

3 Chapel Place  
London EC2A 3DQ  
t +44 (0)20 7749 5970  
f +44 (0)20 7729 4568

Avenue de Tervueren 36  
1040 Brussels  
t +32 (0)2 808 34 65  
f +32 (0)2 733 05 27

info@clientearth.org  
www.clientearth.org



## Legal background paper: Environmental Regulation of Oil Rigs in EU Waters and Potential Accidents

Sandy Luk – Senior Lawyer, Marine Programme, ClientEarth; Rowan Ryrie – Marine Biodiversity Lawyer, ClientEarth

### **Introduction**

This legal background paper has been drafted in response to enquiries regarding the EU rules that would apply in the event of an oil spill from an oil rig accident such as the recent BP accident in the Gulf.

It is intended to provide a general overview of some of the main rules which govern oil rigs in the EU, and to identify some of the weaknesses of and gaps in the current EU regulatory framework. However, it is not the intention of this paper to provide an exhaustive list of all applicable laws and regulations.

The briefing is divided into two main sections.

Section 1 examines the **international legal framework**, discussing in particular:

- The UN Convention on the Law of the Sea;
- Anti-pollution legislation: the OSPAR and Barcelona Conventions;
- Emergency planning and the OPRC Convention; and
- International environmental impact assessments under the Espoo Convention and Kiev Protocol.

Section 2 examines the **EU legal framework** and discusses:

- Health and safety regulations;
- The Erika packages and the Third Maritime Safety Package;
- The Environmental Liability Directive; and
- Environmental assessment under EU law.

### **Background: Oil rigs and oil rig accidents**

The responses of EU Member States and European countries to the BP Deepwater Horizon incident have varied considerably. While Norway has stated that it will not issue any more licences for deepwater drilling until the BP incident has been fully investigated, Ireland has stated its intention to significantly expand activity in the Irish offshore region, and Italy's plans to allow drilling in the Adriatic appear to be going ahead despite concerns about tectonic activity in the area.

## Legal background paper: Environmental Regulation of Oil Rigs in EU Waters and Potential Accidents

Accurate figures as regards the numbers of existing oil rigs and oil rig accidents in the past are not easy to come by and reported numbers vary widely. The following have been taken from a variety of websites that may not be entirely accurate, but they are, in any case, only provided as background information and to set the following legal analysis in a practical context.

According to Rigzone ([http://www.rigzone.com/data/rig\\_report.asp?rpt=reg](http://www.rigzone.com/data/rig_report.asp?rpt=reg)), an industry website, there are currently about 1,234 exploration rigs world-wide in various stages of their lives - from construction to drilling, and including a number of different rig types. Out of these 148 are in Europe's North Sea and 109 are in the Gulf of Mexico.

However, according to oil rig counts carried out in May 2010 by Baker Hughes International ([http://investor.shareholder.com/bhi/rig\\_counts/rc\\_index.cfm](http://investor.shareholder.com/bhi/rig_counts/rc_index.cfm)), there are only approximately 17 offshore rigs in the Gulf of Mexico and 42 in Europe (this includes gas, thermal and oil rigs). The discrepancy in the numbers might be explained by the fact that the Baker Hughes count only lists rotary drilling rigs of a certain size that are actively drilling.

Other rigs are found off the coasts of Brazil, Venezuela, West Africa and in the Persian Gulf and the seas of south and southeast Asia.

According to a website on oil rig disasters ([www.oilrigdisasters.co.uk](http://www.oilrigdisasters.co.uk)), out of 184 reported incidents since the 1960s/70s, on all the different types of oil rigs world-wide, approximately 13% (24) occurred in Europe (including Norway) and around one third (59) took place in the Gulf of Mexico. Incidents in the Gulf of Mexico were mainly due to sinking, blowouts (uncontrolled release of crude oil after pressure control systems have failed – as the BP Deep Horizon incident in the Gulf of Mexico) and hurricanes, whereas causes of European incidents included fire, explosion and also blowouts as their main causes.

If these lists are correct, this means that it is likely to be important for the legal framework for oil rigs to contain strong safety measures and emergency response plans, as well as strong rules regarding the prevention and possibly the remedying of environmental damage.

