

## **OECD / NEA WORKSHOP**

**10-11 DECEMBER 2013**

Nuclear damages, liability issues and  
compensation schemes

- The EU and nuclear liability issues
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## Introduction

- Euratom Treaty, art.98 :
- *“Member States shall take all necessary measures to facilitate the conclusion of insurance contracts covering atomic risks. Within a period of two years after the date of the entry into force of this Treaty and after the Assembly has been consulted, the Council, acting by means of a qualified majority vote on a proposal of the Commission which shall previously obtain the opinion of the Economic and Social Committee, shall issue directives as to the particulars of application of this Article.”*

## Why did art. 98 remain a *sleeping Beauty* ?

- The scope of Euratom in 1957
- The scope of the Paris Convention and the Brussels Supplementary Convention
- A further reprieve: the Joint Protocol (1988)

## The genesis of the European « patchwork » in the domain on nuclear liability

- The fall of the Berlin Wall and the launching of the Phare & Tacis programmes
- The success of the Vienna convention in Central and Eastern Europe, before the adhesion of most of those States to the EU (in 2004/2007/2013)
- The 1997 revision of the Vienna convention
- The 1997 Convention on supplementary compensation
- The 2004 Protocols amending the Paris & Brussels supplementary convention
- The unbalanced success of the Joint Protocol
- The Slovenian exception

Conventions	N	Parties
None	5	Austria, Cyprus, Luxembourg, Ireland, Malta
Paris Convention	1	Portugal
Paris Convention + Joint Protocol	1	Greece  (non-EU : Turkey)
Paris Convention + Brussels supplementary Convention	4	Belgium, France, Spain, United Kingdom  (non-UE : Switzerland)
Paris Conventions + Brussels supplementary Convention + Joint Protocol	7	Denmark, Finland, Germany, Italy, Netherlands, Slovenia, Sweden  (non-UE : Norway)
Vienna Convention	0	None (*)
Vienna Convention + Joint Protocol	7	Bulgaria, Croatia, Czech republic, Estonia, Hungary, Lituania, Slovakia (*)
Vienna Convention + Protocol 1997 + Joint Protocol	2	Latvia, Poland (*)
Vienna Convention + Protocol 1997 + Joint Protocol + Convention on supplementary compensation	1	Romania
		(*) Non EU-member States Parties to the Vienna Convention are not quoted here, due to their high number
<b>Total</b>	<b>28</b>	



# The challenges at EU-level in the field of nuclear liability

- Competition between operators of nuclear installations
- Competition between operators of nuclear installations and other producers of electricity
- Transboundary issues for the victims
  - -how will they be treated by a foreign court ?
  - -do they have a right to sue the operator ?
  - -other (im)practical transboundary effects
- Other issues for the victims
  - -the limitation of the operator's liability
  - -the ultimate frontier with an unlimited liability: the operator's assets
- The States should bother too
  - States would be victims too...

# The stages of the EU reflections (I)

- The study by Gomez-Acebo y Pombo abogados and the first questionnaire to the stakeholders (2007-2008)
- The five options:
  - -statu quo
  - -all EU-member States join the Paris convention
  - -idem, except for the 5 EU member States « outside » the Paris or Vienna conventions
  - -adhesion of Euratom to the Paris convention
  - -an EU-directive
- And the winner is...
- The Paris Convention !



## The stages of the EU reflections (II)

- The Joint BNLA/Commission workshop (June 2010) and its wide range of topics, a.o.:
  - -A confirmation of the EU competences in the field of nuclear liability
  - -A full study of the relations between the EU competition law and the national regimes of nuclear liability, with some solutions
  - -The views of a EU member State without any nuclear installation or Vienna or Paris Treaty relations with the fellow EU member States

## The stages of the EU reflections (III)

- **The nuclear liability group (2011-2013)**
  - -purpose: a think tank about several topics of nuclear liability in the EU
  - -composition: a wide range of stakeholders from the Paris & Vienna traditions
  - -a regret : in spite of repeated invitations, almost no-one from the « 5 »
- **The three sub groups**
  - -**WG 1** (claims handling and related matters): in the event of an accident, how can one improve the claims handling procedures to guarantee a fair and equal treatment of all victims, irrespective of the place where the damage is suffered
  - -**WG 2** (insurance, operator's pools and other financial security): how is it possible to increase the amounts available to cover the operator's liability ?
  - -**WG 3** (liability amounts and other issues): are the basic principles of nuclear liability (absolute liability, legal channeling, possibility to limit the liability in time and amount) still fair and acceptable; how pertinent is the architecture of the Paris and Vienna conventions and of the Joint Protocol in the XXIth century ? Is it possible to improve it or is it to be thrown away ?

