KEY MESSAGES ON OFFSHORE OIL LIABILITIES AND FINANCIAL SECURITY

In October 2011 the European Commission proposed a Regulation on the safety of offshore oil and gas prospection, exploration and production activities that aims to extend the scope of the Environmental Liability Directive (ELD) to include liability for pollution caused to all marine waters. The proposal also calls for assessment of the financial capacity of offshore oil licence applicants, including financial security measures.

While insurance can play a role as a tool to transfer the risk of environmental damage caused by EU industries, it cannot provide a complete or feasible solution for the cover of risks in the offshore oil sector.

- Offshore risks are rare yet severe, highly complex and extremely difficult to quantify. Few insurers are able to offer this cover and global insurance capacity is highly limited, in contrast with other insurance markets such as those for motor or natural catastrophes.
- The ELD would require complete restoration of the offshore marine environment to its baseline condition following an oil spill. However, the precise level of biodiversity is unknown in these waters, so insurers cannot assess potential damage accurately enough to be able to offer cover.
- Oil spills cause damage that can last for decades for which the ELD would require the operator (ie the offshore oil company) to pay the full economic cost of remediation. Given the amount of capital insurers would need to provide sufficient cover, comply with solvency legislation and provide adequate returns to investors, a mandatory insurance regime for this risk would lead to significantly higher insurance costs.
- Insurers unable to offer the mandated cover would be likely to leave the EU market altogether, thereby reducing competition and further limiting the availability of insurance.
- The greatest impact of rising insurance costs under a mandatory scheme would be felt by the smaller offshore oil contractors, which would be unable to obtain insurance and thus forced to leave the market.
- A sector handicapped by such infeasible regulatory obligations would not be attractive to investors. Lack of insurer capital would translate into reduced underwriting capacity.
- The offshore energy sector is global, thus an international (rather than an EU) solution to its risks would be more appropriate.

Extension of the ELD and the possible introduction of mandatory financial security measures into an insurance market in which the necessary preconditions do not exist is likely to lead to higher insurance costs, diminished insurance capacity and less product innovation and competition.