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Off-shore oil spills require government-industry co-operation, not more regulation and expanded liability

by Prof. Lucas Bergkamp and Barbara J. Goldsmith

Since the April 2010 Deepwater Horizon Incident in the US Gulf of Mexico, governments around the world have scrambled to determine whether changes are needed to prevent and address similar incidents. The European institutions are currently considering proposals that would harmonize and tighten requirements for offshore activities at the European level, expand the Environmental Liability Directive (“ELD”) to include all marine waters, which are currently excluded from the Directive’s scope, and potentially require that European-headquartered companies apply EU standards to their activities worldwide. These pending proposals, however, are premature and need to be assessed carefully relative to status quo and other alternatives.

The Commission’s October 2010 Report “Facing the challenge of safety of offshore oil and gas activities” identified areas where action was deemed necessary to maintain environmental and health safety for offshore activities in Europe. This report was followed by opinions from two committees of the European Parliament, and a Parliament resolution setting forth recommendations to prevent offshore oil spill incidents and address them if they were to occur, including possible expansion of the ELD to all marine waters. These proposals would be necessary to “close gaps” in the European legislative framework. Clearly, offshore drilling and safety is an issue of great interest to both private and public sectors alike, as evidenced by nearly 75 submissions — ranging from individual citizens to industrial companies to government authorities to NGOs — in response to the April 2011 Directorate General of Energy public consultation on improving offshore safety in Europe. Opinions on whether expansion of the ELD and more regulation are effective ways to prevent and address off-shore oil spills, however, diverge.

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Prof. Lucas Bergkamp is a Partner at Hunton & Williams, Brussels

Barbara J. Goldsmith is the Founder & President of Barbara J. Goldsmith & Company, Brussels