Response to DG ENER Public Consultation: 'Improving Offshore Safety in Europe'

Introduction:

E.ON Ruhrgas E&P is responsible for the overall oil and gas upstream business within the E.ON group. Our business has been grown over the last years since establishment in 2003. Currently we are active in three regions: North Sea, Russia and North Africa and we are accepted operator in Uk, Norway and Algeria. Our producing assets are based in the UK and Norwegian sectors of the North Sea as well as in Russia.

We have been audited in 2009 on HSSE topics and have been identified as "best in class" within the E.ON group.

General Comments:

We acknowledge the legitimate environmental concerns of European States with coastlines that could potentially be affected by an oil spill incident. However, we believe that these concerns should, to a large degree, be allayed by the fact that the UK (as the biggest offshore oil and gas producer in the EU) already has stringent, robust and fit-for-purpose offshore regulatory standards in place. In addition to the strengths of its regulatory regime, the UK has an oil spill response capability that is effective and being enhanced where necessary. Only Norway (in the EEA) and a handful of EU Member States have significant offshore oil production, with the majority of EU Member States having none at all. It follows therefore that any action to alter the offshore regulatory regime at the EU level will affect only a small minority of EU Member States, with the UK experiencing by far the biggest impact.

Possible EU Legislative Action:

We support the Commission's goal of ensuring the highest safety standards throughout the EU. However, any revision of existing or new legislation at the EU level should not have an adverse effect on the current high safety standards present. Currently the European offshore oil and gas industry is controlled by a network of international, European and national legislation, regulation and standards (both in terms of health and safety and environmental protection). In its Communication, the Commission takes the view that this arrangement is unsatisfactory and does not acknowledge that this system has hitherto helped to ensure the high standards evident in Europe. The Commission's proposal to come forward with a single piece of new legislation has the greatest risk of undermining the existing system (that currently functions well) through creating an extended period of regulatory uncertainty.

We believe that, in general, the principle of subsidiarity should apply to the regulation of Member State offshore oil and gas interests. In proposing any revision of existing or new legislation the Commission should take full account of existing practices, procedures, Member State regulatory regimes and the ongoing action being taken by industry and others (e.g. OSPRAG, GIRG etc.).

Summary:

Our expectation is that, in general, any action taken at EU level should:

- take due account of the analysis and findings of the various investigations into the Macondo incident and of the action being taken by industry and Member State authorities in response;
- take into account the existing national, EU and international network of regulation and legislation - and act only to enhance and add value to this existing system, rather than dilute its effectiveness;
- not have a detrimental effect on the current high safety standards present in Europe;

- respect the general principle of subsidiarity regarding regulation of individual Member States' offshore oil and gas activities and, therefore, the right of individual Member States to control their respective energy resources.

In order to raise safety standards in all EU waters, the EU should avoid the temptation to create an additional layer of supervisory regulation at the centre and instead work collaboratively with those Member States having offshore oil operations. This should be with a view to ensuring that each such Member State:

a. fully separates the economic/licensing aspects of offshore regulation from those relating to safety;
b. requires the national safety regulator to be an independent and adequately resourced expert body (such as the UK's Health and Safety Executive);
c. applies a goal setting regulatory regime including a requirement to reduce risks as low as reasonably practicable (i.e. the ALARP principle);
d. applies a safety case to all relevant operations within its jurisdiction, which has to be accepted by the State regulatory authority.

Responses to Specific Questions Posed:

Questions 1-3: Authorisations:

1. Which changes, if any, would you recommend to the authorisation conditions for offshore prospection or exploration or production activities? Please specify which authorisations your recommendations concern (all authorisations, those in a specific country, those authorising only a certain stage(s) such as prospection, exploration or production etc) (Please limit your response to maximum 1000 words)

The UK regime operates to robust, fit-for-purpose authorisation procedures. The UKCS licensing process currently includes requirements for the presentation of full safety cases, the demonstration of technical capability to respond to oil spill incidents and the financial capacity to cover the liabilities associated with operations. The safety case regime effectively ensures (on a case-by-case basis and across all stages of prospection, exploration and production) that the latest technology and procedures are fully applied.

