

Preventing major accidents: New oil & gas offshore operations regime - VdA



The Portuguese government recently enacted Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on the safety of offshore oil and gas operations and amended Directive 2004/35/EC regarding environmental liability.

The new legal regime – Decree-Law nr. 13/2016, of 9 March – already in force, establishes the minimum requisites for the prevention of major accidents involving offshore oil and gas operations and for the limitation of the consequences of said accidents.

The main purpose of this legislation is to prevent major accidents resulting from offshore operations that may have serious impacts on the marine environment and on the economy of coastal zones, as well as to limit possible disruptions to oil and gas production, considering the importance of the EU's energy supply.

A competent authority has been created – the competences of which are exercised jointly by the Natural Resources, Safety and Maritime Services Directorate-General and by the Fuel Market National Entity – with significant supervisory and authority powers, such as prohibiting the functioning of installations and infrastructures and the imposition of proportional measures in order to avoid major accidents.

The main obligations of the holder of the concession are (i) to take all measures to ensure that the operator (entity appointed by the holder of the concession or by the Competent Authority to carry out offshore oil and gas operations) complies with all requisites, carries out his functions and complies with its obligations under the terms of the concession; and (ii) to be financially accountable for the prevention and repair of any damages caused by offshore oil and gas operations.

The holder of the concession and the operator must comply with the obligations set forth in the new legal regime, in the other applicable legislation and in the concession agreement, and shall be joint and severally liable, alongside with the contractor (entity hired by the operator to carry out specific functions in his name), for the acts and omissions of the contractor that may lead or contribute to the occurrence of major accidents.

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As regards operators, increased obligations are imposed in order to reduce the risk of a major accident to the lowest level possible, such as (i) the responsibility to take all adequate measures to prevent major accidents, and (ii) in case of a major accident, to take all adequate measures to limit the consequences for human health and the environment, adopting all necessary measures so that, in case of environmental damage, the baseline environmental conditions are put back. Furthermore, operators must comply with several rules regarding information, documents and reports mentioned in the annexes of the decree-law.

It should also be noted that the legal definition of “water damage”, contained in the environmental liability legal regime has been amended so that environmental water damage now also includes marine waters, as defined in Directive 2008/56/EC.

In conclusion, and from an environmental perspective, the marine environment located in offshore waters is now much more protected against the risk of pollution, considering the liability rules imposing joint and several liability for holders of concessions and operators, alongside contractors, in case of major accidents – this is a very strong guarantee that environmental repair and clean-up will be enforced. As regards all of those involved in offshore operations – contractors, holders of concessions and operators – a large set of obligations must be complied with and significant costs may be at stake in case a major accident occurs or is imminent considering there is no legal definition of “adequate measures” that may be imposed by the competent authorities in order to prevent or to limit negative consequences to human health and to the environment. That may include the restoration of the environment to its original state.

Manuel Gouveia Pereira is a managing associate at Vieira de Almeida & Associados. He can be contacted at mgp@vda.pt