in place more detailed rules for removal of abandoned/disused installations and outline the role which the Competent Authority will play. Again how the operator will achieve this could be outlined in the MHR and or construction operating permits.</p> <p>As underlined by Professor Raftopoulos, it can be argued that both instruments are deficient in at least two important aspects, as required from a perspective of integrated management:</p> <ul style="list-style-type: none"> • The plans for removal of installations should be developed in consultation with the competent authorities and stakeholders (e.g. local communities, fishing groups and other interested parties). • Post removal environmental monitoring should be part of the removal

process as an important aspect for assessing the recovery of the production site.⁸⁵

Further, the two instruments provide options for the establishment of a complementarity approach. In short, the Offshore Protocol includes in the minimum of requirements for (renewal of) authorisation of the project to be submitted by the operator to the competent authorities ‘the plans for the removal of installations as specified in Article 20’ (Article 5(1)(g)). On the other hand, the EU draft Regulation deals with the dismantling of installations as a distinct major issue for amending the MHR. It refers to dismantling of both production and non-production installations and in Annex II(6) specifies the information to be provided. A synthesis of the two aspects can be beneficial: while the inclusion of the plans for removal of installations in the requirements for authorisation is important, it should be supplemented by information usefully provided pursuant to the EU draft Regulation. This would effectively clarify the duty and responsibility of the operator prior to such a removal to ‘take all necessary measures to prevent spillage or linkage from the site of the activities’ as is generally provided in Article 20(1) of the Offshore Protocol.

The Offshore Protocol and the EU draft Regulation should have a complementary function: plans for the removal of installations should be one of the requirements for authorisation and they should be reviewed again when the installations are no longer needed (abandoned or disused) on the basis of information provided in the EU draft Regulation.

In general, the OSPAR Decision 98/3 as well as the IMO Resolution A.672(16) can provide useful guidance.

- **Cooperation**

The obligations on cooperation placed on the EU Mediterranean Member States are to a large extent covered by the EU *acquis*. This section however discusses some of the provisions under Section V on cooperation as they provide for interesting synergies (transboundary pollution) or differences (liability and compensation).

Transboundary pollution

The issue of transboundary pollution is regulated under both legal instruments: the Offshore Protocol requires that parties must ensure that activities within their jurisdiction do not have transboundary effects; the proposed EU Regulation provides that if such transboundary effects are foreseeable, Member States have to notify the Commission and the potentially affected country.

In comparison to the EU draft Regulation, the Offshore Protocol prescribes a more individual duty-oriented transboundary regime, providing cooperation (duty to inform Parties that are likely to be affected, REMPEC as well as the duty to endeavour to cooperate with third parties) in the case of emergencies. Article 26(3) of the Offshore Protocol refers to ‘cases in which the marine environment is in imminent danger of being damaged, or has been damaged’.

The EU draft Regulation, on the other hand, is more extensive in this regard as it also applies at the preventative level. Article 17 of the EU draft Regulation regulates cooperation in case of transboundary effects. If a Member State considers that a well operation or the operation of an installation ‘may have significant negative effects on waters of another Member State in the case of

⁸⁵ Raftopoulos, E., (2010) Sustainable Governance of Offshore Oil and Gas Development in the Mediterranean: Revitalizing the Dormant Mediterranean Offshore Protocol, in: Mepielan Bulletin.

accident’, or ‘where a Member State likely to be significantly affected so requests’, it is under the duty to inform that Member State and to ‘endeavour to adopt joint preventive measures to prevent damages’.

With regard to transboundary emergencies (Article 32), the EU draft Regulation provides for the duty of the Member States:

- To ‘coordinate their emergency plans to facilitate joint response to an accident’(Article 32(1));
- To ‘coordinate measures related to areas beyond the boundaries of the Union in order to prevent potential negative affects of offshore oil and gas operations’ (Article 32(2));
- To ‘regularly test their preparedness to respond effectively to accidents in cooperation with potentially affected Member States, relevant EU Agencies or third countries’ (Article 32(3)).

Possible additional measures: corporation in case of transboundary pollution

The obligation to exchange information regarding danger or damage by pollution is part of both legal documents.

Essentially, when informing the European Commission and affected Member States, the source Member State should also inform REMPEC. One issue which may need to be resolved is the understanding of terms such as ‘major accident’, ‘imminent danger’, ‘event’ etc. In other words it is not clear what incidents should be reported and which should not. Therefore, it would be useful to reach a common understanding within the framework of the Barcelona Convention taking into account the approach followed at EU level and aligning the interpretation of these key terms at both levels.

It is noted that guidance can be sought from the Espoo Convention and the Kiev Protocol that are applicable.

- **Liability and compensation**

A future undertaking to cooperate in the drafting of appropriate rules and procedures

One of the critical and extensively discussed requirements of the Protocol relates to liability. According to Article 27(1), the Parties ‘undertake to cooperate as soon as possible in formulating and adopting appropriate rules and procedures for the determination of liability and compensation for damage resulting from the activities dealt with in this Protocol, in conformity with Article 12 of the Convention’.⁸⁶

Whereas the Offshore Protocol requires parties to ‘cooperate in formulating and adopting’ a regime on rules and procedures for liability and compensation, the Draft Regulation builds upon the existing liability scheme under Directive 2004/35/EC (Article 7). Directive 2004/35/EC aims at establishing a ‘common framework for the prevention and remedying of environmental damage at a reasonable cost to society’.⁸⁷ Regarding environmental liability, Directive 2004/35/EC addresses pure ecological damage in terms of ‘protected species and natural habitats’ (biodiversity damage), ‘water damage’ and ‘land damage’.

Although the Offshore Protocol does not specify explicitly that environmental damage and traditional damage (damage to health or property) resulting from pollution of the marine environment should be

⁸⁶ Article 12 of the Barcelona Convention regulates ‘Liability and compensation’.

⁸⁷ Recital 3 to Directive 2004/35/EC.

compensated, this is clarified by (non-binding) guidelines to the Protocol. As provided by the Guidelines on Liability and Compensation from Damage resulting from Pollution of the Marine Environment in the Mediterranean Sea Area ‘the legislation of Contracting Parties should include provisions to compensate [both traditional damage and] environmental damage resulting from pollution of the marine environment’.⁸⁸ Further guidance is provided by part D, nr. 14, setting out the meaning of ‘traditional damage’ for the purpose of these Guidelines:

- (a) loss of life or personal injury;
- (b) loss of or damage to property other than property held by the person liable;
- (c) loss of income directly deriving from an impairment of a legally protected interest in any use of the marine environment for economic purposes, incurred as a result of impairment of the environment, taking into account savings and costs;
- (d) any loss or damage caused by preventive measures taken to avoid damage referred to under sub-paragraphs (a), (b) and (c).

Regarding its legal status, the Guidelines in part A set out that ‘While not having a legally binding character *per se*, these Guidelines are intended to strengthen cooperation among the Contracting Parties for the development of a regime of liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area and to facilitate the adoption by the Contracting Parties of relevant legislation.’⁸⁹ The coverage of ‘traditional damage’ by the Offshore Protocol would in principle not need to lead to additional measures, as traditional damage would be generally covered by the civil liability system established by national legislation.⁹⁰ In general, the Environmental Liability Directive aims to avoid overlap with the civil liability regimes in place in the EU Member States, meaning that the ‘so-called ‘traditional damage’ - personal injury and damage to goods and property -, even if it is caused by ‘risky and potentially risky’ activities covered by the Environmental Liability Directive, will be dealt with under national civil liability legislation as the Directive only deals with damage to the environment’.⁹¹

The EU draft Regulation extends the existing EU environmental liability legislation to cover offshore environmental damage. It amends the Environmental Liability Directive (2004/35/EC) (ELD) to cover environmental damage to all EU marine waters, stating that Article 2(1)(b) of that Directive shall be replaced by the following: '(b) water damage, which is any damage that significantly adversely affects (i) the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies, or (ii) the environmental status of the marine waters concerned, as

⁸⁸ UNEP/Mediterranean Action Plan, Decision IG 17/4 (15th Meeting of the Contracting parties), Guidelines for the Determination of Liability and Compensation for Damage resulting from Pollution of the Marine Environment in the Mediterranean Sea Area, nr. 8, Athens, Greece, 28-29 June 2007. A detailed description of the Guidelines and their establishment can be found in: Scovazzi, T. (2009), *The Mediterranean Guidelines for the Determination of Environmental Liability and Compensation: The Negotiations for the Instrument and the Question of Damage that Can Be Compensated*, in: *Max Planck Yearbook of the United Nations Law* 2009, nr. 13.

⁸⁹ *Ibid.*, Part A (Purpose of the Guidelines), nr.3.

⁹⁰ A confirmative conclusion would require studying the civil liability regimes of the Member States. See for further discussion: europa.eu/rapid/press-release_MEMO-02-10_en.doc. It is explained that ‘Traditional damage comprises two types of damage: personal injury and damage to goods and property. These are the types of damage that are usually dealt with by national civil liability law (or tort law). The need for EU action with respect to traditional damage [in the Environmental Liability Directive] is therefore less pressing than regarding environmental damage’.

⁹¹ See:

<http://www.envirocentre.ie/includes/documents/Questions%20and%20Answers%20Environmental%20Liability%20Directive.pdf>.

defined in Directive 2008/56/EC, in so far as particular aspects of the environmental status of the marine environment are not already addressed through Directive 2000/60/EC'.⁹²

Possible additional measures: (environmental) liability	
<p>Appropriate rules and procedures for the determination of liability and compensation for damage resulting from the activities covered by the Offshore Protocol are to be adopted. This requires follow-up activity under the Offshore Protocol. The obligation to cooperate as established in Article 27(1) implies 'a duty to act in good faith in pursuing a common objective and in taking into account the positions expressed by the other interested States'.⁹³</p>	
<p>While the exact nature of any additional requirements can only be determined on the basis of the final outcome of the co-decision procedure concerning the EU draft regulation and how future EU legislation on offshore safety will be implemented at EU Mediterranean Member States national level, terms such as 'damage' and 'compensation' may in themselves introduce wider concepts than under the forthcoming EU Regulation.</p>	
<p>It will be important to ensure that when appropriate rules and procedures for the determination of liability and compensation for damage resulting from the activities covered by the Offshore Protocol are drafted for adoption, that these effectively mirror those requirements adopted at the EU level. Where additional requirements are introduced at this stage appropriate coordination should be considered at the stage of implementation.</p>	
<p>The development of appropriate rules and procedures will need to be in line with the ELD for the EU Mediterranean States. When drafting such rules and procedures, all Parties will have to consider conformity with the international definition of pollution damage under the International Convention on Civil Liability for Oil Pollution Damage (CLC) and Fund Conventions as these instruments address damage by persistent oil (establishing liability for oil-carrying ships). For EU Mediterranean States, these Conventions prevail within their applicable scope over the ELD and they can therefore neither adopt contradicting rules and procedures (the easiest and legally most elegant way for EU Member States would be just a reference to the applicable ELD including the exemption of these Conventions). Consequently, oil loaded and transported in shuttle tankers and floating production storage and offloading units (FPSO) are covered at the international level.</p>	
<p>This is however not the case for the EU Mediterranean States as the 'appropriate rules and procedures' will need to be in line with the EU <i>acquis</i>, which is the ELD. The ELD itself exempts certain International Conventions, in particular the relevant IMO Conventions relating to ship source pollution in so far as they are implemented by the Member States concerned.</p>	

Systems regulating liability in the EU Mediterranean countries are based on Directive 2004/35/EC:

Measures from EU MED countries on liability	
CY	In Cyprus, offshore activities are not mentioned in legislation on environmental liability; liability applies in cases of damage and immediate threat. Operators are required to remediate environmental damage. It is however noted that Cyprus ratified the Protocol.

⁹² Article 37 of the EU draft Regulation.

⁹³ Scovazzi, T., (2012) Maritime Accidents with Particular Emphasis on Liability and Compensation for Damage from the Exploitation of Mineral Resources of the Seabed, in: De Guttry, A., Gestri, M., Venturini, G. (eds), *International Disaster Response Law*, Springer 2012, p. 299.

EL, ES, MT, HR	In Croatia, Greece, Malta and Spain, operators are liable for environmental damage (strict and fault-based) and are required to remediate environmental damage.
FR	In France, the environmental liability framework applies (transposition of Directive 2004/35/EC), where for damage caused to the environment by certain professional activities listed by the Decree, strict liability applies. ⁹⁴
IT	In Italy, the competent authority conducts financial and technical checks to ensure ability to pay compensation. Operators are required to pay compensation for environmental damage. ⁹⁵
SL	In Slovenia, general provisions for environmental liability are in place under the Environmental Protection Act.

Measures to channel liability on the operators; payment of compensation; and compulsory insurance or other financial guarantee.

Professor Scovazzi summarises the second paragraph of Article 27 as to set forth three provisional, but substantive, obligations: ‘Waiting for the adoption of appropriate rules and procedures on liability and compensation, the parties to the Offshore Protocol are bound to take measures to ensure that, first, liability is channelled on the operators, second, they pay compensation in a prompt and adequate manner and, third, they have and maintain compulsory insurance or other financial guarantee’.⁹⁶

The first two obligations are covered by the Environmental Liability Directive: liability is channelled to the operator in control of the activity that causes the (threat to) environmental damage and a common framework is established to choose the most appropriate measures to ensure the remedying of environmental damage (whereas traditional damage is generally covered by civil liability). Here, the difference is underlined between ‘payment of compensation’ and ‘remedying of environmental damage’: payment of compensation for environmental damage is expressly prohibited under the ELD, whereas the ELD aims at natural restoration of damage (primary, complementary and compensatory remediation). The EU draft Regulation in its explanatory memorandum sets out that ‘the operator of activities causing significant environmental damage to protected species, natural habitats or water is strictly liable to prevent and remedy the damage and bear the full cost of it. The proposal aims to expand the current territorial applicability of ELD, currently limited to the coastal strip and territorial sea in relation to water damage to cover also marine waters under the jurisdiction of the Member States’.⁹⁷ Whereas the draft Regulation proposed the expansion of the geographical scope, no mention is made of the functional scope: it therefore remains subject to discussion whether offshore oil and gas activities are covered by Annex III to the ELD and consequently are only subject to remedying of environmental damage to protected species and natural habitats. It should however be noted that Directive 2004/35/EC excludes ‘environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Annex IV’.⁹⁸ This applies when the Convention are ratified by the Member States.