## 1. THE INTERNATIONAL LEGAL FRAMEWORK

### 1.1 The UN Convention on the Law of the Sea 1982

Oil rigs are governed by a variety of international conventions, starting with the basic rights and obligations set out in the **UN Convention on the Law of the Sea**, which:

- give coastal states the **exclusive right to authorize and regulate** drilling and oil exploration in the EEZ and on the continental shelf (Articles 56, 60 and 81);
- impose environmental protection obligations regarding the marine environment (see Part XII, Article 192ff), including in relation to pollution from oil rigs and the operation and maintenance of installations (see Articles 194 and 208);
- impose duties of international cooperation (Article 197ff) and of monitoring and environmental assessment (Articles 204 and 205).

**The UN Convention on the Law of the Sea imposes international law duties on its parties to prevent pollution, including from oil platforms.**

**However, it relies on national and regional rules and cooperation to achieve these goals. Therefore, it is necessary to examine EU and other regional rules (and national laws) to determine the status of rules aimed at preventing oil rig accidents in the EU and at dealing with the consequences of an accident should one occur.**

## 1.2 Anti-pollution legislation

### (a) The OSPAR Convention

A crucial international convention from an EU point of view is the **OSPAR Convention 1992**, which applies in the North East Atlantic and obliges Contracting Parties to 'take all possible steps' to prevent and eliminate marine pollution and to 'take the necessary measures' to protect the maritime area against adverse effects caused by human activities in order to safeguard human health and conserve marine ecosystems.

Pollution from offshore installations, for example oil rigs, is specifically dealt with in Article 5 and Annex III. Article 7 of Annex III imposes a specific obligation on the Contracting Parties to

'take appropriate measures, both individually and within the relevant international organisations, to prevent and eliminate pollution resulting from the abandonment of offshore installations in the maritime area **caused by accidents**. In the absence of relevant guidance from such international organisations, the measures taken by individual Contracting Parties should be based on such guidelines as the Commission may adopt.' [Emphasis added]

Annex III also addresses the conditions under which oil rigs can be 'dumped'/decommissioned and left.

The OSPAR Convention expressly applies the **precautionary and polluter pays principles** and the use of **best available techniques** and **best environmental practice** (Article 2(2), Annex I, Article 2(1)). Similar to Article 193 of the Treaty on the Functioning of the European Union (TFEU), the OSPAR Convention also allows Contracting Parties to take more stringent measures in relation to pollution prevention and elimination or with respect to the protection of the maritime area against the adverse effects of human activities (Article 2(5)).

The OSPAR Offshore Oil and Gas Industry Strategy from 2003 applies all these principles, as well as the principle of sustainable development and an integrated ecosystem approach. However, although it aims to develop programmes and measures to reduce marine pollution from the oil and gas industry and it seeks to

'promote the development and implementation by the offshore industry of environmental management mechanisms, including elements for auditing and reporting, which are designed to achieve both continuous improvement in environmental performance and the environmental goals', and to 'promote the joint development of environmental best practice guidelines for offshore activities for the purpose of giving effect to the principle of sustainable development',

the OSPAR Convention mechanism does not provide for emergency response planning or for clean-up and liability rules once an accident has happened.

The OSPAR Convention has 16 contracting parties including Iceland, Norway, Portugal and Spain, as well as the EU. It is implemented in the EU in Decision 98/249/EC, but as the EU is also a party to this Convention, the Convention forms an integral part of EU law in any case and is binding on all EU Member States (in relation to their use of the North East Atlantic), and not only those who have signed the Convention.

**Annex III of the OSPAR Convention requires Contracting Parties to take appropriate measures to prevent pollution from accidents on oil rigs. These requirements are binding requirements of EU law and must be complied with.**

**However, although the OSPAR Convention is a binding part of EU law, it is only intended to apply to the North East Atlantic. In addition, it does not provide for emergency planning processes or for clean up responsibilities and the allocation of liability. Neither does it provide for insurance or financial guarantees in relation to such accidents.**

### **(b) The Barcelona Convention**

The 1976 Convention for the Protection of the Mediterranean Sea Against Pollution (the Barcelona Convention) (as amended) mirrors several of the provisions of the OSPAR Convention but applies instead to the Mediterranean Sea area.

The Barcelona Convention applies the **precautionary and polluter pays principles** (Article 4(3)) and requires the use of **best available techniques** and **best environmental practices** (Article 4(4)). One of the types of pollution specifically addressed in the Barcelona Convention is pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil. Article 7 requires parties to the Convention to

‘take all appropriate measures to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil.’

