COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

on

Removal and Disposal of Disused Offshore Oil and Gas Installations

Introductio

In June 1995, following receipt of a permit from the UK Government Shell decided to dispose of the Brent Spar, a redundant oil storage buoy, by sinking it a deep water site in the North Atlantic. This reopened an extensive debate on the whole question of the disposal of redundant oil and gas installations in European waters, of which there are approximately 600. The decision coincided with the North Sea Conference and in the subsequent Ministerial Declaration a majority of the Ministers present, including the Commissioner, but excluding the UK and Norwegian Ministers who represent the only two states with a significant number of large installations which under existing guidelines can be considered for sea disposal, effectively called for a complete ban on disposal at sea of all such installations, in order to protect the marine environment.

The Brent Spar 'affair' generated considerable public interest and demonstrated the difficulties of implementing a disposal policy which does not have sufficiently broad support. Eventually, in the face of a concerted campaign, which included a consumer boycott of Shell products in several Member States Shell reversed its decision and the Brent Spar was towed to a Norwegian fjord pending a further review of all the options for disposal. Following this detailed review in January 1998 Shell announced that they were now seeking approval from the UK to scrap the topsides onshore and dismantle and reuse the hull as part of a quay extension in Norway. Since then the issue has been extensively debated within OSPAR and the discussion on disposal of such installations continues and a Decision on the Prevention, Reduction and Control of Pollution from the Disposal of Disused Offshore Installations under the Convention for the Protection of the Marine Environment of the North East Atlantic (1992 OSPAR[1] Convention) is scheduled for adoption by a Ministerial Meeting of the Convention to be held in Portugal in July 1998. Major differences still exist but there is a general agreement that the consultation process, the failings of which were a factor in the Brent Spar affair, needs improvement and that concrete installations need to be dealt with separately. These and other key issues are currently being discussed in detail.

1. Background

1.1. At the June 1995 North Sea Conference the Commission took the position that the preferred disposal method for offshore oil and gas installations was to reuse or to bring them to shore for recycling and for disposal of unavoidable wastes.

[1] In this Communication, references to OSPAR are references to the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft ('Oslo Convention'), signed in Oslo on 15 February 1972 and, when it enters into force, to its successor, the Convention for the Protection of the Marine Environment of the North East Atlantic, signed in Paris on 9 September 1992, as well as to the executive Commissions set up under these Conventions.

The Commission therefore signed the Ministerial Declaration calling for such disposal, inviting the contracting parties to the Oslo and Paris Convention for the Protection of the Marine Environment of the North East Atlantic (which includes the North Sea in the Convention Area) ('OSPAR') to implement this by 1997. The UK and Norway dissented whilst France declared that it understood the Declaration as applying to steel structures.

1.2. At the subsequent OSPAR Commission Meeting a decision was adopted on a majority basis establishing a moratorium on disposal at sea pending the adoption of a new Decision on disposal. The UK and Norway opted out of this Decision whilst France maintained its position taken at the North Sea Conference. This Decision is now under discussion in OSPAR with strenuous efforts being directed at arriving at a unanimous position.

1.3. The Commission Services commissioned a joint study by a reputable offshore engineering company into the technical, environmental and economic aspects of removal and disposal of such installations. This study was completed in November 1996 and the report[2] was distributed to and discussed with Member States and EEA Members, environmental non governmental organisations and industry. It was also distributed to the Contracting Parties of OSPAR to assist in their discussions.

1.4. The main impetus for the study came from the 'Brent Spar' incident and the North Sea Conference Ministerial Declaration in June 1995. Clearly this was an issue with implications for the Community and with no agreement between the states involved it was considered advisable to have a thorough technical review prepared in order to assist the Commission, and other interested parties - for the study has been made widely available - to assess the best course of action on the basis of a thorough knowledge of the issues in question.

1.5. The study arrived at two main sets of conclusions. For the large concrete installations complete removal is technically unproven, unlikely to provide environmental benefit and impossible to put a cost on at this stage. For the remainder (i.e. steel structures) except for a limited number of installations, complete removal is technically feasible and economically balanced when the total cost of removing all the installations is considered as a whole and could be safely undertaken.

