

Oil Regulation

Contributing editor
Bob Palmer



2016

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Oil Regulation 2016

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Published by
Law Business Research Ltd
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London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

© Law Business Research Ltd 2016
No photocopying without a CLA licence.
First published 2003
Thirteenth edition
ISSN 1742-4100

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Hydrocarbons have been produced on the Norwegian continental shelf (the NCS) since 1971. The Norwegian Petroleum Directorate's (NPD) base estimate for total discovered and undiscovered petroleum resources on the Norwegian continental shelf is about 14.2 billion standard cubic metres of oil equivalents (Sm³ o.e.). It is expected that 7.6 billion Sm³ o.e. remain to be produced.

At the end of 2015, a total of 82 fields were producing on the NCS. The average daily production of oil from the NCS was approximately 1.57 million barrels (0.25 million Sm³), while the total production of oil and gas (condensate and NGL included) reached 230 million Sm³ (5 per cent higher than 2014). The NPD predicts that production over the next few years will be dominated by fields on stream or under development, with a gradual increase from discoveries where work on development plans is now under way. The NPD estimates that the overall production from the NCS will remain relatively stable in 2016–2017.

Norway is Europe's second-largest oil producer (after Russia), the world's third-largest natural gas exporter, and an important supplier of both oil and natural gas to other European countries. The petroleum industry is by far the largest industry in Norway. The government's total net cash flow in 2015, including the dividend from Statoil and various fees, was 219 billion kroner, down from 312 billion kroner in 2014. The surplus created by petroleum income to the state is deposited in the Government Pension Fund. As of 3 June 2016, its total value was 7.2 trillion Norwegian kroner.

The investment level on the NCS has previously been relatively high, but has dropped during the last year. In 2015, investments in oil and gas activities excluded exploration totalled 148 billion kroner. The central bank of Norway (Norges Bank) estimates that the exploration and production investments on the NCS will be reduced by 12 per cent in 2016 and another 7 per cent in 2017.

The activity level in 2015 has also decreased compared to 2014, which is mainly due to the sharp fall in the oil price. Norges Bank recently forecasted that exploration activities will be reduced by 44 per cent in 2016 followed by an increase of 6 per cent in 2017.

The NPD reports that 17 new discoveries were made in 2015 while four new fields came on stream. At the end of 2015, nine fields were under development on the NCS.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Norway has the world's largest per capita hydropower production, and a large part of the country's total energy consumption comes from hydropower. The daily oil consumption is very low compared to its oil output potential, and it is unlikely that Norway will need foreign oil supplies to meet domestic needs in the coming decades.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Norwegian petroleum industry is based on the principles of sustainable development. Taking this into account, the government and the industry itself have a strong focus on enhanced technology, and health, safety and the environment. There is also a strong focus on increased exploration – both in mature and unexplored areas – and increased oil recovery.

4 Is there an official, publicly available register for licences and licensees?

The Norwegian Petroleum Register is the official publicly available register listing all licences and licensees on the NCS. The register is electronic and enables licensees to obtain legal protection when mortgaging their participating interest in a production licence, which is an arrangement of great importance for oil companies with limited financial resources. In respect of registration of mortgages, a fee amounting to 10 times the standard court fee must be paid to the NPD. The standard court fee is 1,025 kroner. Proof that the fee has been paid should be enclosed with the request for registration. The register is available via the NPD Fact Pages (www.npd.no).

5 Describe the general legal system in your country.

Norway is a civil law jurisdiction and statutory legislation passed by the Norwegian parliament is the main source of law. There are also important fields of law that are not legislated. Notably, tort law and contract law are, to a large extent, made up of non-statutory law.

The Norwegian judiciary branch has three tiers: the district courts (66); the appeal courts (six); and the Supreme Court. Unlike many other jurisdictions, the district courts have jurisdiction over all cases. Hence, there is no division of ordinary courts and administrative courts, criminal courts and civil courts, or a separate constitutional court. Civil and criminal cases can be appealed to the appeal courts. Appeal to the Supreme Court is restricted. It is, further, recognised that the fact that courts create case law, in particular from the Supreme Court, is highly important when a specific legal question is assessed.

Norwegian contract law has a different approach to interpretation of contracts than, for instance, English law. Norwegian law prescribes, as a general rule, that a contract obligation shall be interpreted in accordance with the common intentions of the parties at the time the contract was entered into. When a party is claiming a specific understanding, all circumstances related to the contract are relevant and can be invoked in support of this understanding. If no common understanding can be established, the meaning will be established through an interpretation of the contract where the starting point is the wording.

Any other circumstances related to the contract are also relevant in the interpretation, and their weight will be determined on a case-by-case basis. Although the above characteristics remain as the basic starting point of construction of contracts under Norwegian law, it must be pointed out that a series of decisions of the Supreme Court suggests that the significance of an objective interpretation on the basis of the contract wording is increasing in Norwegian law, in particular when interpreting contracts between professional parties. Based on this trend in the Supreme Court's approach to the construction of contracts between professional parties, it can be said that Norwegian law is moving towards a more common law approach to interpretation, although Norwegian law does not contain the strict Anglo-American rules prohibiting production of evidence related to the formation of the contract.

Norway is a stable democracy with an independent judiciary system generally considered to be unbiased and fair. Domestic judgments and arbitral awards are easily enforced. Norway is a member state of the Lugano Convention, ensuring the enforcement of judgments in the EU and EEA area. Further, Norway is also a member state of the New York Convention, ensuring the enforcement of foreign arbitral awards.

