

Short presentations of the outcomes of the conference **Taking the nuclear third party liability into the future**, Brussels, January 20&212014

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Taking nuclear third party liability into the future - Fair compensation for citizens and level playing field for operators

- Organised by EC (DG Energy), EESC and BNLA.
- Hi profile and well attended event:
 - Comissionaire G. Oettinger, Director General for Energy D. Ristori, president of TEN Section of EESC S. Buffetaut, President of BNLA M. Beyens, representatives of IAEA, OECD, IEE, INLA, Foratom, Greenpeace, FOE, ANCLLI, insurance
 - About 300 participants, predominately from EU but also from Japan and USA; representatives of nuclear and insurance industry, EU institutions, national regulators, civil society, legal experts etc.
- Topics:
 - Cross border claims management: how to ensure equal treatment of potential victims of nuclear accidents?
 - Insurance market capacity, financial coverage and electricity costs: how to ensure the right balance?
 - International Conventions in practice

Taking nuclear third party liability into the future - Fair compensation for citizens and level playing field for operators

■ The context of the event:

Consultation: Insurance and compensation of damages caused by accidents of nuclear power plants (nuclear liability) 30/7/2013 – 22/10/2013 by EC

- assessing **to what extent the situation of potential victims of a nuclear accident in Europe could be improved**, within the limits of EU competence
- **“who pays how much to whom for which damages?”** in case of a nuclear accident.
- the EU has already adopted a **set of legally binding rules aiming at maintaining and promoting a high level of safety in the European nuclear sector** (Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations [OJ n° L 172, of 2.7.2009, p. 18]).
- **to have clear and workable rules on liability, insurances or other financial guarantees** in order to ensure that in the event of an accident, adequate compensation for loss of life, harm suffered on health, loss or damage of property and environmental damage are available

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■ The context of the event:

- **the costs** derived from the damages to persons, goods and environment have been estimated as high as **€187 billion for Fukushima or €450 billion, for Chernobyl**. These figures give rise to the questions of how to deal with compensation for such damages, to what extent the nuclear operator should be held liable for all the damages caused by an accident and whether sufficient monetary resources have been foreseen to pay all this compensation.
- Since the 1950's there have been **two principle approaches** worldwide towards the regulation of nuclear operators' liability.

international Conventions [the Paris Convention (PC) and the Vienna Convention (VC)]
- limiting to a particular level, the amount for which NPP operators might be held liable ("capped liability")
- making them solely responsible for any accident ("channelling" principle)

the concept of the unlimited liability of NPP operators, such that they remain fully liable with all their business assets

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- The context of the event:
 - irrespective of the scheme applied, a **financial security is usually required from operators in order to at least cover a part of the damages** caused by nuclear accidents.
 - As to the heads of damages (loss of life, personal injury, loss or damage to property, economic loss and reinstatement of impaired environment), **the coverage is not uniformly regulated by the Conventions or in the MS**. Some MS have laid down rules in order to prioritise particular types of damages, while others operate a pro-rata scheme.
 - At the EU level, the **nuclear liability regimes remain governed by national laws**, which in 23 out of 28 MS reflect the provisions of either the PC or the VC.
 - **23 MS set the principle of liability of the sole nuclear operator and establish a minimum level of coverage**. Amongst them, some apply channelling alongside the unlimited liability.
 - There are **five MS not bound by any Convention**, thus applying common tort law rules to nuclear liability, meaning in particular that in addition to operators, transporters and suppliers can be held unlimitedly liable.