The Barcelona Convention has a number of Protocols which contain detailed measures for protecting the Mediterranean from specific types of pollution.

The **Prevention and Emergency Protocol** sets out how parties to the Convention should respond in the event of a pollution incident including an oil spill from either a ship or an offshore installation, and it stipulates which state party should be responsible for bearing the costs associated with cleaning up pollution incidents within their jurisdiction (Article 13(2)). It also requires parties to the Convention to ensure that operators of offshore installations in their jurisdiction have contingency plans for combating any pollution incidents (Article 11(5)).

The **Hazardous Wastes Protocol** includes ‘waste oils/water, hydrocarbons/water mixtures’ and emulsions within the definition of hazardous waste in addition to ‘mineral oils unfit for their originally intended use’ and requires parties to ‘take all appropriate measures to reduce to a minimum, and where possible eliminate, the generation of hazardous wastes’ (Article 5(2)).

A **Protocol setting out provisions for protecting the Mediterranean from pollution resulting from exploration and exploitation of the continental shelf and the seabed and subsoil** was drawn up in 1994 but has not entered into force as it still needs to be ratified by one further party. The only EU Member State to have ratified the Protocol is Cyprus and the EU has neither signed nor ratified the Protocol.

The EU is a party to the Barcelona Convention (along with 21 countries which border the Mediterranean Sea). This means the Barcelona Convention is a binding part of EU law. The EU is also one of only seven Convention parties to have ratified the Prevention and Emergency Protocol. This means that although only three Member States have ratified the Protocol, it is nonetheless a binding part of EU law and all EU Member States must implement the provisions of the Protocol when operating in the Mediterranean sea area.

Although the Hazardous Wastes Protocol is in force, it has not been ratified by the EU and, within EU Member States, therefore only binds Malta as the only Member State to have ratified the Protocol.

**The Barcelona Convention requires contracting parties to minimise pollution resulting from seabed exploration and to cooperate in dealing with any pollution incidents in the Mediterranean Sea. These are binding provisions of EU law.**

**Although detailed Protocols regulating seabed activities and hazardous wastes have been drawn up they have not been ratified by the EU and are not binding on all EU Member States. Similarly, although the Convention includes commitments to develop detailed provisions for determining liability and compensation, no such provisions have been adopted.**

### 1.3 Emergency planning – the OPRC Convention

The **International Convention on Oil Pollution Preparedness, Response and Cooperation 1990**, (the OPRC Convention) seeks to introduce measures to prepare for and respond to oil pollution incidents, including from oil rigs, by requiring **co-ordinated and approved oil pollution emergency plans** (to be prepared by the operator), as well as **national contingency plans**, and by introducing **reporting and information sharing and international cooperation** requirements.

The EU is not a signatory to this Convention, but the majority of its Member States are. Compliance with the Convention is mainly through regional seas agreements, such as the Helsinki Convention, the Barcelona Convention and the Bonn and Lisbon Agreements. **However, there is great disparity between EU Member States (and regions) in the level of activity and effectiveness of the relevant regional seas conventions and the implementation of the OPRC Convention.**

Note: The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 also gives coastal states the right to take necessary measures on the high seas to prevent, mitigate or eliminate danger to its coastline or related interest from oil pollution or threat of oil pollution. There are also a number of other international conventions connected to safety, training etc. (e.g. The Convention on Safety of Life at Sea 1974, the COLREG Convention 1972 on preventing collisions at sea and the STCW Convention 1978 on standards of training, certification etc). However, these conventions are not of such direct relevance in relation to the matter at the heart of this paper (i.e. oil rig accidents).

**The OPRC Convention imposes emergency planning rules on operators and signatories, but it is not general EU law and its implementation is disparate.**

**Better implementation/compliance and possible additional measures are needed for harmonising major accident response plans for oil rigs** (see also comments on Seveso II Directive below).