The Norwegian legislation against corruption is among the strictest in the world. The Norwegian General Civil Penal Code contains provisions applicable to corruption and bribery. The rules apply to public officials as well as private persons. Persons as well as legal entities may be subject to criminal liability. Further, aiding and abetting is subject to the same penalty. Norway has also ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), the Council of Europe Criminal Law Convention on Corruption (1999), the Council of Europe Civil Law Convention on Corruption (1999) and the United Nations Convention against Corruption (2003).

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The main statute providing the legal framework relevant for petroleum activities on the NCS is the Petroleum Act, which regulates subsea activities and onshore activities that form an integrated part of the offshore petroleum production. Detailed rules and adaptations are set out in the appurtenant Petroleum Regulations of 27 June 1997 No. 653. To date, no onshore exploration and production activities are conducted in Norway.

The petroleum activities on the NCS are regulated by a licensing system administered by the Ministry of Petroleum and Energy (MPE) and the NPD, and there are two distinct licences that may be granted by the MPE: exploration licences and production licences. In addition, a specific licence to install and operate pipelines is also granted by the MPE. The exploration licence is not exclusive, and does not give a preferential right if a subsequent production licence is granted. A production licence is, on the other hand, exclusive, meaning the licensees are given a sole right to conduct surveys, exploration and production within the geographical area defined by the production licence.

The award of a production licence is, pursuant to the Hydrocarbons Licensing Directive (94/22/EC), made on impartial, objective and non-discriminatory criteria whereby the applicant's technical expertise, financial strength, geological understanding and experience on the NCS, or similar areas, will be weighted.

Exploration and production licences are awarded separately, and an exploration licence will not necessarily be awarded prior to a production licence. Exploration licences are granted for a period of three calendar years, unless otherwise specifically stipulated in the licence. Production licences are granted for an initial period of up to 10 years, and if the licence is granted for a shorter period of time, the MPE may subsequently extend the licence period within the 10-year limit. When the licensees have fulfilled the mandatory work obligations set out in the production licence the production licence may be further extended. A possible extension period is, as a general rule, up to 30 years, but may, under specific circumstances, be up to 50 years.

Offshore areas regarded as mature parts of the NCS are subject to a simplified annual licencing round referred to as awards in predefined areas (APA). Areas not regarded as mature are, on the other hand, subject to ordinary licencing rounds, which, traditionally, have been held every second year. Applicants being prequalified as upstream petroleum companies can apply individually or as a group. Companies being awarded a production licence are obliged to enter into a joint venture, which normally is established through a decision made by the MPE at the date the production licence is awarded.

The joint venture is governed by a standard joint operating agreement (JOA) and accounting agreement stipulating detailed rules pertaining to, inter alia, the role of the management committee and the operator, and the licensees' rights and obligations. The award of a production licence is conditional upon the companies' signature to the JOA and the accounting agreement.

If the licensees decide to develop the petroleum deposit, a plan for development and production (PDO) must be submitted to the MPE for approval, see the Petroleum Act section 4-2. The MPE shall also approve the production schedule stipulated by the licensees.

In addition to ordinary awards, licences on the NCS can also be obtained through transfer of assets. Such transactions require the consent

of both the MPE and the Ministry of Finance (the MoF), see the Petroleum Act section 10-12 and the Petroleum Taxation Act of 13 June 1975 No. 35 section 10.

Decisions of subordinate bodies may be appealed to the relevant ministry in charge. Further, decisions made by the ministries as a first instance may be appealed to the King in Council. Administrative decisions may also, to the extent all administrative rights of appeal have been exhausted, be appealed to ordinary courts. In such cases the court may normally only assess the procedure and application of law, not the administrative authority's application of discretion.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

No. A participating interest in a licence may, however, be revoked if the licensee is in serious or repeated breach of its obligations under the Petroleum Act, regulations issued thereto, stipulated conditions or orders issued pursuant to the Petroleum Act. We are not aware of any cases where this power has been exercised by the MPE.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The MPE, together with the MoF, the Ministry of Labour and Social Affairs, the Ministry of Climate and Environment and the Ministry of Trade, Industry and Fisheries, are the main governmental offices responsible for petroleum activities on the NCS.

The MPE has overarching responsibility for managing petroleum resources. It is also responsible for the state-owned companies Petoro AS (Petoro) and Gassco AS. Petoro manages the state's direct financial interest (SDFI) in petroleum activities, and is organised as a private limited company. Petoro is not empowered with any regulatory authority, and conducts activities on the same terms and conditions as the other licensees. The NPD is administratively subordinate to the MPE and plays a key role in the management of petroleum activities.

The MoF has overall responsibility for ensuring that the state collects taxes and fees (corporate tax, special tax, CO₂ tax and NO_x tax) from petroleum activities. The Petroleum Taxation Office, which is part of the Norwegian Tax Administration, reports to the MoF. Its primary task is to ensure the correct levying and payment of taxes and fees adopted by the political authorities.

Additional important authorities are the Petroleum Safety Authority (the PSA), which sits under the Ministry of Labour and Social Affairs and has regulatory responsibility for technical and operational safety, including emergency preparedness and the working environment in petroleum activities. The Ministry of Climate and Environment and the Environment Agency are responsible for all environmental issues related to petroleum activities, including granting requested permissions to pollute. Finally, the Norwegian Coastal Administration, which sits under the Ministry of Transport and Communication, is responsible for the state's preparedness for oil spills.

