Council of the European Union

Brussels, 9 April 2024
(OR. en)

8657/24

Interinstitutional File:
2024/0084 (NLE)

ENV 397
CLIMA 147
POLMAR 10

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 April 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 153 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) on a Decision amending OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations

Delegations will find attached document COM(2024) 153 final.

Encl.: COM(2024) 153 final

EUROPEAN
COMMISSION

Brussels, 8.4.2024
COM(2024) 153 final

2024/0084 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) on a Decision amending OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the North-East Atlantic Marine Environment Protection Commission in connection with the envisaged adoption of a Decision amending OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations within the Convention for the protection of the marine environment of the North-East Atlantic.

2. CONTEXT OF THE PROPOSAL

2.1. The OSPAR Convention

The Convention for the protection of the marine environment of the North-East Atlantic ('the Agreement') aims to protect the North-East Atlantic maritime area against the adverse effects of human activities to safeguard human health, conserve marine ecosystems and, when practicable, restore marine areas, which have been adversely affected. It has 16 Contracting Parties: Belgium, Denmark, the EU[1], Finland, France, Germany, Iceland, Ireland, the Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom, Luxembourg, and Switzerland. The Agreement was opened for signature at the Ministerial Meeting of the Oslo and Paris Commissions on 22 September 1992 and entered into force on 25 March 1998.

2.2. The OSPAR Commission

The OSPAR Commission (established according to Article 10 of the Convention) is made up of representatives of each of the Contracting Parties; it meets at regular intervals and at any time, due to special circumstances. Its duties include supervising the implementation of the Convention and reviewing the condition of the maritime area, the effectiveness of the measures being adopted, the priorities and the need for any additional or different measures.

According to Article 20 of the Convention, each Contracting Party has one vote in the Commission. The EU is entitled to a number of votes equal to the number of its Member States, which are Contracting Parties to the Convention. The EU shall not exercise its right to vote when its Member States exercise theirs and conversely.

2.3. The envisaged act of the OSPAR Commission

On 24 June 2024, during its 27th session/meeting, the OSPAR Commission is to adopt a Decision amending OSPAR Decision 98/3 regarding the Disposal of Disused Offshore Installations ('the envisaged act').

It is proposed to amend the definition of "concrete installation" in OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations to clarify that any cell content within the substructure is not part of the installation. Cells in such installations (called "concrete gravity-based structures (CGBS)") are used for storage of hydrocarbons and the residual materials in these cells, of largely unknown composition, are mainly liquid, with high amounts of oil. Such cell contents are hazardous waste which, if left at sea after decommissioning of the installation, carries high risks for the environment, ecosystems and potentially human health.

OSPAR Decision 98/3 requires in principle full removal of end-of-life installations but allows derogations.

[1] Council Decision 98/249/EC of 7 October 1997 on the conclusion of the Convention for the protection of the marine environment of the north-east Atlantic (OJ L 104, 3.4.1998, p. 1)

CGBS cell contents are not part of an offshore installation and therefore should not be subject to a derogation under Decision 98/3; in order to provide clarity on this issue, the OSPAR Jurist Linguists recommended amending the definition of "concrete installation" in paragraph 1 of OSPAR Decision 98/3 to: "concrete installation means a disused offshore installation constructed wholly or mainly of concrete*; any cell content within the substructure is not part of the installation and is covered under the provisions of Annex III of the OSPAR Convention".* The addition of the part in italics, by excluding explicitly the cell contents from the definition of "concrete installation", removes any possibility for allowing, through a derogation to the full removal obligation established under Decision 98/3, to leave such cell contents at sea after decommissioning.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

In the wake of the Brent Spar incident in the mid-nineties (whereby, in the face of public outcry, Shell had to change its decision to dump in the sea a disused oil extraction installation) the 1998 OSPAR Ministerial Meeting in Sintra (Portugal) adopted OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations; this Decision prohibits dumping, and the leaving wholly or partly in place, of disused offshore installations within the OSPAR Maritime Area.

Only for certain categories, and subject to an assessment in accordance with Annex 2 of Decision 98/3, the competent authority of the relevant OSPAR Contracting Party may issue a derogation permit to leave installations or parts of installations in place. Categories of disused offshore installations where derogations may be considered include, for example, steel installations weighing more than ten thousand tonnes in air or concrete gravity-based structures (CGBS).

During 2019-2020, a consultation process under OSPAR Decision 98/3 on the United Kingdom's intention to issue a derogation permit for leaving in-situ the footings of the Brent Alpha Steel Jacket and Brent Bravo, Brent Charlie and Brent Delta gravity-based concrete installations structures was undertaken; such permit would include the cell contents of the gravity-based concrete installations structures.