⁹⁴ It is noted that the French law explicitly provides that activities that deal with substances classified under the CLP Regulation must be subject to strict environmental liability. The CLP Regulation is relevant as it defines the scope of the offshore activity covered by strict liability pursuant to Annex III.7.(a) ELD.

⁹⁵ It is noted that ‘payment of compensation for environmental damage’ is expressly prohibited under the ELD. The ELD aims at natural restoration of damage (primary, complementary and compensatory remediation).

⁹⁶ Scovazzi, T., (2012) *Maritime Accidents with Particular Emphasis on Liability and Compensation for Damage from the Exploitation of Mineral Resources of the Seabed*, in: De Guttry, A., Gestri, M., Venturini, G. (eds), *International Disaster Response Law*, Springer 2012, p. 299.

⁹⁷ Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospecting, exploration and production activities, Brussels, 27.10.2011, COM(2011) 688 final, p.3.

⁹⁸ Article 4(2) of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. The international convention listed in Annex IV include: (a) the International

Although the objective of both legal documents is to put in place mechanisms to cover potential damage, a significant difference in approach emerges in relation to the third obligation: while the Offshore Protocol mentions mandatory financial security measures to do so, the draft Regulation and EU *acquis* does not impose a certain tools or methods to ensure sufficient financial capacity (which is left to the Member State).⁹⁹ In other words, the ELD does not contain an obligation to provide insurance or other financial security at EU level.¹⁰⁰ Although some Member States proposed such requirements during its legislative process, it was not included in the final text. According to its current Article 14, Member States instead are required only ‘to take measures to encourage the development of financial security instruments and markets in this field, including financial mechanisms to cover insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities’ under the Directive.

Interesting in this context is the 2010 report published by the Commission,¹⁰¹ as required by Article 14(2) of Directive 2004/35/CE (requesting the Commission to report on the effectiveness of the Directive as well as several aspects relating to financial security). It concluded that, in relation to Article 14(1), Member States ‘took rather limited action, restricted to discussions with insurers and/or their trade associations’, where insurance proved the most used instrument to cover environmental liability.¹⁰²

In line with the wording of Recital 48 of the draft Regulation, which underlines the need to further study financial security instruments,¹⁰³ the Commission in its 2010 report, concludes that it needs to further examine the need for a harmonised mandatory financial security system at the EU level: ‘Given that the transposition of the ELD resulted in divergent implementation rules, that the Member States opting for mandatory financial security do not yet have their systems in place, so mandatory approaches cannot be evaluated, and that more financial security products are becoming available, it is premature for the Commission to propose mandatory financial security at EU level’.¹⁰⁴

Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage; (b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage; (c) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage; (d) the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea; and (e) the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

⁹⁹ It is noted that reference is made to the Member State in the first place as the Member States has the discretionary power to establish mandatory financial security at the national level and even if they do not decide so they have to ‘encourage the development of financial security instruments’ (as established in Article 14(1) of the ELD). At secondary level the operators are addressed.

¹⁰⁰ Recital 27 to Directive 2004/35/EC stipulates that ‘Member States should take measures to encourage the use by operators of any appropriate insurance or other forms of financial security and the development of financial security instruments and markets in order to provide effective cover for financial obligations under this Directive’.

¹⁰¹ Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of Regions. Under Article 14(2) of Directive 2004/35/EC on the environmental liability with regard to the prevention and remedying of environmental damage, Brussels, 12.10.2010, COM(2010) 581.

¹⁰² *Ibid.*, p. 7.

¹⁰³ Recital 48 to the EU draft Regulation reads that ‘As no existing financial security instruments, including risk pooling arrangements, can accommodate all possible consequences of extreme accidents, the Commission should proceed with further analysis and studies of the appropriate measures to ensure adequately robust liability regime for damages related to offshore oil and gas operations, requirements on financial capacity including availability of appropriated financial security instruments or other arrangements’.

¹⁰⁴ COM(2010) 581, p. 8.

The report further concludes, in relation to aspects to be considered for financial security, that ‘whereas some form of gradual approach would necessarily be part of any mandatory financial security scheme, the other two options [a ceiling for the financial guarantee and exclusion of low-risk activities] might or might not be employed in a mandatory scheme’. Again it is underlined that ‘using any of the three options needs a thorough analysis; they can facilitate implementation of mandatory financial security, but may also reduce effectiveness’.¹⁰⁵ Although these three instruments are already used by the Member States, they handle these differently.

In the impact assessment that the Commission presented for the draft Regulation financial guarantees and security are mentioned as means of assessing financial capacity of operators, as well as the possible need for establishing compensation regimes for traditional damage. In follow up of these discussions, several studies covering financial security issues have already been conducted on the request of the Commission,¹⁰⁶ or are on-going - such as the ‘study to explore the feasibility of creating a fund to cover environmental liability and losses occurring from industrial accidents’¹⁰⁷ as well as the ‘study on civil liability and financial security for offshore oil and gas activities’.¹⁰⁸ The latter study will further analyse the current situation on the insurance market and will come up with recommendations on how to solve this complex topic. The results on this study are expected to be available by summer 2013. Moreover, based on the final version of the Directive on offshore safety, the Commission will report to the Parliament and to the Council, by two years after entry into force of the Directive, on its assessment of the effectiveness of the liability regimes in the Union in respect of the damages caused by offshore oil and gas operations. This report will include an assessment of the appropriateness of broadening liability provisions and, if appropriate, will be accompanied by proposals.

In January 2008, the 15th ordinary meeting of the Contracting Parties to the Barcelona Convention adopted the *Guidelines for the Determination of Liability and Compensation for Damage resulting from Pollution of the Marine Environment in the Mediterranean Sea Area*.¹⁰⁹ The Guidelines do not have a binding character as such, but aim to strengthen cooperation among the Contracting Parties in the process of developing a regime of liability and compensation. Amongst others, they provide that national legislation ‘should include provisions to compensate both environmental damage and traditional damage’ (nr. 8). Regarding financial guarantees, it provides that the Contracting Parties ‘should explore the possibility of establishing a Mediterranean Compensation Fund to ensure compensation where the damage exceeds the operator’s liability, where the operator is unknown, where the operator is incapable of meeting the cost of damage and is not covered by a financial security or where the State takes preventive measures in emergency situations and is not reimbursed for the cost thereof’ (nr. 29).

¹⁰⁵ *Ibid.*, 8-9.

¹⁰⁶ Examples include a 2009 study on ‘Implementation efficiency of the Environmental Liability Directive (ELD) and related financial security issues’ and a 2008 study on the ‘Collation and analysis of recent information and presentation of the financial security issues in the context of Environmental Liability Directive (ELD)’.

¹⁰⁷ This study is led by Bio Intelligence Service. See: <http://eldfund.biois.com/>.

¹⁰⁸ This study is currently conducted by the Maastricht University: <http://www.maastrichtuniversity.nl/web/Institutes/METRO/Research/ContractResearch/OngoingResearchProjects.htm>.

¹⁰⁹ UNEP(DEPI)/MED IG.17/10 Annex V (18 January 2008). Available at: http://195.97.36.231/acrobatfiles/08IG17_10_Ann5_Decisions_eng.pdf.

The recent accession of the EU to the Offshore Protocol might give the discussion new impetus.¹¹⁰ By acceding to the Offshore Protocol, there will be a responsibility for the EU and its Member States to take part in the discussion on financial security within the context of the Barcelona Convention. Article 27(2) would apply and requires the Member States to act through national legislation and in line with the (non-binding) Guidelines.

Possible additional measures: liability and compensation	
Operators are to be held liable for damage and required to remediate environmental damage. Overall, the Environmental Liability Directive covers these requirements. Further the importance of the CLP Regulation is underlined as it defines the scope of the offshore activity covered by strict liability pursuant to Annex III.7.(a) ELD. A need for further measures might however exist in relation to the Protocol's requirement towards the (compulsory) financial security instruments. As mentioned above, the Commission underlined the need to carefully study all options before to reach conclusions on possible manners to achieve harmonised mandatory financial security. The Commission services believe that these elements are strengthened in the final Directive text.	

A brief overview shows that the systems in place in the EU Mediterranean countries are quite diverse:

Measures from EU MED countries on financial security for environmental damages	
CY	<p>In Cyprus, operators are not required to have insurance by law; it is however required by the model exploration and product sharing contract.</p> <p>The 'Model Exploration and Production Sharing Contract' provides that the contractor must have all insurances with respect to hydrocarbons operations, of the type and for such amounts customarily used in the international hydrocarbons industry, including, inter alia, third party liability insurances and insurances to cover damage to property and environment, without prejudice to such insurances as may be required under the legislation of the Republic (paragraph 32.3, p. 65).</p> <p>The contractor shall provide the Minister with the certificates proving the subscription and maintenance of the above-mentioned insurances. The Minister shall approve the said insurance policies for exclusions and verify the financial capacity of insurers. The Minister shall have the right to require amendments to the said insurance policies in order to secure the compliance with the requirements pursuant to this Article (paragraph 32.4, p. 65).</p>
EL	<p>In order to ensure the contractor's compliance with the requirements aimed at ensuring the safety of the operations and the protection of the environment, the Minister of Environment, Energy and Climate Change <i>may</i> require from the lessor or contractor a deposit guarantee, the amount of which is to be determined by the Minister, upon the recommendation of the Hellenic Hydrocarbon Resources Management SAPPD Model Environmental Conditions (H.H.R.M S.A.), or, alternatively, an insurance contract with an international firm against all risks (Article 12A(5) Law 2289/1995 on exploration and exploitation of hydrocarbons).</p> <p>The Draft Model Lease Agreement states that the lessee will effect and</p>

¹¹⁰ At the time of signature of the Offshore Protocol, the European Community (now EU) and France entered a reservation, "pending consideration", with specific regard to Article 27(2). In the text of the Council Decision on the accession of the EU to the Offshore Protocol, no such mentioning is made.

	<p>maintain for Petroleum Operations an insurance coverage of the type, and in such amount as is customary in the international petroleum industry in accordance with good oilfield practices, and, on request, furnish to the lessor certificates evidencing that such coverage is in effect when such future surrender takes place (Article 9.2(g)).</p> <p>Within the transposition of the ELD, Greece has established mandatory financial security, which however up to date has not yet been implemented.</p>
ES	<p>Regarding the compensation regime for damages to the marine environment, Articles 24 to 26 of the Law 26/2007 on environmental liability, establish that only operators of the activities listed in Annex III shall provide a financial guarantee to enable them to cope with environmental responsibility inherent to the activity to be developed. The minimum amount to be secured (not limiting the responsibility) shall be determined by the competent authority according to the intensity and extent of the potential damage that can be caused with that activity and according to regulatory criteria.</p> <p>The guaranteed amount is specifically and exclusively designed to meet the operator's environmental liabilities arising from the economic activity and shall be independent of any other liability, whether criminal, civil or administrative.</p> <p>The financial guarantee may be established by different forms as regulated by Article 26 of the Law 26/2007 and which may be alternative or complementary to each other, both in amount and in the facts warranted:</p> <ol style="list-style-type: none"> a. An insurance policy according to the Law 50/1980 of 8 October, on Insurance Contract, signed with an insurance company authorised to do business in Spain. b. A guarantee granted by a financial institution authorized to operate in Spain. c. The constitution of technical reserves by allocating a fund ad hoc realised through financial investments backed by the public sector. <p>The mandatory financial security system in Spain is being gradually phased in for specified Annex III activities according to a time schedule laid down in a Royal Decree.</p>
FR	<p>Operators are not required to subscribe to insurance or other financial security. However, granting of licences necessitates sufficient financial (and technical) capacities. Sufficient financial capacity provides the required financial security (a joint guarantee is systematically asked for).</p>
IT	<p>Operators are required to have financial security. The relevant authorities (such as the Ministry of Environment and the Ministry of Economic Development) require the use of specific financial security products, such as bank guarantees. Italy has not established a mandatory financial security under the ELD.</p>
MT	<p>No requirement to have insurance/other financial security has been identified under Maltese law.</p>
SL	<p>General provisions for environmental liability are in place under the Environmental Protection Act. There is not (yet) any requirement for operators to have insurance or other financial security.</p>
HR	<p>The Law on mining, regulating offshore exploration and exploitation of oil and gas in Croatia, obliges operators to have a security guarantee, i.e. operators are obliged to provide a financial guarantee prior to issuing of concession. This guarantee is defined according to financial value of the concession.</p>

In certain cases, the obligation is not set in the law. Even if these obligations are included through model contracts, it should be noted that the signed contracts are subject to confidentiality, leading to a lack of transparency as to the actual requirements with regard to financial security.

- **Appointment of Competent Authorities**

The Offshore Protocol, under Article 28, obliges the Contracting Parties to appoint one or more competent authorities and prescribes their competencies and functions. However, it does not touch upon the ‘good and effective governance aspect’ of the national Competent Authorities responsible for the duties and powers attributed to them by the Protocol (issues of knowledge, fairness, and accountability). This is entirely left to the discretion of the internal order of the Contracting Parties. In fact, the Offshore Protocol, in this regard, reflects a typical competencies-descriptive aspect of the traditional ‘*state-centric approach to environmental governance*’.

The EU draft Regulation is more advanced in this respect providing for ‘*a sustainable governance approach to offshore development*’. In doing so, it generally prescribes, in Articles 8 and 19, the functions of the National Competent Authorities, which are to:

- Assessing and accepting all relevant reports and documents (Article 8(2)(a));
- Performing inspections, conducting investigations, taking enforcement actions (Article 8(2)(b));
- Producing reports (Article 8(2)(c));
- Be organised so as to ensure independent performance of potentially conflicting tasks, expertise and general effectiveness (Article 8(2)(d));
- Clarification of the extent of their responsibility and functions so as not to confer on itself primary responsibility (Article 19(2));
- Establish a policy of thorough assessment for its aggregate functions and role (Article 19(3));
- Have adequate resources secured by Member States (Article 8(4));
- Coordinated or joint operation (Article 8(5)).