We, therefore, does not consider that any changes to the authorisation conditions for offshore prospection, exploration or production activities are required in the UK.

It should be noted that a key aspect of the UK regime is the separation of the regulation of licensing from that relating to and health and safety. This separation must remain if the highest standards of safety are to be maintained and to avoid any potential for conflict of interest.

We think that potentially stipulating authorisation (licensing) requirements on a pan-EU basis would fail to take into account the distinct characteristics and requirements of oil and gas reservoirs across the EU. Hydrocarbon licensing must remain with the Member State authorities. It is our strong view that it is essential that the licensing of offshore oil and gas activities (and therefore control of the exploitation of their respective energy resources) remains under the control of the individual Member States in accordance with the principle of subsidiarity.

In addition, the technical competence and knowledge of the specifics of individual oil and gas producing regions takes much time and effort to develop. As this expertise already exists in several European States, it would make little sense to remove control of hydrocarbon licensing from them to be supplanted by another, less experienced, regulatory body.

2. European law foresees that the competent national authorities shall ensure that authorisations are granted on the basis of selection criteria which consider, among other things, the financial and technical capability of the companies wishing to carry out offshore oil or gas operations.

a) What key elements should this technical capacity requirement include in your view?
Please limit your response to maximum 500 words

b) Similarly, what key elements should the financial capability requirement include in your view? (Please limit your response to maximum 500 words)

The UK offshore licensing process has proven authorisation procedures in full accordance with the EU Hydrocarbons Licensing Directive 94/22which requires the demonstration of the technical and financial capability of the operator.

As a general principle, it is important that authorisation criteria (including criteria on the technical and financial capability of potential operators) are adequate in the particular circumstances of the proposed operation or activity. Criteria should not be defined on a one-size-fits-all basis.

In the UK, Oil & Gas UK, are conducting a major consultation on aspects of the demonstration of the financial capability of UK operators. It is assumed that these findings will be shared with the Commission. It is however, recognised that any criteria around financial capability should not preclude smaller companies from operating in Europe.

3. How (such as through legislation or voluntary measures at international, EU or national levels or by industry) should the adoption of state-of-the-art authorisation practices be best achieved throughout the EU? Should neighbouring EU Member States be consulted on the award of authorisations? (Please limit your response to maximum 1000 words)

We support the Commission in its desire to ensure that sound, state-of-the-art authorisation procedures are employed by Member States throughout the EU; in order to help ensure that authorisations are made which will result in safe operations.

We believe that the authorisation procedures in the European States where we operate are state-of the-art, robust and fully fit for purpose. It is understood that the European Commission wants consistent standards but we believe that the focus should be on working with those individual Member States over which the Commission has concerns.

In the UK and several other North Sea and EU Member States, the relevant regulatory authorities have developed, over the course of several years, state-of-the-art authorisation processes for the exploration and production of offshore oil and gas resources. We support the sharing of this experience, knowledge and regulatory best practice with others to help raise standards across the EU to those of Member States which have significant, established offshore oil and gas sectors.

Effective mechanisms already exist to ensure this sharing takes place. They include forums such as the North Sea Offshore Authorities' Forum (NSOAF) and the International Regulators' Forum (IRF). Advisory organisations such as these which consist of national regulatory experts could have an important role in helping to disseminate state-of-the art authorisation procedures across the EU. It would seem appropriate for the Commission to encourage all relevant EU Member State authorities (i.e. those in which offshore oil and gas exploration and production are conducted) to actively participate in such forums, or to form new bodies modelled on these arrangements.

We do not see how EU Member States would hand over sole sovereign rights over the exploitation of hydrocarbon resources within their respective territories. For this reason, we see little possibility of neighbouring countries being consulted on the decisions taken by other Member State authorities on the award of authorisations to explore for, or produce offshore oil and gas resources.

However, in order to assure adjoining Member States that the authorisation process is robust, it is prudent that all Member States with oil and gas operations within their waters publicly disclose their authorisation processes and procedures. For example, in the UK, the relevant licensing authority (the Department of Energy & Climate Change (DECC)) publishes guidelines on the licensing process on its website.