#### **1.4 International conventions on maritime liability and liability for oil pollution**

It should be noted that all the international conventions that deal with liability in relation to oil pollution (and other forms of pollution) from ships or the limitation of liability for maritime claims **do not apply to oil pollution as a result of accidents on oil rigs**. They are restricted to oil pollution incidents caused by ships. Therefore, **none of the following conventions would apply to an oil rig accident**:

- The Convention on Limitation of Liability for Maritime Claims (LLMC) 1976
- The International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992
- The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (the Fund Convention) 1992
- The International Convention on Civil Liability for Bunker Oil Pollution Damage (the Bunkers Convention) 2001
- The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (the HNS Convention) 1996

**International conventions on liability for oil pollution or the limitation of maritime liability generally only apply to ships, not to oil rigs. Therefore they will not provide any funds or compensation in relation to an oil spill caused by an oil rig.**

#### **1.5 The Espoo Convention 2001 and the Kiev Protocol 2003**

The Espoo Convention (Convention on Environmental Impact Assessment in a Transboundary Context 2001) requires parties to the Convention to 'take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities' (Article 2(1)). The convention requires that transboundary environmental impact assessments are carried where significant adverse impacts are likely to result from a proposed activity.

Appendix I of the Espoo Convention lists **offshore hydrocarbon production as one of the activities with potential to cause significant adverse impacts**.

An oil spill from an oil rig affecting more than one country would constitute a 'transboundary impact' with a significant 'impact' on the environment (including the marine environment).

**Legal background paper: Environmental Regulation of Oil Rigs in EU Waters and Potential Accidents**

It should be noted that the environmental and human health 'impacts', which Parties to the Espoo Convention are required to prevent by taking relevant measures, are defined very broadly, and are not restricted to only specific elements of the environment (as happens, for example, in the EU Environmental Liability Directive – see below).

The Kiev Protocol on Strategic Environmental Assessment 2003 is intended to support the Espoo Convention by ensuring that individual Parties integrate environmental assessment into their more general plans and programmes at an early stage and thereby help to lay the groundwork for sustainable development.

The EU is a signatory to both the Espoo Convention and the Kiev Protocol, which makes them integral parts of EU law and immediately binding on EU Member States. Specific EU rules on environmental impact assessments and strategic environmental assessments (not necessarily of a transboundary nature) are discussed below.

**In the EU, specific rules exist in relation to environmental impact and strategic environmental assessments (see below).**

**The application of the Espoo Convention and the effectiveness of transboundary environmental impact assessments within the EU appears to vary considerably and could be improved by EU-wide guidance on when transboundary consultations should be carried out. The Kiev Protocol is only due to enter into force in July 2010.**

## **1.6 Conclusion on international rules on oil rig accidents**

The main two international conventions which are relevant to pollution from oil rig accidents in the EU are the OSPAR Convention and the OPRC Convention (the Barcelona Convention applies to a far smaller area than the OSPAR Convention with comparatively limited offshore drilling activity). These two Conventions impose rules on preventing pollution from oil rigs and emergency planning. However, they do not apply universally and in a harmonized way across the EU and, unlike in relation to ships, there are no international rules on liability for oil pollution damage from oil rig accidents and no conventions guaranteeing funds for clean-up.

Rules on environmental impact assessment and strategic environmental assessments are subject to detailed EU laws (the EIA and SEA Directives – see below), but in terms of transboundary impacts, the implementation of the Espoo Convention is mixed and the Kiev Protocol is yet to enter into force (due in July 2010).

**Existing international rules on oil pollution from accidents on oil rigs, including in relation to major accident response and emergency planning, need to be made to apply in a harmonised way right across the EU. Moreover, rules on financial guarantees and liability for oil pollution damage from oil rigs are required, either under new or amended international, regional and/or EU rules.**

## 2. THE EU LEGAL FRAMEWORK

### 2.1 Health and safety regulations

As a consequence of the Piper Alpha disaster in 1988, there are now a number of EU Directives that aim to protect workers on oil rigs and that consequently impose safety procedures and safety measures in relation to oil rigs (see for example Directive 89/391/EC and Directive 92/91/EC). However, they prescribe only very basic safety measures.

The Seveso II Directive (Directive 96/82/EC on the control of major-accident hazards involving dangerous substances) imposes rules on major accident prevention policies, management systems and procedures, notification and information requirements and safety reports, emergency plans and even land use planning (Articles 6-14), all aimed at a high level of protection for 'man and the environment' (see Article 7). In addition, Member States must ensure inspections that ensure a planned and systematic examination of the relevant systems (Article 18). However, the **Seveso II Directive does not apply to oil rigs** (see Article 4(f)). Similarly, the Mining Waste Directive (Directive 2006/21/EC), which also contains provisions for major-accident planning (see Article 6) does not apply to oil rigs.

