

**Responses to questionnaire
related to pollution from offshore activity**
(ref. letter of President of CMI of 19 Jul 2013)

1. Ukraine is not a party to any instruments listed under 1 to 3 of the Questionnaire, namely:
 - a. The OSPAR Convention, 1992;
 - b. 1994 Offshore Protocol to the Barcelona convention;
 - c. the Abijan Convention with 1985 Protocol;
 - d. OPOL.
2. Ukraine as well is not a party to any form of regional or bilateral agreements which address the issue of liability and compensation arising from transboundary oil pollution damage resulting from offshore oil exploration and exploitation.

At the same time we would like to inform that Ukraine is a party to *the Convention on the Protection of the Black Sea Against Pollution, 1992* (together with other Black Sea countries, i.e. Bulgaria, Georgia, Romania, Russian Federation, and Turkey). The full text of the convention can be found here: http://www.blacksea-commission.org/_convention.asp.

This convention does not deal expressly with the pollution of the Black Sea from offshore activity and aims to establish a legal framework for cooperation between coastal states to prevent, reduce, and control pollution in the Black Sea.

In fact only article XI of this convention is devoted to the offshore activity and stipulates the following:

Article XI. Pollution from activities on the continental shelf

Each Contracting Party shall, as soon as possible, adopt laws and regulations and take measures to prevent, reduce and control pollution of the marine environment of the Black Sea caused by or connected with activities on its continental shelf, including the exploration and exploitation of the natural resources of the continental shelf.

The Contracting Parties shall inform each other through the Commission of the laws, regulations and measures adopted by them in this respect.

The Contracting Parties shall cooperate in this field, as appropriate, and endeavour to harmonize the measures referred to in paragraph 1 of this Article.

3. Ukraine has adopted several legal acts which deal with exploration and exploitation of oil and gas, including in the continental shelf area, and below we would like to note some essential acts:
 - a. *The Natural Resources Code of Ukraine* dated 27 Jul 1994, No. 132/94-BP

The Code regulates different legal relations in the field of exploration, exploitation and protection of natural resources. For instance, it stipulates the competence of different state authorities, regulates relations regarding the use and protection of natural resources, as well as establishes the rights and obligations of users of natural resources,

geological exploration, state supervision in this field, liability for violation of the laws on natural resources and other.

The Code does not cover the issues related to liability and compensation for pollution damage caused by offshore activity.

However, it is provided in article 67 of the Code that legal entities and citizens shall compensate the damage, caused by them as a result of violation of the law on natural resources, in the amount and the manner, prescribed by the law.

b. *The Law of Ukraine On Oil and Gas* dated 12 Jul 2001, No. 2665-III

The Law defines legal, economic and organizational principles of the oil and gas industry of Ukraine and regulates the relations related to exploitation, transportation, storage and use of oil, gas and their products to ensure the energy security of Ukraine and other.

Article 45 of the Law obliges all the economic entities, regardless of ownership, who is consuming, conducting exploitation, transportation, storage, processing and marketing of oil, gas and their products, to comply with the requirements of the environmental laws, to be responsible for their violations and to employ technical and organizational measures to reduce the impact on the environment.

c. *The Law of Ukraine On Pipeline Transport* dated 15 May 1996, No. 192/96-BP

The Law shall apply to the relations in the field of pipeline transport designed to transport hydrocarbons, chemicals, water and other products and substances from their location, exploitation, production, or storage to the places of their processing or consumption, transshipment and subsequent transportation.

d. *The Law of Ukraine On Production-Sharing Agreements* dated 14 Sep 1999, No. 1039-XIV

This Law aims to establish favorable conditions for investment to search, explore, and exploit natural resources within the territory of Ukraine, its continental shelf and exclusive (maritime) economic zone according to the production-sharing agreements.

Article 29 of the Law deals with the liability of the contracting parties.

According to second and third paragraphs of this article, damage, caused to the environment due to investor's activity, related to the performance of the production-sharing agreement, shall be refunded (compensated) in full by investor, regardless of payment for environmental pollution and deterioration of natural resources. The investor shall be exempt from compensation of damage caused to the environment, unless he proves that damage has been caused as a result of the natural phenomena or by wilful acts of victims. The damage caused by lawful investor's actions which fully meet the requirements of the production-sharing agreement and agreed with the state, shall be reimbursed by the parties to the agreement in proportions provided for the sharing of the product.

e. *The Law of Ukraine On Environmental Protection* dated 25 Jun 1991, No. 1264-XII

The Law regulates different legal relations in the field of environmental protection, i.e. it establishes ecological rights and obligations of citizens, competence of state and

municipal authorities as well as control and supervision in the field of environmental protection, ecological expertise, and other.

Article 69 of the Law relates to the particularities of application of civil responsibility and stipulates the following:

- Damage, caused by violation of the law on environmental protection, shall be compensated in full.
 - Persons, who have suffered such damage, shall be entitled to compensation for loss of income during the time required for health recovery, the quality of the environment, restoration of natural resources up to a condition appropriate for the intended usage.
 - Beneficiaries of sources of increased danger shall compensate for the damage caused to citizens and legal entities, unless they prove that the damage results from the natural phenomena or wilful acts of victims.
- f. Furthermore, some legal issues of exploration and exploitation of offshore oil can be found by the Civil Code of Ukraine, the Commercial Code of Ukraine and other legal acts.