It also specifies, in Annex III, the *minima criteria* for its regulatory functions relating to safety and environmental protection (Article 19(4)):

- Clear division of responsibilities of the regulator (Verifying that the operator has adequate measures in place that are likely to be effective in controlling major hazard risks) from the operator (having primary responsibility for controlling risks) (Annex III, 1(b));
- Strategy statement: functions, priorities for action, organisation (Annex III, 1(c));
- Operating procedures (Annex III, 1(d));
- Coordination/establishment of a mechanism for joint operation, where the competent authority comprises two or more agencies (Annex III, 1(f));
- Use of sufficient specialist expertise (Annex III, 2(a));
- Adequate resources for training, communication, access to technology, travel and subsistence of competent authority staff in their regulatory functions (Annex III, 2(c));
- Undertaking or instigating research pursuant to the competent authority's functions Annex III, 2(e);
- Indicative description of the assessment procedures (Annex III, 3);
- Independence - no adoption of any political stance regarding the oil and gas sector (Annex III, 4).

Possible additional measures: appointment of Competent Authorities	
<p>While the Competent Authority may be the same under both legal acts, the responsibilities might be different (as Article 26 of the Offshore Protocol list tasks that are not all covered by the EU draft Regulation, such as issuing and registration of permits in relation to harmful or noxious substances, or sewage). In any case, coordination would be crucial between permitting the Competent Authority and the ones in charge of safety. The definition of such coordination mechanisms can be part of follow-up activities, and can include mechanisms, such as mutual consultation, streamlining of reporting and the sharing of information.</p> <p>As the EU Regulation refers to ‘one’ responsible competent authority, there appears to be greater scope for consistency in the application of the Regulation. The EU Mediterranean Member States should consider giving responsibility for the implementation of the Offshore Protocol to the same competent authority, or at least putting in place streamlined implementation arrangements.</p>	

- **Reporting mechanisms, coordination and cooperation**

Reporting mechanisms for the EU Mediterranean countries to UNEP need to be adapted to the requirements of the Offshore Protocol. The Protocol requires reporting on in the case of the granting or renewal of authorisation (Article 6(4)). Further, reporting to all the Parties to the Protocol is required in case another Party to the Protocol can become affected by (an imminent danger to) pollution of the marine environment (Article 26(3)).

Possible additional measures: reporting systems to UNEP	
Reporting on authorisations granted	<p>On the basis of Directive 94/22 EC (<i>licence</i>), Member States are required to annually report on granted authorisations (<i>licence</i>). As discussed above, these are not the same types of authorisations and streamlining at the national level will be required.</p> <p>Timing is an issue as a different approach is taken by both legal acts – the Offshore Protocol requires information as soon as possible while under the EU draft Regulation it is an annual reporting process.</p> <p>Further, no specific reference is made to ‘renewal of authorisations’. Adding these data to their reporting, would require minimal changes to existing requirements placed on EU Member States. Overall streamlining is needed – one option is for the Member States to inform UNEP/MAP that an authorisation has been granted. If further information is required, a copy of the authorisation (if non-confidential) could be sent.</p>
Transboundary pollution	<p>The obligation to exchange information regarding danger or damage by pollution is part of both legal documents. The EU Mediterranean countries need to ensure to extend this obligation to reporting to REMPEC. Essentially, when informing the European Commission and affected Member States, the source Member State should also inform REMPEC.</p> <p>One issue which may need to be resolved is the interpretation of terms such as ‘major accident’, ‘imminent danger’, ‘event’ etc. In other words it is not always clear what incidents should be reported and which should not (see discussion above on transboundary pollution).</p>

Cooperation between the Contracting Parties is addressed in Article 3 of the Offshore Protocol. It requires that the Parties ‘shall take, individually or through bilateral or multilateral cooperation, all appropriate measures to prevent, abate, combat and control pollution in the Protocol Area resulting from activities, inter alia by ensuring that the best available techniques, environmentally effective and economically appropriate, are used for this purpose’.

Both the Offshore Protocol and the proposed EU Regulation aim at protecting the marine environment. The focus of the EU draft Regulation is on risk management rather than the day-to-day operations to which the general obligations apply that are formulated in Article 3 of the Offshore Protocol. Synergies with the Regulations include the use of best practices (which in the scope of the Regulation apply to risk assessment, accident prevention, compliance verification and emergency response). Although no additional measures are foreseen there are possibilities for streamlining of the best practices.

Possible additional measures: cooperation
<p>In terms of additional guidance or best practices, the most efficient way to do this would be to develop BAT guidance in conjunction with all parties to the Protocol, for instance with or under the auspices of the UNEP/IMO. In order to ensure consistency with the draft Regulation, such guidelines would need to be risk-based and not be overly prescriptive.</p>
<p>In the development and strengthening of best practices, the Offshore Oil and Gas Authorities Group can play an important role. As discussed in the Commission Decision of 19 January 2012 on setting up of the European Union Offshore Oil and Gas Authorities Group ‘based primarily on the activities of national regulators, the European Union Offshore Oil and Gas Authorities Group should involve in its activities experience from relevant stakeholders including relevant third countries. The Authorities Group should facilitate the transfer of knowledge among stakeholders and assist in the production of formal guidelines relating to best practices’¹¹¹.</p>
<p>Further recommendations in this perspective would be the involvement of UNEP/MAP in the development of best practices and common standards. Such role can be established on the basis of the Commission Decision as ‘Representatives from the sectors concerned, including industry, trade unions, academia, research organisations, NGOs, relevant Union Agencies, third countries and other stakeholders may take part in the work of the Authorities Group at the Chairman’s invitation. In addition, observer status may be given to individuals or organisations whose participation may contribute to the work of the Authorities Group’.¹¹²</p>

- **Public participation**

Although not dealt with by the Offshore Protocol, the issue of public participation is covered in this section as it might provide for complementarities for the parallel implementation of the Offshore Protocol and the EU draft Regulation.

As a general observation,¹¹³ the Mediterranean Offshore Protocol (1994), being negotiated and adopted before the 1995 extended revision of the Barcelona Convention system (the framework Convention and its related Protocols), does not adequately reflect the objective of sustainable governance which runs through the revised Barcelona Convention system. As a result, and unlike the

¹¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:018:0008:0010:EN:PDF>.

¹¹² *Ibid.*

¹¹³ Provided by Prof. Raftopoulos, Meliepan Centre, Panteion University of Athens.

other amended or new Protocols to the Barcelona Convention, it does not envisage any *informational and participatory pattern* for the active involvement of all the relevant stakeholders (e.g. local communities, public entities concerned, offshore operators, representatives of fishing industry and tourism, NGOs, scientists, the public concerned) in decision-making procedures for the effective and efficient management of the complex issues involved in offshore development.

Article 15 of the Barcelona Convention on ‘Public Information and Participation’ applies, however, is insufficient for the full implementation of public participation in the decision-making process.¹¹⁴ In fact, all Protocols of the second phase (amended or replacing original protocols) variably refer to Public Participation in their specific context, whereas the ICZM Protocol makes the most extensive and meaningful specification of all. On the other hand, the EU Draft Regulation provides for the early and effective *public participation in licensing procedures* in Article 5 specifying the requirements in Annex I of this regulation.

Possible additional measures: public participation

It should be stressed, however, that appropriate public participation should be further envisaged in relation to other aspects of the governance of offshore development (e.g. compliance monitoring, emergencies, removal of installations, consultations commencing at the planning stage and continue throughout the lifetime of a project).

¹¹⁴ According to Article 15(1) of the Barcelona Convention the Contracting Parties ‘shall ensure that their competent authorities shall give to the public appropriate access to information on the environmental state in the field of application of the Convention and the Protocols, on activities or measures adversely affecting or likely to affect it and on activities carried out or measures taken in accordance with the Convention and the Protocols’. Article 15(2) continues that ‘The Contracting Parties shall ensure that the opportunity is given to the public to participate in decision-making processes relevant to the field of application of the Convention and the Protocols, as appropriate’.

4 The possible involvement of EMSA in the implementation of the Offshore Protocol

4.1 Objective and method

- Objective

The main responsibility for preventing, preparing for and responding to marine pollution from ships and offshore facilities lies with producers and Member States. However, as such incidents may have cross-border consequences, there is a role for regional and pan-European actors such as REMPEC and EMSA to play in this area.

The European Marine Safety Agency (EMSA), the Lisbon-based EU agency established in 2002, already performs a range of functions which complement the efforts of producers and Member States in the area of ship-based pollution. UNEP MAP, through its 'Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea' (REMPEC) established in 1976 and based in Malta, performs a range of similar tasks in the Mediterranean.

The role EMSA, which is the focus of this section, until now has not specifically included assisting non-EU or non-EEA countries. However, with the introduction of the revised EMSA Regulation, its geographical scope extends to countries neighbouring the EU and which share a sea basin with its Member States, such as the Mediterranean. Likewise, EMSA sees its duties extend to covering certain duties relating to offshore installations. In addition, the proposed EU Regulation will change the regulatory framework for offshore operators and Member States in the areas of safety and environment. These changes will impact on EMSA. Finally, with the coming into force of the Offshore Protocol in the Mediterranean, REMPEC may be tasked with some of its implementation.

In the context of the above changes, the Commission has asked that this study should include '*suggestions for possible EMSA assistance in implementing the Offshore Protocol*'. In doing so, this should outline '*any synergies with activities carried out, or planned, by REMPEC in relation to offshore activities should be identified and described (having regard to on-going cooperation in relation to maritime safety, prevention, emergency preparedness and response*'.

- Structure of this section

In order to outline what possible role EMSA could play in the implementation of the Offshore Protocol, it is necessary to examine what EMSA does at present (and what it is being proposed to do under current Commission proposals) and compare and contrast this with the role of REMPEC. Once this comparison exercise has been done, it will be necessary to identify possible, ways in which EMSA can help and why this intervention would be beneficial.

The scope of the duties performed by EMSA and REMPEC is briefly outlined in Section 4.2. This includes a description of the context in which EMSA and the regional agreements operate, an overview of the activities of EMSA in the area of ship-source pollution, including in the Mediterranean Sea, as well as a brief outline of the new powers it will most probably assume under current legislative proposals. This section also provides a short description of the role of REMPEC in implementing the Barcelona Convention as well as a brief outline of some current initiatives in which it is involved.

Section 4.3, briefly describes the ways in which EMSA and REMPEC currently co-operate. It also

compares and contrasts the powers and activities of EMSA and REMPEC in the area of ship-based pollution (as neither EMSA nor REMPEC are currently active in the area of offshore oil and gas safety, these sections focus for the most part on their respective roles with regard to pollution from shipping and assume that a number of these activities will be undertaken in a similar way for offshore installations).

Finally, Section 4.4 covers how EMSA could possibly assist in the implementation of the Offshore Protocol.

4.2 Description of current and future EMSA & REMPEC activities

4.2.1 Context

In the area of marine pollution, the main responsibility for preventing, preparing for and responding to pollution lies with operators and the Member States in which jurisdiction the pollution occurs. The main rules covering pollution – including the duties of the operators causing the pollution – are determined by Member States in line with international maritime legislation, most notably legislation developed within the International Maritime Organisation (IMO).

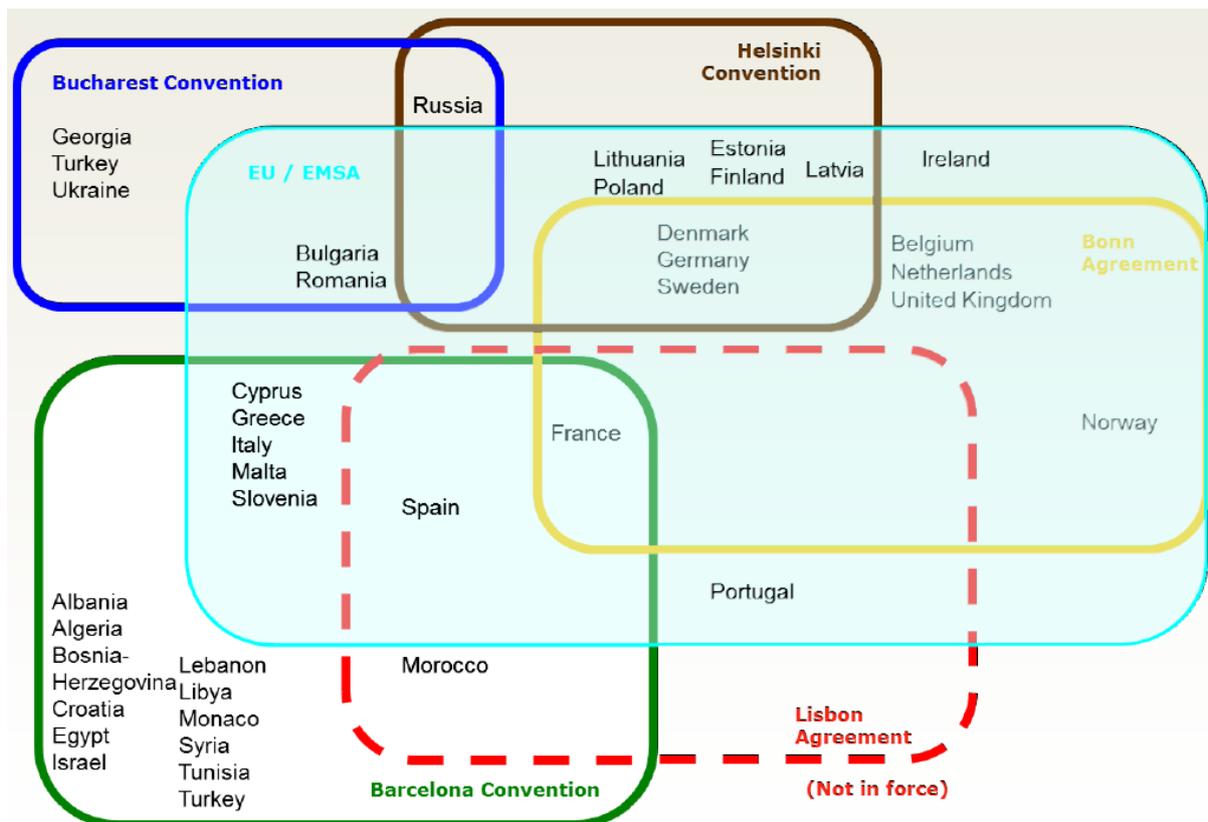
Nevertheless, EU Member States cooperate in a number of ways. There are currently three levels of cooperation/assistance between EU Member States and neighbouring coastal countries:¹¹⁵

- Bi- and tri-lateral agreements (sub-regional level) between neighbouring States;
- Regional Agreements (regional level) between States adjoining the same sea area;
- EMSA (Pan-European level) for all EU Member States and European Neighbourhood Policy (ENP) Countries.