Currently, the European Maritime Safety Agency (EMSA)(see Regulation 1406/2002/EC) does not play a role either in relation to the inspection of oil rigs (even though it has a role in verifying classification societies which inspect ships) or in relation to any oil pollution preparedness and response measures specifically aimed at oil rigs, rather than at dealing with ship oil pollution (although some of the measures will be the same).

**More rigorous and detailed major-accident prevention policies and management systems are required for oil rigs, as is a harmonised system of inspections.**

**This could be achieved by extending the Seveso II Directive to oil rigs or by separate legislation (as has been done for example in relation to the Mining Waste Directive). In addition, EMSA should monitor inspections of oil rigs in the same way as it does for ship inspections.**

### 2.2 The Erika packages (I and II) and the Third Maritime Safety Package

After the Prestige and Erika tanker oil spills off the French and Spanish coasts, the EU passed a number of measures aimed at preventing future accidents of this nature, including (but not limited to):

- Measures linked to port state control (Directive 95/21/EC and Directive 2009/16/EC), ship inspections, safety standards and flag state requirements (Directive 94/57/EC, 2001/105/EC, Directive 2009/21/EC, Regulation 391/09/EC and Directive 2009/15/EC), ship generated waste (Directive 2002/59) and on banning single-hull oil tankers (Regulation 417/2002/EC).

## Legal background paper: Environmental Regulation of Oil Rigs in EU Waters and Potential Accidents

- Measures to increase transparency in relation to the availability of information on ship safety, EU vessel traffic monitoring and information systems (Directive 2002/59/EC), an EU maritime safety structure (Regulation 2099/02/EC).
- Rules on traffic monitoring, accident investigation, liability of carriers of passengers by sea in the event of an accident (Regulation 392/09/EC).
- Mandatory requirements for ship-owners to insure against damage to third parties caused by their ships where such damage is not covered by the LLMC Convention (but not the oil pollution conventions mentioned above) (Directive 2009/20/EC).

Plans to introduce a number of collective compensation schemes, or a fund providing a financial guarantee for civil liability, and to establish a wider principle of liability on the part of carriers and cargo owners were never realised. Provisions for financial guarantees have been incorporated to a limited extent into the Mining Waste Directive but only in relation to the period after the mine closes (e.g. after decommissioning) and for land rehabilitation (in Article 14) but there are no rules establishing financial guarantees in relation to waste from off-shore installations.

Moreover, it should be noted that most of the measures introduced in the Erika packages and the Third Maritime Safety Package are aimed at oil pollution from ships, but they do not address potential oil rig accidents.

**Measures passed as a response to the Erika and Prestige disasters do not consider potential accidents caused by oil rigs. Oil rigs (or offshore installations) need to be controlled and regulated in a similar way to ships, where this is appropriate.**

**The broadening of mandatory financial security requirements should be considered, and a potential international/EU fund to deal with possible liability claims should be re-considered.**

### 2.3 The Environmental Liability Directive

The Environmental Liability Directive (ELD - Directive 2004/35/EC) establishes rules that implement the polluter pays principle by making 'operators' responsible for preventing and remedying significant damage to water (defined by reference to the Water Framework Directive (Directive 2000/60/EC)), soil (if there is a risk to human health) and biodiversity (certain habitats and species protected under the Habitats Directive (Directive 92/43/EC)).

The ELD applies in the Member States' exclusive economic zones, but **there is no category of marine water damage linked, for example, to 'good environmental status' under the Marine Strategy Framework Directive.**

Water damage under the ELD is currently not relevant to oil rig accidents, as water damage only applies to waters to which the Water Framework Directive applies (an area which is a relatively small distance from the coast which can vary from Member State to Member State). Soil damage is only covered if there is a significant risk of human health being adversely affected through the relevant soil contamination, so this is very unlikely to apply in the marine context.

**Biodiversity damage could be a relevant consideration** in relation to a potential oil rig accident if the incident caused serious damage to protected species or habitats. Such damage would need to have a significant adverse effect on a range of protected species or habitats (under certain articles and annexes of the Wild Birds (Directive 2009/147 on the conservation of wild birds) and Habitats Directives (Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora)) as regards their reaching or maintaining favourable conservation status (see Article 2(1)(a), ELD).