1.6. For all disposal options, the environmental impact of residues of toxic or hazardous substances on the environment can be reduced to acceptable levels provided that these are contained, removed and disposed of carefully. Complete removal and disposal on land would ensure that the steel could be recycled. It is furthermore self-evident that depending on the removal and disposal options chosen, there could be substantial amounts of demolition waste and debris left on the seabed at the site of the installation and at a possible disposal site.

[2] A Technical Review of the possible Methods of Decommissioning and Disposing of Offshore Oil and Gas installations - John Brown bv

1.7. The overall extra costs imposed by bringing all steel platforms to shore for recycling rather than implementing only the bare minimum 'required' by the International Maritime Organisation ('IMO') Regulations were estimated at up to 2 BECU over 25 years, or on the average up to about 80 MECU/year. The impact of such a decision on the overall production costs of oil and gas would be negligible although the cost differential for certain individual installations could be substantial for the operator concerned. (see also section 4.3)

1.8. In European waters there are currently approximately 600 installations. Precise figures are difficult to give because of the range of definitions of what constitutes a particular installation - for example where two platforms are connected by a fixed bridge and some installations are on the boundaries of the weight and water depth limits. However it is generally agreed that of the 600 there are about 100 large steel installations and about 20 large concrete installations which fall into the category where at present partial removal is permitted under the guidelines established by the IMO to ensure the safety of navigation. These guidelines cover only removal, they do not deal with any questions concerning disposal. The large steel installations are located mainly in UK (about 60) and Norwegian (about 30) waters. Currently a few (about 10 in total) are located in Irish, Italian and Spanish waters. As new discoveries are made the numbers may of course increase. The 100 steel installations represent about 85% of the total mass of steel in the North Sea off-shore installations. Large concrete installations are currently only present in UK and Norwegian waters.

2. International Legislation

2.1. There is a considerable body of International Law (Regional and Global Conventions and Guidelines), EC and domestic legislation covering the removal and disposal of disused offshore oil and gas installations. The main texts are as follows :

- Geneva Convention on the Continental Shelf 1958 (global)
- United Nations Convention on the Law of the Sea 1982 ('UNCLOS')
- London (Dumping) Convention 1972 ('LC') (global)
- International Maritime Organisation Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf 1989 ('IMO') (global)
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989 (global)
- Oslo and Paris Convention ('OSPAR') 1992 and its predecessors the Oslo Convention 1972 and the Paris Convention 1974 (regional)
- Helsinki Convention on the Protection of the Marine Environment in the Baltic Area 1992 (regional)
- Barcelona Convention for the Protection of the Mediterranean Sea against Pollution 1976 (regional)
- See Section 5 for relevant EC legislation

2.2. As the industry expands its activities and environmental issues receive more attention the rules and regulations develop and there is not a common legal position as such. In some cases the question of removal is dealt with separately from disposal, others which deal with disposal must by implication also cover removal. It should be noted that as a general rule these international and regional conventions and guidelines deal only with minimum standards and individual states may impose more stringent conditions.

2.3. The original Geneva Convention called for complete removal, but UNCLOS (which has not yet been ratified by all signatories) maintained the requirement of removal as the main rule, but introduced the possibility of partial removal and hence effectively some disposal at sea. In connection with partial removal, UNCLOS requires that guidelines established by the IMO to ensure the safety of navigation be taken into account.

2.4. The LC covers disposal by dumping in the sea, and allows for oil installations to be considered for disposal of in the sea on the basis of a case by case evaluation. It also requires a permit to dump to be refused if opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs.

2.5. The IMO Guidelines define mainly technical criteria (water depth and weight criteria) for platforms which may be considered for only partial removal and specifies the necessary water clearance after partial removal to ensure the safety of navigation. The key criteria for such consideration is that the installations must be either in more than 75m of water or must weigh more than 4 000 tonnes. A recommendation to the London Convention's Scientific Group that these guidelines should be reviewed will be considered by the Consultative Committee of Contracting Parties in November.

