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License Terms on the Norwegian Continental Shelf

*Torkjel Grondalen**

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INTRODUCTION

The Norwegian authorities adhere to a long and firm practice of stipulating various conditions in petroleum production licenses that the licensees must fulfill following the award. The two primary license terms contemplate completion of the “work obligation” and entrance into an “Agreement Concerning Petroleum Activities,” which includes “Attachment A–Joint Operating Agreement” and “Attachment B–Accounting Agreement.”¹ Furthermore, production licenses will normally contain so-called “miscellaneous conditions,” outlining, *inter alia*, licensees’ obligation to take environmental matters into account when performing petroleum activities.

The purpose of this article is to provide an overview of the Norwegian authorities’ practice to conditionally award production licenses, focusing on the two main license terms, as these are the most practical and legally interesting conditions. Part I provides an overview of the legal structure governing petroleum production in Norway, where the state’s prominent role is a striking feature.

Part II explores the obligation to enter into an “Agreement Concerning Petroleum Activities,” including a joint operating agreement (JOA). This section provides a short discussion on the JOA’s rare legal significance in Norwegian law. It has been asserted in legal theory that the JOA, which is a standardized agreement for all production licenses operating on the

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Editors’ Note: As Mr. Grondalen is an expert in Norwegian petroleum law and the content of this article concerns Norwegian license terms, many of the cited sources are not available in English. The editors’ of the *LSU Journal of Energy Law & Resources* have relied on Mr. Grondalen and Mr. Lower to verify those sources for accuracy.

1. These three parts are often collectively referred to in the industry as the “JOA”, which is as an abbreviation of “Joint Operating Agreement”. For unofficial translations of the agreements, see *Framework*, MINISTRY OF PETROLEUM & ENERGY, <https://www.regjeringen.no/en/dokumenter/framework/id455506/> [<https://perma.cc/ESG8-GQ35>] (last visited 15 September 2015).

Norwegian Continental Shelf (NCS), should be considered as regulations and not a license term as such for the individual joint venture. Furthermore, the JOA is undoubtedly an ordinary contract between the licensees, subject to general rules of contract law. Thus, the fulfilment of the obligations stipulated in the JOA is both a prerequisite for the fulfilment of the license terms² and of the contractual obligations as between the licensees.

Part III examines the “work obligation” pursuant to the Norwegian Petroleum Act, as further specified in the production license and the JOA. A recent discussion in Norwegian legal theory has been whether contingent activities related to decision-making fall within the scope of the “work obligation.” This question is important, as a licensee cannot go sole risk, assign its participating interest without the Management Committee’s approval, or withdraw from the joint venture before the “work obligation” has been completed. The fall in crude oil prices has brought along an increased preoccupation within petroleum companies in freeing themselves from non-commercial projects, for instance by withdrawing from the joint venture. The content of the work obligation has thus become subject to increased scrutiny.

Part IV discusses the connection between the production license document and the JOA in regard to the term “work obligation.” It must be assumed that the King intended in awarding the production license that the content of the work obligation should be identical in regard to the production license and the JOA. Thus, the licensee must complete all activities listed in the production license, including the contingent activities, before it is allowed to go sole risk, unilaterally assign its participating interest and withdraw from the joint venture.

I. AN OVERVIEW OF THE NORWEGIAN REGIME OF PETROLEUM RESOURCE MANAGEMENT

Section 1-1 of the Norwegian Petroleum Act (PA)³ declares that ownership of subsea resources on the NCS, and management thereof, lies with the Norwegian state. In line with this decree, Section 1-3 prescribes that no party other than the Norwegian state may conduct petroleum activities without the licenses, approvals, and consents required pursuant to the PA. Thus, a prominent feature of Norway’s petroleum system is its concession-based nature.

2. Or, if the JOA is viewed as regulations, as a prerequisite for the fulfilment of the regulations.

3. The Norwegian Petroleum Act of 29 November 1996, no. 72.

Production licenses on the NCS are awarded through two different licensing rounds. The first is the ordinary license rounds. This usually takes place every other year. The twenty-third license round will be awarded during 2016. The second alternative consists of license awards in predefined areas (APA rounds), which take place annually.