However, some of the general problems relating to the application of the ELD would also be relevant here. First of all environmental damage that is covered by the ELD is not damage to biodiversity, water or soil in general. Rather **it only relates to areas of protection in relation to which the EU has made specific rules (e.g. water status and protected species and habitats)**. This stands in stark contrast to other generally applicable directives, such as the EIA and SEA Directives and, importantly, also the Mining Waste Directive, which apply to risks to the 'environment' in general (see for example Article 4(1), Mining Waste Directive).

Secondly, **the damage thresholds that trigger liability under the ELD are set at a very high level**, which is incredibly hard to establish (the ELD has been in force since 2007 and has not been applied very often). On the other hand, the Mining Waste Directive, which has aims closely connected to those of the ELD (and is listed in Annex III of the ELD – see below), sets a much lower damage threshold in its general requirements: danger to human health, harm to the environment, in particular risks to water, air, soil and fauna and flora (Article 4).

Another important aspect of the ELD is that it introduces two different liability regimes (Article 3(1)). In relation to activities listed in Annex III of the Directive, it imposes strict liability. In relation to other 'occupational activities' (basically all other commercial/business activities), liability for biodiversity damage is fault-based, and there is no liability at all in relation to water and soil damage. If the ELD is extended to apply to marine water damage, then it would be important that liability rules extend to this category of damage for all occupational activities, not just Annex III activities, and it would be even better if liability for other operators was strict too.

Annex III lists a number of activities which are perceived as dangerous (and regulated by EU laws) or involve dangerous substances. Thus, it includes the management of extractive waste pursuant to the Mining Waste Directive, but also the

'7. [m]anufacture, use, storage, processing, filling, release into the environment and onsite transport of:

(a) dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC...'

Annex I of Directive 1272/2008/EC replaces Annex I of Directive 67/548, which lists the substances referred to in Article 2(2) of Directive 67/548 (which still applies today). That Annex includes hydrocarbons and crude oil. Under the same Directive 1272/2008, the definition of 'manufacture' includes the 'production or extraction of substances in the natural state' (see Article 2(14)).

**Therefore, the drilling and extraction of crude oil is covered by Annex III of the ELD, and any damage caused by oil pollution that causes significant adverse effects to biodiversity is subject to strict liability rules under the ELD.**

If liability is established, the damage must be reinstated and/or complementary and compensatory remedial measures might also be required (see Article 6 and Annex II of the ELD) and both the polluter and the competent authority are under a duty to take action under the Directive (Articles 5, 6, 7 and 11). There are also requirements to prevent damage where there is an imminent threat of it occurring (Article 5).

It should be noted that the ELD does not apply to environmental damage arising from incidents in relation to which the oil pollution and liability conventions listed above apply. However, as already mentioned, these conventions only apply to oil pollution from ships, and not to oil rigs.

**Unlike in relation to ship-source oil pollution, the Environmental Liability Directive does apply to oil pollution caused by oil rig accidents if significant biodiversity damage is caused. As the extraction of crude oil is one of the dangerous activities in Annex III, strict liability rules apply.**

**However, there is currently no provision for compulsory financial security in the ELD. This is being reviewed by the Commission. In relation to oil pollution from oil rigs, compulsory insurance requirements should be required, whether under the ELD or other instruments.**

**In addition, damage thresholds under the ELD are very high and general environmental damage is not covered by the ELD (only defined aspects of different damage types that are deemed to need a higher level of protection).**

**Moreover, damage to marine waters, unlike inland waters, is not covered at all by the ELD. The ELD covers waters that are subject to the Water Framework Directive (by reference to status categories under that Directive).**

**Also, the list of Annex III activities is limited and does not automatically include all of the activities listed in the Annexes to the EIA and SEA Directives (activities which should trigger an environmental impact assessment)**