Post-licensing, trans-boundary issues of an environmental nature (including oil spills) are already managed through existing EU and international regulation.

<u>Questions 4-5: Prevention of accidents:</u>

4. Please describe here any recommendations or changes (to the current regulatory framework or practices) - if any - that you consider important to improve the prevention of accidents affecting the health or safety of workers on offshore oil and gas installations in the EU: (Please limit your response to maximum 1000 words)

Health and safety aspects of the offshore oil and gas industry are already controlled by a network of international, European and national legislation, regulation and standards. The Commission's Communication proposed a review of safety legislation and suggested that the Commission favours a single new piece of legislation. However, in terms of health and safety, to a large extent a 'single piece of legislation' already exists in the Extractive Industries Directive (EID) 92/91/EEC. This sector specific legislation provides for the minimum protection of workers in the mineral-extracting industries through drilling. In some areas many member states regimes already go well beyond the EID (e.g. in the UK the requirement for a safety case that has to be accepted by the regulator before operations can commence; advance well notifications; weekly drilling reports; well examination scheme, etc). In addition, the UK regime already requires well design, construction and maintenance to be critically examined by independent competent persons (ICPs).

Even before the Macondo incident, the EID was scheduled to be reviewed in 2011. We think that the review of the EID as the correct way of examining any changes that may be needed to the legislation. However, any revision of the Directive should be well informed and based on sound analysis and well thought-out conclusions.

The Communication also recommended that the relevant national authorities and oil and gas operators undertake to review the safety cases and update these if necessary. It should be noted that such a review is already a requirement of the UK safety case regulations for example.

5. Please describe here any recommendations or changes (to the current regulatory framework or practices) – if any – that you consider important in order to better prevent damage to the natural environment from accidents on offshore oil and gas installations: (Please limit your response to maximum 1000 words)

As per health and safety, the environmental aspects of offshore oil and gas industry are already controlled by a tight network of international, European and national legislation and regulation. It is crucial that any new measures proposed by the Commission for the protection of the environment build upon this existing regime and avoid areas of duplication, or regulatory ambiguity which do not exist today and may result in a less effective regulatory regime.

For example the UK environmental regulatory regime is already subject to stringent controls which set requirements for consents, permits, inspection, investigation and enforcement. A key requirement is for each operator to have an independently verified environmental management system which ensures that appropriate control measures are applied. The environmental regulations stipulate that every offshore operation must have a corresponding Oil Pollution Emergency Plan (OPEP) which should be approved by DECC. OPEPs are tailored to location and the environmental and socioeconomic sensitivities within a potential impact area. They are updated as required and exercised periodically.

The primary method of protecting the natural environment and avoiding the impacts associated with offshore incidents is through accident prevention. The Commission Communication suggests that existing legislation could be strengthened (e.g. the Seveso Directive, covering major accident hazards

involving dangerous substances, could be extended to offshore oil and gas installations) or, a stand-alone instrument for such operations could be developed.

However, this we believe is not necessary as the existing safety case regime has been shown to be robust and fit-for-purpose. To remove the already effective regime for dealing with major hazard issues currently in use, in order to introduce another approach would be counterproductive and have an adverse effect on the high safety (and therefore also environmental protection) standards currently in place in areas where we operate.

Questions 6-10: Verification of compliance and liability for damages:

6. Please describe here any recommendations you would like to make on how to improve compliance of the offshore oil and gas industry with applicable offshore safety legislation and other regulatory measures in the EU. (Please limit your response to maximum 1000 words)

As an operator we already strive to comply fully with all applicable offshore safety legislation and other regulatory measures. Strict penalties are in place and these are rigorously enforced if rules are not followed correctly. These penalties may include fines, suspensions or revocation of licences and/or permits. The Gulf of Mexico incident was a stark demonstration of the potential financial, human and environmental costs of offshore incidents. This is a very strong and clear incentive for industry to comply fully and rigorously with the legislative and regulatory framework that it operates under.