The two types of rounds are distinguishable in that the ordinary license rounds cover new areas on the NCS, where the geology is more unknown, while the APA rounds relate to mature areas that have been awarded in previous ordinary license rounds and later been relinquished.⁴ Ownership in production licenses can alternatively be obtained directly through direct purchase of license interests or indirectly by purchasing shares in petroleum companies holding license interests on the NCS.⁵

Pursuant to Section 3-3, Paragraph 3 of the PA, a production license grants an exclusive right to exploration, exploration drilling, and production deposits in areas covered by the license. The King in Council (King) has the exclusive power to award production licenses. With a few historical exceptions, these licenses are always granted to groups of petroleum companies that together form a joint venture.⁶ The initial period of the awarded license generally runs for five to eight years but can be extended if the license terms are fulfilled. The group's composition is decided by objective and non-discriminatory criteria, with the key objective being the assembly of petroleum companies that together further the best possible resource management. The two main criteria for determining whether a licensee is qualified at the NCS are the applicant's financial capacity and technical competence. Authorities may also consider their previous experiences with the applicant. An increasingly more common feature since the start of the 21st century is that smaller petroleum companies have become increasingly more common licensees on the NCS.⁷

The PA explicitly empowers the King⁸ to condition the license award upon entry into a JOA and completion of the work obligation, pursuant to

4. This difference plays an important role when it comes to the extent of the "work obligation" licensees must complete as a condition of the award. *See also infra* Part IV.

5. Such direct and indirect transfers cannot take place without the approval of the Ministry of Petroleum and Energy (MPE) and the Ministry of Finance (MOF). Since July 1, 2009, notification to the MOF is generally sufficient.

6. As discussed in Part II.B *infra*, the joint venture has many of the same characteristics as a company with liability.

7. The general view of the Norwegian authorities and the petroleum industry is that the introduction of smaller players on the NCS has spurred heightened activity and increased tax revenues.

8. Powers given to the King can be delegated to ministries and subordinate authorities, according to firm practice and legal theories of administrative and

Section 3-3 and Section 3-8, respectively. The PA also contains a general legal basis for stipulating conditions in Section 10-18, Paragraph 4, which reads as follows:

In connection with individual administrative decisions, other conditions than those mentioned in this Act may be stipulated, when they are naturally linked with the measures or the activities to which the individual administrative decisions relate.⁹

This provision creates a legal basis for the King to set a wide range of conditions.¹⁰ In principle, such conditions can be stipulated in all phases of petroleum activities, from the award of an exploration license to decisions relating to the disposal of a production field, insofar as doing so meets the requirements in the provision. From the preparatory works to Section 10-18, it follows that the “the specific provisions providing authority to set conditions [such as Sections 3-3 and 3-8], shall not limit the power to stipulate conditions in accordance with this general provision.”¹¹ Thus, Paragraph 4 of Section 3-3 and Section 3-8 must be interpreted in light of Section 10-18, Paragraph 4. If a condition could be stipulated under Section 10-18, Paragraph 4, it must follow from the internal connection in the PA that such conditions can be stipulated according to the applicable “special provision.”

II. THE OBLIGATION TO ENTER INTO A JOA

A. Introduction

A joint venture is responsible for a wide range of matters pertaining to the production license under which it was established, from selecting

constitutional law. Powers given to the “King of Council” cannot, however, be delegated to ministries and subordinate authorities. In practice, the MPE prepares the groundwork for the King of Council’s decision, and so in reality, effectively decides the composition of the production license.

9. The Norwegian Petroleum Act of 29 November 1996, no. 72, § 10–18.

10. Under the general rule of Norwegian administrative law, a public authority can stipulate conditions in connection with individual administrative decisions, such as concessions, without having explicit legal basis in the applicable law. *cf* Rt. 1961 p. 297 and TORSTEIN ECKHOFF & EIVIND SMITH, FORVALTNINGSRETT 414 (9th ed, 2010). A main justification for this right is that when a public authority has the power to reject an application or not grant a license, it must also be entitled to decide upon a less burdensome action—to accept an application or to grant a right under certain conditions. However, it is obviously more predictable to entities and persons involved in the relevant area, that the applicable law explicitly states that the authorities may stipulate conditions.