2.6. The Basel Convention deals with transboundary movements of hazardous waste and their disposal. The Community is a Party to it and so are the Member States. Although this Convention does not contain any specific provisions on the disposal of offshore installations nor on disposal of waste at sea, it does require Parties to ensure that the generation of hazardous waste is reduced to a minimum and that where the generation of hazardous waste cannot be avoided its environmentally sound management is guaranteed.

2.7. A series of regional seas Conventions dealing with maritime environmental protection lay down requirements for installations in particular seas. The European Community is a party to the Helsinki Convention, which covers the Baltic and requires complete removal and disposal on land, and to the Barcelona Convention which covers the Mediterranean sea and reiterates the requirements in UNCLOS. Finally the European Community is a signatory and about to become party to the OSPAR Convention.

2.8. Action at regional seas Convention level can lead to different standards between regions. For example the OSPAR Convention (12 EC Member States, 2 EEA Member States, 1 third country and the European Community) is currently debating the subject. The Helsinki Convention (4 EC Member States, 5 third countries, and the European Community) has already decided that all disused installations must be 'entirely removed and brought ashore'.

2.9. OSPAR merges the Paris Convention which covers land-based pollution where the Community is a signatory and the Commission negotiates and votes on behalf of the Community, and the Oslo Convention covering sea-based pollution, where the Community is an observer. In October 1997[3] the Community decided to ratify the Convention and it is now expected to enter into force in early 1998.

2.10. Individual states also have their own domestic legislation and regulation. Broadly speaking the UK and Norway treat each installation on a case by case basis within the confines of the IMO guidelines, the remaining states have policies requiring disposal to be on land, although it is worth mentioning that under the IMO and Oslo Convention guidelines practically all their installations would have to be completely removed in any case.

3. Current Activities

3.1. It is within OSPAR that the recent discussions have taken place - as a result of the Ministerial Declaration of the North Sea Conference calling for an OSPAR decision to implement the Declaration. The issue is difficult to resolve as Contracting Parties to the OSPAR Convention can choose to opt out of Decisions taken under it. Therefore consensus is a prerequisite for a meaningful Decision.

3.2. The Commission Services have been participating in the preparatory discussions under the OSPAR umbrella, and a draft decision should be finalised for the discussion at the OSPAR Ministerial Conference in July 1998. A preliminary draft decision has been prepared but the key questions are still unresolved. The significant areas of disagreement are as follows, and are to a certain extent interdependent:

The structure of the Decision - While the UK and Norway favour a general authorisation of consideration of sea disposal combined with a list of categories of installations for which such disposal is prohibited (prohibition list), the other Contracting Parties favour a Decision based on a general prohibition of dumping with a list of installations which may nevertheless be considered for sea disposal (reverse list). However, recent UK Ministerial statements suggest that the UK will eventually accept the reverse list approach, if sufficient progress can be made on other areas of the draft currently being discussed.

[3] *Ref. to OJ*

The question of an exception clause - The UK and Norway have proposed that their 'prohibition list' approach be complemented by an exception clause which would permit in certain circumstances the installations on the prohibition list to also be considered for sea disposal. They have also proposed that should the 'reverse list' approach be adopted it too should be complemented by an exception clause which would permit those installations not identified on the reverse list to be considered for sea disposal. The other Contracting Parties appear to question the real need for such an exception clause, particularly under the prohibition list approach and the possible criteria for establishing such exceptions are in any case not agreed.

The definition of the technical characteristics of the categories of (large steel) installations for which the decision would allow consideration of sea disposal. The UK and Norway wish to ensure that all installations which are not required to be completely removed under the IMO guideline may be considered for disposal at sea. The other Contracting Parties appear to wish to prohibit disposal of steel installations or restrict the number which may be considered for sea disposal by introducing stricter technical criteria than the IMO removal Guidelines.