7. In your view, which are the key measures to supervise and verify compliance of the industry with offshore health, safety and environmental rules and who should do the supervision and verification? (Please limit your response to maximum 1000 words)

In areas where we operate regulatory authorities already strictly monitor compliance of rules and regulations relating to the industry. We will continue to work within the confines of the relevant national authorities who should continue to exercise their rights to supervise, inspect and verify industry compliance. We see no benefit in adjusting these control systems. Member State authorities should remain responsible for inspecting and ensuring compliance within their own respective regulatory regimes

It is already apparent that expert offshore oil and gas regulatory inspectors are a precious commodity. The EU and individual Member States should ensure that these valuable human resources remain fully functional in their capacity as national regulatory bodies.

8. In your view, should the existing environmental liability legislation (Directive 2004/35/EC) be extended to cover environmental damage to all marine waters under the jurisdiction of the EU Member States? (Please limit your response to maximum 1000 words)

Under the Environmental Liability Directive (ELD) operators are held responsible for environmental damage to protected habitats and species. We understand that the Commission may consider the need to extend the ELD to all marine waters irrespective of whether these are designated sites or not. However, to assess any damage that may have been caused by an oil spill incident, a baseline condition must be established against which any changes can be measured. Such baseline metrics are currently not available to all marine waters. It would therefore require the development of protocols e.g. for damage assessment in the marine environment, before considering amendments to the current ELD.

In any event, under most national legislation, clear provisions for the responsibility of clean-up and liability for damage, beyond that currently covered by the ELD, already exist. In the UK for example there is no legal limit on the liability of companies for the consequences of their actions. Within the UKCS licensing regime, operators and co-ventures already bear full liability on a joint and several basis which cannot be shifted to contractors. Any extension of the ELD should be considered in the context of existing legislation in individual Member States.

9. In your view, is the current legislative framework sufficient for treating compensation or remedial claims for traditional damage caused by accidents on offshore installations? If not, how would you recommend improving it? (Please limit your response to maximum 1000 words)
10.In your view what would be the best way(s) to make sure that the costs for remedying and compensating for the environmental damages of an oil spill are paid even if those costs exceed the financial capacity of the responsible party? (Please limit your response to maximum 1000 words)

As previously stated in the UK and other member states, there is no legal limit on the liability of companies for the consequences of their actions. Nevertheless, over and above this financial responsibility, the industry also operates, through Offshore Pollution Liability Association Ltd (OPOL), a voluntary industry mutual agreement which requires each operator to accept strict liability for pollution damage and reimbursement of third parties (including public authorities) for cleanup and compensation costs up to a pre-determined limit. OSPRAG recommended that the limit be raised from $120 million per occurrence to $250 million per occurrence. This came into effect on 1 October 2010.

While OPOL provides for third party clean-up and compensation costs to a predetermined limit, there are additional expenses that the operator has to cover in the event of a blowout, such as those related to bringing the well back under control and drilling a relief well. In the UK one of our main areas of operation the industry regulator DECC carries out checks on a company's finances before it grants a licence to that company, with the focus on a company's ability to carry out the agreed work programme rather than on its ability to pay for unforeseen events. In a letter issued to operators in December 2010, DECC stated that it would now require explicit confirmation that sufficient finance or insurance / indemnity provision is available to cover the drilling of relief wells.

We believe that , in general, the current legislative framework for treating compensation or remedial claims for traditional damage caused by accidents on offshore installations including MODUs, as it applies to our operations, is sufficient. We also believe that individual Member States should retain the authority to determine how they regulate indemnity and insurance provisions within their respective jurisdictions.

Questions 11-15: Transparency, sharing of information and state-of-the-art practices:
11.What information on offshore oil and gas activities do you consider most important to make available to citizens and how? (Please limit your response to maximum 1000 words

In our areas of operation the regulators and industry already issue relevant information and much data are already publicly available. For example, the HSE website contains data such as operations notices, safety notices, safety alerts, information sheets, research reports, 'key programme' (KP) reports, hydrocarbon databases and other relevant statistics. There is also a high degree of transparency in terms of information relating to environmental protection and performance. For example, OPEPs submitted to DECC are public documents and maybe obtained upon request. So too are the Environmental Impact Assessments (EIAs) that underpin OPEPs. Operators are also required to publish an annual environmental report on their operations.

