***VERSÃO ORIGINAL***

# A Comparison of Regulations on Work Related Health in the Petroleum Sector in Brazil and Norway(*)

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## *PURPOSE*

The purpose of this article is to compare the regulations on work related health issues in the offshore petroleum sector in Brazil and Norway. The regulation of reporting and handling of work related illness has been used as a case for the study. We aim to show that even though the legislation both in Brazil and Norway relies upon similar legislative traditions, emphasising statute law, with written norms given by national authorities, there are considerable differences in how the regulation is developed and how the this kind of norms are formulated in the two countries.

The differences will be interpreted in view of the governance cultures in the petroleum sector in the two countries. What can be learnt from this comparison may be of general interest when working with development of legislation and regulations.

## *MATERIAL AND METHODS*

The method chosen for this study may be described as a controlled comparison(1). Even though this is regarded to be a quite weak method, we find it useful when comparing limited characteristics related to large units as e.g. national programmes and regulations.

We have approached the legislation and regulation related to reporting and handling of work related illness in the offshore petroleum sector in Brazil

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(1) VAN EVERA, Stephen. *Guide to methods for students of political science*. New York: Cornell University Press, 1997. p. 56.

and in Norway. The comparison has been done by exploring the relevant set of current legislation (2008) and by testing our interpretations through interviews with relevant personnel in the two countries. The analysis has been performed on basis of the theories and models presented in chapters 3 and 4 below.

The analysis of national textual material and the interviews were performed by one of the authors (CRH) who is competent in both national languages.

Important arguments for choosing Brazil and Norway for this comparison are these:

- Both nations have legislations heavily characterised by statute law (in opposition to Common Law). Thus comparable, written sources for the relevant norms are easily accessible through published texts.
- Both nations have undergone extensive developments in the offshore petroleum sector during past few decades, and this sector emerges to be an important part of the national economy in both countries.
- The regulations are rather new, and under continuous change in both countries.
- But still the two nations have chosen a different approach to developing and enforcing the Occupational Health and Safety regulations.

This gives us a case for analysing norms related to similar challenges from comparable legal structures, but in different cultural and societal settings, not least when it comes to governance of the petroleum industry. By comparing these two countries we think that we will be able to give a valid interpretation of the importance of culture and societal frames on development and enforcement of occupational health and safety regulations.-

For the specific analysis we have chosen regulations on work related health issues. It might be noted that the concept of work related illness as described in the Norwegian legislation seems to be somewhat wider than what usually is covered by the English concept of occupational health. The Brazilian legislation seems to be closer to the English concept of occupational health. This difference might be explained by differences in the public system for delivery of health care and social welfare in the two countries. We have not analysed further what is meant by the concept work related health issues in the two countries, as we think that this will not alter the more general interpretations given by us.

## *I. PRINCIPLES ON LEGAL REGULATION*

Brazil, as well as Norway, has a legislative tradition closely connected with what may be characterised as the Civil Law tradition, as opposed to the

Common Law tradition[2]. Therefore both nations heavily rely upon written legislation with expressions of explicit norms given by a competent public authority. The space for law derived from judicial decisions is quite narrow in this tradition. This approach secures predictability for the different actors, but to some extent it may be claimed to give a legislation that has problems with catching up with industrial developments in a flexible way.

The Common Law tradition, to a greater extent relying upon judicial decision in real cases, may be said to open up for the law to adjust to sound development in industry and science. This tradition must rely upon professional judgements of what may be claimed as sound or prudent practice in different situations, more than searching for specific solutions directly given by the statutes or other legislative texts. In this tradition legal standards must be sought not only in the legislative texts, but also in the practice of responsible practitioners.

Brazil and Norway both have legislative texts with different formal status. In both countries we may identify regulations as legislative texts that are secondary to the acts. In Brazil the regulations are regarded supplementary to the primary law. In Norway the regulations are regarded as legislative texts as strong as the text of the acts, as long as they do not oppose norms expressed by acts.

In Norway also the principle of *lex specialis* is applied when interpreting legal norms that might be contradicting. A regulation concerning any special topic will gain dominance over a general norm possibly also covering the same topic. This kind of concept is not so obvious within the Brazilian legislation and juridical doctrine.

In spite of these slight differences, we think that it may be claimed that the legislative systems in the two countries are so similar that a comparison of legislative and regulatory texts related to work related health may give some information on how laws and regulations are actively used for regulating this specific field, not only revealing differences due to structural phenomena.

## *II. CHARACTERISTICS OF A REGULATORY REGIME*

Hood, Rothstein and Baldwin have suggested a framework for analysing a regulatory regime[3]. According to their model a regulatory regime may be characterised by evaluating what they describe as *control components* related to gathering of information, setting of standards and modification of behaviour as seen from a contextual perspective and in relation to the actual content of the control components.

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(2) GARNER, Bryan A. *Black's law dictionary.* 7. ed. St. Paul: West Group, 2001. p. 239.
(3) HOOD, Christopher; ROTHSTEIN, Henry; BALDWIN, Robert. *The government of risk. Understanding risk regulation regimes.* Oxford: Oxford University Press, 2004. p. 20.

We have used the concept of control components when analysing and presenting our findings. We have not made any significant distinctions between the content and the context perspectives here, as it is done by Hood, Rothstein and Baldwin. We think that this distinction is not as important in a Civil Law tradition as it is in a Common Law tradition.