Future installations - The IMO guidelines distinguish between existing installations and those made after 1 January 1998 only to the extent that the water depth criteria is increased from 75m to 100m and that these new installations must be designed in such a way that they are capable of being removed. The UK and Norway appear to wish to replicate this treatment in the OSPAR Decision whereas the remaining Contracting Parties appear to be seeking to ensure that these future installations are all disposed of on land. Given the requirement to design new installations as removable, which has in any case been required by some states for many years, it would appear preferable if the Decision were to make land disposal mandatory for all new installations. However, given the timescale of developing, exploiting and exhausting reservoirs any new installations are unlikely to be candidates for decommissioning for many years.

Consultation - There is broad agreement that any proposed permit for disposal at sea should be the subject of consultation. However, the amount of time permitted for consultation, and in particular the possibility for consultative meetings of the Contracting Parties and both industry and environment NGOs, in all cases where sea disposal is being proposed, as well as the amount of information made available to the Contracting Parties being consulted is not yet agreed. The UK and Norway appear to have been in favour of less extensive consultation than the other Contracting Parties, but it now seems likely that unanimous agreement on the form of consultation may be reached.

The criteria for installations that may be considered for disposal at sea are significant because the discussions are moving towards a position whereby some installations would always be required to go to land, and some could be considered for sea disposal on a case by case basis. How many of these 'IMO' large steel installations should be considered on a case by case basis is fundamental to the decision. Possible solutions to the impasse could include retaining the IMO criteria, setting new ones, or side-stepping the issue by prohibiting sea disposal of all installations and concentrating on the exception clause.

3.3. The Commission Services have continually stressed that to be effective any OSPAR Decision has to be supported by all the Contracting Parties and to that end have attempted to a certain extent to mediate between the two groups of interest, mindful of the position adopted by the Commission at the 1995 North Sea Conference and the findings of the Commission Services' Technical Review.

3.4. In May 1997 the UK Government launched a review of UK policy regarding environmental protection and exploration and production of hydrocarbons offshore and initial statements to the press and to the OSPAR Commission meeting in September 1997 suggest that the UK are moving more towards the position taken by the other EC Member States; in particular that there should be a presumption against disposal at sea. However, there are still major areas of disagreement over the form and content of the draft decision.

3.5. The Decision is expected to be agreed at the OSPAR Ministerial Meeting in July 1998. By that time the OSPAR Convention should have entered into force. In the event that the new Convention is not ratified, adoption of a Decision would formally be by the Oslo Convention where the European Community is an observer.

4. Additional issues to be considered when assessing options

In addition to the technical and environmental issues outlined above the following points are also highly relevant -

4.1. Member States

4.1.1. Removal and disposal costs are met initially by the owners of the installations, the oil companies, which in some instances have an element of state participation. Because such expenditure is to a large extent tax- deductible, Member States may themselves have to fund indirectly a part of the costs via reduced tax revenues. For example, the estimated cost to the UK, which is the Member State which could be most substantially affected by any tightening up of existing rules, is up to 70% of any additional removal and disposal costs.

4.1.2. The UK currently has the majority of the larger steel installations but more Member States could be materially affected in the future if they establish significant offshore oil and gas exploration and production. The UK has appeared to be strongly in favour of adopting a case by case approach and would probably give greater emphasis to a cost benefit or cost effectiveness analysis of the disposal options than other Member States with such installations.

4.2. Norway

4.2.1. Norway is the other country which currently could be substantially affected and as an EEA member would eventually be subject to Community legislation. Currently Norway takes a similar approach to the UK on the decision process although because the Norwegian state share of the costs is met by an actual cash payment to the owner (based on the tax history of the oil or gas field in question) approval by the Storting, the Norwegian Parliament, is required. The possible financial effects would therefore be reflected by an increase in public expenditure rather than in the UK case by a decrease in tax revenues.