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	Convention to which MS is party	Operator's liability	Limit of the financial security
Austria	PC (not ratified)	Unlimited	446.6 million
Belgium	PC	1.2 billion	1.2 billion
Bulgaria	VC	49.1 million	49.1 million
Croatia	VC	43.9 million	43.9 million
Cyprus	-	Unlimited	-
Czech Republic	VC	232 million	232 million
Denmark	PC	Unlimited	700 million
Estonia	VC	Unlimited	-
Finland	PC	Unlimited	700 million
France	PC	91.5 million (700 million)	91.5 million (700 millic)
Germany	PC	Unlimited	2.5 billion
Greece	PC	16.3 million	-
Hungary	VC	109 million	109 million
Ireland	-	Unlimited	-
Italy	PC	5.4 million	5.4 million

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Latvia	VC	114.2 million	Shall be determined by the Government
Lithuania	VC	1963 USD 5 million (= € 154 million)	1963 USD 5 million (= € 154 million)
Luxemburg	PC (not ratified)	Unlimited	-
Malta	-	Unlimited	-
Netherlands	PC	1.2 billion	1.2 billion
Poland	VC	345 million	345 million
Portugal	PC	16.3 million	-
Romania	VC	345 million	345 million
Slovakia	VC	75 million	75 million
Slovenia	PC	700 million	-
Spain	PC	1.2 billion	1.2 billion
Sweden	PC	Unlimited	1.2 billion
United Kingdom	PC	156.7 million	156.7 million

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- **Gap between the potential costs and the effective amounts** for which nuclear operators are liable and are therefore covered by insurance creates several problems:
 - **victims won't probably be treated equally**, since not all of them will receive compensation for the same heads of damage
 - **competition conditions of the operators in different MS could be distorted**, since the amounts for which they might be held liable significantly varies from MS to MS
 - MS will very likely have to assume at least a big part of the non-covered costs, the gap also creates **a problem of governance and could have an impact on public budgets**

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D. Ristori (DG Energy): **EU Energy Policy Context**

⑩ Global context is radically changing:

- ⑩ increased energy demand on East (China, India),
- ⑩ unconventional oil and gas in USA – improved competitiveness of US economy – re-industrialisation of USA

■ EU challenges:

- competitive and secure energy supply for all costumers,
- increasing competitiveness through EU single energy markets,
- increasing security of supply through diversification of suppliers and (new) technologies – decreased dependence on (imported) oil and gas.
- Regulatory certainty for investors & new environmental demands: new technology and business opportunities for investors.
- EU shall remain champion in decarbonisation of energy sector.
- Nuclear as base load electricity is providing security and competitiveness of supply

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Ristori: **Common Nuclear Framework**

- ⑩ Should not be static but flexible to deal with technology and procedure improvements. Support BAT
- ⑩ Depend on several issues – at very first on competitiveness and security.
- ⑩ EC is architect of change on international level on nuclear safety improvement: IAEA Memorandum to support Convention on Nuclear Safety.
- ⑩ Prevention, detection and mitigation of nuclear risk: Safe Directive, (updating) WISE directive.
- ⑩ Quick EU response on Fukushima accident. All MS preparing National Action Plans with concrete measures. Fukushima providing incentive to improve EU safety regulation – update of WISE directive.
- ⑩ Nuclear Safety should be supported beyond EU borders:
 - ⑩ radiation protection, fatal incident protection, and nuclear waste management.
 - ⑩ Create capacities of inspectors worldwide, improve transparency etc.
 - ⑩ **Third pillar – stress test of NPP.** Analysis needed to be extended to EP&R that is important to assure nuclear safety – identifying national gaps, particularly in the cross border perspective..

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Ristori: **Nuclear Third Party Liability**

- ⑩ Need for more effective procedures regarding (civil) liabilities in public interest.
- ⑩ Paris and Vienna Convention are creating basis to improve Nuclear TP Liability.
- ⑩ Implementation of nuclear conventions from comparative perspective.
- ⑩ Public consultation: No need to challenge existing global framework but to improve it.
 - ⑩ Solid and open methodology – robust fact and figures are needed!
 - ⑩ It is important to be transparent and opened, involving all stakeholders, including civil society.
- ⑩ Very relevant issues – cross border management issues and compensation of potential victims.