11. Ot.prp.nr.43 (1995-96) p. 65.

contractors to deciding on the next year's work program and budget. Furthermore, the individual licensee has an interest in having predictable rules governing default by the other licensees, assignment of its participating interest, etc. Combined, this situation creates a strong need to regulate the internal relationship in the production license.

Pursuant to Section 3-3, Paragraph 4, of the PA, "The King may stipulate as a condition for granting a production license that the licensees shall enter into agreements with specified contents with one another." By well-settled practice, the production license granted by the King contains a provision obligating the licensees to enter into an "Agreement Concerning Petroleum Activities," commonly referred to as the "Special Conditions" for the individual joint venture, with "Attachment A—Joint Operating Agreement" and "Attachment B—Accounting Agreement."¹² The MPE has approved this contract as a standard agreement applicable to all production licenses.

The main consideration behind Paragraph 4 of Section 3-3 is the Norwegian state's desire to exercise control over the activities of the joint venture. The country risks compromising its sensible management of Norwegian petroleum resources to the autonomous management of the joint venture, without that control. Thus a close connection ties the starting point of the PA—that the subsea resources belong to the Norwegian state—to the state's desire to control not only which companies are granted a production license, but also how such licenses are executed. Furthermore, a mandatory standard contract avoids long-lasting and expensive negotiations between licensees on the contractual terms of the joint venture. In addition, standardized terms also ensure that employees of the petroleum companies will be familiar with the content of contract and thus will be able to use their acquired knowledge from other joint ventures.

The various elements of the standard contract regulate different aspects of the joint venture. The Special Conditions regulate, *inter alia*, the parties to the joint venture and their participating interests, the operator of the joint venture, and the joint venture's voting rules.¹³ As the name

12. See *Agreement Concerning Petroleum Activities*, MINISTRY OF PETROLEUM & ENERGY, <https://www.regjeringen.no/globalassets/upload/oed/vedlegg/konsesjonsverk/kverkengelsk2010.pdf> [<https://perma.cc/2Q9S-THBB>] (last visited September 15, 2015) (unofficial source). A reservoir could cover several licenses where unitization between the licenses entails the most efficient exploration of the reservoir. If this scenario is the case, the licensees are obliged to enter into a Unitization Agreement (Unit Agreement) and to establish a common joint venture for both licenses. The Unit Agreement will consist of mainly the same elements as the normal JOA and Accounting Agreement.

13. See *id.* The principal voting rule is that "Unless otherwise stipulated in this Agreement [i.e. Special Conditions, JOA and the Accounting Agreement], a

indicates, the Special Conditions are particular to each joint venture, in the sense that they vary on certain points from venture to venture. The Special Conditions nevertheless constitute a standardized agreement that always contains provisions on the parties to the venture, voting rules, and the like.

The Accounting Agreement governs the practical matters relating to costs incurred by the joint venture. The content includes cash calls, statements and billings, charges to the joint account, and interest on outstanding payments. The provisions are technical in nature and essential to the operation of the joint venture's activities. The obligation to contribute funds to the joint venture, however, is not stipulated in the Accounting Agreement but in the JOA.

B. The Joint Operating Agreement: The Fundamental Legal Basis of the Joint Venture's Activities.

The JOA governs all matters pertaining to the joint venture and is the fundamental legal basis for the licensees' obligations toward one another. The JOA is identical for all production licenses awarded on the NCS.¹⁴

An operator is responsible for the daily operations of each joint venture. The operator conducts its role on a "no gain, no loss" basis, meaning that the operator neither receives compensation nor assumes liability for the activities of the joint venture. However, the JOA contains a narrow exception prescribing operator liability if the joint venture or any of its participants sustains losses due to the willful or gross negligence of the operator's management or supervisory personnel or any of its affiliated companies.¹⁵