4.3. Industry

4.3.1. The exploration and production industry is strongly opposed to any change in the current case by case approach, particularly with regard to the larger installations which they consider to include all the 100 or so installations which are not required to be completely removed under the IMO Guidelines. Initially technical feasibility was stressed as the most important factor but increasingly additional costs and safety factors compared to environmental gains have been emphasised by the industry. Their association E & P Forum has challenged some of the general cost estimates contained in John Brown's Technical Review as not being representative of individual cases and have quoted the results of studies relating to two individual installations which were significantly higher than the John Brown estimates. The offshore contracting industry on the other hand has consistently argued that all the steel structures can be safely removed but have maintained a slightly lower profile. Their association IPLOCA did not challenge the cost estimates when they provided their comments on the John Brown Technical Review.

4.3.2. The fishing industry's association Europêche's policy is to call for the complete removal of all installations when they are decommissioned. The fishing industry has traditionally been concerned that offshore exploration and production could affect fishing opportunities through pollution, by restricting the area available for fishing and by installations giving rise to damage to fishing gears.

4.4. Environmental Non-Governmental Organisations

4.4.1. Environmental groups remain strongly in favour of bringing the steel installations to shore for recycling and/or disposal although their attitude towards concrete installations has been somewhat modified. Much emphasis is placed on the duty to take a precautionary approach given the uncertainties of sea disposal and on the difficulty of justifying what is seen as an exceptionally favourable treatment of the oil and gas industry as regards their waste. This is particularly so given the trend in international and EC law is towards less, rather than more, disposal of wastes in the sea.

4.5. Questions relating to liability for abandoned or dumped installations

4.5.1. Although UNCLOS is silent on the question of liability, the 1989 IMO Guidelines and the 1996 Protocol to the London Convention 1972 require Contracting Parties to address the question of liability. For example, the IMO guidelines require coastal States to ensure that the legal title to installations and structures which have not been entirely removed from the sea bed is unambiguous and that responsibility for maintenance and the financial ability to assume liability for future damages are clearly established.

4.5.2. It is likely that, in most cases, liability will remain with the original owner of the installation. For example, the UK's consultative document "Guidance Notes for Industry - Abandonment of offshore Installations and Pipelines under the Petroleum Act 1987 (1995) recognised that abandonment would not normally involve a change in ownership and therefore the residual liability for any compensation or damages remained with the original owners in perpetuity. Although such an approach is in accordance with the polluter pays principle, perpetual liability raises a number of issues of concern, principally whether such owners can be effectively called to account if damage is caused in the future.

4.5.3. An alternative approach would be that the State assumes responsibility for the disused installations. In the American example, some American States have accepted responsibility for certain abandoned platforms. When the relevant agency of these States issues a permit to the owner for disposal at sea it absolves the owners from any subsequent liabilities Industry appears to favour some form of limitation or transfer of liability to a state authority. Whether other States would be prepared to do the same is not clear.

4.5.4. Under the existing rules the importance of establishing clearly who is the legal owner of any installation disposed of at sea, and who has financial responsibility for it has been recognised. Whether the State or Industry is ultimately responsible is less important than ensuring that at the time that disposal at sea takes place responsibility is clearly established, thereby ensuring the necessary effective protection for users of the sea.

4.6. Competition and competitiveness

4.6.1. In theory different standards could lead to problems with competition. The North Sea is a mature oil and gas province with a stable regulatory regime and the additional costs of a complete removal and disposal on land policy are not material to the investment decision. They arise at the end of an income stream of a number of years and their net present cost at the time of the development decision are negligible. It is therefore unlikely that there would be a serious danger of diverting investment away from the North Sea to other regions on cost grounds.

4.6.2. However, as regards environmental policy and in particular waste management, should two regions apply different standards there may be an issue. However, Community negotiation and implementation would ensure uniformity across regions where appropriate and therefore avoid any possibility of competition problems in this area. This would effectively transfer a disagreement arising in OSPAR to the Community.

