HRVATSKO DRUŠTVO ZA POMORSKO PRAVO

ASSOCIATION CROATE DE DROIT MARITIME
CROATIAN MARITIME LAW ASSOCIATION
Member of Comité Maritime International
c/o University of Rijeka faculty of Maritime Studies
Studentska 2, 51000 Rijeka, Croatia

From: CROATIAN MARITIME LAW ASSOCIATION

To: COMITÉ MARITIME INTERNATIONAL

Response to the Questionnaire prepared by the International Working Group regarding Offshore activities — pollution liability and related issues (of 17 July 2013)

1) Is your country a party to any of the instruments listed under 1 to 3 above or, in the case of OPOL, are the offshore operators in your country parties to that agreement? If so please advise whether issues of liability and compensation are adequately addressed by the instrument itself or by any subsidiary national legislation.

None of the above. Croatia is a party to the Barcelona Convention and to all its protocols except the 1994 Offshore Protocol and the 1996 Hazardous Wastes Protocol. Croatia is a signatory to the 1994 Offshore Protocol, but has not ratified it so far.

However, it is interesting to note that the 1994 Offshore Protocol to the Barcelona Convention is indirectly applied through a piece of national legislation, i.e. **Ordinance on the protection of marine environment in the protected ecological-fisheries zone of the Republic of Croatia** (Official gazette no. 47/2008) which in its Art. 4 states: "Fixed and floating platforms, including drilling rigs, floating facilities for the production, storage and unloading used in the offshore exploitation and storage of oil and the floating storage units for the offshore storage of the exploited oil, as well as the gas platforms must fulfil the requirements of Rule 39 Chapter 7 Annex I of MARPOL and the [1994 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 (Barcelona Convention)]."

The ordinance applies to the offshore platforms, rigs, facilities and units situated in the protected ecological-fisheries zone of the Republic of Croatia (based on the UNCLOS 1982 concept of exclusive economic zone).

2) If your country is not a party to any of the instruments listed under 1 to 3 above, is it party to any other form of regional or bilateral agreements which address the issues of liability and compensation? May we please have details of any such agreement?

To our knowledge there are no such bilateral or regional agreements. Croatia is a party to the Agreement on the cooperation in the protection of the waters of the Adriatic Sea and the coastal areas from pollution of 14th February 1974, but that sub regional agreement does not address the issues of liability and compensation. The other parties to the Agreement are Italy, Slovenia and Montenegro.

Furthermore, there is a Technical agreement between The Ministry of Economy of the Republic of Croatia and The Ministry of Economic Development of the Republic of Italy on the joint exploitation of the gas field *Annamaria* in the Adriatic Sea, which is in force as of 23rd February 2013. To our knowledge the Agreement does not address the issues of liability and compensation. However, we were not authorised to inspect any of the wording of the said agreement.

The legal basis for the joint exploitation of gas in the continental shelf of the Adriatic sea is the Agreement between the Socialist Federal Republic of Yugoslavia and the Republic of Italy on delimitation of the continental shelf between the two States of 8th January 1968, providing that the common exploitation of the mineral resources determined on the border line between the two countries is possible subject to a special agreement reached between the competent authorities of the two states. The said Agreement of 1968 remains in force between the Republic of Croatia (as the successor of the SFR Yugoslavia) and the Republic of Italy on the basis of the general succession of bilateral agreements confirmed by the exchange of the diplomatic notes of 25th March 1992 and 22nd January 1993. It does not contain any provisions regarding liability and compensation for damage arising from offshore drilling.

3) Please identify the national regulations which are applied to offshore oil and gas exploration and exploitation operations by the authorities in your country?

Laws:

- Mining Act, Official gazette no. 56/2013
- Act on exploration and exploitation of hydrocarbons, Official gazette no. 94/2013
- Environmental Protection Act, Official gazette no. 80/2013
- Nature Protection Act, Official gazette no. 080/2013
- Air Protection Act, Official gazette no. 130/2011
- Energy Act, Official gazette no. 66/2001, 177/2004, 76/2007, 152/2008
- Maritime Code, Official gazette no. 181/2004, 76/2007, 146/2008, 61/2011, 56/2013
- Waste Act, Official gazette no. 178/2004, 111/2006, 60/2008, 87/2009
- Maritime Security Act, Official gazette no. 124/2009

Sub-laws:

Ordinances:

- Ordinance on the cadastre of the exploration spaces and the exploitation fields, and on the method of the record keeping, the document compilation and the list of the mining companies and the independent entrepreneurs to whom the approvals for the exploration and exploitation of the mineral resources have been issued, Official gazette no. 44/1991
- Ordinance on data collection, the method of recording and establishing reserves of the mineral resources and on the preparation of the balance sheet of those reserves, Official gazette no. 48/1992, 60/1992
- Ordinance on the exploration of mineral resources, Official gazette no. 125/1998
- Ordinance on the exploitation of mineral resources, Official gazette no. 125/1998
- Ordinance on the verification procedure of the mining projects, Official gazette no. 140/1999

- Ordinance on the procedure of establishing and verifying reserves of the mineral resources, Official gazette no. 140/1999
- Ordinance on the contents of the long-term and annual programme, and on the contents of the mining projects, Official gazette no. 196/2003, 6/2004
- Ordinance on the professional qualifications for certain mining occupations, Official gazette no. 9/2000
- Ordinance on the relevant technical requirements of safety and security in the exploration and exploitation of hydrocarbons on the seabed and subsoil of the Republic of Croatia, Official gazette no. 52/2010
- Ordinance on the technical standards in exploration and exploitation of oil, natural gas and formation water, Official gazette no. 53/1991
- Ordinance on the technical standards in the handling of explosives and mining, Official gazette no. 26/1988, 63/1988
- Ordinance on the technical conditions and standards for the safe transportation of the liquefied and gaseous hydrocarbons by the trunk pipelines and the pipelines for the international transport, Official gazette no. 53/1991
- Ordinance on the management of waste from the exploration and the exploitation of the mineral resources, Official gazette no. 128/2008
- Ordinance on the registry of environmental pollution, Official gazette no. 35/2008
- Ordinance on the measures of the environmental damage recovery and the rehabilitation procedures, Official gazette no. 145/2008
- Ordinance on the monitoring, reporting and verifying the reports on greenhouse gas emissions from the industrial installations and aircraft in the period starting on 1st January 2013, Official gazette no. 77/2013
- Ordinance on the assessment of the acceptability of the intervention in the natural environment, Official gazette no. 89/2007
- Ordinance on the monitoring of the pollutant emissions into the air from the stationary sources, Official gazette no. 129/2012, 97/2013
- Ordinance on the borderline values of the waste water emissions, Official gazette no. 80/2013
- Ordinance on the protection of marine environment in the protected ecological-fisheries zone of the Republic of Croatia, Official gazette no. 47/2008

Regulations:

- Regulation on the fee for the exploration of the mineral resources, Official gazette no. 40/2011
- Regulation on the fee for the concession to exploit the mineral resources, Official gazette no. 40/2011
- Regulation on the assignment of the approval for the exploitation of the mineral resources and of the concession contract for the exploitation of the mineral resources, Official gazette no. 126/2011
- Regulation on the assessment of the project's impact on the environment, Official gazette no. 64/2008, 67/2009
- Regulation on the method of determining damage to the environment, Official gazette no. 139/2008
- Regulation on the procedure of determining the uniform conditions of environmental protection, Official gazette no. 114/2008
- Regulation on the proclamation of the ecological network, Official gazette no. 109/2007
- Regulation on the borderline values of the pollutant emissions into the air, Official gazette no. 117/2012
- Regulation on the critical levels of pollutants in the air, Official gazette no. 133/2005

Notate bene

1. In the list above, we have not included the laws and sub-laws relating to health and safety at work, sub-laws relating to waste management and handling of hazardous wastes, noise pollution, poisons, chemicals, radiation, flammable liquids and gasses, safety and rescue, fire protection, as rules applying generally to all industry and not specifically to offshore oil and gas exploration and exploitation. On the other hand we have included the legislation relating to general environmental protection.

2. The above cited Mining Act and Act on exploration and exploitation of hydrocarbons are harmonized with the corresponding EU legislation, in particular with **the EU Directive 94/22/EC of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons, offshore oil and gas**

operations in the Union and Directive 2009/31/EC of 23April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006.

3. **The Mining Act**, as *lex generalis*, provides that the concessionary who undertakes exploration or exploitation (the operator) is liable for damage to the nature and environment caused by the exploration mining works or by the works in the exploitation fields respectively (strict liability) and is obliged to rehabilitate the spaces where the works are done and to undertake all safety and precautionary measures to prevent any hazard to persons, property, nature and environment. In case of the operator's default, the competent public authorities shall undertake such measures at his expense and risk. The relevant Articles of the Act are 44, 45, 69, 87, 88, 101 and 137.

