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from: General Secretariat of the Council

to: Coreper/Council

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Subject: **PREPARATION OF THE TTE (ENERGY) COUNCIL ON
3 DECEMBER 2012**

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

- Presidency report on state of play

Introduction

1. The Commission adopted the above proposal on 27 October 2011, proposing as legal basis Article 192(1) TFEU. A presentation was provided by the Commission at the TTE (Energy) Council meeting on 24 November 2011. A progress report¹ was presented at the TTE (Energy) Council meeting on 15 June 2012, providing guidance for the further examination of the file.
2. On 9 October 2012, the European Parliament's ITRE Committee voted on the proposal and provided the rapporteur Mr. Ivo Belet with a mandate to negotiate with the Council.

¹ See doc.10205/12

3. Agreement at first reading between the two Institutions on the draft offshore safety Directive should be reached as soon as possible. The Presidency and the rapporteur have therefore agreed to hold a first informal trialogue on 29 November 2012, with a view to identifying the respective positions of the two Institutions and to agreeing on an appropriate way forward.

State of play

4. During the extensive examination by the Energy Working Party under the Cyprus Presidency several concerns were raised by delegations on different aspects of the proposal. The Presidency has constantly been seeking compromise solutions which formed the basis of a draft mandate for the first informal trialogue held on 29 November 2012. Without prejudice to specific concerns of individual delegations, the following outline briefly reflects the main issues discussed and concerns raised by delegations:

(a) Legal instrument - Regulation or Directive

- Following the discussion in the Council preparatory bodies, and considering the EP amendment to change the legal form into a Directive, a redrafting of the draft Council text into a Directive format was undertaken.

(b) Public participation relating to planned offshore oil and gas exploration

- Although the principle of this provision, dictating that a public consultation must take place, either at planning or at project stage before any exploration drilling occurs, is generally welcomed by delegations, several delegations have a concern on the inclusion of this provision in the Directive. According to them, it would have been better placed in the relevant environmental legislation.

(c) Liability for environmental damage

- Some delegations would like to expand the liability regime under the Directive to include also other liabilities in addition to environmental liability. However, most delegations can agree with the Commission proposal to limit the scope to environmental damage.

(d) Competent authority

- The provisions dealing with the competent authority have been extensively discussed by the Council preparatory bodies given the serious concerns that most delegations raised. However, most delegations can agree that as a minimum a functional independence of the competent authority must be ensured. Furthermore, the draft Council text lays down that the human and financial resources of the competent authority shall be commensurate with the level of offshore oil and gas operations of the Member State. The provisions concerning the competent authority are still under consideration by delegations.

(e) Offshore oil and gas operations conducted outside the Union

- The relevant provisions on offshore operations outside the Union are only directed towards Member States with offshore oil and gas operations under their jurisdiction. These provisions provide for the mandatory reporting by EU based companies operating outside the Union on major accidents in which they have been involved in order to contribute to the continuous improvement of safety of offshore oil and gas operations and environmental protection related for operations within the Union. Although the principle of these provisions can generally be supported, they are still under consideration by some delegations.

(f) Transboundary effects

- The provisions dealing with transboundary effects reflect the outcome of a comprehensive discussion in the Council preparatory bodies, especially concerning the interaction between Member States with and without offshore oil and gas operations in the context of emergency preparedness and response. For reasons of clarity, it was considered appropriate to allocate all the provisions on transboundary effects to a new chapter which seems to be acceptable to delegations.

(g) Transposition and addressees

- The provisions of the Directive are not directed to the "land-locked" Member States. Concerning Member States with a coastline but with no offshore oil and gas operations under their jurisdiction, and which do not plan to licence such operations, shall only be obliged to transpose the provisions on emergency preparedness and response and penalties.

5. The Permanent Representatives Committee is invited to take note of the state of play to be presented by the Presidency at the TTE (Energy) Council on 3 December 2012. A further update of this Note will be given orally by the Presidency at the Council meeting.