4.7. Third Countries

4.7.1. Community relations with 3rd countries other than Norway might also become an issue if complete removal were to become a general requirement subject only to a restricted number of exceptions as a number of the companies operating in the North Sea have as their ultimate parent non EC or 3rd country corporations. For example in the United States of America although at present complete removal is generally required there is extensive reuse under a 'rigs to reefs' programme and therefore there is in effect disposal at sea, albeit via 'reuse'. However, there are few installations of the size of the large North Sea ones, certainly none have reached the end of their useful lives yet. Controversy surrounds the transferability of 'rigs to reefs' policy to the North Sea where conditions are quite different from the Mexican Gulf. Within OSPAR it is theoretically permitted but the necessary guidelines have not yet been drawn up and agreed. As any guidelines or regulations would apply to all installations, regardless of the nationality of the owner, there should be no question of discrimination against 3rd country corporations.

5. The Community dimension

5.1. Disposal of decommissioned offshore installations situated where the Member States exercise jurisdiction is clearly an issue for which the Community can exercise competence, cf. Article 130r(1) of the EC Treaty. Furthermore, the Community may exercise external competence for environmental questions, cf. Article 130r(4) of the Treaty and may therefore participate on behalf of the Member States in international negotiations. The scope of the draft OSPAR Decision is both new and existing installations and it will therefore affect both the known areas where there are existing installations as well as the as yet unknown areas where any future installations may be placed.

5.2. An important environmental challenge posed by decommissioned offshore installations is their potential to cause pollution by hazardous substances, including oil residues, both from the installations themselves and from associated piles of drill cuttings. Other important environmental challenges include substantial amounts of materials containing natural radioactive substances of low specific activity as well as the management and disposal of the very large amounts of demolition waste from the physical structures of the installations. Also, the decommissioning issue raises non-environmental questions concerning the safeguarding of other uses of the sea.

5.3. Hazardous and radioactive substances, once released into the marine environment, be freely transported in the sea across boundaries in accordance with prevailing currents and meteorological conditions and cause pollution. In this context, the need to remove polluted drill cuttings may influence decisions on the need for complete removal of installations from the sea bed. The requirement to protect the sea against such pollution is therefore clearly an international one. Substantial Community legislation to prevent direct and indirect pollution of the sea by hazardous substances is already in place. Examples of such important legislation are inter alia Directives 76/464/EEC (discharge of dangerous substances) and 76/769/EEC (restrictions on marketing and use of certain dangerous substances and preparations) as well as risk assessment framework laid down in Council Regulation 793/93/EEC (risk assessment). Also, the Community has set basic safety standards in the area of radiation exposure through Directive 96/29/EURATOM (basic safety standards).An OSPAR Decision on offshore installations could, depending on its content undermine some of the environmental benefits resulting from the implementation of Community legislation concerning hazardous substances and radioactive exposure.

5.4. In the area of waste disposal, for hazardous as well as non-hazardous waste, a Community policy and extensive Community legislation is already in place, in particular Directives 75/442/EEC (waste framework) and 91/689/EEC (hazardous waste). The objectives of the waste legislation include the reduction of risks to the environment from hazardous waste, the protection of human health and the environment against harmful effects caused by transportation, treatment and dumping of waste, and the promotion of waste recovery with a view to the conservation of natural resources. The waste legislation inter alia prohibits the abandonment of waste, require waste to be treated without using methods which could cause harm to the environment and without risk to water and require the separation of hazardous waste from non-hazardous waste and its subsequent safe treatment and disposal. There is thus a substantial Community interest in ensuring coherence of a future regime for removal and disposal of offshore installations and Community waste policy and legislation.

5.5. Protection of species and their habitats and conservation of biodiversity is an area which requires concerted action by the Member States. The Community has therefore adopted legislation in this area, in particular Directives 79/409/EEC (wild birds) and 92/43/EEC (conservation of natural habitats). As measures taken with regard to removal and disposal of offshore installations may have effects on species and habitats , the disposal of offshore installations is clearly an issue where an international solution is needed.

5.6. The Study carried out for the Commission Services showed that if sea disposal is to be carried out, the only generally cost-effective solution is to topple installations at the location where they have been in operation. Although there is no scientific evidence to suggest that the presence of such structures on the seabed will enhance marine life overall, they might give rise to a local concentration of fishes and other animal groups on and around the structures, most likely to the detriment of other areas.

