

**Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities'**

COM(2011) 688 final — 2011/0309 (COD)

(2012/C 143/20)

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On 17 November 2011 and on 29 November 2011 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 192(1) of the Treaty on the Functioning of the European Union, on the

*Proposal for a Regulation of the European Parliament and of the Council on safety of offshore oil and gas prospection, exploration and production activities*

COM(2011) 688 final – 2011/0309 (COD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 January 2012.

At its 478th plenary session, held on 22 and 23 February 2012 (meeting of 22 February), the European Economic and Social Committee adopted the following opinion by 111 votes to 2 with 9 abstentions.

## 1. Conclusions and recommendations

1.1 Though major incidents offshore are rare, the consequences they attract in terms of hazard to human life, the environment, the economy and climate are often catastrophic.

1.2 The need for a consistent EU approach to safety in offshore oil and gas activities is well recognised.

1.3 This objective will best be achieved through dissemination and implementation of the highest standards already in place throughout much of the industry.

1.4 The EESC endorses the Commission's recommendation of "Option 2" as the package of measures most likely to achieve the objectives of the proposal.

1.5 The regulation should aim to strengthen the devolution of regulation of the reform measures to competent national authorities and stakeholders, reserving a well-defined but contained role for the proposed EU Offshore Authorities Group.

1.6 The EESC encourages the Commission to bring forward to an early conclusion its deliberations on product safety, financial capacity and, most important, corporate liability.

1.7 EU operators who are engaged in exploration and production activities outside the territories of the Union should be encouraged to export best EU standards.

## 2. Introduction

2.1 On 27 October 2011, the Commission proposed its Proposal for a Regulation on safety of offshore oil and gas prospection, exploration and production activities.

2.2 Against the background of the Deepwater Horizon disaster in the Gulf of Mexico in April 2010, and, as the Commission has expressed it, the significant risk of a major offshore incident within the European offshore sector, there

can be little doubt of the urgency with which the issues outlined by the Commission in the impact assessment (accompanying the proposal) need to be confronted and appropriate measures adopted. These issues are:

- the anticipation and, so far as is reasonably possible, elimination of high-risk incidents;
- the limitation and containment of the consequences of a major disaster;
- increased protection of the marine environment and coastal economies against the effects of pollution;
- the need to improve the range and effectiveness, between Member States, of response activities;
- the need to establish, sooner or later, clear guidelines on the liability of offshore contractors for direct and indirect losses sustained by third parties;
- the need to devise and harmonise a framework set of conditions essential for the safe operation of offshore installations and facilities; and
- the restoring of public confidence in a safe, well-directed and regulated, offshore oil and gas industry.

2.3 The Commission believes that these issues can best be concluded by:

- improvements in procedures for the vetting, licensing, regulating and monitoring of contractors and operators in the industry;
- encouraging a corporate culture that willingly embraces improved safety practices;
- removing inconsistencies in practice between Member States;

- better management and co-ordination of response resources and capability;
- improved verification of safety critical equipment (including independent third-party verification); and
- carrying out a policy evaluation of measures concerning product safety, financial capacity guarantees and civil liability and compensation schemes of offshore operators.

2.4 More particularly, the Commission hopes to achieve these ambitions by promoting an "EU best practice model", implementing a package of reforms based, in large measure, on long-established and highly-regarded practice in the North Sea sector. This would lead to greater collaboration in risk assessment, contingency planning, emergency response, sharing of information, expertise and resources. This model (identified as "Option 2" in the impact assessment) contemplates the setting-up of a "competent authority" in each Member State, with an overarching responsibility for industry-related matters, and, between Member States, an EU Offshore Authorities Group to set new standards of safety, facilitate EU regulatory programmes, and ensure standard reporting across national boundaries.

### 3. General comments

3.1 In the European offshore oil and gas sector there are almost 1 000 offshore installations. The geographical spread of these facilities is: 486 (UK); 181 (Netherlands); 123 (Italy); 61 (Denmark); 7 (Romania); 4 (Spain); 3 (Poland); 2 (Germany); 2 (Greece); 2 (Ireland); and 1 (Bulgaria).

3.2 The EESC believes that safety in every aspect of offshore oil and gas activity, and in all outcomes associated with that industry, is of paramount importance, and welcomes this initiative from the Commission.

3.3 Although much of the focus of the regulation is on preventing or containing the environmental impacts of offshore incidents or accidents, the EESC is pleased to note that, in the impact assessment, the health, safety, and welfare of workers in the offshore oil and gas industry has not been overlooked.

3.4 The EESC recognises the balance that has to be struck between the imperatives of the proposal and EU needs for energy and security of energy supply.