The Commission representing the EU, together with other OSPAR Contracting Parties, has objected to the UK's intention because such contents are hazardous waste which should not be left at sea; moreover, a proper monitoring programme of the marine environment around the parts of the disused installation left at sea should be in place; furthermore, to prevent leaving any parts at sea after decommissioning, in line with the spirit of Decision 98/3, development of technological solutions for full removal should be accelerated; granting derogation permits without adequate justification does not stimulate such development.

The consultation process was reflected, inter alia, in the new OSPAR Strategy, adopted by the 2021 OSPAR Ministerial Meeting in Cascais (Portugal), which has an objective to "review and, if appropriate, amend the categories of disused offshore installations where derogations may be considered under OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations, aiming to reduce the scope of possible derogations. The review will be based, inter alia, on the advancement of decommissioning technologies and on the best available scientific knowledge." The Strategy also contains an objective of promoting the decommissioning technologies; the development of a harmonised methodology for assessing decommissioning options is also underway in OSPAR.

In this context, the aim of the proposed amendment is to provide a solid legal basis for preventing to leave in situ contaminated cell contents after decommissioning. This is in line not only with the abovementioned objections to derogations for cell contents by the

Commission and other OSPAR Contracting Parties , but also with related EU policies such as the Zero Pollution Action Plan, aiming to reduce pollution in water to levels no longer considered harmful to health and natural ecosystems by 2050, the Marine Strategy Framework Directive, which requires achievement of Good Environmental Status in EU marine waters, the Waste Framework Directive, which prohibits dumping of waste and the Offshore Safety Directive, which considers also environmental aspects of decommissioning. None of these policies can be properly implemented if sources of a potentially severe and lasting transboundary pollution, such as contaminated cell contents of disused oil installations, are present in the Northeast Atlantic.

In view of the OSPAR Commission meeting from 24-28 June 2024, a Union position is necessary because the envisaged Decision, which is going to be adopted is a legally binding text. Since the Decision will facilitate the implementation of EU policies and legislation and prevent damage to the marine environment, it is proposed that the Union supports the adoption of the Decision by voting in favour thereof.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[2].

4.1.2. Application to the present case

The OSPAR Commission is a body set up by an agreement, namely the Convention for the protection of the marine environment of the North-East Atlantic.

The act which the OSPAR Commission is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects because all OSPAR Decisions are legally binding for the Contracting Parties, according to paragraph 2 of Article 13 of the OSPAR Convention, according to which: *"A decision shall be binding on the expiry of a period of two hundred days after its adoption for those Contracting Parties that voted for it and have not within that period notified the Executive Secretary in writing that they are unable to accept the decision, provided that at the expiry of that period three-quarters of the Contracting Parties have either voted for the decision and not withdrawn their acceptance or notified the Executive Secretary in writing that they are able to accept the decision. Such a decision shall become binding on any other Contracting Party which has notified the Executive Secretary in writing that it is able to accept the decision from the moment of that notification or after the expiry of a period of two hundred days after the adoption of the decision, whichever is later".*

The envisaged act does not supplement or amend the institutional framework of the Agreement.

---

[2] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to relate to protection of the environment.

Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 192(1), in conjunction with Article 218(9) TFEU.

2024/0084 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) on a Decision amending OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Convention for the Protection of the Marine Environment of the North-East Atlantic[3] ('the Convention'), to which the Union is a Contracting Party, entered into force on 25 March 1998.

(2) Pursuant to Article 10(3) of the Convention, the Commission established by Article 10(1) of the Convention ("the OSPAR Commission") may adopt Decisions in accordance with Article 13 of the Convention.

(3) The OSPAR Commission, during its 27th regular session/meeting on 24th June 2024, is to adopt a Decision amending OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations.

(4) The envisaged Decision amends the definition of "concrete installation" to clarify that any cell content within the substructure is not part of the installation.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the OSPAR Commission, as the Decision to be taken by the latter will be binding on the Union.

(6) The Union position should be to vote in favour of the Decision amending OSPAR Decision 98/3 because it will facilitate the implementation of EU policies and legislation and prevent damage to the marine environment.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 27th session/meeting of the OSPAR Commission shall be to vote in support of the adoption of the Decision amending OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations as concerns the definition of "concrete installation".

[3] OJ L 104, 3.4.1998, p. 2.

Article 2

Refinement of the position referred to in Article 1 may be agreed to, in the light of developments at the 27th meeting of the OSPAR Commission, by the representatives of the Union, in consultation with Member States during on-the-spot coordination meetings, without a further decision of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President