9 What government body maintains oil production, export and import statistics?

The NPD maintains and publishes annual statistics for oil production, export and import. In addition, Statistics Norway is responsible for analysing the statistics.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

According to the (offshore) Petroleum Act and the analogous Onshore Petroleum Act of 4 May 1973 No. 21, the Norwegian state has the proprietary right to all offshore and onshore petroleum deposits and the exclusive right to resource management. However, the MPE is empowered to grant licences to explore, produce and extract petroleum. Title to the petroleum passes to the licensees once the petroleum has passed the well head. There is no legal distinction between surface rights and subsurface mineral rights.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Norwegian oil exploration and production is, to date, solely conducted offshore. Prior to opening a new area for petroleum activities, the MPE is responsible for carrying out an impact assessment that, inter alia, shall include a description of the area planned to be opened, a review of the environmental effects of the petroleum activity versus national environmental goals and the assumed impact on employment and commercial activities. At present, certain areas within the Norwegian jurisdiction are off-limits to exploration and production. The situation may, however, change because of future impact assessments and a subsequent decision by the government to open up new areas for petroleum activities.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The governmental bodies responsible for regulating oil activities are described in question 8.

Two distinct licences are granted by the MPE: the exploration licence and the production licence. In addition, a specific licence to install and operate pipelines is also granted by the MPE. The exploration licence is not exclusive, and does not give a preferential right if a production licence is granted at a later stage. A production licence is, on the other hand, exclusive, which implies that it gives the licensee or licensees a sole right to conduct surveys, explore and produce within the geographical area set by the production licence. It should be noted that exploration and production licences are awarded separately, and that an exploration licence will not necessarily be awarded prior to a production licence. In respect of the exploration licence, a fee amounting to 65,000 kroner per calendar year shall be paid in advance of the application. For the handling of an application for a production licence, a fee of 109,000 kroner will apply. For every seismic survey on the NCS, a fee amounting to 33,000 kroner must be paid.

Offshore areas regarded as mature parts of the NCS are subject to a simplified annual licensing round referred to as APAs. Areas not regarded as mature are subject to ordinary licensing rounds, which traditionally have been held every second year. Applicants that are prequalified as upstream petroleum companies can apply individually or as a group. Based on the applications submitted, production licences are awarded to a group of companies forming a joint venture on the basis of relevant, objective, non-discriminatory announced criteria. One of the licensees is further appointed as an operator. If the licensees decide to develop the petroleum deposit a PDO must be submitted to the MPE for approval. The MPE shall also approve the production schedule stipulated by the licensees. Additionally, licences can be obtained through a transfer of assets. Such transactions require the consent of both the MPE and the MoF. The licensees obtain ownership in the petroleum produced equal to their relative share in the production licence.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The Norwegian state participates in petroleum activities on the NCS through the SDFI. The participating interest held by the SDFI in production licences, pipelines and specific land-based plants is managed by Petoro. Petoro is a licensee, and participates on equal terms and conditions as all other licensees. Petoro only participates in selected licences, but there are no limitations on the maximum participating interest to be reserved to the SDFI as from the date of award; however, Petoro's share will normally be less than 50 per cent. Petoro does not hold operatorships.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are there any tax stabilisation measures in place?

Licensees granted a production licence pay an annual fixed fee known as an 'area fee' to the state, effective from the expiration of the initial period of the production licence, which may be up to 10 years. The fees are as follows:

- for the first year the fee is 34,000 kroner per square kilometre;
- for the second year the fee is 68,000 kroner per square kilometre; and
- 137,000 kroner per square kilometre is the fee for the following years.

Licensees may, however, be exempted from the area fee if a PDO is submitted to the MPE for the period the field is in production.

The Norwegian petroleum tax regime is stable, but no specific tax stabilisation measures have been implemented to prevent onerous taxes being levied in the future.

To date, no onshore exploration and production activities have been conducted in Norway.

15 What is the customary duration of oil leases, concessions or licences?

Exploration licences are granted for a period of three calendar years, unless otherwise specifically stipulated in the licence.

Production licences are granted for an initial period of up to 10 years. If the licence is granted for a shorter period of time, the MPE may subsequently extend the licence period within the 10-year limit. When the licensees have fulfilled the mandatory work obligations (including other applicable obligations) set out in the production licence, they may require the production licence to be extended. The possible extension period is stipulated in the applicable production licence, and shall, as a general rule, be up to 30 years, but may under specific circumstances be up to 50 years.

16 For offshore production, how far seaward does the regulatory regime extend?

For offshore production, the regulatory regime extends to the outer limits of the continental shelf (as defined in the United Nations Convention on the Law of the Sea (UNCLOS)), and may also be extended beyond the outer limits of the continental shelf if established through international law or through bilateral agreements with foreign states. The delimitation of the continental shelf between Norway and the United Kingdom, Russia, Sweden, Denmark, Faroe Islands and Iceland respectively has been mutually agreed in separate agreements, while the delimitation between Norway and Greenland has been settled by the International Court of Justice.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

To date, there has been no onshore exploration or production in Norway. The Petroleum Act, which governs offshore petroleum exploration and production, includes all types of hydrocarbons.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Different requirements exist depending on whether an exploration or production licence has been granted. The MPE may grant an exploration licence to a body corporate irrespective of whether the company is domiciled, registered, or both, in Norway. Exploration licences may also be granted to physical persons domiciled in a state within the European Economic Area (EEA). Production licences may, as a starting point, only be granted to a body corporate established in conformity with Norwegian legislation and registered in the Norwegian Register of Business Enterprises. However, pursuant to the EEA Agreement, companies applying for a production licence may also be established in an EEA state. In addition, production licences may be granted to a physical person domiciled in an EEA state. The award of a production licence is based upon the applicant's technical expertise, financial strength, geological understanding and experience on the NCS or similar areas. In the case of a group application (as opposed to an individual application), the composition of the group and the group's collective competence will be evaluated.