The diagram below portrays the various regional agreements and how their membership overlaps with EMSA.¹¹⁶ For the purpose of this report, the overlap between EMSA's duties and that of REMPEC under the Barcelona Convention are assessed. This concerns eight EU Member States (including Croatia) and 11 non-EU Member States (including Monaco).

¹¹⁵ http://www.pcs.gr.jp/doc/esymposium/2012/5_mr_bernd_bluhm_word_e.pdf, last checked at 9 September 2012. Part of Presentation B. Bluhm on 'The European Systems for Co-operation in Case of a Major Oil Spill'.

¹¹⁶ *Ibid.*



While most of the EU Member States are Party to one regional convention or another, most of the regional agreements also include non-EU countries which are not subject to EU maritime safety policy. As such, the membership of the EU and the regional conventions overlap.

The roles of EMSA and the regional conventions differ and complement each other in a range of respects. Firstly, to date, EMSA has focused on ship pollution while most of the regional conventions are Multilateral Environmental Agreements which are also concerned with other issues including coastal pollution etc. In addition, the EU is, in most cases, a party to these regional conventions and not the other way around. Essentially, as the primary responsibility for response remains at operator and State level, in the area of pollution response, the regional conventions typically provide support and coordinate activities, with EMSA then acting as an additional level of support, where required and requested.

There are also differences in the scopes of the various regional conventions. For instance, while the Barcelona Convention covers pollution from a range of sources, the North Sea's 'operational' Bonn Agreement has traditionally focused mostly on oil.

Of course, the above picture is changing constantly and will continue to change with the future reinforcement of EMSA duties and the ratification of the various protocols and agreements which govern the regional agreement areas. This is very much the case for the Mediterranean region, as outlined in previous sections to this report.

4.2.2 The European Maritime Safety Agency (EMSA)

- EMSA's current role & activities

EMSA was established as an EU agency in the aftermath of the Erika (1999) tanker disaster by *Regulation 1406/2002/EC of June 2002 establishing a European Maritime Safety Agency*. Based in Lisbon, its objectives are to:

- Ensure a high, uniform and effective level of maritime safety and prevention of pollution by ships;
- Provide the Member States and the Commission with technical and scientific assistance;
- Monitor the implementation of the EU legislation in this field and to evaluate the effectiveness of the measures in place;
- Support Member States by introducing operational methods for fighting pollution in European waters (from ship-based pollution).

EMSA undertakes a range of duties which include, but extend beyond, pollution response. Below is a full description of the duties undertaken:

- Inspecting the inspectors* in technical areas, enabling the EU to ensure compliance with the rules and fair and equal conditions for shipping across the EU and beyond. Examples of inspection activities:
 - helping evaluate the Classification Societies listed as 'Recognised Organisations' by the EU;
 - helping evaluate maritime training systems in countries outside the EU;
 - checking that foreign ships calling at EU ports are adequately inspected;
 - inspecting vessel traffic monitoring systems, and port waste reception facilities, in the EU;
 - putting systems in place to ensure consistent investigation of marine accidents (EMCIP database);
 - training in fields like effective information sharing and maritime safety issues.
- Providing maritime information services to EU Member States*. EMSA's applications include:
 - SafeSeaNet (SSN) for vessel traffic monitoring within European waters (20,000 vessels across Europe);
 - The EU LRIT Data Centre, for tracking the location of all EU-flagged vessels worldwide;
 - CleanSeaNet (CSN) for delivering satellite images and alerts to identify pollution at sea (detection and surveillance in European waters);
 - THETIS, for centralising data on Port State Control, and supporting the targeting of ships with a poor safety record.
- Combating marine pollution* in the event of a major oil spill. EMSA contracts oil recovery ships which are on standby to provide at-sea oil recovery services, within a matter of hours, to any EU country threatened by large oil spills (the Member State concerned must request this service and it is required to pay the costs of the intervention).

The duties of EMSA in the field of pollution response relate primarily to pollution from ships. It has three horizontal tasks in this area: it offers 1) operational support, 2) cooperation and coordination, and 3) information services to the Commission and/or to Member States. Its activities include (i) prevention (inspections, vessel tracking, risk analysis and information sharing); (ii) preparedness (exchange of information on contingency planning availability of equipment/ships and related data);

(iii) response to emergencies and (iv) accident investigation.

The pollution prevention activities undertaken by EMSA cover ship-sourced pollution and comprise a mixture of inspection activities and vessel-tracking.

In terms of preparedness for oil spills, EMSA has a fleet of 18 chartered vessels around the coasts of the EU – 6 of these are based in the Mediterranean on stand-by. For 2012, the combined net storage capacity under contract for the Mediterranean Sea will reach approximately 25,000 m³. Support is offered on request as a ‘top-up’ or ‘tiered’ response to national capabilities, meaning that support is offered once national capabilities are exhausted or overwhelmed. In this instance, EMSA also maintains and publishes an inventory of marine pollution response resources available at Member State level. Finally, it also runs a number of drills to simulate an oil spill. EMSA also hosts a ‘Vessel Network User Group’ whose aim is to strengthen communication between end-users (i.e. Member States).

As Member States respond to oil spills in different ways, and have varying levels of resources, the response provided varies by Member State. For instance, certain oil-producing countries already have significant response capabilities in place. Likewise, some of these countries use dispersant to tackle oil spills (with one using it as a primary response), the use of which reduces requests for oil recovery vessels.

In terms of contingency planning, EMSA does not formally engage in pollution risk analysis. This task is the responsibility of Member States. Therefore, EMSA feeds into industry’s, Member States’ and REMPEC’s planning in this area. However, it does facilitate expert exchange in this area. Finally, with regard to ‘Hazardous and Noxious Substances’ (HNS) spills, EMSA operates the Marine Intervention in Chemical Emergencies Network (MAR-ICE) which provides information on response to maritime chemical spills.

In response to an emergency, EMSA’s services are requested via the EU’s Civil Protection Mechanism (CPM). Within the CPM structure there is a Monitoring and Information Centre (MIC) in place which assists response and is operated by the ECHO DG of the European Commission and is available on a 24/7 basis. It has 24/7 contact points in both the civil protection and the marine pollution authorities in all the Participating States¹¹⁷ and coordinates requests and offers for assistance received. During marine pollution emergencies, the MIC assists national marine pollution and civil protection authorities and cooperates with EMSA and other relevant actors. The MIC uses the Common Emergency Communication and Information System (CECIS) to manage the availability of assets.

With respect to maritime pollution incidents, while the CPM operates both outside and inside the EU’s waters, as well as at sea and in coastal areas, EMSA’s role has until now been formally limited to responding to pollution incidents at sea and within the EU/EEA.

In addition, since 2007, within its ‘Consultative Technical Group for Marine Pollution Preparedness and Response’ (CTG MPPR), EMSA has facilitated technical cooperation between EU Member States, candidate countries, Norway and Iceland in the area of preparedness for and response to pollution from ships. One of the forums in which this co-operation has taken place was through the EMPOLLEX expert exchange programme, which was established in mid-2008 and was composed of a ‘Network of National Correspondents’. The programme was based on EMSA reimbursing 75 percent of the associated costs for an expert to go on an exchange with the remaining 25 percent being

¹¹⁷ The EU 27, Croatia and the three European Economic Area (EEA) countries - Norway, Iceland and Liechtenstein, as well as fYRoM.

at the expense of the country sending the expert. Non-EU/EEA non-candidate countries were not able to participate. The programme focused on five major areas of expertise:

- *Coordination and incident management*: (inter)national coordination, decision-making, crisis management and communication.
- *Technical expertise/ response operations*: response to pollution by oil or HNS at sea, including aerial and satellite surveillance, health & safety, response equipment and waste management aspects.
- *Contingency and emergency planning*: national & regional marine pollution contingency planning, preparedness and response aspects.
- *Legal and financial aspects*: enforcement and prosecution of deliberate marine pollution, claims, cost recovery.
- *Scientific and environmental expertise*: environmental, impact evaluations or studies, remote sensing, mathematical modelling, monitoring and oil sample analysis, net environmental benefit analysis.

Finally, following Directive 2009/18/EC on the investigation of accidents in the maritime transport sector, EMSA investigates accidents and provides information on this through its EMCIP system. It conducts these investigations in line with Commission Regulation No 1286/2011 adopting a common methodology for investigating marine casualties and incidents. The aim here is not to determine liability or apportion blame. There is also an EU-wide Permanent Cooperation Framework for this purpose, where EMSA acts as the secretariat.

On a horizontal level, EMSA provides extensive training on most of the above activities. With regard to co-operation with third countries in the Mediterranean and further afield, these countries are allowed to participate in EMSA's activities and structures if they already apply EU law in this area. As such, only Iceland and Norway participate as they already comply with EEA rules. Nevertheless EMSA does provide training for non-EEA countries on an ad-hoc basis.

In terms of finances, the total operating budget of EMSA, with over 200 staff at its offices in Lisbon, stood at just over €56 million in 2011, the vast majority of which comes from the EU budget. In terms of cost breakdown, roughly €20 million is for staffing costs; just over €4 million for buildings, equipment and miscellaneous expenditure; and approximately €32 million for operating expenditure. For 2012, €20.5 million was committed for anti-pollution measures, of which the Network of Stand-by Oil Spill Recovery Vessels would account for 80%, CleanSeaNet EU satellite oil spill and illegal discharges monitoring service for 18% and co-operation, co-ordination and information relating to pollution preparedness and response for the other 2%.¹¹⁸ Globally, over 90 percent is spent on either marine safety (50%) or pollution response (44%), while prevention accounts for 3% and communications/information accounts for another 3%.

- Changes to EMSA's scope

Original Commission Proposal

In October 2010, the Commission proposed to update the EMSA Regulation.¹¹⁹ This proposal put

¹¹⁸ EMSA Work Programme 2012. Found at:

<http://emsa.europa.eu/news-a-press-centre/external-news/2-news/1389-work-programme-2012.html>

¹¹⁹ Proposal for a Regulation (EU) [...] of the European Parliament and the Council, amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency, Brussels, 28.10.2010 COM(2010) 611 final, 2010/0303 (COD). Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0611:FIN:EN:PDF>.

forward a range of new tasks for EMSA.

With regard to prevention, preparedness and response activities, the Commission had proposed that the Agency should:

- Assist the Commission in analysing the safety of *mobile* offshore gas and oil installations, in order to identify possible weaknesses, basing its contribution on the expertise it has developed with regard to maritime safety, maritime security, the prevention of pollution caused by ships and response to marine pollution;
- At the request of the Commission, provide technical assistance as regards the implementation of relevant EU legislation to countries applying for accession to the Union, to all European Neighbourhood partner countries; and
- Carry out inspections on behalf of the Commission in third countries as required by EU legislation.
- Clarify that the Stand-by Oil Spill Response Vessels under contract by EMSA can intervene also in case of oil pollution caused by offshore installations;
- At the request of the Commission, provide assistance in case of accidental or deliberate marine pollution affecting these States, via the EU Civil Protection Mechanism and that these tasks shall be coordinated with the existing regional cooperation programmes.

On a horizontal basis, the Commission proposed to:

- extend EMSA's technical assistance to all European Neighbourhood Policy countries in order to promote the EU maritime safety policy in all the regional seas bordering the EU.

EMSA's response

In its Annual Work Programme¹²⁰ for 2012, EMSA presented its views on some of the possible additional powers and duties resulting from the revision of the EMSA Regulation as proposed by the Commission on 28 October 2010.

With regard to the proposal to extend EMSA's pollution response capabilities to ensure that measures are in place to respond to marine oil pollution from offshore installations, and taking into account specific risk factors and the possible need for long term intervention, EMSA proposed that actions in this area could include extending the CleanSeaNet oil spill monitoring service and/or the Network of Oil Spill Response Vessels, to the extent possible within the current multi-annual financial framework for pollution response.

Concerning assistance to European Neighbourhood Countries, including access to Anti-Pollution Response Measures (e.g. the Network of Stand-by Oil Spill Response Vessels and CleanSeaNet), such access would be subject to certain conditions (e.g. acceptance of the Incident Response Contract, or analogous conditions, by non-EU countries, liability insurance for the Agency covering possible non-payment by third countries), and would also imply provision of support from EMSA to ensure effective use of the services (e.g. training for new CleanSeaNet end-users).

Discussions during co-decision on EMSA Regulation

The Co-decision procedure started in March 2011. In June the Council put forward its proposals and these were followed by a first reading report of the European Parliament in December. The Council finalised its position in October 2012.

¹²⁰ EMSA Work Programme 2012.

Firstly, all of the relevant institutions (European Commission, Council¹²¹ and European Parliament¹²²) agreed that the scope of the Agency should be expanded to cover offshore oil and gas installations. There was also agreement that EMSA should play an active role in pollution preparedness and response, including through use of its pollution tracking tools. Secondly, all of the institutions agreed that the Agency may also provide operational assistance to the countries sharing a sea basin with the Union, namely with ENP countries.

However, there was disagreement over the role which EMSA should play in prevention, namely regarding its role in inspections and risk assessment. While the European Parliament wanted to significantly extend the agency's role in preventing accidents and go far beyond what was proposed by the Commission, the Council on the other hand was against any major direct EMSA role in inspecting offshore installations. It considered that, as an ancillary duty, *'the Agency shall assist the Commission with respect to mobile offshore gas and oil installations, in examining IMO requirements and in gathering basic information on potential threats to maritime environment'*. Nevertheless, it also considered that *'this assistance shall not include any inspection activities or any activities specifically related to the exploration or exploitation of mineral resources'*.