The sharing of information should be a matter for Member State regulators, however it is important that all commercially sensitive data would have to be removed and other relevant restrictions (such as those concerning operational security) must be fully observed.

It is also important that European citizens are provided with information on how the industry operates and the benefits that the indigenous European oil and gas industry brings to the EU. In particular, it is important to ensure the availability of information concerning industry's contribution to the economy, science and technology, capital investment, employment, tax revenues and security of energy supply, to ensure that citizens appreciate the contribution that the industry makes to society.

12.What is the most relevant information on offshore oil and gas activities that the offshore companies should in your view share with each other and/or with the regulators in order to improve offshore safety across the EU? How should it best be shared? (Please limit your response to maximum 1000 words).

Various national and international industry trade associations, all with readily accessible websites, act as bodies for the sharing of information and best practice between companies and for the development of guidelines.

Within Europe, a number of National Oil Industry Associations (NOIAs) participate in the well established NOIAs' forum with which to share information on a variety of aspects of the industry including health and safety and environmental issues.

There is strong co-operation across the offshore industry to improve safety performance continually, year on year. An example of this is the industry's Step Change in Safety (SCIS) initiative which has a readily accessible website for the sharing of information relating to health and safety incidents. With the application of the Safety Case regime and the formation of SCIS there has been a marked overall improvement in performance, with falling long term trends for dangerous occurrences, hydrocarbon releases and injuries. Our ultimate goal as with all other oil and gas companies is to make our operations the safest place possible to work.

The formation of OSPRAG and other groups in response to the Macondo incident is also an example of how industry shares information in order to improve offshore safety. Similar groups have been set up in other European oil and gas sectors.

13.What information should the national regulators share with each other and how to improve offshore safety across the EU? (Please limit your response to maximum 1000 words)
14.Which means, if any, would you recommend using to promote, across the EU, the use of state of the art practices to protect occupational health and safety during offshore oil and gas operations? (Please limit your response to maximum 1000 words)

Relevant national regulators already have established processes for working together where necessary, for example, the UK HSE and Norwegian PSA routinely work together to undertake joint inspections on the installations that straddle the North Sea median line. In addition, previously mentioned organisations such as NSOAF and the IRF are existing bodies which already work to share safety and other information between the relevant national regulators.

Question 15-18 Emergency Response and international activities:

15.Which means, if any, would you recommend using to promote, across the EU, the use of state of the art practices to protect the environment against accidents caused by offshore oil and gas operations? (Please limit your response to maximum 1000 words)

It is recognised that an oil spill incident in one Member State may affect other Member States and, in that context, we support any additional efforts to increase oil spill response capability in the EU. However there are already established procedures and processes in place for responding to incidents and these should not be overlooked. Any additional measures at the EU level must act to add value to existing mechanisms.

There are several existing agreements already in place that apply to our main operations that deal with cross border oil spill response. These include the Bonn Agreement, the Norway–UK Joint Contingency Plan (NorBrit Agreement) and the Mancheplan. Also of relevance is the North Sea Offshore Cooperative Emergency Services Agreement (OCES). The OCES arrangement is an international agreement between the national oil and gas trade associations of the UK, Norway, Denmark, the Netherlands, Germany and the Irish Republic. The arrangement allows operators to call upon each other for support in emergency situations regardless of national boundaries. The arrangements were first agreed by the national associations in 1979 and OCES is now being refreshed in light of the Macondo incident.

The international oil and gas industry has its own organisation, Oil Spill Response Limited (OSR), to respond to offshore oil spill incidents. OSR is a cooperative that consists of over a hundred member companies. From bases in major producing areas around the world (including the UK) the organisation can respond to an emergency at any time, all year round. OSR has also provided equipment and expertise in the Gulf of Mexico. In addition, OSR also helps members to improve their readiness by providing training, response exercises and contingency planning.