19 What is the legal regime for joint ventures?

Companies acquiring a production licence are obliged to enter into an unincorporated joint venture, which is normally established through a decision made by the MPE at the date of award of a production licence. The joint venture is governed by a joint operating agreement (JOA) and an accounting agreement that stipulates detailed rules pertaining to, inter alia, the role of the management committee and the operator, and the licensees' rights and obligations. The JOA and accounting agreement are standard

agreements that are negotiated between the MPE and the Norwegian Oil and Gas Association as the representative of the industry. The award of a production licence is conditional upon the companies' signature to the JOA and accounting agreement.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

If a petroleum deposit on the NCS extends over more than one block with different licensees, or onto the continental shelf of another state, the licensees shall, pursuant to the Petroleum Act, seek to find a mutual agreement on the most efficient coordination of the relevant activities and apportionment of the petroleum deposits. Similar principles shall apply with regard to trans-boundary petroleum deposits, but any development of such fields is subject to bilateral agreements between Norway and the respective countries. For information purposes, Norway and the United Kingdom have entered into a framework agreement establishing the main principles applicable to development of cross-border reservoirs.

The Norwegian Oil and Gas Association has developed a set of standard terms and conditions that the parties involved may decide to apply in specific unitisation processes on the NCS.

21 Is there any limit on a party's liability under a licence, contract or concession?

Licensees are jointly and severally liable to the state for financial obligations arising out of petroleum activities pursuant to the licence. There is no maximum limit on the party's liability.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

According to the Petroleum Act, the MPE may decide that a licensee shall provide security for fulfilment of the obligations that the licensee has undertaken in relation to the petroleum activities. Traditionally, the MPE has only requested the ultimate parent company of a subsidiary being represented on the NCS to provide such guarantee, meaning that the MPE has not requested stand-alone companies to provide any specific guarantee. The parental guarantee shall be unlimited. There is no general requirement to provide security deposits.

Owing to the relatively high number of newcomers on the NCS with modest financial capacity, and frequently not forming part of a company group, there have been ongoing discussions as to whether the MPE should exercise its power to demand security in the form of a bank guarantee or similar from companies falling within this category. The exposure is highest in the field development, production and abandonment phases, but so far the MPE has not found it necessary to introduce such new guarantee requirements.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

There are no local content requirements in Norway.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

Norway is a party to the EEA Agreement which brings together the EU member states and the three EEA/EFTA states - Iceland, Liechtenstein and Norway, in order to enable the EEA/EFTA states to participate in the EU's internal market.

The legislation on the internal market provides restrictions on the Member States' right to pass legislation implementing local content requirements. The Norwegian Petroleum Act has, however, one provision that has elements of a local content requirement.

The Petroleum Act section 10-2 provides requirements as to the licensee's local organisation and base in Norway. The provision implies that the licensee must have an organisation in Norway, and secondly sets out requirements as to the robustness of such organisation. The requirements are relative to the nature and extent of the petroleum activities, and the obligations placed on the licensee will therefore have to be assessed on a case-by-case basis.

The MPE may grant an exemption from the obligation to maintain an organisation in Norway. Such exemptions are intended used on licensees with assets of limited economical value. With respect to licensees with a larger portfolio of assets on the Norwegian continental shelf it is considered necessary to maintain the obligation to have an organisation in Norway. The decision of whether or not to grant an exemption will depend on a broad assessment where several aspects are relevant.

The provision also empowers the MPE with an explicit right to instruct the licensee to use specific bases (supply, helicopter bases). Resource management and health, safety and environment are explicitly listed as relevant circumstances when making such decision, but also regional and energy policy objectives are considered to be relevant.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Pursuant to the Petroleum Act, a transfer of assets in production licences is subject to the prior consent of the MPE. The requirement also applies to the purchase of at least one-third of the shares in a company holding a production licence. A correspondent consent related to the tax consequences must, according to the Petroleum Taxation Act, also be obtained from the MoF.

The state has, through the SDFI, a pre-emption right in all production licences being transferred on the NCS. The pre-emption right is exercised through Petoro, and is only exercised in special cases. It is stated in Petoro's annual report of 2014 that the pre-emption right has never been exercised, and we have not obtained information indicating a shift in this practice. It should be noted that the pre-emption right does not apply to transactions involving a transfer of shares.

It is difficult to estimate the time frame for obtaining approval from the MPE, as it may vary from one week to many months. Factors that may influence the process are, inter alia, whether the assignee is a company already established on the NCS, the complexity of the transaction and the financial situation of the assignee. The application for approval is free of charge, but if a mortgage in the participating interests being transferred is registered in the Norwegian Petroleum Register, a fee amounting to 10 times the standard court fee must be paid (see further details in question 4).

