



Mr Günther Oettinger
European Commissioner for Energy
200 Rue de la Loi
B-1049 Brussels, Belgium

Brussels, 18 April 2012

Dear Commissioner Oettinger,

In addition to previous letters submitted by us as a group and individually, we are writing to restate our strong support for the choice of a Regulation as the legislative instrument for the Commission's proposal regarding safety of offshore oil and gas activities within the Union. We consider this necessary in order to achieve a strong and truly responsible EU management of this industry.

Offshore operations are taking place in increasingly challenging environments in European waters, as recognized in the Commission's 2010 Communication on Facing the Challenge of the Safety of Offshore Oil and Gas Activities. The need to ensure a consistently robust regulatory framework throughout the Union is ever more pressing. Recent events, such as the ongoing gas leak at Total's Elgin platform and the oil spill from Shell's Gannet Alpha platform in August 2011, have made this clearer than ever. Besides these visible accidents, smaller incidents which could turn into major disasters happen almost every day. In the UK part of the North Sea alone for instance, regulators lately revealed an astonishing 69 incidents of oil and chemical spills during the last three months¹.

After discussions with the stakeholders involved, and hearing their underlying arguments, we remain certain that a Regulation is the most suitable instrument for regulating this sector. The claim made by representatives of the UK regulators at DG Energy's workshop on 31 January that a Regulation would legally require extensive repeal and amendment of existing national safety legislation, whereas a Directive would not, is incorrect. In either case, any national provisions contradicting the new EU law must cease to be applied, but in fact, a Directive, as it requires formal legislative transposition, could be more burdensome to implement than a Regulation, which would take effect through its direct applicability. We conclude, from our discussions with the stakeholders, that the main concerns are to do with the administrative burden which implementation of the new Regulation would entail. It is true that a Regulation would place a short-term administrative burden on national authorities. However, so would a Directive, as well as any other change in legislation. Moreover, the need to spend some money and man-hours in the short term on bringing national procedures up to speed with the new law should not be a reason to sacrifice, in the long term, the best possible safety and environmental standards.

The benefits of a Regulation are vast in comparison to a Directive. A Regulation ensures direct application of the same minimum standards in all Member States, without the risk of losing stringency

¹ Data published by the Department of Energy and Climate Change on 30 March 2012. Available from: http://og.decc.gov.uk/en/olgs/cms/data_maps/field_data/oil_spills/oil_spills.aspx

or nuance as a result of national transposition. It is crucial to recall that, by allowing Member States to exceed what is required in the Regulation, no compromises will be made with regards to existing safety provisions and there will be no risk of dismantled national safety regimes. The fact that Member States may retain existing national provisions which go further than the Regulation is expressly set out by the designation of the Regulation as minimum requirements in Article 1 of the draft, as well as by Article 193 of the EU Treaty, in respect of environmental protection.

As identified in the Impact Assessment, uneven implementation of Directives is one of the underlying drivers for the current problems in the sector. This is a particularly prevalent problem for environmental legislation, as can be exemplified by the Habitats Directive (92/43/EEC)² and the Environmental Liability Directive (2004/35/CE)³ which both provide rich examples of late and inadequate transposition of environmental Directives. There are furthermore a range of Directives which have proven insufficient enough in providing a uniform implementation that they have ultimately been repealed and replaced by Regulations.⁴ This record of poorly transposed and ultimately repealed Directives undeniably indicates additional costs for Directives, which should be factored into the discussion when considering the choice of legal instrument.

Finally, there is the important point that a Regulation (more than a Directive) will provide certainty and consistency across EU jurisdictions, which should be to the advantage of the industry and to regulators.

While we have previously expressed concerns about specific provisions in the Commission's proposal, which we stand by, we are convinced that this new legislation is needed to reduce the risks of major accidents, protect the safety of workers and minimise environmental damage in the offshore oil and gas sector. We urge the Commission to remain truly responsible in their proposal and deliver the most effective piece of legislation – by retaining it in the form of a Regulation.

Yours sincerely,



Frederic Hauge
President,
Bellona



Sandy Luk
Senior Lawyer,
Client Earth



Xavier Pastor
Executive Director,
Oceana Europe



Monica Veerbeek
Executive Director,
Seas at Risk

Cc to: Jan Panek, Head of Unit B3 Oil and Coal

² The Court of Justice judged against Germany in cases C-83/97 and C-98/03 and against Greece in case C-329/96. It also found that Luxembourg (case C-75/01), Belgium (case C-324/01) and Italy (case C-143/02) had not correctly transposed the Habitats Directive.

³ Only four countries met the transposition deadline in 2007. After 23 letters of formal notice, 16 reasoned opinions and nine court applications, seven Member States were condemned by the European Court of Justice for failure to transpose the Environmental Liability Directive on time (Austria, Finland, France, Greece Luxembourg, Slovenia and the UK).

⁴ Examples include: Regulation (EU) No 994/2010 concerning measures to safeguard security of gas supply, repealing Council Directive 2004/67/EC; Regulation (EC) 443/2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO2 emissions from light-duty vehicles, repealing Directive 70/220; and Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (COM(2012) 11 final, 25 January 2012) intended to repeal Directive 95/46/EC.