Final EMSA Regulation

The final text of Regulation 100/2013 was agreed in December 2012 and was formally published on 15 January 2013.¹²³ The text agreed was in line with the Council's wishes on excluding any mention of inspection of offshore installations. While the Commission's proposals with regard to EMSA assisting it gathering preventative information on potential threats for the Commission, the Council's proposed text was for the most part inserted in the final text.

On the other hand, the text extends the co-operation between Member States and the Commission to cover the use of oil response vessels and CleanSeaNet surveillance to oil and gas installations. Moreover, under Article 2(5), EMSA may, as a core objective, and upon request from the Commission, provide technical assistance including training to European Neighbourhood Partnership countries, including the non-EU Mediterranean countries. It may also provide assistance in case of pollution caused by oil and gas installations affecting third countries sharing a sea basin with the EU (such as in the Mediterranean Sea). As envisaged by the Commission, the final text agreed also notes that such assistance should be in line with the EU's Civil Protection Mechanism and be coordinated with the existing regional cooperation arrangements related to marine pollution, such as UNEP MAP including REMPEC.

- Impact of the proposed EU Regulation on offshore safety

Although the draft Oil and Gas Regulation, and the accompanying Impact Assessment, proposed in October 2011 only refers to EMSA in a small number of cases, it contains a range of proposed activities which could strongly impact on how EMSA and indeed REMPEC conducts its activities.

In terms of preparedness, the Regulation puts forward a risk-based, bottom-up approach to oil spill prevention and preparedness. Likewise it outlines certain conditions regarding contingency

¹²¹ Position of the European Parliament adopted at first reading on 15 December 2011 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency.

¹²² Draft Position at first reading adopted by the Council with a view to the adoption of a Regulation (EU) [.../....] of the European Parliament and of the Council amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency, 6 August 2012.

¹²³ Regulation (EU) 2013 of the European Parliament and of the Council of 15 January 2013 (OJ L 39 of 9/2/2013, p.30).

arrangements. Finally, a number of provisions concern how the EU and Member States co-operate with neighbouring countries and regional organisations. The possible implications of this draft Regulation for EMSA in assisting the implementation of the Offshore Protocol are discussed in the final section below. In terms of progress made, these proposals are still being discussed in co-decision.

4.2.3 The Regional Marine Pollution Emergency Response Centre (REMPEC)

- REMPEC's current remit

Acting under the joint auspices of United Nations Environment Programme (UNEP) Mediterranean Action Plan (MAP) and the International Maritime Organization (IMO),¹²⁴ REMPEC was established in 1976 to undertake certain duties under the Barcelona Convention. These duties can be summarised as follows:¹²⁵

- Strengthen the capacities of the coastal States in the Mediterranean to deal with maritime pollution;
- Facilitate co-operation among them in case of a major marine pollution incident and to obtain assistance from outside the region if necessary;
- Assist coastal States of the Mediterranean region which so request in the development of their own national capabilities for response to pollution incidents;
- Facilitate information exchange, technological co-operation and training.

At present REMPEC's work is focused on pollution from ships.¹²⁶ However, in future it will also assist in the implementation of the Offshore Protocol. However, given that this Protocol only came into effect in March 2011, REMPEC does not yet have any experience in implementing the Offshore Protocol. That said, as of late 2012 it was in the process of exploring ways in which this can be done.¹²⁷ These efforts are discussed below. Nevertheless, with regard to preparedness and response to ship-based pollution, REMPEC currently undertakes the following:

- i. In terms of Pollution Preparedness, REMPEC maintains a 'Regional Information System' comprised of the following elements:
 - Part A - Basic Documents, Recommendations, Principles and Guidelines;
 - Part B - Directories and Inventories;
 - Part C - Databanks and information resources;
 - Part D - Operational guides and technical documents.
- ii. In the area of Pollution Response, Contracting Parties are obliged to inform each other, either directly or through REMPEC of:
 - All accidents causing or likely to cause pollution of the sea by oil and other harmful substances;
 - The presence, characteristics and extent of spillages of oil or other harmful substances observed at sea which are likely to present a serious and imminent threat to the marine

¹²⁴ REMPEC is assisted in its tasks by the UNEP MAP Secretariat which is based in Athens.

¹²⁵ Further information available from REMPEC's website at www.rempec.org.

¹²⁶ A full overview of the protocols where REMPEC plays a role can be found at: <http://www.rempec.org/rempec.asp?pageVisit=New&theID=6>.

¹²⁷ Based on discussion with REMPEC Secretariat.

- environment or to the coast or related interests of one or more of the Parties;
- Their assessments and any pollution combating actions taken or envisaged to be taken;
- The evolution of the situation.

REMPEC mainly helps contracting states, upon request, to respond to pollution incidents which result or may result in a discharge of oil or other hazardous and noxious substances and which require emergency actions or other immediate response. In emergency situations it either assists directly or does so by obtaining assistance from the other Parties, or when possibilities for assistance do not exist within the region, in obtaining international assistance from outside the region.

Moreover, each Party needing the assistance may request it from the other Parties either directly or through REMPEC Secretariat.

In terms of how this works on the ground, any Party affected by a marine pollution incident can request assistance to REMPEC following its official communication procedure or through a Pollution Report (POLREP).¹²⁸ Assistance provided by REMPEC may comprise of:

- Providing requested information and advice, by telephone or other communication means, on operational, technical, administrative and legal aspects of pollution response (e.g. Oil and Hazardous and Noxious Substances response, forecasting model, response to affected wildlife, etc.);
- Providing assistance in coordination with various interlocutors on behalf of the State(s) concerned;
- Co-ordinating regional assistance;
- Providing expert advice on the site of accident by sending REMPEC officers or by mobilising the Mediterranean Assistance Unit (i.e. a network of experts).

As noted above it performs these duties through its secretariat in Malta which is comprised of 10 staff and an annual total operating budget of approximately €950,000 (in 2011), of which roughly €800,000 is spent on administrative/staff costs and €150,000 spending on activities.¹²⁹ These costs are paid out of the UNEP's Mediterranean Trust Fund to which the EU and the other Parties to the Barcelona Convention contribute.

- Pending changes to current REMPEC's activities

Ongoing projects

The role of, resources available to and the structures of UNEP MAP and REMPEC are currently under functional review. Therefore, it is difficult to foresee how REMPEC will change over the coming years. Beyond this review, however, there are a number of short- to medium-term projects which REMPEC is involved in developing.

For example, in the area of pollution preparedness, it is co-operating with the oil industry through the Mediterranean Oil Industry Group (MOIG). Together with industry REMPEC agreed in 2005 on a

¹²⁸ A standard 'pollution accidents reporting' format (POLREP) and alert message is used within the framework of the Emergency Protocol in order to facilitate rapid transmission of information and requests for assistance. This has been recommended by the International Maritime Organization (IMO) with a view to harmonising pollution reporting systems.

¹²⁹ This information can be found at:

http://www.rac-spa.org/sites/default/files/doc_cop/decision_ig_19_17_en.pdf.

Mediterranean Government Industry Co-operation Plan (MGICAP)¹³⁰ for shipping.

In addition in late 2011, both REMPEC and MOIG held a regional workshop on Oil Spill Risk Assessment in the Mediterranean Sea (otherwise known as MEDEXPOL). This workshop concluded with the following set of recommendations for the development of an oil spill risk assessment methodology for the Mediterranean Sea during the next biennium (2012-2013):

- To identify the sources and characteristics (age, type, accuracy) of data used to assess the risk;
- To aim at integrating all forecasting models in a single reliable end-user one, under the framework of the Mediterranean Operational Oceanography Network (MOON) with high resolution data provided;
- To investigate centralised data and models initiatives on sensitivity mapping, in order to define a harmonised approach;
- To define common concepts and terminology and integrate specific aspects of the risk in the Mediterranean (e.g. water column and sea bottom, offshore and high seas risks), for the harmonization of the risk assessment approach across Mediterranean countries;
- To encourage and agree on sharing the results and data of risk assessments and response capacity;
- To improve data inventory on response capacity;
- To define and improve procedures to seek for international assistance.

In this area, REMPEC as well as EMSA are involved in the development of a ‘Mediterranean Decision Support System for Marine Safety’ or, ‘MEDESS-4MS’. The aim of this system is to assist preparedness and response by providing ‘an integrated real time operational oil spill forecasting service’ which will help the various actors better understand the implications of oils spills and hence better analyse risks which in turn can help improve response strategies. This project which started in March 2012 for a period of 3 years is funded through the EU’s regional policy (European MED Programme) and will be completed by and available from 2015.

Foreseen changes to REMPEC’s remit resulting from the Offshore Protocol

As noted above, following the entry into force of the Offshore Protocol in March 2011, REMPEC will play an important role in the area of pollution from offshore installations.

In preparation, and in the aftermath of the Deepwater Horizon incident in 2012, at the 10th meeting of the ‘Focal Points’ of REMPEC which took place in May 2011, it was noted that while the process of gathering information on offshore facilities in the Mediterranean region had already started, a number of other related preparedness issues were raised, namely:

- The importance of a coordinated response procedure so that a duplication of efforts is avoided;
- The importance of maintaining at national and regional level an inventory of means available to fasten the identification of equipment and human resources to be made available to a third party in case of emergency. In this respect, the development of an online version of REMPEC’s Regional Information System was noted as being important;
- For the purpose of increasing safety on oil terminals, the need to develop a marine Terminals safety management system;

¹³⁰ The Mediterranean Oil Industry Group (MOIG), launched in 2004, has 24 oil company members and commercial providers in the region. The group serves as a regional oil industry forum on oil spill prevention, preparedness and response. MOIG engages in collaborative activities with REMPEC.

- The benefits of involving industry in the development of, and discussion of, these safety measures.

One specific action proposed by the REMPEC Secretariat was to include the development of a Regional Risk Assessment Methodology in the programme of work of the ‘Mediterranean Technical Working Group’ for the period 2012-2013.

In terms of the implementation of the Offshore Protocol, in February 2012, the COP to the Barcelona Convention decided to prepare an Action Plan for the implementation of the Protocol. This is expected to be ready by 2014 at the earliest.

4.3 Possible synergies between EMSA & REMPEC activities

Although EMSA and REMPEC are active in the same fields, their respective roles and responsibilities vary considerably in terms of powers, resources, governance structure and activities. Nevertheless, there are a number of ways in which they already either complement each other’s activities and/or co-operate directly. Likewise there are a number of areas in which further co-operation could be envisaged.

4.3.1 Existing cooperation between EMSA and REMPEC

EMSA and REMPEC currently co-operate in a number of ways, either directly or indirectly through the European Commission and the International Maritime Organisation.

In terms of direct co-operation, EMSA and REMPEC co-operate, along with the other regional agreements, through the holding of an annual ‘inter-secretariat (INTERSEC) meeting’ where information on activities is exchanged. EMSA has taken the initiative of hosting these meetings.

Both organisations are also co-operating through EMSA-led efforts to develop guidelines on combating illicit discharges between the various Regional Agreements, including the Barcelona Convention. As outlined above, they are both also involved in the ‘Mediterranean Decision Support System for Marine Safety’ or, ‘MEDESS-4MS’.¹³¹

In terms of indirect co-operation, EMSA and REMPEC are also both active within the International Maritime Organisation which is drafting a new procedure to improve the exchange of pollution response equipment between countries in case of large accidents.

Regarding co-operation organised by the EU and the EUROMED states, both organisations play a central role in the MEDA¹³²-financed ‘EUROMED Co-operation on Maritime Safety and Prevention of Pollution from Ships’, otherwise known as SAFEMED. A description of this project is outlined in the box below.

¹³¹ More information can be found at: <http://www.medess4ms.eu/>.

¹³² The MEDA Programme is the principal financial instrument of the EU for the implementation of the Euro-Mediterranean Partnership. The programme offers technical and financial support measures to accompany the reform of economic and social structures in the Mediterranean Partners.

The SAFEMED Project

In 2005 the European Commission and the Euro-Mediterranean Transport Forum (EUROMED) established the SAFEMED project (SAFEMED I). The essential aim of this project was to *'mitigate the existing imbalance in the application of maritime legislation in the region between the EU Member States and the Mediterranean partner countries through promoting a coherent, effective and uniform implementation of the relevant international conventions and rules aimed at better protecting the marine environment in the Mediterranean region by preventing pollution from ships'*¹³³. As such, the major objectives of this project are to support better and more uniform implementation of maritime safety rules and provide *'technical advice and support to the non-EU Mediterranean countries identified in the 1995 Barcelona Process'*. This project ran from 2006 until 2008 and was managed by REMPEC with participation from other relevant actors such as EMSA. This technical assistance project had a budget of 4 million euro.

Following the success of SAFEMED I, the European Commission and the Mediterranean partner countries agreed to extend the project for another four years, covering 2009-2012. As was the case for SAFEMED I, the SAFEMED II project – which ran until the end of 2012– was managed by REMPEC. While many of the activities of SAFEMED I were continued in the second instalment, new fields of co-operation such as Port Control. There was also a focus on assisting the Mediterranean partner countries with the implementation of the 2007-2013 Regional Transport Action Plan (RTAP) for the Mediterranean, wherein a Roadmap for transport cooperation was agreed and comprised of a number of actions in different transport sectors (maritime, road, railways and civil aviation) and targets mainly regulatory (institutional) reform and infrastructure network planning and implementation.

With regards to marine pollution and security, the most relevant actions in the on-going RTAP are related to the implementation of IMO/ILO conventions (action N°7) and cooperation with the EMSA (action N° 8). Under action No. 8 in particular, EMSA has been called upon to examine ways for cooperation with the Mediterranean Countries and, on this basis, define concrete areas for cooperation.

In late 2012, a decision was made to extend the SAFEMED for another three years from 2013 to 2015, covering similar objectives to previous years. For this project, EMSA will become the EU implementing body for technical assistance. This, as in previous years will comprise of training sessions, workshops, technical support to enhance technical rules, analysis/studies (e.g. overview of the maritime administrations), tutoring projects (joint inspections) and in-country training (auditors). It will also include co-operation on:

- Operational activities (i.e. oil recovery vessels exercises);
- Inventories (marine pollution at-sea response policies and resources available);
- Pilot projects (participation in CleanSeaNet)

Each of the three SAFEMED projects agreed to date have included the 'protection of the environment' as a core activity.