26 Is government consent required for a change of operator?

According to the Petroleum Act, the MPE's consent is required for any change of operator.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

There are no specific fees or taxes in relation to a transfer or change of control situation.

Decommissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The main legal framework relating to abandonment and decommissioning of oil and gas facilities and pipelines are the Petroleum Act and the Petroleum Regulations.

The licensees are obliged to submit a decommissioning plan to the MPE prior to the expiry or surrender of a production licence or a specific licence referring to installation and operation of facilities, or alternatively before the use of a facility is permanently terminated. The plan shall contain proposals for continued production or shutdown of production and the disposal of facilities. The MPE renders a final decision relating to the content of, and the time limit for, implementation of the decommissioning plan. The decision shall, inter alia, be based on technical, safety, environmental and economic aspects, as well as with consideration to other users of the sea.

Licensees forming a joint venture are jointly and severally liable for decommissioning costs. If a licence or a participating interest in a licence

has been transferred, the assignor shall be liable for financial obligations towards the remaining licensees for the costs of carrying out the disposal.

In addition to national regulations, the decommissioning plan must take into consideration various requirements undertaken in international regulations. This particularly relates to the OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations (OSPAR), the IMO guidelines and UNCLOS.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

As stated in question 22, the MPE may request a parental guarantee, but there is no requirement to obtain a security deposit in respect of future decommissioning liabilities. However, if a licence or a participating interest thereof has been transferred, the assignor shall (inter partes) be liable for financial obligations towards the assignee and the remaining licensees for the costs of carrying out the decision relating to disposal under the Petroleum Act and the Petroleum Regulations. Normally, the assignor will request the assignee to provide a parental or bank guarantee in order to obtain adequate certainty with regard to the assignee's (future) financial capability.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Offshore pipeline transportation of crude oil and other petroleum products is governed by the Petroleum Act and is administered by the MPE. Onshore pipeline transportation is governed by Regulations of 8 June 2009 No. 602 and is administered by the Directorate for Civil Protection and Emergency Planning (the DSB). Norwegian maritime rules – enforced by the Maritime Directorate – apply to transportation of crude oil and crude oil products by marine vessels within Norwegian territorial waters, under the Regulations of 8 December 2009 No. 1481 and the Regulations of 15 December 2009 No. 1543, which are partly based on the international convention SOLAS. The rules of the vessel's flag state apply to transportation outside Norwegian territorial waters. Onshore transportation (ie, transportation by tanker trucks and railroads) is governed by the Regulations on Transport of Hazardous Material of 1 April 2009 No. 384 and is enforced by the Directorate for Civil Protection and Emergency Planning. Such transportation is based on the ADR and RDI international agreements.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

According to the Petroleum Act, a licensee who decides to develop a petroleum deposit shall submit a PDO to the MPE. The MPE's approval of the PDO will normally also contain a permission for the construction, placing, operation and use of offshore and onshore oil pipelines and offshore loading installations. The MPE can, however, also grant a licence to install and operate pipelines and facilities separately. No specific permits are required to conduct the transport of crude oil and refined oil products from the fields to the market. As discussed in question 30, onshore transportation by tanker trucks and railroads must comply with the applicable regulations enforced by the DSB, but no specific permits are required.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The main health, safety and environment (HSE) requirements applicable to subsea and onshore activities that form an integrated part of the offshore petroleum production are set out in the following five regulations:

- the Framework Regulations of 12 February 2010 No. 158, which set out certain criteria for HSE in petroleum activities (applicable to activities conducted offshore and certain specifically mentioned onshore plants and refineries);

- the Management Regulations of 29 April 2010 No. 611, which set out requirements on the management of HSE issues, including development of objectives and strategies to improve HSE (applicable to activities conducted offshore and certain specifically mentioned onshore plants and refineries);
- the Facilities Regulations 29 April 2010 No. 634, which set out certain criteria when designing offshore facilities used in petroleum activities (applicable to activities conducted offshore);
- the Activities Regulations of 29 April 2010 No. 613, which govern various petroleum activities and set out requirements pertaining to, inter alia, the working environment, prerequisites for start-up and use of facilities, maintenance of the facility, monitoring of the external environment and handling of waste, and emergency preparedness (applicable to activities conducted offshore); and
- the Technical and Operational Regulations of 29 April 2010 No. 612, which set out requirements relating to the development and design of onshore facilities, working environment issues, handling of risks and emergency preparedness (applicable to activities conducted at specifically mentioned onshore plants and refineries).

As a main rule, all mobile offshore facilities are subject to obtaining an acknowledgment of compliance (AOC) prior to the start-up of activities. The AOC is provided by the PSA and expresses the authorities' confidence that petroleum activities can be carried out using the facility within the framework of the regulations. An applicant can either be the owner of the facility or a party that will be in charge of the day-to-day activities of the facility.

The PSA is the administrative body responsible for technical and operational safety, and the working environment related to offshore and onshore activities covered by the Petroleum Act. Said responsibility covers all phases of the relevant activities, including planning and design, construction and operation, and decommissioning and removal. All licensees conducting activities on the NCS shall have a management system that the PSA finds to be in compliance with the HSE regulations, and breach of the applicable regulations may be subject to administrative and criminal sanctions.