The supreme body of the joint venture is the management committee. One member in the management committee represents each participant of

decision by the management committee is adopted when at least [y] of the Members representing at least [x] % of the Participating interests have voted in favour of a proposal." The content of [y] and [x] are stipulated based on the number of participants in the joint venture and their respective participating interest. The most common rule is that a decision is adopted when the majority of the members representing more than 50% of the participating interest have voted in favour of a proposal. Certain decisions, such a field development, surrender of a license or part of a license area and discharge of the operator, require unanimity. The Special Conditions also forbid the management committee from making a decision "*which could render an unreasonable advantage to certain Parties or other to the detriment of other Parties or the joint venture.*"

14. Any changes in the JOA will also apply to joint ventures established prior to the change.

15. It is understood that there has yet to be any judicial decision concluding that an operator has acted with willful misconduct and or gross negligence. This question is nevertheless practical in the sense that operator responsibility is often discussed in legal disputes as a potential legal basis.

the joint venture; while the operator is the chairman, he does not enjoy an extra vote. The management committee performs the key role in executing the strategic processes of the venture and can vote on all subjects relevant to the joint venture. The committee also controls the activities of the operator. Additionally, the joint venture may appoint sub-committees dedicated to special matters, such as a technical committee.

The joint venture participants are primarily liable to each other on a *pro rata* basis, meaning that each is secondarily, jointly, and severally liable for all obligations arising out of the venture's activities. The participants are also obligated to contribute sufficient funds to cover all expenses relating to the joint venture's activities in accordance with their respective participating interest.

Participants have the right and obligation to take in kind and dispose of a share of the produced petroleum, also in accordance with each participant's interest. The petroleum is then sold on a company basis. As there are joint expenses but no joint income, the joint venture is normally characterized as a "joint expenses enterprise."

Before petroleum reaches the so-called "lifting point,"¹⁶ it is owned as a joint asset in which each participant holds an ideal share in proportion to its participant interest. Other assets that are acquired or developed by the operator or the participants on behalf of the joint venture are also owned as joint assets, such as petroleum facilities and new technologies.

If a participant defaults on its obligation to provide sufficient funds to the joint venture or to cover its liabilities, non-defaulting participants are obligated to advance the deficient amounts. If the default has not ceased within five working days after the operator requests such payment, the defaulting party loses both its right to vote and its access to data and information for as long as the default remains in effect.

A participant is entitled to assign its interest or any part thereof. The sales and purchase agreement shall contain provisions obliging the assignee to be bound by the JOA and the conditions of the production license. If the work obligation in the production license has not been completed, the participant is not allowed to assign its interest without the consent of the management committee.

The joint venture, established as a result of the production license, possesses many of the same characteristics as a partnership with apportioned liability. It constitutes a partnership in which the participants

16. The lifting point for oil is usually the point (valve) where the oil enters into the shuttle tanker, *cf.* Eirik Tveit, *Praktiske kommentarer til standard samarbeidsavtale* [Practical comments on the standard cooperation agreement], 438 SCANDINAVIAN INSTITUTE OF MARITIME LAW [marlus] 275–76 (2014) (Nor.). The lifting point for natural gas is the point where the gas enters into the pipeline system, for further transport to the processing facilities.

have unlimited personal liability for the total obligations of the partnership—indivisible or divisible in parts which together constitute the total obligations of the partnership—and which acts as one entity in relation to third parties. However, Section 1-1, Paragraph 4 of the Partnerships Act¹⁷ explicitly provides that the Act does not apply to cooperation agreements pursuant to the PA, including the JOA. Nevertheless, because of the close connection between joint ventures and general partnerships, legal theory has asserted that the Partnership Act applies as background law for the governance of the joint venture if the JOA is silent or incomplete on matters pertaining thereto.¹⁸