4.3.2 Comparing & contrasting the roles of EMSA and REMPEC

As per the terms of reference one of the aims of this study is to make *'suggestions for possible EMSA assistance in implementing the Offshore Protocol'* and in doing so outline *'any synergies with activities carried out, or planned, by REMPEC in relation to offshore activities should be identified and described (having regard to on-going cooperation in relation to maritime safety, prevention, emergency preparedness and response'*. In order to ascertain where and how EMSA could possibly assist in the implementation of the Offshore Protocol, it is necessary first to outline how the relative roles and remits of EMSA and REMPEC in this regard compare and contrast.

As both EMSA and REMPEC are focused on preventing, preparing for and responding to marine pollution, it can be said that both organisations very much operate in the same field. The table below compares and contrasts what both do in these functional areas. In addition, while the traditional focus

¹³³ More information can be found at <http://www.safemedproject.org/> .

of both bodies is ship-based pollution, looking forward, the recent ratification of the Offshore Protocol and the advanced development of the draft revised EMSA Regulation also means that both organisations will be dealing with many of the same issues in the future for offshore installations.

In addition, at an operational level, both organisations maintain a considerable array of operational expertise and documentation and assist in training the Member States and Parties to better to prevent, prepare for and respond to marine pollution. For instance, both organisations publish across-the-board best practices and document the response capability of its Member States and Parties.

That said, there are a number of key differences between EMSA and the role of REMPEC, differences which, while being a natural result of the governance context in which they operate, nevertheless affect how they can co-operate in preventing, preparing for and responding to pollution incidents in the Mediterranean Sea.

Firstly, EMSA acts under the auspices of the European Commission and does not co-ordinate the EU's activities in preparing for and responding to marine pollution emergencies; the main responsibility for preparedness is on operators and Member States while response is also assisted by the European Commission's Civil Protection Mechanism. While REMPEC plays a similar supportive role, it can if requested undertake more of a central role in co-ordinating emergency response operations in the Mediterranean. Under the Offshore Protocol, it is REMPEC which may co-ordinate emergency response.

REMPEC also formally co-operates with industry within the context of the Mediterranean Oil Industry Group, which was launched in 2004. EMSA is not understood to maintain such formal direct contacts.

A second difference, already referred to above is that while EMSA acts for the EU as a whole, UNEP MAP and REMPEC are concerned with the Mediterranean area. For EMSA, as its remit covers the entire EU, its geographical scope is greater and needs to work across several 'regions'. On the other hand, its duties are narrower than those of UNEP MAP, REMPEC and the parties to the Barcelona Convention in that it does not cover coastline pollution. Moreover, while EMSA covers EU Member States, REMPEC covers Parties to the Barcelona Convention which include both EU and non-EU parties. That said, as the revised EMSA Regulation will allow EMSA to act outside the EU and co-operate with the regional conventions, this difference will pose less of a barrier to co-operation in future.

Another difference relates to the varying means and information available to both EMSA and REMPEC. EMSA possesses a range of financial and other means (e.g. satellite equipment, response vessels) which help it detect and respond to emergencies. These means are not believed to be available in REMPEC, which relies more on the Parties' capabilities.

On the other hand, REMPEC maintains a number of databases (e.g. on past oil spill incidents; hazardous substances). As outlined in the previous section, REMPEC also maintains a large amount of lists, inventories, databanks etc. with regard to pollution prevention, preparedness and response in the Mediterranean. It also maintains a Mediterranean Assistance Unit,¹³⁴ comprised of experts from the Parties which can be called in the event of an emergency.

EMSA for its part holds significant amounts of information on Member States response vessel capabilities. EMSA also possesses other information regarding MS capabilities, such as dispersant, aircraft and vessel capabilities for dispersant use, as well as information on national policies.

¹³⁴ http://www.rempec.org/rempec.asp?theIDS=2_165&theName=OPRC&theID=9&daChk=1&pgType=1

Likewise, it maintains an extensive expert and information exchange network. Therefore, the overall picture in terms of resources and information sources held by both actors is mixed. Finally, EMSA – like REMPEC - also maintains certain information on past oil spill incidents and hazardous substances.

The table below presents a high level overview of the main duties which EMSA and REMPEC perform in the areas of prevention of, preparedness for and response to oil spill emergencies. The majority of both organisations responsibilities lie in helping Member States and Parties to prepare for, and in particular to respond to oil spills.

		REMPEC (UNEP MAP)	EMSA	Key Differences/Similarities
Role	Field	<ul style="list-style-type: none"> – Mostly concerns prevention of, preparedness for and response to ship-based pollution but also covers other maritime accidents and major pollution incidents; – Currently starting process to implement Offshore Protocol (i.e. to offshore facilities) – Focus is on Oil and HNS (also covers ship-generated waste). 	<ul style="list-style-type: none"> – Amongst other duties, concerns prevention of, preparedness for and response to ship-sourced pollution. – Extension of the above duties to offshore installations with amended Regulation (likely December 2012). – Response to Oil and HNS, Port Reception Facilities 	<ul style="list-style-type: none"> – While both organisations operate in the same fields, REMPEC’s duties may be broader given the scope of the Barcelona Convention and Offshore Protocol which, for instance, covers coastal areas. – Further, EMSA will cooperate on a bilateral basis with (non-)EU countries, whereas REMPEC will maintain a regional coordination/cooperation role.
	Role	<ul style="list-style-type: none"> – Assists parties in enhancing capabilities and regional co-operation. Provides expertise and advice but not equipment. 	<ul style="list-style-type: none"> – Assists MS in enhancing capabilities and co-operation, plus complements MS through provision of satellite surveillance and provision of chartered pollution assistance/ recovery vessels and experts on site. Also develops tools, inventories and studies to help prevent accidents/build capacity. 	<ul style="list-style-type: none"> – The role undertaken by both organisations is similar with two exceptions. Firstly REMPEC co-ordinates operational response while EMSA is a supporting actor. Secondly, EMSA provides response equipment which REMPEC does not possess.
	Governance	<ul style="list-style-type: none"> – UN-related body; 22 EU and non-EU Members (including European Union). 	<ul style="list-style-type: none"> – EU Agency with an administrative board composed of the European Commission and EU MS’ representatives; EMSA treats all EU MS on equal basis. The EU (incl. EMSA) and MSs are members of UNEP MAP/REMPEC for the purpose of emergency response to incidents under the Barcelona Convention. Amended Regulation will provide for mandate to assist ENP Countries. 	<ul style="list-style-type: none"> – EMSA is a pan EU body while REMPEC’s constituency covers Mediterranean EU and non-EU countries. REMPEC is the main body which co-ordinates response from all Mediterranean countries. The European Commission (including EMSA) is a party to the Offshore Protocol, which is partly managed in part by REMPEC.
Prevention	Information Provision	<ul style="list-style-type: none"> – Yes; advises parties on implementing international agreements, such as the MARPOL convention which includes task on surveillance. REMPEC itself does not undertake surveillance activities. 	<ul style="list-style-type: none"> – Yes; beyond vessel tracking, EMSA’s network (CTG MPPR) of experts – which meet twice-yearly – shares expertise on preparedness including contingency planning, publishes inventories on national pollution response capabilities. 	<ul style="list-style-type: none"> – Both organisations maintain and provide significant bodies of information.

		REMPEC (UNEP MAP)	EMSA	Key Differences/Similarities
	Inspections	<ul style="list-style-type: none"> No, but some training in this area has been carried out particularly with regard to pollution prevention conventions. 	<ul style="list-style-type: none"> Yes, indirectly; for ships, classification societies, MS and third countries (STCW), EMSA conducts visits to national authorities for EU compliance checking. However, it does not directly inspect individual ships. It is unlikely that EMSA's role here will extend to cover authorities charged with the safety of offshore installations. 	<ul style="list-style-type: none"> In the area of shipping, EMSA conducts inspections of 'inspectors'. However, as this is highly unlikely to extend to offshore installations, this issue is not relevant for this study.
	Vessel Tracking	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> Yes; tracks ships in EU waters as well as EU flagged ships in international waters. It also tracks high-risk ships. For installations, this is of marginal relevance. 	<ul style="list-style-type: none"> This is an area where EMSA possesses significant capabilities, which are not available in REMPEC. However, as this is not applicable to offshore installations, it is not relevant to the Offshore Protocol.
	Accident Investigation	<ul style="list-style-type: none"> No, but some training has been carried out within the framework of the SAFEMED II Project. 	<ul style="list-style-type: none"> Yes; uses investigations as a learning tool, not as a means to apportion blame. Mandate changed to assist MS with accident investigation. EP proposed to extend to offshore installations 	<ul style="list-style-type: none"> While only EMSA conducts <i>ex-post</i> accident investigations, as this is highly unlikely to extend to offshore installations, this issue is not relevant for this study.
Prepared-ness	Response Procedures/Contingency Planning	<ul style="list-style-type: none"> Detailed regional procedures in place available on website. REMPEC acts as the secretariat of the Mediterranean Technical Working Group, a network of experts on preparedness and response techniques. 	<ul style="list-style-type: none"> Procedures at EU level for EMSA services. Co-ordination between DG ECHO (MIC) and the maritime community. Each region (Baltic, Mediterranean etc.) acts differently. Nevertheless EMSA does provide a network (CTG MPPR) of experts who share expertise on preparedness, including contingency planning. 	<ul style="list-style-type: none"> The main difference, as noted above is that REMPEC co-ordinates response while EMSA does not. Neither organisation is responsible for contingency planning, a role which remains a country-level responsibility. Nevertheless, REMPEC maintains CP information on planning and is currently examining the possibility of harmonized contingency planning in the Mediterranean. Both organisations possess maintain significant expert networks in a range of areas.
	Monitoring Data	<ul style="list-style-type: none"> Yes. REMPEC maintains a database on alerts and accidents which have 	<ul style="list-style-type: none"> Yes. New legislation could see EMSA taking on additional albeit limited data 	<ul style="list-style-type: none"> While both organisations could play an active role in this area in future, REMPEC

		REMPEC (UNEP MAP)	EMSA	Key Differences/Similarities
	Enforcement	<p>occurred in the Mediterranean Sea. This covers oil-related accidents reported since 1977 and HNS-related accidents reported since 1988. Main sources of information: REMPEC national Focal Points, Lloyd's Casualty Reporting Services (LCRS), Lloyd's List, Current Awareness Bulletin of the IMO, Cedre accident list, local media. Mediterranean Coastal States should inform REMPEC about pollution above 100 tonnes.</p> <p>- No. REMPEC is not an enforcement body. Nevertheless, it is establishing an 'enforcement network', whose work it will facilitate. However common rules for such a network are not yet in place.</p>	<p>gathering activities on potential threats. It is as yet unclear what data this would involve.</p> <p>- No. However, EMSA is leading a working group on guidelines on combating illicit discharges between the various Regional Agreements, including the Barcelona Convention.</p>	<p>is understood to hold significant historical data in this area</p> <p>- With regard to offshore installations, while both organisations possess information on the location of these installations (or are in the process of collecting it), neither yet possess detailed data in this area.</p> <p>- While neither organisation is responsible for enforcement activities, both are active in promoting best practice and/or assisting parties and Member States in this area.</p>
	Training	Yes; in the areas of prevention, preparedness and response.	Yes; in most areas of remit, including prevention, preparedness and response.	- Both organisations have been actively involving in training officials from Member States/ Contracting Parties.
	Co-ordination	Yes. Sharing of Information through a system of focal points. Also through information on website of each party's response capability.	Yes. EMSA shares information on website of response capability of each MS.	- Both organisations collect and maintain information on response capability.
Response	Satellite Support	No.	Yes, through CleanSeaNet satellite oil spill and vessel detection system.	- This is an area where EMSA possesses significant capabilities, which are not available in REMPEC.
	Oil Spill Response vessels	No. Contracting Parties use own equipment or request assistance through REMPEC.	Yes. Contracts a 'Network of Stand-by Oil Spill Recovery Vessels and equipment' (provided as a 'top-up'; under responsibility of MS once contracted).	- This is an area where EMSA possesses significant capabilities, which are not available in REMPEC.

	REMPEC (UNEP MAP)	EMSA	Key Differences/Similarities
Contact with Member States/ Parties	Yes, through network of national 'Focal Points'.	Yes, user groups with MS experts for all services. Direct contacts in case of emergencies with MRCC's (Marine Rescue Coordination Centres), e.g. for purpose of vessel provision/contracting and/or satellite imagery.	- While both are involved in contacting member states/ parties in the event of an emergency, REMPEC does it on formal basis.
Advice during an emergency	Yes. Technical advice remotely or on site and co-ordination role. Could send Mediterranean Assistance Unit if need be.	Yes, expertise on site possible.	- Both organisations provided services in this area.
Co-ordination	Yes. Co-ordinates response of Mediterranean Countries through system of focal points. Could potentially lead operation but never been officially asked to.	No. Acts under responsibility of affected coastal state(s). Requests for assistance via the EU's Civil Protection Mechanism (MIC).	- EMSA does not co-ordinate emergency response. This will remain the case after the new EMSA Regulation comes into effect.

4.4 Possible adaptation of current EMSA mechanisms to assist in implementation of the Offshore Protocol

The aim of this section is to identify ways in which EMSA can assist REMPEC and other Mediterranean parties in implementing the Offshore Protocol in the areas directly relevant to the prevention of, preparedness for and response to pollution.

In terms of criteria against which any EU intervention should be measured, the European Commission's impact assessment guidelines recommend that any intervention should be effective, efficient (i.e. cost-effective) and coherent. Beyond such criteria, any EMSA assistance would need to take in to account the governance context in which the Offshore Protocol will be implemented as well as the changes which the proposed EU draft Regulation on safety of offshore oil and gas prospection, exploration and production activities will introduce.

4.4.1 Intervention logic of EMSA support for implementation of the Offshore Protocol

With regards to how EMSA assistance can increase the effectiveness of Offshore Protocol, under the draft EMSA Regulation and the Oil and Gas Regulation, it will have a role to play in helping prepare for oil pollution at sea from offshore installations within the EU Parties to the Protocol. However, as actions to prevent spills are more effective than response actions, and given that producers and Member States will be the main actors responsible for preventing and preparing for offshore emergencies, the main responsibility for the effectiveness of the Regulation and the Offshore Protocol will lie with these actors, and not with EMSA. An important issue for the purpose of ensuring the effectiveness of oil pollution response is to establish the extent to which producers and Member States are responsible, and then once this established, establishing how EMSA and other actors such as REMPEC acting at regional and pan-EU level can complement these industry and national efforts.