Pursuant to the Petroleum Regulations, the licensee shall ensure the safekeeping of materials and documents for as long as it provides necessary information about the petroleum activities.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Various acts and regulations are applicable to oil and oil product composition. The Environment Agency manages and enforces, among others, the Pollution Control Act of 3 March 1981 No. 6, the Product Control Act of 11 June 1976 No. 79 and the Greenhouse Emission Trading Act of 17 December 2004 No. 99, and is responsible for granting permits, establishing requirements and set emission limits. The overarching goal of these acts is to protect the environment against pollution, including pollution from the petroleum industry. Other important regulations and international agreements are the Registration, Evaluation, Authorisation and Restriction of Chemical Substances (EC/1907/2006), which, inter alia, aims to improve the protection of human health and the environment through better and earlier identification of intrinsic properties of chemical substances (implemented in Norwegian law through Regulations of 30 May 2008 No. 516); and the Strategic Approach to International Chemicals Management, which is a policy framework to foster the sound management of chemicals. This agreement was adopted at the International Conference on Chemicals Management on 6 February 2006.

The Product Control Act specifies that any distributor of consumer products shall be able to provide information needed to specify and trace the origin of such products, which, inter alia, also applies to oil and oil product composition. Such information shall be kept available for control for five years from the end of the year in which the information was received.

Breach of the regulations enforced by the Environment Agency may lead to administrative and criminal sanctions.

Labour
34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Norwegian Working Environment Act of 17 June 2005 No. 62 (WEA) applies, with a few exceptions, to undertakings that engage employees, including labour within the petroleum industry. Provisions regarding, inter alia, working hours, health and safety issues, entitlement to leave of absence and regulations on termination of employment forms part of the WEA.

Other relevant statutes are the Holiday Act of 29 April 1988 No. 21, the different anti-discrimination acts and the Gender Equality Act of 21 June 2013 No. 59. The Petroleum Act provides additional provisions on safety measures with regard to petroleum activities.

A number of collective agreements (entered into between labour unions and employers, or an employer association) apply to the Norwegian petroleum industry and regulate, inter alia, employees' working hours, working conditions, stipulation of wages and retirement pensions. Certain provisions from the Engineering Industry Agreement (collective bargaining agreement) have been made applicable in the maritime construction industry. The provisions relate to minimum wage, compensation for overtime, working hours, travel, board and lodging expenses and work clothes.

Nordic citizens may work in Norway without needing to obtain a residence permit. EU and EEA citizens have an unrestricted right to work in Norway. There is, however, a requirement to be registered if the stay in Norway exceeds three months, along with certain conditions (eg, the ability to be self-supported). Other foreign employees require a residence permit for work in Norway.

There are no minimum requirements to use local labour in the petroleum industry, and any such requirements would be in violation of the EEA Agreement. However, the Norwegian government and Norwegian-based oil companies promote both education and employment within the petroleum industry, mainly to secure a stable and viable workforce. There is no governmental regulated training fund for the local workforce.

Pursuant to the WEA, all discrimination on the basis of political views, membership of trade unions, part-time employment or age is prohibited. Moreover, discrimination regarding ethnicity, national origin, ancestry, colour, language, religion, belief or gender is prohibited subject to the Ethnicity Anti-Discrimination Act, the Anti-Discrimination and Accessibility Act, the Sexual Orientation Anti-Discrimination Act and the Gender Equality Act.

Employers shall ensure that the WEA provisions are complied with. A proprietor of an undertaking or an employer who wilfully or negligently breaches the provisions pursuant the WEA are liable to a fine, imprisonment for up to three years, or both.

The Norwegian Labour Inspection Authority supervises compliance with the WEA.

Taxation
35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Petroleum-related activities on the NCS are governed by the Petroleum Taxation Act. The Act levies a special tax of 51 per cent in addition to the ordinary Norwegian corporate tax rate of 27 per cent. Thus, the marginal tax rate for activities carried out on the NCS is 78 per cent. All exploration costs may be deducted. For production facilities and pipelines, a linear depreciation rate of 16.66 per cent per year is granted. There is a special uplift allowance when calculating the special tax. This uplift equals 5.5 per cent per year over a four-year period on capital investments, in total 22 per cent. Due to a special provision in the Petroleum Taxation Act, companies that are in a loss position can annually claim a cash reimbursement from the state equivalent to the fiscal value (78 per cent) of exploration costs that the company has carried during the income tax year. The Norwegian system also allows pledging and selling of such reimbursement claims against the state. For the purpose of determining the taxable income from sales of crude oil, the Petroleum Taxation Act states that a norm price (set by the Petroleum Price Council) may be used, which will ensure a price that would have been agreed upon between independent parties.

The MoF's consent is required for any transfer of a licence or a participating interest in a licence. The MoF's approval may contain conditions

to secure a neutral tax effect for the transfer of the licence. In short, this means that the seller is not taxed for any capital gains but the buyer will not get any tax deduction for the purchase price. The MoF may, however, make adjustments to the tax positions of companies involved in the transfer to ensure tax-neutrality.

The Petroleum Taxation Act also has standardised regulations for licence transfers. According to the standard, defined transactions will be accepted by the MoF without a special ruling. One condition is that a description of the licence transfer and its tax consequences is sent to the MoF, with a copy to the Oil Taxation Office.

Other taxes linked to petroleum activities are the CO₂ tax and the area fee. The CO₂ tax rate for 2015 is 1.02 kroner per litre of petroleum (the area fee rates are described in question 14).