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Richard Adams EESC(co –chair of EU nuclear Forum): **the role of CS**

- ⑩ Although NP is widely discussed in various EU institutions, liability is least understood.
- ⑩ “*After assembling information on NTPL I am more confused then when I started.*” CS has no standing on nuclear cross border issues procedures on compensations.
- ⑩ Charta on human rights is a part of EU treaty. Main instrument of citizens in this area are not EU at all but OECED and IAEA. Compensation rights are limited by Vienna and Paris conventions – EU citizens are not aware of that.
- ⑩ What EU citizens can expect in practice is respect of some principles:
 - ⑩ Adequate compensation for losses,
 - ⑩ fair procedures,
 - ⑩ equality regardless nationality and place of living,
 - ⑩ to proceed claims fast and without large delays.
 - ⑩ process to re-address in case that system is non responsive,
- ⑩ Existing conventions are short in providing these principles in practices. How we can make these principles operational?

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Richard Adams EESC(co-chair of EU nuclear Forum): **the role of CS**

- ⑩ There are clear cross border issues that can affect any MS, legitimate questions have been asked according solidarity and cohesiveness.
- ⑩ Cohesive action would further strengthen safety rules and reduced potential of nuclear risks. EUROZONE management can serve as a positive example of cohesiveness.
- ⑩ Last resort compensation can assure only few MS. **Meeting full liability will bankrupt many MS.**
- ⑩ Articulated expectations:
 - ⑩ NP has its own community – EURATOM. All MS joined EURATOM Attitude to nuclear has changed but EUROATOM is mature.
 - ⑩ Citizens expecting EURATOM to resolve issues that can have negative impact on their lives but 56 years later we are still discussing these issues.
 - ⑩ The best moment for solid liability regime was at the beginning when nuclear power was a state power. If this would have happened this would most probably established sharp liability regime.

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Marc Leger (Director for Legal Affairs, French Alternative Energies and Atomic Energy Commission (CEA) **Claims Handling Process**

Recommendations:

1. MS with NPP should manage nuclear claims
2. **One stop shop**: all claims at one shop that should help victims regardless their nationality and place of residence
3. EU should establish guidelines on communication and procedures on claims
4. **One single desk in a country** when accident has occurred to connect all stakeholders and liable operator – victims do not need to start several independent procedures. This office would pool claims and manage funds. May be same entity as one stop shop.
5. **MS should check technical capacities of insurance** in terms of ability and resources for claims handling. This does not include financial capacities that should be assured before
6. **Guidelines on early compensation**. Emergency aid that MS or operates should provide.
7. **MS should provide the form of claims of financial compensation**. MS should specify the total costs of claims and check appropriate allocation of compensation to the victims.

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Prof. Namura (Fukushima Dispute Recolitation Committee)

- ⑩ Japan is not party to any international liability convention but its law generally conforms to them.
- ⑩ Plant operator liability is exclusive and absolute, and power plant operators must provide a financial security amount of JPY 120 billion (US\$ 1.4 billion) – half that to 2010.
- ⑩ The government may relieve the operator of liability if it determines that damage results from “a grave natural disaster of an exceptional character”, and in any case liability is unlimited.
- ⑩ For the Fukushima accident in 2011 the government set up a new state-backed institution to expedite payments to those affected.
 - ⑩ The body is to receive financial contributions from electric power companies with nuclear power plants in Japan, and from the government through special bonds that can be cashed whenever necessary. The government bonds total JPY 5 trillion (\$62 billion). The new institution will include representatives from other nuclear generators and will also operate as an insurer for the industry, being responsible to have plans in place for any future nuclear accidents.