**At the next review of the ELD (in 2013/2014 – see Article 18), the following issues should be considered:**

- **a lowering of damage thresholds;**
- **the inclusion of damage to marine waters (by reference to the Marine Strategy Framework Directive) or the application of the ELD to environmental damage in general (as in the EIA, SEA and Mining Waste Directives);**
- **the inclusion of activities/processes listed in the annexes of the EIA and SEA Directives in the list of Annex III activities;**
- **deleting the exclusion of liability in relation to international oil pollution incidents, where this is possible under international law;**
- **the inclusion of mandatory financial security provisions at least in relation to potentially catastrophic activities (e.g. oil rig pollution);**
- **the inclusion of protected areas under all relevant international and EU laws, including MPAs (see below) under the Marine Strategy Framework Directive and sites to be designated under international agreements such as the OSPAR Convention, the 1971**

**Ramsar Convention on Wetlands of International Importance or the Convention on Biological Diversity (CBD) 2000.**

## 2.4 Environmental assessment

Oil rigs are subject to requirements under various EU rules on environmental assessments, such as:

- the EIA Directive (Directive 85/337/EC as amended by Directive 97/11/EC): commercial petroleum extraction of more than 500 tonnes of oil a day are subject to mandatory environmental impact assessments (as they are Annex 1 projects);
- the SEA Directive (Directive 2001/42/EC) under Article 3(2)(a);
- appropriate assessments under Article 6(3) of the Habitats Directive, which applies to any plan or project that may have significant effects on sites protected under the Habitats Directive.

Implementation of these Directives varies across Member States. The EIA and SEA Directives are also closely linked to the Espoo Convention discussed above.

**In relation to oil rigs, the implementation of the EIA, SEA and Habitats Directives (as well as the Espoo Convention) needs to be monitored to ensure assessments are properly carried out and all provisions relating to environmental impact assessments are being applied consistently throughout the EU.**

## 2.5 EU environmental law requirements

There are a number of EU environmental laws which deal with environmental protection requirements in marine waters, for example by setting environmental protection standards such as requirements to achieve 'good environmental status' under the Marine Strategy Framework Directive (Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy) by 2020, or for ensuring that protected habitats and species under the Wild Birds and Habitats Directive are restored at favourable conservation status (see Article 2).

The Habitats Directive (in Article 6(1) and 6(2)) and Wild Birds Directives (Article 4(4)) in particular require EU Member States to ensure that European Marine Sites are properly managed and are not allowed to be damaged, to deteriorate or be disturbed.

In addition, the Habitats and Wild Birds Directives, as well as the Marine Strategy Framework Directive require the designation of ecologically coherent networks of marine protected sites (Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in the case of the former two Directives, and Marine Protected Areas (MPAs) in the case of the latter – see Article 13(4) on programmes of measures)).

The UK has also committed to establishing an ecologically coherent network of MPAs under several agreements including the OSPAR Convention, World Summit on Sustainable Development and Convention on Biological Diversity.

These protected areas need to be considered in relevant environmental assessments (as already detailed) and, for example, with regard to liability under the Environmental Liability Directive

#### 4.6 Conclusion on EU rules on oil rig accidents

There are a number of different EU rules which apply to the regulation of oil rigs (e.g. rules on environmental assessments and worker safety rules) and to the prevention and remedying of potential oil pollution incidents caused by oil rigs (e.g. the Environmental Liability Directive).

However, there are currently no EU-wide harmonised rules on major-accident and emergency planning in relation to oil rigs, a surprising fact given the extensive and dangerous nature of incidents when they do happen, and there are no instruments setting up funds or other rules regarding financial guarantees. Moreover, the scope of the Environmental Liability Directive, though it applies, is very limited, and only covers significant damage to certain protected habitats to species.

**In order to do everything possible to prevent an occurrence of an oilrig incident similar to the one that took place in the Gulf of Mexico earlier this year, it is necessary for rules regarding major-accident and emergency planning to be established at EU level, for there to be provision for financial guarantees and possible funds (the latter still do not exist for ship oil accidents either) and rules on liability to be strengthened. In addition, the proper implementation of environmental assessment rules needs to be monitored and enforced.**

Contact details	
Sandy Luk Senior Lawyer Marine Programme  t +44 (0)20 7749 5977 m +44 (0)7879 655779 e <a href="mailto:sluk@clientearth.org">sluk@clientearth.org</a>	Rowan Ryrie Marine Biodiversity Lawyer  t +44 (0)20 3030 5969 m +44 (0)7813 915437 e <a href="mailto:rryrie@clientearth.org">rryrie@clientearth.org</a>