In addition, the seabed at the large majority of these locations is highly polluted due to the presence of large piles of oil contaminated drill cuttings from the oil and gas exploitation activities. Sea disposal might therefore have the effect of unnecessarily exposing marine life to oil pollution which could, apart from any general detrimental effects of such exposure, also result in the tainting of fish. Sea disposal may therefore offset the benefits of Community legislation in the area of protection of species and habitats and may in the future give rise to infringements of this legislation. Furthermore, it may impact on the quality of fish caught for human consumption.

5.7. Safeguarding other human uses of the sea and the seabed is another important issue to be taken into account. An important example of this is ensuring the safety of navigation which is appropriately taken care of internationally by the IMO guidelines on removal of installations. Another important issue is the interaction of removal decisions with the management of fisheries in the open sea which is a competence of the Community under the Common Fisheries Policy. Clearly, the degree of removal of decommissioned offshore installations will interfere with the availability of the areas concerned for certain types of fisheries, with the safety of fishermen and will increase the risk of loss of gears and vessels. Measures adopted concerning removal and disposal of decommissioned offshore installations therefore interfere considerably with the Common Fisheries Policy in particular by interfering with the management of areas available for fishing.

Although the influence of decisions on removal and disposal of offshore installations on the production price of oil and gas is negligible, there is nevertheless a considerable Community interest in ensuring that the oil and gas exploration and exploitation industry is subjected to the same approach to removal and disposal requirements across the Community thus ensuring that such requirements do not become a competition factor.

5.8. In summary, there is a preponderant Community interest in the issue of removal and disposal of disused offshore oil and gas installations. In the environmental area it is related particularly to questions of pollution with hazardous substances and low-level radioactive wastes, hazardous and non-hazardous wastes, conservation of biodiversity and protection of species of habitats. In other areas, it is particularly related to the Common Fisheries Policy and to ensuring a common approach across the Community to decommissioning requirements and to residual liability thus ensuring that these do not become competition factors between Member States. A clear and unambiguous Community policy and implementation will notably help ensure the uniform application and enforcement of Community policy and measures in this area both within the same seas and between different seas, and will in particular mitigate the inherent risks of incompatibilities and unequal treatment which might develop if different approaches are adopted by the different regional seas conventions.

It is therefore appropriate for the Community to take action concerning the disposal of offshore oil and gas installations. It is clear that the objectives in this area cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community.

6. Defining a Community position

6.1. The disposal of offshore oil and gas installation is an issue of direct Community interest. In the absence of direct Community action initiatives would be limited to individual Member States' negotiations within the various regional Conventions and action would essentially be at the individual MS level. Each MS might be bound to implement only the specific rules which they supported and were adopted by the Conventions to which they are a Contracting Party. The risk would be the lack of a coherent approach across the Community leading to unequal treatment of competing industries and possible contradictory environmental protection measures. Even if similar rules were to be adopted by the different regional sea Conventions they might be applied very differently across the Community, both within the same seas and between different seas. Furthermore Convention decisions may be difficult to enforce. This potential lack of consistency and enforcement could lead to a requirement for Community action at a later date to rectify the situation and avoid Community enterprises being faced with a range of different regulatory regimes.

6.2. One way of moving forward would be to propose internal Community legislation, such as a Council Directive, immediately. The nature of the Community and its legislative process would allow for a uniform application and enforcement but only across the EC and EEA. The disadvantage of this approach is that only EC and EEA Member States would be bound to the common approach whereas other third countries with which we share the Seas concerned would not be bound to implement the same or similar measures without the Community taking the initiative to negotiate and adopt such rules in the relevant regional seas Conventions. Although this approach would have the advantage of applying to all EC Member States immediately ie also to those Member States outside OSPAR - namely Austria, Greece and Italy it would only apply to Norway after a Decision of the EEA Joint Committee. It could also be interpreted as prejudicial to Community interest in other OSPAR policies if the Commission were to be seen to press ahead separately for action via EC legislation rather than via the newly ratified OSPAR Convention. Furthermore it could be seen as an attempt to exclude Norway from negotiations on any final policy.