In addition, member states that are signatories to the United Nations Convention on the Law of the Sea, (UNCLOS) have an obligation to protect and preserve the marine environment. Member states have National Contingency Plans (NCP) for marine pollution from shipping and offshore installations. These plans are designed to ensure that incidents are responded to in a timely, measured and effective way.

It was identified by the industry OSPRAG group set up in response to the Macondo event that it was important to ensure that the industry is adequately equipped to respond to an oil spill incident, particularly as per OPRAGs remit to in the UK. After an extensive review of UKCS wells, the met ocean environment in which the industry operates and the practicality of a range of potential response options, the primary solution identified by OSPRAG is a capping device that can be relatively rapidly deployed using a wide range of vessels or rigs while a relief well is drilled.

We have fully supported this initiative and the manufacture of the OSPRAG cap is now in progress and, in conjunction with the immediate drilling of a relief well (standard practice for well control intervention across the industry); the cap is designed to become a key element of the UK industry's oil spill response contingency plans. Completion of the device is due in summer 2011.

Steps are being taken to ensure that this work and GIRG/OGP activity around non-US well control contingency planning remains integrated and complimentary. In addition, OSPRAG has been working to ensure that other aspects of the UK's oil spill response capability are effective and fit-for-purpose. This has included the development of a 'tool-kit' comprising the response options utilised during the

Macondo incident, to provide a suite of potential counter pollution options for use particularly in the UKCS, Work is ongoing within OSPRAG to enable the full range of response options within the toolkit.

As per health and safety issues, new knowledge and technological advancements relating to environmental incidents are shared throughout industry and between regulators through internal company mechanisms, various organisations, trade associations and industry bodies and through the multitude of conferences and events which cover these aspects of the industry.

16.In your view what should be the role of the EU in emergency response to offshore oil and gas accidents within the EU? (Please limit your response to maximum 1000 words)

In terms of oil spill response, relying on a one-size-fits-all approach to responding to incidents in differing geographical areas is ineffective. In our areas of operation, operators must have individually approved plans which demonstrate response plans that are tailored to the assessed risks of particular operations in specific locations. We think that the regulation already in place for our areas of operation is in general, sufficient to ensure that adequate emergency response plans are in place for all offshore operations.

Any strengthening of the capability of Member States to respond to oil spill incidents is to be welcomed. However, this should we think be managed by the individual member state. We see no real value in having a pan-EU "control-the-controllers" regulatory regime for offshore safety.

17.Please describe any recommendations you may have concerning cooperation with non-EU countries to increase occupational safety and/or environmental protection in offshore oil and gas operations internationally? (Please limit your response to maximum 1000 words)

We would support any European and international dialogue with others regarding offshore safety and environmental protection. As noted previously, bodies such as the NSOAF represent an efficient model for the sharing of information between countries with offshore operations. Conceivably this could be extended to include the relevant regulatory authorities from other countries, or, similar forums set up in other regions. Industry would also be happy to participate in such arrangements.

18.Pease describe here any recommendations you may have on how to incentivise oil and gas companies with headquarters in the EU to apply European offshore safety standards and practices in all their operations worldwide: (Please limit your response to maximum 1000 words)

It should be remembered that there oil and gas production is a complex nature of operations in different oil basins, both within Europe and around the world. Differences in the regulatory regimes present in the various international offshore oil and gas producing countries are also apparent. For example, the goal setting type approach employed by North Sea EU and EEA States is fundamentally different to the more prescriptive regulatory approach utilised in the US.

We understand that Member States (and other non-EU countries) should have absolute responsibility for the control and regulation of their respective oil and gas resources.

As an industry and as an individual operator we have HSE standards that are applied consistently in our operations. These standards are the cornerstone of how we manage our business irrespective of

the country that we are working in. Where our in house or industry those standards are better than the regulatory regime of a particular country, then we will not lower our standards to the lower level. If the national legislation or standards are higher then we will ensure that performance is to that level and implement the higher standards worldwide if able to do so in the legislative regime that applies.

It is not appropriate to apply legislation in one jurisdiction to another, the EU would not accept US regulatory controls or vice versa. Therefore the application of EU regulations is not appropriate.