In the 2008 study on the evaluation of EMSA, the authors noted that some Member States had expressed the view that a lack of EU standards covering how much oil response capacity each maritime Member State (and resident producers) should hold could lead to industry or Member State 'free-riding' on EMSA.¹³⁵ However, as EMSA may charge EU countries for such operational assistance during an emergency (and will apply the same financial treatment for non-EU ENP countries), such free-riding could only refer who pays the 'insurance costs' of maintaining stand-by capacities. In other words the idea expressed in the above evaluation report was that certain countries may use EMSA services as a substitute rather than as a complement for when their capacities are overwhelmed. With the EU draft Regulation, however, there will be a requirement for each producer and Member State within the EU to ensure that emergency prevention, preparedness and response is sufficient from a risk assessment point-of-view.¹³⁶ Therefore, any free-riding should be avoided. In addition, as the above evaluation referred to response to pollution from ships; in the case of offshore installations, national authorities should have a good understanding of the risks associated with each installation within their territory (as well as the consequences of an accident on the region), maintain corresponding response capacity and thereby possibly rely less on combined response from EMSA or other actors.

¹³⁵ Page 42 of COWI's 2008 Evaluation of EMSA; found at: <http://www.cowi.com/menu/project/EconomicsManagementandPlanning/Evaluationandimpactassessment/Pages/EvaluationoftheEuropeanMaritimeSafetyAgency.aspx>

¹³⁶ While the draft Regulation does not outline what is specifically meant by when a Member States response capacities are 'overwhelmed', Article 32 on transboundary emergency preparedness and response outlines that coordinated planning should take place where transboundary effects are 'foreseeable'. Therefore it is presumed that any foreseeable risk will be assessed, including cross-border effects.

With regards to whether or not EMSA's assistance in helping implement the Offshore Protocol would be efficient (i.e. cost effective), in the proposed EU Regulation, the Commission anticipated that EMSA's assistance in the event of offshore emergencies in EU waters would be primarily related to the use of its satellite surveillance system, which is active regardless of offshore accidents and the use of emergency vessels organised by EMSA. The Commission noted that as the emergency vessels are only contracted for that purpose (i.e. the cost is fixed) and the operational costs are covered by the affected coastal state that requests the intervention, it foresaw that there would be non-additional costs to EMSA of extending the scope of its activities in this area from ship based pollution to offshore facilities. On the benefit side, the broader geographical scope (e.g. covering ENP and EU countries) and broader operational scope (e.g. to cover risks from offshore installations in addition to ships) would mean that the same amount of vessels and satellite surveillance would be deployed or available to cover a broader set of risks. As any EMSA assistance for incidents involving installations in Mediterranean ENP waters will be provided under the same financial conditions as EU Member States, it can be said that above assistance would be cost-effective.¹³⁷

Another way of estimating the possible cost effectiveness of such vessel response – irrespective of whether it is provided inside or outside the EU – would be to examine the possible contribution which EMSA could make to avoid the overall economic, social and environmental costs associated with oil spills. For instance, if a major oil spill involving a ship takes place every three years and assuming that the size and cost impact of such a spill would be in the range of 75,000 tonnes and 600-700 million euro respectively, even if only 10% of the oil (7,500 tonnes) was collected, then conceivably a conservative 60-70 million Euros of damage would be avoided. In the case of the Prestige incident, which occurred off the north, coast of Spain in November 2002 (and which in part spurred the creation of EMSA), between 7,850 and 9,595 tonnes of pure oil out of a total estimated spill of 63,000 tonnes was recovered.¹³⁸ Some 90% of this was recovered by 12 vessels. EMSA for its part maintains a Mediterranean fleet of 7 recovery vessels. To put this in context the entire expenditure on all its contracted vessels around the EU – including its Mediterranean contracted fleet – is in the region of 22 million euro.¹³⁹ In this hypothetical example, the oil spill vessel service pays for itself from an insurance point of view. However, it should be noted that given the absence of detailed data, the above example is very much a hypothetical simulation, and as such it is not possible to define what would happen in any given real-life situation where conditions and response rates are affected by a range of factors.

In terms of coherence with other EU policies, any EMSA involvement in implementing the Offshore Protocol should be coherent with other EU policies such as the pending EU draft Regulation and proposals to extend the scope of the EU's Civil Protection Mechanism (CPM).¹⁴⁰ Regarding the EU draft Regulation on offshore safety, which will of course not apply outside EU waters, there may arise a situation where there will be considerable divergence between the regulatory framework in place in the EU Mediterranean states and that in place in the neighbouring 'ENP' countries. On the other hand, under both the new EMSA Regulation and the pending EU draft Regulation, where requested the EU, EMSA and Member States may be expected to provide assistance to ENP countries in the same sea basin. Irrespective of the response capability of these countries, it would most likely be in the EU's interest to assist. Therefore, it is of interest for the EU to that the Offshore Protocol is implemented to

¹³⁷ This assumption of an incident taking place is taken from the study undertaken for ECHO in 2009 on 'Strengthening the EU capacity to respond to Disasters'. Found at: http://ec.europa.eu/echo/civil_protection/civil/prote/pdfdocs/Final%20Report%20-%20scenario%20study.pdf.

¹³⁸ Other figures taken from EMSA's Action Plan for Oil Pollution Preparedness and Response (2004) with the exception of the 10% figure which is a rough estimation chosen by the author on the basis of the case studies contained in the same report and the number of EMSA-contracted vessels available in the Mediterranean which was provided by EMSA at the workshop on the OP held in the Commission on 5th December 2012.

¹³⁹ EMSA Work Programme 2012.

¹⁴⁰ http://ec.europa.eu/echo/files/about/COM_2011_proposal-decision-CPMechanism_en.pdf.

the fullest extent possible and in a way which aligns with safeguards put in place within the EU. In this context, as the proposed EU Regulation provides that oil spill emergency response preparedness should take place at regional level, in co-operation with regional actors, the possible use of EMSA's expertise in the area of contingency planning could help in applying consistent levels of preparedness across the Mediterranean.

In addition, under the proposed EU Regulation, information on emergency response resources shall be made available on a reciprocal basis between the European Commission and EU Member States on the one hand and with neighbouring ENP countries on the other¹⁴¹. It is assumed here that both EU and non-EU authorities would have to exchange information. Such information sharing could extend beyond vessel information to cover contingency plans, satellite imagery etc. Such mutual co-operation would benefit all as it would help EU assistance actors (including EMSA) to better react to incidents outside EU waters, and vice versa. Therefore, the provision of EU and EMSA assistance in the implementation of the Protocol is consistent with the draft EU Regulation.

Overall, in terms of intervention logic, based on the above high-level assessment it appears that the provision of EMSA assistance for the implementation of the Offshore Protocol can be justified on effectiveness, efficiency (cost-effectiveness) and coherence criteria.

4.4.2 Scope for intervention

Beyond intervention criteria, and as outlined above, the current and future governance arrangements covering prevention, preparedness and emergency response in the EU and under the Barcelona Convention also play a major part in determining where and whether EMSA can help in the implementation of the Offshore Protocol.

EMSA is only one of a number of EU and non-EU actors involved in emergency response in the Mediterranean and its services are often upon request from the Commission through the MIC. As noted above, in late 2011, the Commission put forward proposals to extend the role which the CPM/MIC plays in organising the EU's preparedness for and response to emergencies. If passed it is unclear how these changes would affect EMSA's role.

Likewise, when the proposed EU Regulation becomes law, industry and national authorities will be required to develop internal and external emergency plans respectively. They will then be expected to co-ordinate such planning efforts with other EU and non-EU states. It is unclear, however, what role EMSA will play in these co-ordination efforts.

In addition, the economic, social and environmental risks on which any response strategy are based is also important in determining the type of intervention required, which may or not be available from EMSA. Within the EU and indeed the Mediterranean, while EMSA's current response is focused oil recovery vessels and does not use dispersant, it is understood that different Member States and indeed companies have differences approaches.¹⁴²

Moreover, as UNEP MAP, REMPEC and the parties to the various protocols falling under the Barcelona Convention are responsible for the implementation Offshore Protocol, it is important that these actors outline how other actors – including EMSA – can best provide it with assistance. However, given the ongoing functional review exercise of REMPEC's resources, structure and mandate, and the broader review by UNEP MAP of how it will implement the Offshore Protocol, it is

¹⁴¹ Article 32(1) of the proposed EU Regulation.

¹⁴² EMSA Manual on the Applicability of Oil Spill Dispersants, 2009. Found at: www.emsa.europa.eu/opr-documents/download/1166/719/23.html.

difficult to outline how the EU and EMSA in particular can co-ordinate its activities within this regional framework.

Ideally, a thorough assessment of how EMSA and indeed the EU and its Member States can assist in the implementation of the Offshore Protocol should be done after UNEP has decided an implementation plan for all the parties. Likewise, as there are many EU actors involved, there would need to be clarity as to who does what e.g. what are the respective roles of DG ECHO (CPM/MIC), Member States, EMSA and other relevant actors.

4.4.3 Potential areas for co-operation

In terms of the specific ways in which EMSA and REMPEC and the parties to the Offshore Protocol can co-operate, and drawing on the comparison table above, the main area in which both have the most competencies, and therefore have the most scope to co-operate, is in the area of emergency response. In addition, given the extent which both organisations are involved in preparedness, there also appears to be significant opportunity to co-operate in this area. As neither is likely to be significantly involved in the prevention of offshore pollution, there does not appear to be much scope for co-operation in this area.

Regarding emergency response, while official communications in an emergency are to be undertaken via the MIC – as outlined in the legislation – EMSA has signalled that it can provide substantial assistance most notably through the use of services related to satellite surveillance and oil recovery vessels. Concerning the possible use of recovery vessels, these would presumably be provided on similar terms as they are currently for EU Member States, namely upon request as a top-up to national capacities and subject to the requesting party paying for the service. Therefore, the risk with regards to operational costs here lies with possible instances of non-payment. The costs of maintaining a fleet on stand-by are already being paid for by EU Member States through the EU budget. As with satellite surveillance, the Offshore Protocol party in which the incident takes place would need to request oil vessel support; these services could be provided directly to the Offshore Protocol parties and do not require co-ordination with REMPEC. However, as assistance is partially linked to reciprocity¹⁴³ in terms of the provision of support, REMPEC – working with EMSA and the MIC – could play a role in collating and providing this information.

As defined under the Protocols to the Barcelona Convention, REMPEC plays a central role in the coordinating operational response to emergencies. Indeed it is the only body which can contact and co-ordinate response from both EU and non-EU parties to the Offshore Protocol. While EMSA does not have any official role here, it does – like REMPEC – provide expert remote or on-the-ground assistance and advice during emergencies. It is not expected that this role will change with the implementation of the Protocol.

Compared with response assistance, how and whether EMSA can provide assistance in the area of pollution preparedness is less clear given that both EMSA's and REMPEC's respective roles vis-à-vis other response actors are less well defined. Nevertheless, this is an area where REMPEC and EMSA possess considerable expertise.

In the Mediterranean, both are involved in one or more projects aimed at ensure that response to pollution is based on linking to risks to available resources. For instance, REMPEC is co-operating with industry group MOIG on developing an 'oil spill risk assessment' tool by the end of 2013 and both EMSA and REMPEC are active in promoting the 'Mediterranean Decision Support System for

¹⁴³ The proposed Oil and Gas Regulation refers to 'reciprocity' with regard to the EU's relations with ENP or third countries (e.g. in Articles 30 and 32). However, it is not yet clear what this will entail in practice.

Marine Safety’ or, ‘MEDESS-4MS’ project which will be complete in 2015.

However, and as noted above, at the 10th meeting of the ‘Focal Points’ of REMPEC of May 2011, it was noted that there was much work to be done to improve preparedness in the Mediterranean. At the same meeting it was mentioned that during the Regional Government and Industry Workshop on Cooperation, Preparedness for and Response to Oil Spills in the Mediterranean Sea (Marseille, May 2009), there are few ‘*sensitivity maps or risk assessments available, little expertise available on such sensitivity mapping & risk assessment and there is a possible need for a regional risk assessment and a need for regional capacity building*’.¹⁴⁴

While co-operation on preparedness is for the European Commission and its Member States, and the Parties, to agree on, this is an area where both EMSA¹⁴⁵ and other regional agreements¹⁴⁶ have experience and could possibly assist and work together with REMPEC and the Parties to the Offshore Protocol.¹⁴⁷ In addition, as it will also most likely be required under the proposed EU Regulation for industry and EU Member States to compile and share cross-border information on preparedness, the implementation of the Offshore Protocol would appear to be a good opportunity to do this for the Mediterranean.

Indeed, EMSA may also possibly benefit from an operational perspective from such co-operation as at the moment the Network of Response vessels which are geared towards the risks posed by ships and not offshore installations.¹⁴⁸ It would also help EMSA to support the Commission assess the risk posed by certain offshore installations in the Mediterranean, should it request EMSA to do so. Finally, a clear sharing of information on the response capacities of all Parties to the Offshore Protocol, and EMSA, may also help in the further development of preparedness for spills from offshore facilities in the Mediterranean.

Therefore, in order to help best allocate response resources, and to help ensure that the same level of preparedness is in place in the non-EU section of the Mediterranean as in the EU once the proposed EU Regulation is implemented, it might be beneficial for EMSA and other EU actors – such as the MIC – to work together with REMPEC and the Parties to develop a common regional Mediterranean approach to preparing for cross-border spills. However, in this case it should be noted that EMSA is not in the lead on this and member States which are parties to the Offshore Protocol should ideally take the lead.

In addition, every year, EMSA conducts a considerable number of drills and participates in international exercises, an area where the involvement of the Parties the Offshore Protocol may be beneficial. The exercises which take place in the Mediterranean could be co-ordinated with REMPEC and the Parties, possibly in accordance with any common regional response arrangements.

