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The safety of Arctic offshore oil and gas operations within the EU regulatory framework

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Why EU is an Arctic actor?

▶ National Interests

Arctic States:

- ▶ Canada (costal State)
- ▶ US (costal State)
- ▶ Norway (costal State)
- ▶ Russian Federation (costal State)
- ▶ Denmark (Greenland, costal State)
- ▶ Iceland
- ▶ Sweden
- ▶ Finland

Arctic Ocean Conference
Ilulissat, Greenland
May 2008

➤ Common Interests

- Climate Change and Arctic environment
- Sustainable development
- Use of resources

EU is becoming a maritime actor in the Arctic even if EU has not Arctic coastline

Arctic Common Concern Ilulissat,
Greenland
September 2008

Why is the EU an Arctic actor?

“European Union is inextricably linked to the Arctic region by a unique combination of history, geography, economy and scientific achievements”.

- ▶ **Two Member States** —, Finland (*Eurozone*) and Sweden — have territories in the Arctic.
Denmark: Greenland withdraw from the EU after a referendum
- ▶ **Two** other Arctic states — Iceland and Norway — are **members of the European Economic Area**.
- ▶ Canada, Russia and the United States are **strategic partners** of the EU.
- ▶ European Arctic areas are a priority in the **EU Northern Dimension policy: the Arctic Window**

Calling for the development of an EU ARCTIC POLICY

Looking at the geopolitical consequences of Arctic warming, the EU has recently changed its Arctic Climate Change Policy into a challenge for its Integrated Maritime Policy

Main steps:

- European Parliament resolution on 4
- COM *The EU on the Arctic region* (2008)
- ✓ Protecting and preserving the environment with its population
- ✓ Promoting sustainable development
- ✓ Contributing to the development of multilateral governance (in line with UNCLOS)
- European Parliament resolution on a *Sustainable EU policy for the High North* (2011)
- COM *Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps* (2012), which is accompanied by other two documents:
 - a. *The inventory of activities in the framework of developing an European Union Arctic Policy*
 - b. *Space and the Arctic*

The safety of offshore operations is an inter-sectorial topic

Last Developments

1. March 2014 the EP adopted a resolution on EU strategy for the Arctic;
 2. May 2014- Council conclusions on COM *Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps* (2012):
 - valuable contribution to Arctic cooperation through research (€20 million/year, 2007-13);
 - regional and cross-border investment (€1.14 billion, 2007-13)
 - cooperation with our partners in the fields of environment, transport, energy, and maritime safety.
- ✓ The EU should seek to strengthen its support for the following objectives:
- a. Protecting and preserving the Arctic in unison with its population
 - b. Promoting sustainable use of resources
 - b. Contributing to enhanced Arctic multilateral governance (in line with UNCLOS)

FOCUS:

EU and Arctic offshore oil and gas operations

Already in its 2008 Communication, the EU proposed, *inter alia*, actions in order to

“[c]losely follow the processes of maritime delimitation and of the establishment of the outer limits of the continental shelves to assess their impacts on EU [interests](#).” [COM (2008)763 final, 11]

What are exactly EU interests? And those of EU-based companies interests?

- 2013- *rejection* by Arctic Council [was received affirmatively but has not yet been approved] for permanent Observer Status in the Arctic Council

Last Developments

On 5 March 2014, having regard with the EU directive 2013/30 on safety of offshore oil and gas operations, the EP adopted a **resolution** on EU strategy for the Arctic and called:

'for a ban on oil drilling in the icy Arctic waters of the EU and the EEA and for promotion by the EU of comparable precautionary standards in the Arctic Council and for Arctic coastal states'.

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- There is no doubt that the EU has a vital interest in ensuring maximum safety of offshore oil and gas operations and the protection of the environment. **Nevertheless, the extent of the legal basis for such a ban is not yet clear.**
 - The EP' s approach also seems to differ with the EC's perspective, which proposed strengthening **international cooperation on environmental standards for the extraction of Arctic hydrocarbons within *all the region***, according to the current international legal framework – *including the Directive 30/2013*.

EU directive 2013/30 on safety of offshore oil and gas operations

Why and how is the directive relevant for the Arctic?

- Specific references to Arctic
- Transboundary effects
 - Cooperation with third states
- EU operators outside the EU maritime space (e.g., Arctic)

Specific references to Arctic

Para. 52 Preamble

The Arctic waters are a **neighbouring marine environment** of particular importance for the Union, and play an important role in mitigating climate change.

(...)

Member States who are members of the Arctic Council are encouraged to actively promote the highest standards with regard to environmental safety...

Article 33

Coordinated approach towards the safety of offshore oil and gas operations at international level

- Role of the Commission in promoting collaboration with third states in close collaboration with MS
 - offshore oil and gas operations in the **same marine region**
 - promote preventive measures and regional emergency response plans through the exchange of information **with adjacent third states**

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- The Commission shall promote high safety standards for offshore oil and gas operations at international level in relevant global and regional fora, including those relating to Arctic waters (para. 3)

Transboundary effects

Art 31

Transboundary emergency preparedness and response of Member States with offshore oil and gas operations under their jurisdiction

- Where there is a risk of the foreseeable transboundary effects of major accidents affecting third countries, Member States shall, **on a reciprocal basis**, make information available to the third countries (para 3)
 - Duty to cooperation under international law
 - Art. 197 LOSC
 - MOX Plant and Land Reclamation Cases

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- Member States shall coordinate between themselves measures **relating to areas outside of the Union** in order to prevent potential negative effects of offshore oil and gas operations (para. 4)
 - In the event of a major accident, or of an imminent threat thereof, which has or is capable of having transboundary effects, the Member State under whose jurisdiction the situation occurs shall, without delay, notify the Commission and those Member States or **third countries** which may be affected by the situation and shall continuously provide information relevant for an effective emergency response (para. 6)

EU operators outside the EU maritime space

Paras 39, 41 Preamble

- all Member States (...) should require reports on major accidents occurring **outside the Union** which involve **companies registered in their territory**, and should share this information at Union level
- While Member States are not able to enforce rules outside the Union, [adequate means for the confidential reporting of safety concerns] should enable the reporting of concerns of **persons involved in offshore oil and gas operations outside the Union**.

Art. 20

Offshore oil and gas operations conducted outside the Union

- MS shall require companies registered in their territory and conducting, **themselves or through subsidiaries**, offshore oil and gas operations outside the Union, as licence holders or operators to **report** to them, on request, the circumstances of any major accident in which they have been involved
- ➔ Promote and enhance the safety culture of EU economic actors
- ➔ Support CSR instruments (Ocean Corporate Social Responsibility)

Concluding Remarks

- Presence of the EU in the Arctic
 - Adjacency of the maritime areas
 - Through EU based economic operators
- Directive 2013/30
 - = First step of the EU Arctic policy which develops also through the other EU policies that are relevant for the Arctic
 - Maritime affairs
 - Energy
 - Transport
 - Environment → Legal basis of the directive

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- Thank you for your attention!
 - Questions?