Commodity price controls
36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

To calculate the taxable income for oil companies in Norway, the Petroleum Price Council (the Council) sets tax reference prices, also known as norm prices. Determination of norm prices is based on the principle that such price should reflect the price that could have been achieved between independent parties. The procedure for determining norm prices is governed by the Norm Price Regulations. There is no price-setting regime for crude oil products.

The Council arranges meetings with the companies before the final norm price is set, and the companies are thus given an opportunity to express their view prior to the norm price being determined. Companies may also appeal the Council's decision to the MPE. If the Council does not find it reasonable to set norm prices, the actual price achieved will be used as the applicable tax reference price.

Competition, trade and merger control
37 What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Norwegian Competition Law of 5 April 2004 No. 12 is enforced by the Norwegian Competition Authority (NCA), whose decisions may be appealed to the Ministry of Trade, Industry and Fisheries. If an appeal to the Ministry is unsuccessful, the complainant can bring the case before an ordinary court. Administrative fines are appealed directly to the ordinary court system. There is currently an ongoing reform regarding the system of appeal of the NCA's decisions. Most likely a new independent administrative competition appeal body will be established being the sole venue for first instance review of the NCA's decisions. The decisions of the new appeal entity will be subject to judicial review directly before the Court of Appeal.

In addition to enforcing the national competition law, the NCA is also empowered to enforce the competition law provisions of the EEA Agreement. However, its powers are subordinated to the powers of EFTA Surveillance Authority (ESA) and the European Commission (EC). Should ESA or the EC initiate the investigation of an infringement of the competition law provisions of the EEA Agreement, the NCA is prohibited from making decisions conflicting with those of the EC or the ESA.

Infringements of the Competition Act can be sanctioned with administrative fines by the NCA. Serious infringements of the Competition Act are considered criminal offences, and Norwegian courts can impose penal sanctions such as imprisonment or fines on individuals.

38 What is the process for procuring a government determination that a proposed action does not violate any anticompetitive standards? How long does the process generally take?

Undertakings engaged in economic activity in Norway are responsible for carrying out their own assessment of the compliance of their practices and agreements with competition law. However, concentrations between independent undertakings above certain turnover thresholds must be notified and approved by the NCA under the domestic merger control regime or the EC, pursuant to their competence as defined in article 57 of the EEA Agreement.

Update and trends

New awards of production licences (TFO 2015 and 23rd licensing round 2016)

On 19 January 2016, the MPE offered 56 production licenses to 36 different companies in the yearly awards in predefined areas (APA 2015). The licenses are located in the North Sea (27), the Norwegian Sea (24) and the Barents Sea (five). The APA licensing rounds cover the most explored areas on the NCS. During recent years we have seen that new discoveries unviable as standalone developments have turned out to be profitable if they could be exploited by using existing processing equipment and transportation systems.

The MPE announced the 23rd licensing round in the end of January 2015. Following the delimitation agreement entered into between Norway and Russia effective as of 7 July 2011, the Barents Sea south-east area was opened for exploration and production of oil and gas, and the very first licences in said area were up for award in the 23rd licensing round. The MPE announced on 4 December 2015 that the government aimed to award the new production licences during the first half of 2016. The MPE complied with this schedule, and on 18 May 2016, 13 companies were offered participating interests in various production licences. The industry has been very enthusiastic about this licensing round, and the prospective area in the Barents Sea south-east is expected to include vast amounts of oil and gas. Since the new area in the south-east of the Barents Sea provides a more challenging environment than mature areas, time restrictions for exploration and drilling and other necessary precautions will be implemented.

The NPD released its Resource Report 14 February 2016

The NPD released its Resource Report for activities on the Norwegian sector on 14 April 2016, and it is stated that 57 discoveries have been made since the resource report issued in 2013. The NPD emphasises that the resource base on the NCS is very good, estimating that nearly three billion standard cubic metres (Sm₃) of oil and gas have yet to be discovered. Exploration activities are, however, expected to fall significantly during 2016, and the low oil price and other factors contribute to this negative development. The NPD also highlights many positive developments during the period of the last ten years, including many newcomers leading to more discoveries and the previous cost reductions in projects under development on the NCS. Among other things, the following summary is found in the report:

The NPD estimates that nearly three billion standard cubic metres (Sm₃) of oil and gas on the shelf have yet to be discovered. The fact that discoveries are still being made after 50 years of exploration activity shows that the Norwegian shelf is an attractive petroleum province. Activity has been high over the last ten years, with an average of about 40 exploration wells per year. A total of 56 exploration wells were spudded in 2015, while we expect that about 30 wells will be drilled in 2016.

At the end of 2015, there were 53 companies on the shelf, which is a doubling since 2000. Most of these companies are active in the exploration phase. New players mean greater diversity, and greater diversity means that we test a greater number of ideas and more innovative concepts. Overall, this contributes toward a higher discovery rate and increased values.

The oil and gas industry is currently experiencing a period characterised by low oil prices and considerable challenges. This means it is important to have a long-term perspective."

The low activity level creates massive workforce reductions and restructuring measures affecting the Norwegian petroleum industry

Oil prices have remained at low levels since the significant drop in autumn 2014. Affected businesses have experienced severe reductions in revenue over a short period of time. This has led to the whole oil and gas industry implementing massive cost cutting measures.

Before the sharp fall in oil prices it was normal to exercise options to prolong rig contracts and contracts with offshore vessel, but this is no longer the case. This has created overcapacity in the market (ie, with regard to drilling rigs, supply vessels, seismic vessels, etc).