The production license only requires that licensees enter into the JOA; it does not state that licensees are thereafter obligated to adhere to the provisions in JOA. This wording might be considered to mean that compliance with the JOA's provisions is not a license term. However, according to accepted legal theory, the understanding remains that compliance with JOA provisions is indeed a license term. This conclusion is based partially on the fact that both the production license and the Special Conditions provide that “[a]mendments to, exceptions from or supplements to this Agreement shall be submitted to the Ministry for approval.”¹⁹ The necessity of the MPE's approval to amend the agreement illustrates that the JOA is not solely an agreement between the participants. If that were the case, participants would be able to alter the JOA on the basis of the principle of freedom of contract intrinsic to Norwegian law. Furthermore, a scenario under which the licensees were free in their choosing to adhere to JOA provisions would be contrary to the Norwegian state's clear objective of having a standardized contract.

The obligations pursuant to the JOA are general in their nature and apply to all joint ventures operating on the NCS. Therefore, the JOA could be presumed to have many of the same characteristics as regulations. A valid argument could be made that the legal structure of the JOA is more reminiscent of regulations than of license terms, as the latter are individual

17. The Partnerships Act, Act No. 83 of 21 June 1985 (June 27, 1986), <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-19850621-083-eng.pdf> [<http://perma.cc/6V8R-UQYH>].

18. Knut Kaasen, *Samarbeid i olje – en spesiell selskapsrett*, in SELSKAP, KONTRAKT, KONKURS OG RETTSKILDER : FESTSKRIFT TIL MADS HENRY ANDENÆ 70 ÅR / 152, 165-70 (1. utg. 2010).

19. Special Conditions, MINISTRY OF PETROLEUM & ENERGY, art. 8, <https://www.regjeringen.no/globalassets/upload/oed/vedlegg/konsesjonsverk/kverke/ngelsk2010.pdf> [<https://perma.cc/2Q9S-THBB>] (last visited September 15, 2015) (unofficial source); see also Standardized Production License, MINISTRY OF PETROLEUM & ENERGY, art. 6, https://www.regjeringen.no/no/dokument/dep/oed/lover_regler/reglement/konsesjonsverk/id748087/ [<https://perma.cc/6AN9-JSR5>] (last visited September 15, 2015).

in nature. However, the correct legal conclusion is most likely that the JOA provisions constitute individual terms for the particular production license, as they are stipulated by the authorities for each production license.

Based on the above, the JOA holds special legal significance in Norwegian law. On the one hand, it constitutes an undoubtedly binding agreement between the participants of the venture, just like any other agreement between participants of a joint venture or similar entity. On the other hand, compliance with the JOA's terms is also a condition for the award of the production license.

This duality of the JOA raises many interesting questions. One is whether the interpretation of the JOA should be based on the rules for interpreting administrative decisions or the principles for interpreting commercial contracts. These principles are generally very similar (the objective meaning of the wording is the starting point), but they also present some differences. For instance, the subjective view of the physical or legal person subject to a condition will not be relevant for the interpretation unless it has been directly or indirectly communicated to the authorities.²⁰ It may be argued that if it can be established that the contracting parties had a mutual subjective interpretation of the wording at the time the contract was entered into, this interpretation will prevail regardless of what the objective wording might imply. Thus, it is theoretically possible that the licensees have a joint understanding of the wording of a JOA provision at the granting of the production license that differs from the objective meaning of the wording that has not been communicated to the authorities. The question then becomes whether the subjective understanding or the objective meaning shall be decisive. The JOA's contractual role as between the license partners is most prevalent on a day-to-day basis, and it might appear as being the legally most important. The core of a JOA's legal status nevertheless lies in its role as a license term; its purpose is first and foremost to be a tool for the Norwegian state to control the activities of the joint venture. This demands that the principles for interpreting administrative decisions should apply to the interpretation of the JOA.²¹

The duality of the JOA also becomes apparent if a licensee asserts that a provision in the JOA, or the JOA as a whole, is invalid. Towards its license partners, the licensee must base its legal arguments on applicable

20. Norwegian law also allows for taking fairness into account in the interpretation, but a clear wording will usually prevail in situations where fairness implies another conclusion than the objective meaning of the wording.