## *III. REGULATIONS RELATED TO WORK RELATED HEALTH*

The Brazilian regulations represent quite detailed prescriptions, often declaring specific solutions as expected by the authorities. Thus the regulatory texts give quite explicit frames for the health efforts expected by the companies.

There certainly is participation from different parties as employers and trade unions when regulations are made, but the regulations in themselves do not require active involvement from different parties when they are put into use. At that point it is the sole responsibility for the company to demonstrate adherence to the norms.

Neither the acts nor the regulations give any norms that expect a high degree of professional judgement from the employers or the employees. Thus there is no general requirement for running the activities according to sound professional standards or prudent practice.

There are no explicit expectations on the body of regulations on building a managerial system to secure that norms are adhered to (although the oil companies in Brazil do so). Thus there is no legal requirement on e.g. establishing a system for internal control to ensure that requirements related to health issues are dealt with in a responsible way. The supervising authorities regularly focus upon results more than internal processes to achieve the desired results. The authorities also have quite traditional legal instruments for modification of behaviour when norms are not complied with.

The Norwegian regulations on the contrary do not have many detailed prescriptions. The norms are to a higher degree describing performance, thus focusing what should be achieved more than what to do and how to do it.

The regulatory regime not only expects participation of all involved parties when standards are set, but also when information is gathered and regulations are followed up in the companies. The regulations expect an active dialogue between employers and employees at every stance of the operations. Active participation by employees and trade unions on all levels are expected.

In this way the company's use of own information on work related health constitutes an important basis for improvement. To enhance this process the regulations require establishing a managerial system to ensure that this work is done in a systematic way. The supervising authorities thus regularly

focus upon results as well as internal processes to achieve the desired results. The way the company is organised is a concern for the authorities when supervising the regulations on work related health. The means for follow up by the authorities when norms are not complied with are not only traditional legal instruments, but consist also of more soft approaches as giving information and supplying guidance as long as that do not compromise the integrity of the supervising agency.

In addition the act on petroleum activities has a general requirement on prudent practice connected to every part of the development and production processes. This requirement also relates to health and safety activities in the companies.

## *IV. DISCUSSION*

The Brazilian system is characterised by a regulatory structure which is typical for the Civil Law tradition. The norms are expressed in explicit text. Thus they are very predictable. The authorities control adherence to the norms, and in case of non-compliance interfere with instruments given to them by legislation. The authorities in general do not comment upon internal organisation of health and safety work in the companies. Companies as well as authorities are focusing the outcome more than the processes leading to the results.

This approach leads to a highly predictable regime, it is easy to understand, comply with and control. But it also lacks flexibility and it is difficult to adjust to changing environmental challenges and scientific advances.

The Norwegian system is characterised by a regulatory structure with strong emphasis on written norms. But the majority of these norms are written as procedural requirements and as legal standards. The use of legal standards may be seen as a trait of Common Law in an otherwise Civil Law tradition. Possibly this may be explained by strong influence from British legislation due to close regulatory co-operation around the North Sea.

This approach secures flexibility and is robust against contextual changes. But it requires are very strong and continuous cultivation of the regulatory practice, where not only authorities, companies and trade unions collaborate on superior level. It also demands that managers and employees are able to discuss and formulate how standards should be expressed and goals set in each enterprise. This has to rely upon continuous monitoring and analysis of own data and willingness to alter behaviour when failing on goals or getting unwanted or unexpected results. The supervising authorities regularly will focus not only upon achieved results, but also upon the managerial processes leading up to setting of goals, monitoring results and continuous development of sound and prudent practices.

The Norwegian approach requires both willingness to collaborate and confidence between different parties. As long as one have a quite uniform culture withstanding over a relatively long period of time, this may show easy. When bindings between involved parties become looser, e.g. when new companies and workers from a multitude of nations enter the system, this approach may show more difficult to retain.

As the petroleum industry becomes more mature, one might assume that norms formulated as legal standards may be used. But this requires a mutual commitment from all parties to pull in the same direction. If there are strong organisational tensions, a more detailed and less flexible regulatory approach may give best security for a responsible practice regarding industrial health issues.

## *CONCLUSION*

Every nation creates a regulatory system which is applicable to their appreciated needs and suits their culture. It is not possible to claim which is the best of the Brazilian and the Norwegian system.

The Brazilian regulations are complex, but still easy to understand. As they are very explicit and detailed they turn out to be quite rigid. The Norwegian regulations immediately seem simpler, but they require a lot of interpretative work on company level. In a uniform culture, where the climate for collaboration is good, this turns out to be a flexible regulatory approach. But if mutual confidence disappears, the relative vague textual formulations in the regulations may show to be seductive.

The Brazilian context is now becoming so mature that one probably could benefit from some more flexible rules. The Norwegian context may show to stand at a turning point where one will be forced to use some more explicit norms related to issues of high criticality for work related health.

## *BIBLIOGRAPHY*

GARNER, Bryan A. *Black's law dictionary.* 7. ed. St. Paul: West Group, 2001.

HELLEBUST, Celma Regina. *Regulating Norway, Regulating Brazil.* The choices made by the regulators and the regime for reporting and handling of work related illness. Stavanger: University of Stavanger, 2008. (Unpublished master-thesis.)

HOOD, Christopher; ROTHSTEIN, Henry; BALDWIN, Robert. *The government of risk. Understanding risk regulation regimes.* Oxford: Oxford University Press, 2004.

VAN EVERA, Stephen. *Guide to methods for students of political science.* New York: Cornell University Press, 1997.