4. **The Act on exploration and exploitation of hydrocarbons**, as *lex specialis*, provides that the investor (operator) is obliged to comply with all the requirements and undertake all the measures for the protection of nature, environment, health and safety of persons and property prescribed by the Act, all special regulations, the licence and the concession agreement. In case of pollution or damage to nature and environment caused in relation with the works, the investor (operator) must treat it in an ecologically acceptable manner and restore the affected area to the original state at his own cost. The investor must also rehabilitate the exploration/exploitation fields after the completion of the works. (Art. 32, 36, 37, 38). Throughout the validity of the licence the investor (operator) must maintain appropriate insurance covering the operator's property (facilities, installations, equipment, etc.), the wells, third party liability, employees, workers and subcontractors, damage to the environment including ecological damage (including damage arising below and beyond the surface of the Earth) and other risks arising from the mining works (Art. 43). The investor (operator) must hold a valid financial guarantee covering all his financial obligations related to the concession agreement (Art. 54.). The investor (operator) is exculpated in case of *force majeure* (including war, threat of war and warlike circumstances, natural catastrophes, etc., but excluding financial instability, bankruptcy or liquidation of the operator) (Art. 44). The investor (operator) must undertake the

corrective measures in case of release/discharge/spill, or any major irregularities. In case of the operator's default the competent public authorities shall undertake such measures at the operator's risk and cost, which can be recovered from the operator's financial guarantee (Art. 51). After the closing of the well and the clearance of the operator's outstanding debts/liabilities, all further obligations and liabilities related to the well are transferred to the specialised State agency.

5. **Directive 2013/30/EU of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC** (on environmental liability with regard to the prevention and remedying of environmental damage) – this EU directive *inter alia* foresees liability issues relating to offshore oil and gas operations and requirements on financial capacity including availability of appropriated financial security instruments; it must be transposed into the national laws of all EU member states, including Croatia, no later than 19 July 2015.

6. General environmental obligations and liability for environmental damage are prescribed by the above-cited **Environmental Protection Act** which is harmonised with the relevant EU legislation on environmental protection. The liability regime prescribed by this Act is a transposition of **Directive 2004/35/EC of 21 April 2004 on environmental liability** with regard to the prevention and remedying of environmental damage. Environmental liability is based on the "polluter pays" principle, with a view to preventing and remedying environmental damage. The principle of liability applies to environmental damage and imminent threat of damage resulting from occupational activities, where it is possible to establish a causal link between the damage and the activity in question. The regime distinguishes between the dangerous or potentially dangerous occupational activities (mainly agricultural or industrial activities requiring a special licence on integrated pollution prevention and control, activities which discharge heavy metals into water or the air, installations producing dangerous chemical substances, waste management activities and activities concerning genetically modified organisms and micro-organisms) and all other occupational activities (n. b. Offshore exploration and exploitation of oil and gas would fall under these activities). Under the scheme applying to dangerous activities the operator may be held responsible even if he is not at fault (strict liability), subject to only

a few possible exemptions (such as *force majeure*, war, compliance with the orders of public authorities). The second liability scheme applies to all occupational activities other than those listed as dangerous or potentially dangerous. In this case, the operator will be held liable only if he is at fault or negligent.

7. **The Maritime Code** as amended in 2013 introduces for the first time a definition of ecological damage and the "polluter pays" principle. This is done in Art. 49g within the general provisions of the Part III Safety of Navigation. The said provisions are not in compliance with the other liability regimes for pollution damage governed by the Maritime Code (e.g. the provisions implementing CLC 92 and Bunkers Convention). Furthermore, it is unusual that these provisions are placed under the part of the Code dealing with the safety of navigation. Article 49g provides that whoever causes damage to marine environment is obliged to compensate for it. Damage to marine environment means material damage and ecological damage. Ecological damage is a particular kind of damage which results in destruction of the environment, nature and landscape. The criteria for determining ecological damage are: the level of preservation and authenticity of the nature, the level of legal protection, the beauty of the landscape, the possibility of restitution, the richness of flora and fauna, and similar. The ecological damage shall be compensated for in the adequate part, even if the nature is not intact.