21. Another possibility is that the same provision has one meaning in the internal relationship of the joint venture and another meaning in the axis between the joint venture and the authorities. In our opinion, such an approach would lead to unnecessary uncertainty and complexity and should be avoided.

rules of contract law. As towards the authorities, however, the licensee must apply general administrative principles. Thus, the JOA illustrates how petroleum law has strong ties to both public and private law, which work simultaneously.

III. THE REQUIREMENT TO COMPLETE THE WORK OBLIGATION

Section 3-8 of the PA prescribes that “[t]he King may impose on the license a specific work obligation for the area covered by the production license.” Stipulation of a “work obligation” contingency is a long-standing practice imposed by the King.

The general wording in Section 3-8 does not set any limitations on the content of the work obligation. This omission does not mean that the authorities are free to stipulate any condition they desire. The purpose of the PA—ensuring the management of resources for the long-term benefit of Norwegian society as a whole—must be taken into account in interpreting the extent of the right to stipulate conditions. Furthermore, according to general principles of administrative law, the condition (work obligation) imposed must not be disproportionately burdensome when compared with what is seeking to be achieved through the stipulated conditions.²²

The main drive behind Section 3-8 is to empower the King to control the activities of the production license and to incentivize the licensee to undertake activities that further the sensible management of Norwegian petroleum resources.

Section 13 of the Regulations (RA) to the PA provides further guidance on the content and scope of the work obligation. That provision states:

The work obligation mentioned in the Act section 3-8 may consist of exploration and exploration drilling of a certain number of wells down to specified depths or geological formations. The contents, extent of and the time limit for complying with the work obligation, shall be stipulated in the individual production licence²³

The wording of the provision explicitly mentions “exploration and exploration drilling of a certain number of wells” as a possible work obligation. However, the use of the phrase “may consist of” suggests the illustrative nature of the enumerated activities and the possibility that other work obligations may be stipulated as well. A work obligation that furthers a rational production of the petroleum resources in the area covered by the

22. Rt. 2003 p. 764; ECKHOFF & SMITH, *supra* note 10, at 411–12.

23. Regulations to Act relating to petroleum activities 27. June 1997 § 13.

production license must, as the clear starting point, be considered legal in relation to Section 3-8 of the PA and Section 13 of the RA.

The content of the work obligation will vary between ordinary license rounds and the APA rounds. In the ordinary license rounds, licensees are normally only obliged to collect and process seismic data and to decide whether to drill an exploration well.²⁴ The APA rounds have a much more comprehensive work obligation, in which licensees are normally obligated not only to collect and process seismic data, but also to make a decision on drill or drop, concretization, continuation of the deposit, and whether to submit a plan for development and operation of the field to the MPE.²⁵ The content of the work obligation also varies to some degree within the ordinary license and APA rounds, respectively. For example, some production licenses obligate licensees to complete drilling of an exploration well, rather than simply to make the decision as whether to drill such wells.

Each individual production license will stipulate a specific deadline for completion of each of the various elements of the work obligation. The deadlines for each element are stipulated in accordance with the natural development of a field. For instance, the collecting and processing of seismic data must take place first. Then, an exploration well must be drilled before the licensees are able to decide whether the exploration drilling unveiled a commercially profitable reservoir.

Each deadline starts to run from the award date of the production license. Normally, the collection and processing of 3D seismic data must be completed within one to two years from the award date; the decision on whether to drill an exploration well within two to three; the decision on concretization within four to six; the decision on continuation within five to seven; and finally the decision to submit a plan for development and operation to the MPE within six to nine years of the award date. If the licensees fail to carry out the work obligation within the deadlines, they lose their right to the license. The deadline must be completed for each element; it is not sufficient that licensees have a past record of completing elements within the deadline.

When the licensees have completed the entirety of the work obligation, they may demand that the initial period of the production license be extended. The general rule is that the production license is extended for thirty years, but in certain circumstances the extension may stretch up to fifty. The MPE also has the power, pursuant to PA Section 3-15, to require that the work obligations are fulfilled prior to any surrender of the production license.