The significant reduction in E&P investments and activities on the NCS have led to many offshore projects being delayed and new projects being put on hold. By April 2016 more than 36,000 jobs in the Norwegian offshore sector have disappeared, out of about 250,000 nationwide.

It is expected that many businesses within the affected industries will run out of cash during 2016. It is estimated that current bonds issued in the Norwegian oil- and oil service sector have a total face value of 110 billion kroner. The market has already registered defaults in such bonds with a corresponding face value of 23 billion kroner. This means that approximately 21 per cent of the total value of such bonds has not been repaid (interest and instalments) in accordance with the agreed terms. The depressed market has consequently also limited exit strategies for existing lenders and bond issuers unwilling or unable to sell their existing debt holdings at significantly reduced prices.

Norway has already seen the first economic 'monster waves' hitting various oil service companies, but as indicated above the number of restructurings and bankruptcies affecting the Norwegian oil service sector are likely to increase over the next two or three years. It is therefore likely that it will be much more difficult to raise new capital and credit in a market that for the moment is very vulnerable.

New major field developments and sustainable cost reduction measures

Despite the rather gloomy short term market outlook, the NCS is still expected to be one of the most prosperous petroleum provinces in the years to come.

The Plan for Development and Operation (PDO) for the giant Johan Sverdrup field was approved by the MPE in August 2015. The oil and gas production capacity for the full field is expected to be in the range of 550,000–650,000 barrels of oil equivalent per day. This makes Johan Sverdrup one of the five largest fields ever discovered on the NCS. Other fields are under development, and the awards in the long awaited 23rd licensing round in the Barents Sea are soon to be announced.

The Goliat field located in the Barents Sea was officially opened by the Minister of Petroleum and Energy on the 18 April 2016, and this important oil field has an expected lifetime of 15 years producing approximately 100,000 barrels per day.

It is also positive that the significant cost reduction measures implemented on the NCS are likely to be upheld if the oil price returns to a higher level, which will benefit industry and Norwegian society in the coming years.

Revised standard contracts for fabrication, modification work and EPC(I) contracts

The Norwegian standard contracts have a history back to 1983, with revisions in 1987 (NF 87), 1992 (NF 1992), Norwegian Total Contract in 2000 (NTK 2000), 2005 (NF 05, NTK 05 and NTK MOD 05) and in 2007 (NF 07, NTK 07 and NTK MOD 07).

In the second half of 2015, the oil companies active on the NCS and the Norwegian contractor industry agreed on a revised set of standard contracts for fabrication work (Norwegian Fabrication Contract 2015 (NF 15)) and EPC contracts (Norwegian Total Contract 2015 (NTK 15)), and there was also an agreement on a new modification contract (Norwegian Total Contract Modifications 2015 (NTK MOD 15)). The contracts are no longer mandatory for the signatories, which was the case for the previous versions of Norwegian standard contracts. The signatories on the oil company side are no longer limited to the Norwegian oil companies (previously Statoil, Hydro Oil & Gas and Saga Petroleum which are now merged into Statoil), but also consist of other international operators.

In general the new versions are now more adapted to a global contractor industry and thus are slightly more oil company-friendly. Some important changes compared to the previous versions are:

- the protocol that contained important pricing principles no longer exists;
- the contractor takes more responsibility for frame agreement subcontractors;
- restrictions related to use of lump sum prices and target prices have been removed;
- limitations of liability must be negotiated individually;
- time limits for presenting variation order requests are agreed to be 21 days; and;
- the arrangement with an arbiter to prevent disputes has been replaced by the use of project integrated mediation (PRIME).

A notification is only required if:

- the combined aggregate turnover of the undertakings concerned in Norway is more than 1 billion kroner; and
- at least two undertakings concerned each have a turnover in Norway exceeding 100 million kroner.

Under the domestic merger control regime, the parties to a concentration above those thresholds are required to submit a merger notification. The NCA may within 25 working days either clear the concentration or initiate a phase II investigation if the NCA finds that the concentration is a cause of concern for competition in the relevant market or markets. In phase II the NCA shall establish whether the concentration should be prohibited, cleared or granted conditional approval subject to remedies. A phase II investigation may last up to 100 working days. However, if the parties have proposed remedial actions, the process can be prolonged with additional 15 working days.

An acquisition of assets in a producing field on the NCS may under certain circumstances be considered as a concentration, and in which case, insofar as stipulated turnover thresholds are met, must be notified to the NCA under the domestic merger regime.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

As a party to the EEA Agreement, Norway is largely affected by legislation enacted by the EU and the EEA. Hence, statutes and regulations on a national level cannot be inconsistent with the rules of, inter alia, non-discrimination and the 'four freedoms' (ie, free movement of goods, capital, services and persons). Two of the most important directives that further elaborate on the basic rules of the EU and EEA, and that have been implemented by Norway, are Directive 94/22/EC (the Hydrocarbons Licensing Directive) and Directive 98/30/EF (the Gas Market Directive), the latter being repealed twice (by 2003/55/EF and 2009/73/EF).

OSPAR and UNCLOS are important international treaties that are both applicable under Norwegian law.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Objective requirements with regard to the place of registration are described in question 18. Further, pursuant to the Petroleum Act, a licensee is as a main rule obliged to have an organisation based in Norway that is capable of handling its petroleum activities on the NCS.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Cross-border sales or deliveries of these products are not governed by any specific legal requirements.



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Oil Regulation
ISSN 1742-4100



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