3.5 While there is no body of law, within the EU, expressly dedicated to the safety of offshore oil and gas activities, a number of existing directives tackle issues closely associated with those in the proposal, such as: the Environmental Liability Directive (2004/35/EC), the Waste Framework Directive (2008/98/EC), the Environmental Impact Assessment Directive (85/337/EEC, as amended), measures introduced under

the Health and Safety Framework Directive (89/391/EEC) covering the minimum requirements for improving the safety and health of workers in the mineral-extracting industries through drilling, and the Marine Strategy Framework Directive (2008/56/EC). Since these do not exactly match the objectives of the proposal, they may be applied only in piecemeal fashion if, indeed, capable of applying at all without adaptation. The Environmental Liability Directive, for example, while dealing with offshore pollution does not extend its reach to water damage in the Exclusive Economic Zone or the continental shelf, which need to be protected pursuant to the Marine Directive.

3.6 It is a recurring criticism (of commentators) that existing standards of safety, remedy, liability and compensation (by directive, self-regulation, international conventions and protocols) are often "disconnected" and ineffectually observed - by differences of emphasis and interpretation, indifferent attention to the spirit, if not the detail, of implementation and enforcement mechanisms, and poor corporate culture. This discredits the legislative process, and is unsatisfactory. The fresh start outlined in the proposal is to be welcomed.

3.7 In the North Sea sector, industry practices and procedures, both voluntary and statutory, have been described by the Commission as "best operating practices", "best practices in the Union", "best available practices defined in authoritative standards and guidelines", "current best standard", "state-of-the-art practices", and "recognised global best practice in major hazard risk control", with a goal-setting regulatory approach that is considered "world class". Nevertheless, the EESC is concerned about the relatively high level of risk which remains, and is of the opinion that the proposed regulation will enhance corporate safety culture.

3.8 These practices have evolved and matured through exploration, engineering and operational experience (at times bitter, when we recall the Alexander Kielland (1980) and Piper Alpha (1988) disasters). The EESC acknowledges that this is a continuous process, requiring constant evaluation, and believes that operators in the industry are neither complacent nor slow to introduce new measures and guidelines or adapt existing standards or procedures, whenever necessary or convenient. The regulation will offer a uniform framework in which this can take place.

3.9 A set of principles, procedures and controls, within the EU, that is coherent, comprehensive, and universal in application, as addressed in the regulation, is timely and essential to the good governance of the industry as it develops new fields of exploration and production. The EESC notes the Commission's recommendation of "Option 2" as the most acceptable approach.

### 4. Specific comments

4.1 The Commission, in a number of references, highlights the risks of a major oil or gas accident in EU waters as "significant everywhere in the Union", "more real than they may appear" and "unacceptably high". The EESC is interested to know how this claim has been substantiated.

4.2 The EESC has some concerns that, by opting for a regulation as the preferred legal instrument, the Commission's proposal may lead:

- to a dismantling or deconstructing of the "best practice" of those operators and Member States who adhere to the "North Sea basic model", as new complex legislative procedures, with accompanying soft law additions and amendments under powers delegated to the Commission, are introduced; and
- to additional and, possibly, unnecessary cost, disruption, delay, overlap and confusion within the industry and beyond and (possibly during the transition phase) to a compromise of safety and hopes that a carefully worded regulation will allay these misgivings.

4.3 While there is a view that the existing best practice regime (the North Sea model) along with the role of organisations such as the North Sea Offshore Authorities Forum, Oil Spill Prevention and Response Advisory Group, Offshore Oil Pollution Liability Association Ltd, International Regulators Forum, and The Operators Cooperative Emergency Services, afford ample evidence of subsidiarity at work, through the actions of Member States, and that the "level-up" approach favoured by the Commission could be achieved by way of a

directive, the EESC recognises, in immediacy and certainty, the principal merits of a regulation and acknowledges a regulation as the Commission's preferred legislative instrument. The EESC expects the regulation to correct present inconsistencies between Member States, and to assimilate and reflect the best elements, principles, and standards of the "North Sea model".

4.4 The EESC invites the Commission to say whether and, if so, to what extent the provisions of TFEU, Article 194, at paragraph 2, were taken into account when the provisions of the proposal were prepared.

4.5 The EU safety culture should be uniformly applied by EU operators both inside and outside EU waters, whenever possible. Consequently, the EESC suggests exploration of a third-party verification scheme to specifically pursue this objective.

4.6 The Deepwater Horizon disaster confirmed the need to strengthen financial requirements from operators to guarantee their ability to fully cover damages and compensation costs from any accident. The EESC therefore recommends further exploration of compulsory third party liability insurance (or equivalent and adequate liability protection) and suggests a revision clause to the regulation to accommodate this pressing issue in the near future.

Brussels, 22 February 2012.

*The President*  
*of the European Economic and Social Committee*  
Staffan NILSSON

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