24. Often referred to as “drill or drop” condition. In practice, the seismic data referred to is usually 3D seismic.

25. The production license uses “work obligation” in the singular, despite the fact that the “work obligation” consists of several elements, which are natural to view as separate obligations.

IV. THE CONNECTION BETWEEN THE WORK OBLIGATION IN THE PRODUCTION LICENSE AND THE JOINT OPERATING AGREEMENT

A close relationship exists between the work obligation stipulated in the production license and the JOA. This connection grows from certain provisions in the JOA linked to completion of the work obligation outlined in the production license. Article 18.3(d) of the JOA prescribes that sole risk operations may not take place before the “obligatory work obligation in the Production License” has been completed. Furthermore, Article 23.1, Paragraph 2 states that before the “obligatory work commitment pursuant to the Production License” has been carried out, a party cannot assign its participating interest without the consent of the management committee. Finally, Article 24.1, Paragraph 1 determines that a party may withdraw from the joint venture “when the work obligation described in the Production License has been carried out.”²⁶

The licensee’s right to go sole risk, to assign its participating interest without the consent of the management committee, and to withdraw from the joint venture are all dependent on whether the work obligation in the production license has been carried out.

In connection with the recent decline in oil prices, some petroleum companies on the NCS have explored the possibility of withdrawal from a joint venture. Since this requires completion of the work obligation, the content of the licensees’ work obligation contained in the production license has been scrutinized. It has been asserted in legal theory that it is “unnatural” to view decisions relating to concretization, continuation of a deposit, and submission of development and operation plans as part of the work obligation.²⁷ The main argument is that these activities will only be carried out if licensees choose to do so; they are so-called contingent activities.²⁸

The traditional understanding of the work obligation is that it involves collecting and processing seismic data and drilling of exploration wells. Nevertheless, the argument can be made that the traditional understanding in the industry does not necessarily demand that so-called contingent activities fall outside the scope of the work obligation. The starting point

26. The English translation of the JOA by the MPE refers to the “obligatory” work obligation in the following articles: 18.3(d) on sole risk, 23.1 second paragraph on assignment, and 24.1 first paragraph on withdrawal. In the official Norwegian wording, however, the term “obligatory” work obligation is only included in the provisions on sole risk and assignment. There is no reason to believe that the word “obligatory” was intentionally included in articles 18.3(d) and 23.1 of the JOA, but not in article 24.1, and there is therefore no material difference between “work obligation” and “obligatory work obligation.”

27. Tveit, *supra* note 16, at 21–28.

28. *Id.* at 24–28.

of Norwegian law rests upon the entitlement of authorities to change their practice if they deem it necessary to meet a new objective, or to adapt to changing surroundings—for instance a considerably matured NCS. The wording and structure of production licenses in the APA rounds clearly show that the work obligation also encompasses contingent activities. This conclusion is exemplified, *inter alia*, by the fact that the deadline for the last element of the work obligation coincides precisely with the expiration date of the production license's initial period.

The APA rounds are a recent phenomenon in Norway, aimed at securing production in the mature areas of the NCS. For such areas, fostering the fairly rapid development of possible deposits through licensee activities is crucial. One way to achieve this goal is to stipulate that licensees must carry out important decisions before a predetermined deadline.

Thus, the term work obligation in the production license should be construed to encompass contingent activities related to decisions concerning continuation, development, and operation.

The objective meaning of the production license strongly indicates that the work obligation may be comprised of contingent activities. The question is whether the same is true for the “work obligation” in the JOA. As the production license and the JOA are two separate legal grounds, it is, in principle, possible that the content of the “work obligation” differs between the two. It would be rather incongruous to interpret the terms differently, when the JOA expressly refers to the work obligation in the production license. It must be assumed that the King, in awarding the production license, intended that the content of the work obligation should be identical in regard to the production license and the JOA. The licensee—before it is allowed to go sole risk, unilaterally assign its participating interest and withdraw from the joint venture—must thus complete the so-called contingent activities.²⁹

29. Cf. articles 18.3(d) 23.1 second paragraph and 24.1 first paragraph of the JOA.