6.3. A more prudent and appropriate course of action would be negotiation by the Community of the rules and regulations via the respective regional marine environmental Conventions, which would ensure that appropriate policies are uniform across regions, extending where applicable to third countries outside the EC. Application and enforcement for 3rd countries would clearly remain under the Conventions but EC and EEA Member States would benefit from established Community application and enforcement standards. Action in this way via OSPAR ensures that advantage can be taken of the considerable amount of effort already expended within that Convention on negotiations with the prospect of achieving agreement in July of this year and enables Norway to play a fuller role in negotiating the Decision. Similar Community action in the other Regional Conventions could then be taken as necessary, extending the policy to include more States.

7. Conclusions

7.1. The recommended approach is therefore that of Community negotiation and implementation of a policy on removal and disposal of offshore oil and gas installations via multilateral agreements in international fora such as OSPAR.

7.2. At this stage, the Community should aim to retain maximum flexibility over the detailed content of any Decision, regulation or legislation thereby avoiding the risk of prejudicing the current attempts within OSPAR to reach an agreed solution. However, in order for any OSPAR Decision to be politically acceptable, it must be line with current Community policies and where policy is under review be in line with the latest analyses and conclusions and accordingly broad, rather than detailed objectives are specified.

7.3. Any action undertaken by the Community would aim at a high level of environmental protection and should ensure that the disused installations in question are treated in a manner consistent with which other wastes are treated under Community legislation and with Community environment and energy policy as well as with the needs of the Common Fisheries Policy.

7.4. It must also take due account of the results of the Commission's externally produced technical review in 1996, in particular the conclusions on technical feasibility and safety, and the results of ongoing internal study and analysis which, with some exceptions, support the original position taken by the Commission at the 4th North Sea Conference in 1995 that complete removal and recycling and disposal on land is the preferred option,

7.5. The OSPAR Decision should also recognise that even under the current regimes in force it is already generally accepted that few installations are even candidates for sea disposal and that the regulations themselves express a clear preference for land disposal.

Therefore the OSPAR Decision must be based on the main rule that complete removal and recycling and disposal on land is preferable and that the scope for any exceptions to this, where total or partial removal and disposal at sea may be considered, should be limited to a few installations and clearly defined.

7.6. Following this communication, and on the basis of Council Conclusions of 16 December 1997 authorising the Commission to negotiate and vote in the name of the Community on Decisions under Article 10, para 3 of the OSPAR Convention, the Commission will forward to the Council a separate document requesting the Council to endorse recommended specific negotiating directives.

7.7. In as far as the Convention permits, any Decision must deal with all the relevant issues, and provide for maximum consultation and dialogue between interested parties in a transparent fashion. On the basis of these principles the OSPAR decision should satisfy the following objectives:

a. an OSPAR decision based on the principle of prohibition of disposal at sea of such installations;
b. all installations, except for a limited number identified in special circumstances on the basis of individual evaluations, taking into account all relevant aspects including technical, environmental, safety and cost factors, are completely removed when decommissioned and brought to land for recycling and safe disposal of unavoidable residues;
c. large concrete installations are exempted from the requirements under b. as there are currently no proven technologies available;
d. decisions to leave any installations wholly or partly in place or to dispose of them, wholly or partly, in the sea are prepared and taken in full consultation with other Contracting Parties and with interested organisations;
e. new installations (post 1 January 1998) should be completely removed when decommissioned and brought to land for recycling and safe disposal of unavoidable residues, whenever this is feasible, safe, and does not pose a significant risk to the environment.

7.8. In addition, the OSPAR decision should ensure:

- that it be subject to a regular thorough review, at least every five years, to ensure that decommissioning experience, relevant scientific and technological advances, and all other relevant information including the results of individual evaluations made under b) above are properly taken into account.
- that the legal title to installations and structures which have not been entirely removed from the sea bed is unambiguous, and that responsibility for maintenance and liability for future damages, including the financial ability to assume such liability, are clearly established.

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