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Prof. Namura (Fukushima Dispute Reconciliation Committee)

- ⑩ The government estimates that **Tepco will be able to complete its repayments in 10 to 13 years**, after which it will revert to a fully private company with no government involvement. Meanwhile it will pay an annual fee for the government support, maintain adequate power supplies and ensure plant safety.
- ⑩ In January 2012 Tepco deposited with the Tokyo Legal Affairs Bureau JPY 120 billion (about \$1.56 billion) as insurance coverage for the company's nuclear energy facilities. The utility was formerly covered by the Japan Atomic Energy Insurance Pool, an industry organization established by 23 non-life insurers. However, **the pool does not want to renew Tepco's contract** after it expired in mid January 2012. **Tepco is seeking coverage from private-sector insurers.**

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Prof. Namura (Fukushima Dispute Reconciliation Committee)

- ⑩ Fukushima is the 1st case of nuclear liability in practice in case of a major accident
- ⑩ Three different ways for provision of compensation:
 - ⑩ **direct negotiation** between victim and operator,
 - ⑩ **the mediation**, and
 - ⑩ **the court case**
- ⑩ Activities of *Dispute Reconciliation Committee* (only 10 members can not solve all cases, 25.000 application out of 90.000 are not solved yet; most of the victims has chosen direct negotiation with the operator):
 - ⑩ Guidelines on the extent of nuclear damages: Fundamental rules on typical damage on the typical victim - two important and difficult issues:
 - ⑩ Extent of damage the should be compensated
 - ⑩ How to determine amount of money
- ⑩ Guidelines are »soft law« but in practice respected both by TEPCO and by victims

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■ Some observations:

- There are three major international conventions regarding NTPL
 - Paris Convention (OECD)
 - Vienna Convention (IEAE)
 - Convention on Supplementary Compensation for Nuclear Damage (USA)
- However the situation is much more complicated since **most of the parties to the first two conventions have not (yet) ratified protocols** that are updating the one or the other and in spite of Joint Protocol that should bridge the two conventions there are still **considerable legal gaps**.
- To make the situation even more complicated **the USA is pushing for the third convention** as the only one that can assure global regime.
- In the words of EESC representative Mr. R. Adams: „**the matter is highly complex and complicated therefore civil society can only lay down basic principles but can hardly intervene in proposing legally sound solutions.**“ As we know the devil is (always)in the details!

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■ Some observations:

- **Even within the EU the legal context is very complex** therefore it is highly unlikely that in spite of the EC efforts one will see in the mid term real legal “harmonisation”.
- Representatives of global **(re)insurance industry claim** that they have **capacities to cover TP liability in the range from 4 - 10 billion € under assumption that all 135 operating reactors will be obliged to EU wide TP liability insurance**. Estimated **impact of the price of electricity** from NPP would be about **0,1 € cent per kWh**.
- **It seems that EU has no solid legal ground to oblige the operators for taking commercial insurance under scheme proposed by (re)insurance industry** – EU wide nuclear insurance pool under mandatory obligation of NPP operators to insure for full TPL. In addition (national) insurers who have already deals with operators will not give up easily their monopoly position.

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■ Some observations:

- In the words of EU Commissionairee Oettinger the EU should strive to cut down energy (electricity) costs therefore EC will not support solutions that leads toward increase of price of electricity from NPP even if it is only 1€ cent/kWh. **EC people are realists and therefore they demand the impossible:** leveled playing field for all (N)PP on EU electricity market, increased (financial) TPL for NPP **without** negative impact on electricity prices (from NPP).
- Even if the EU will manage to provide more solid and unified legal ground for NTPL and insurance this will not lead toward more leveled playing field of the NPP operators on the globe. **USA is pushing for ratification of CS convention.** This however - based on the principle of „grandfathering“ - **excuses at least 1/4th of US operating NPP** from being obliged on the equal basis for compensation of damage caused to the people, the property and the environment.

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■ Some observations:

- In case of mayor nuclear accident additional challenges in the EU would be next to equal and fair treatment of the victims also **access to justice**. Majority of MS does not recognize „ class suit case“ principles and it is beyond the imagination that any court would have capacities to deliver in time the justice to hounded thousands of victims that would individually appeal to the court. **Language barriers** and **lack of adequate court practice** are yet another factors that would delay or **postpone justice beyond limits of fairness**.
- **Ad hoc damage compensation forms** like in case of Fukushima **might work within the frame of a national state and specific national conflict resolution culture** but it is very unlikely to be operational when cross-border compensation of the victims would be at stake.