In terms of financing, it is understood that such ‘preparedness’ activities could possibly be undertaken within the SAFEMED project or alternatively within any initiative taken by the Commission in accordance with Article 32 (‘Transboundary emergency preparedness and response’) of the EU draft

144

<http://www.rempec.org/admin/store/wytwigImg/file/Information%20resources/Focal%20Points%20Meetings/2011/EN/FPM%202011%2032-9-2%20MTWG%20Futur%20work%20proposal.pdf>.

¹⁴⁵ For instance, the EMPOLLEX expert exchange programme covers expertise in regional and national contingency and emergency planning.

¹⁴⁶ The Bonn Agreement parties have in place detailed contingency plans based on risks posed. In the Baltic Sea, Helcom’s ‘Brisk’ project has developed a regional methodology for measuring risk.

¹⁴⁷ Indeed, REMPEC has stated that this is the goal of the MEDESS4MS project and they intend to extend to the non EU countries the results of the project after its completion for EU MS in 2015.

¹⁴⁸ EMSA Work Programme 2012.

Regulation which notes that the Commission may – budget allowing – contribute to exercises focused on testing cross-border and Union emergency mechanisms involving member States, relevant EU Agencies (including EMSA) and third countries. Another option is the use of the EU’s Horizon 2020 plan, wherein one of the objectives is to tackle pollution in the Mediterranean.¹⁴⁹

Finally, both engage in extensive across the board training and sharing information and expertise in all three areas of prevention, preparedness and response. In terms of training EMSA has many resources in this area, and has indicated that there is the potential for the expansion of training to ENP countries. These could possibly be provided in the areas where REMPEC does not currently provide capacity-building to the parties. Another possibility would be to involve members in each other’s expert groups. How this would be paid for however is not certain.

Potential Areas for Co-operation: A Summary

Emergency response

- This is the main area in which both have the most competencies, and therefore have the most scope to co-operate.
- With regards to how EMSA can provide assistance, it has signalled that it can provide ENP countries with substantial assistance most notably through the use of services related to satellite surveillance and oil recovery vessels. These services could be provided directly to the Offshore Protocol parties and do not require co-ordination with REMPEC.
- In terms of coordination of operational response to emergencies, REMPEC is the only central body which can contact and co-ordinate response from both EU and non-EU parties to the Offshore Protocol. It is not expected that this role will change with the implementation of the Protocol.
- Finally, while EMSA may now provide assistance to neighbouring countries, the draft Oil and Gas Regulation partially links such assistance to ‘reciprocity’ between EU MS and non-MS. What this means in reality is unclear and how it could affect such assistance would have to be clarified.

Preparedness

- At the 10th meeting of the ‘Focal Points’ of REMPEC of May 2011, it was noted that there was much work to be done to improve pollution preparedness in the Mediterranean. At this meeting it was noted that there are few ‘*sensitivity maps or risk assessments available, little expertise available on such sensitivity mapping & risk assessment and there is a possible need for a regional risk assessment and a need for regional capacity building*’.
- However, the extent to which EMSA can provide assistance in the area of pollution preparedness is not clear given the fact that operators and Member States/Parties are responsible for preparedness.
- Nevertheless, preparedness is an area where both EMSA, and indeed REMPEC, possess considerable expertise. In the Mediterranean, and aside from maintaining significant databases on past pollution incidents and current response capabilities, both are involved in one or more projects aimed at ensuring that pollution response capability is based on linking offshore threats/risks with available response resources. For instance,
 - o REMPEC is co-operating with industry group MOIG on developing an ‘oil spill risk assessment’ tool by the end of 2013
 - o Both EMSA and REMPEC are active in promoting the ‘Mediterranean Decision Support System for Marine Safety’ or, ‘MEDESS-4MS’ project which will be complete in 2015.
- While co-operation on preparedness is primarily for the European Commission and its Member

¹⁴⁹ http://ec.europa.eu/environment/enlarg/med/horizon_2020_en.htm.

States, and the Parties, to agree on, this is an area where both EMSA and the other regional agreements have experience and could possibly assist and work together with REMPEC and the Parties to the Offshore Protocol.

- EMSA could also possibly benefit, from an operational perspective, from cooperating to better understand the risks posed by offshore installations, given the fact that its Network of Response vessels are presently geared towards responding to the risks posed by ships, and not from offshore installations. Such cooperation could also help EMSA to support the Commission in assessing the risks posed by certain offshore installations in the Mediterranean.
- Specifically, the following cooperation could also be considered:
 - o Sharing of Information on Response Capacities: A clear sharing of information on the response capacities of all Parties to the Offshore Protocol, and EMSA, may also help in the further development of preparedness for spills from offshore facilities in the Mediterranean.
 - o Common Regional Approach: to help best allocate response resources, and to help ensure that the same level of preparedness is in place in the non-EU section of the Mediterranean as in the EU once the proposed EU Regulation is implemented, it might be beneficial for EMSA and other EU actors – such as the MIC – to work together with REMPEC and the Parties to develop a common regional Mediterranean approach to preparing for cross-border spills. Member States which are parties to the Offshore Protocol should ideally take the lead here.
 - o Co-operation in the area of Response Drills: EMSA conducts a considerable number of drills and participates in international exercises. The exercises which take place in the Mediterranean could possibly be co-ordinated with REMPEC and the Parties.
- In terms of financing this co-operation, ‘preparedness’ activities could possibly be undertaken within the SAFEMED project or alternatively within any initiative taken by the Commission in accordance with Article 32 (‘Transboundary emergency preparedness and response’) of the EU draft Oil and Gas Regulation. Another option is the use of the EU’s Horizon 2020 plan, wherein one of the objectives is to tackle pollution in the Mediterranean.

Prevention

- Aside from training activities (referred to below) as neither is likely to be significantly involved in the prevention of offshore pollution, there does not appear to be much scope for co-operation in this area.

General

- Finally both engage in extensive training and sharing information and expertise in all three areas of prevention, preparedness and response.
- EMSA has many resources in this area, and has indicated that there is the potential for the expansion of training to ENP countries. These could possibly be provided in the areas where REMPEC does not currently provide capacity-building to the parties.
- Another possibility would be to involve members in each other’s expert groups. How this would be paid for, however, is not certain.

Concluding remarks

It was in the aftermath of the Deepwater Horizon accident in the Gulf of Mexico (US) that the Commission reviewed the existing regulatory frameworks on offshore safety of the Member States and proposed new legislation to ensure high health and safety standards as well environmental standards. This was perceived necessary as a serious accident at any of Europe's offshore installations would be likely 'to entail material losses, damage to the environment, the economy, local communities and society, while the lives health of workers might be put at risk'.¹⁵⁰

The lack of a comprehensive legal framework at the EU level led to the development of different regulatory frameworks and practices by the Member States, in particular regarding licensing practices, safety and environment protection regimes. With the EU draft Regulation, the Commission intends to overcome these differences by providing a clear, comprehensive and transparent system through which the safety and sustainability of offshore operations can be ensured.

Although the Commission initially proposed a 'Regulation', which is directly binding upon the Member States, the European Parliament and the Council on 21 February 2013 agreed to recommend the adoption of a Directive, which establishes similar objectives while leaving the means to the Member States, and avoid the redrafting of existing national legislation. This will leave Member States more margin for interpretation when transposing the Directive. Moreover, where a Regulation on offshore health and safety would have resulted in a centralised European safety regime, forming part of the national law in all EU Member States, a Directive provides the Member States more flexibility in the actual implementation process. This flexibility is highly welcomed by the Member States that already have comprehensive offshore legislation in place. A concrete consequence of the agreement to adopt a directive rather than a regulation on the issue of offshore safety is that this will provide a certain leeway in the implementation of the provisions, which allows the Mediterranean Member States to ensure a better coordination and cooperation with the parallel implementation of the Offshore Protocol.

With the recent accession of the European Union to the Offshore Protocol and the advanced debate on the adoption of the proposal for a Regulation on safety of offshore oil and gas prospecting, exploration and production activities, the EU is expected to soon deal with the implementation of these two highly related instruments, both aiming at regulating offshore oil and gas activities. The parallel adoption of these two legal acts provides a unique momentum to further develop and align actions and measures undertaken to implement the core requirements of these acts.

- **Synergies and potential additional national measures by EU Mediterranean countries**

While their ultimate objectives are often similar, the two legal acts have a different focus: the Offshore Protocol, negotiated and adopted in 1994, aims at *protecting against pollution from offshore activities* and provides general obligations for daily operations, whereas the recent EU draft Regulation intends to ensure the *safety of offshore activities* by providing a detailed regulation of major accident prevention.

The EU Mediterranean Member States will need to implement both instruments at the same time. Although it will depend on the existing national legal framework of the Member States, this study analysed the legal documents to identify some areas where additional measures might need to be taken by EU Mediterranean countries to ensure the parallel implementation. The main issues are listed below:

¹⁵⁰ Eu draft Regulation, p. 1.

– *Authorisation system*

A general difference between the two instruments that needs to be taken into consideration relates to the authorisation system; the Offshore Protocol regulates the so-called ‘work authorisation’, (exploration and exploitation), whereas the EU draft Regulation covers both the licensing (defined pursuant to Directive 94/22/EC as *the exclusive right to prospect or explore for or produce hydrocarbons in a geographical area*) as well as the work authorisation.

– *Waste and harmful or noxious substances and materials*

Further, Section III of the Offshore Protocol comprehensively regulates the release and management of any wastes and harmful and noxious substances in relationship to the exploration/exploitation activity. No such requirements have been identified in the proposed EU Regulation, which relates to the fact that Section III was negotiated and adopted before the 1995 revision of the Barcelona Convention. The Protocol uses a black and grey list system to either prohibit disposal or requiring a special permit; a system that was replaced after the 1995 revision of the Barcelona Convention. The EU also makes of the ‘reverse’ approach rather than the black-grey list approach.

– *Monitoring*

The Offshore Protocol requires the operator to measure the effects of the activities on the environment in the light of the nature, scope, duration and technical methods employed in the activities and of the characteristics of the area – a requirement that is not covered by the EU draft Regulation or otherwise covered directly by the applicable EU *acquis*.

– *Removal of installations*

Although the EU draft Regulation deals with the removal of installations and ‘installations’ technically fall under the definition of ‘waste’ (Article 3 of the Waste Framework Directive) removal therefore is covered by the EU *acquis*. No clear rules or guidelines are however specified on how to remove such complex offshore installations.

– *Compulsory insurance or other financial guarantees*

Although the objective of both legal documents is to put in place mechanisms to cover potential damage and both require verification of financial capacity of the operators, a significant difference in approach is that the Offshore Protocol mentions mandatory financial security measures to do so, while the draft Regulation and EU *acquis* does not impose a certain tools or methods to ensure sufficient financial capacity (which is left to the operator).

In addition to the differences between the two legal instruments, several complementarities and synergies have been identified. These include the use of the Chemical Use Plan and the Major Hazard Report. Although the MHR has a broader set up than the Chemical Use Plan as it covers the drawing up of a plan with the identified major hazards, their likelihood and assessment of consequences, whereas the Chemical Use Plan specifically sees on the use of chemicals. The two documents provide opportunities for synergies as some of the requirements of the MHR could cover the use of chemicals by the operator. Another area where overlap is identified is the need for coordination of contingency planning. Under both instruments, operators are required to have a contingency plan to combat accidental pollution. The EU draft Regulation also covers the health and safety of workers. Overall, the cost-effective coordination in the parallel implementation can be improved through harmonising or streamlining of such procedures.

As logically follows from the different scope of the legal instruments, differences have been identified that will need to be addressed during the parallel implementation of the two legal instruments. However, as emphasised earlier, the need to establish additional measures ultimately depends on the national legislation of the EU Mediterranean countries. Review of their regulatory framework shows that in certain of the identified issues that require additional measures, follow up is needed, such as

concrete regulation on the removal of offshore installations. However, in other cases, such as liability or monitoring, Member States in general have legislation in place.

Overall, it can be concluded that, although the provisions of the Offshore Protocol have not been transposed (yet) in all the Mediterranean Member States, the majority of the provisions are covered by the existing EU *acquis*. The *acquis* does not only cover the majority of the Offshore Protocol's requirements, in many cases it provides more detailed (and more recent) provisions that can contribute to the further strengthening of the implementation of the Protocol in the Mediterranean Sea.

- **The possible involvement of EMSA in the implementation of the Offshore Protocol**

With regard to how EMSA can possibly assist UNEP/MAP, REMPEC and the Parties in the implementation of the Offshore Protocol, this help can potentially be provided in the area of emergency response in the form of satellite surveillance, oil recovery vessels as well as technical advice, and in the area of preparedness in terms of expertise on assessment of risks and corresponding response capabilities, for example. Assistance could also conceivably be extended to include REMPEC and non-EU Parties in expert networks maintained and training offered by EMSA.

In terms of emergency response assistance, the new EMSA legislation clearly allows for the provision of assistance in the area of offshore facilities in ENP countries and that this can be co-ordinated with regional organisations such as REMPEC. Such support, however, would need to be offered in the same way as it is currently provided to EU Member States (e.g. on a request basis) and would have to complement and not replace existing pollution response measures in place at operator- and Party-level. Likewise, as REMPEC provides operational coordination for the Parties and given that EU assistance is channeled through the European Commission's Civil Protection Mechanism, EMSA would contribute to, but not co-ordinate, the provision of such assistance.

Regarding the area of pollution preparedness, REMPEC has noted that the existing level of risk assessment and co-ordination of regional contingency planning in place at the regional level in the Mediterranean could be improved. Given the expertise available in EMSA and within its networks, EMSA could play a role in helping UNEP/MAP, REMPEC and the Parties develop such plans. However, it is not clear what is expected from EMSA here. On the one hand the new EMSA Regulation provides that EMSA can assist the Commission in assessing some of the risks posed by offshore installations (including the Mediterranean). On the other hand, such assessment is an ancillary duty of EMSA and should only be provided where such work is not being done elsewhere. Moreover, while the draft Oil and Gas Regulation requires operators and Member States to develop coherent risk assessment and preparedness plans and that such planning can be co-ordinated on a regional basis with ENP countries, the draft Regulation does not specifically outline any 'risk assessment' or contingency planning role for EMSA.