## WG I recommendations (a)

- **Recommendation 1 – Member States having nuclear installations on their territories should have a claims management system up and running.**
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- Objective: Remedy the fact that some entities providing financial securities in the EU do not have a claims management system.
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- **Recommendation 2 - Member States to establish a “one stop shop” for claims registration and record**
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- Objective: establishment, in the “Accident State”, of a system designed to:
- register any claim, irrespective of where the accident occurs or where damage is suffered and of the nationality of the victim;
- simplify claims through easy-to-understand forms in all EU languages;
- allow for victims and claims inventory and for damage assessment.
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- **Recommendation 3 - Establish criteria for EU-wide claims handling communication**
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- Objective:
- ensure victims are prepared throughout the EU and know how to act in the event of a nuclear accident;
- the message to the public should be clear and easy to understand.

## WG I recommendations (b)

- **Recommendation 4 - Establish “one single desk” for claims handling (national level)**
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- **Objective:** establishment, in the “Accident State”, of an entity designed to ensure the following:
  - coordination between the national authorities, the liable operator and the insurer;
  - definition of procedures in cases where both insurers’ funds and State guarantee are triggered;
  - definition of criteria for paying out compensations, including the appropriate status of emergency payments (first help);
  - recording of payments (on whatever basis: operator, insurer, State (emergency funds), worker compensation regime, social insurance, courts, etc.);
  - simplification of the follow-up of the availability of the funds;
  - simplification of medical monitoring and epidemiological surveillance;
  - compensation structure over the long-term to allow for the medium and long term administration of compensation claims.
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## WG I recommendations (c)

- **Recommendation 5 - Allow for the assessment of insurers abilities by national authorities**

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- Objective:

- Ensure the technical ability of the insurers (and other financial security) providing coverage in order to guarantee the availability of adequate competence and resources for claims management.

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- **Recommendation 6 - Set up rules for advance payments on compensation**

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- Objective:

- allow for rapid compensation of victims, especially in case of evacuation.

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- **Recommendation 7 - Clarify how claims management costs are borne**

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- Objective:

- clarify with whom claims-handling costs lie and the amount of these costs;
- ensure that compensation funds are not used to cover claims management costs.

## WG 2 recommendations

- **Recommendation 1**

- The member states must work jointly with nuclear operators and nuclear insurance providers, to put in place cover that fulfills the revised Convention requirements & ratify the applicable Convention as soon as possible.

- **Recommendation 2**

- The EU Commission is to clarify & communicate the acceptable conditions under which EU states are allowed to act, directly or indirectly, to cover nuclear third party liability risks (e.g. for the uninsurable Convention new heads of damage, limits & cover extensions).

- **Recommendation 3**

- Ensure that all financial security provided is sufficiently secure, stable & solvent to guarantee maximum protection for nuclear accident victims; also ensure that a robust & effective claims handling system is put in place.

- **Recommendation 4**

- In the longer term the operators & financial security providers are to continue working together to investigate any additional nuclear liability capacity that might become available in future.

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### WG 3 recommendations (a)

- ***The following proposals are all subject to confirmation of EU competence under Article 98 of the Euratom Treaty, to the subsidiarity and proportionality principles, and to their compatibility with the VC (1997) and the PC (2004).***
- **Recommendation 1 – EU DECISION(S)**
- **AI.** All EU members are required to join the VC or the PC as amended respectively in 1997 and 2004.
- **or**
- **A2.** EU members wishing to join the VC or the PC should ratify exclusively the VC or the PC as amended respectively in 1997 and 2004.
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- **B.** All EU members Parties to either the VC or the PC are urged:
  - i) to adhere as soon as possible to « their » respective amending Protocols of 1997 and 2004 (N.B. this sub-section (i) to be deleted if Option **AI** is retained above) and,
  - ii) if they have not already done so, to adhere to the Joint Protocol.
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- **Instrument(s): decision(s)**

## WG 3 recommendations (b)

- **Recommendation 2 - EU DIRECTIVE**
- A Directive should, in its recitals, recognize the relevance and robustness of the basic principles of the VC(1997) and PC(2004) establishing the rules of a unified regime of nuclear liability (*inter alia*, strict liability, legal channeling, the right to limit the operator's liability in amount and in time, the obligation of the operator to cover its liability by insurance or other financial security), and the importance of the Joint Protocol.
- The provisions of the Directive would:
  - -establish amounts for nuclear third party liability and compulsory financial security up to these amounts in line with the PC(2004) provisions [Members States would have a reasonable timeframe to implement such requirement (e.g. 10 years)];
  - -require Member States to ensure that, up to the amounts quoted under I, compensation available under their legislation shall indemnify victims in all EU Member States without discrimination based upon nationality, domicile or residence.



## Some personal assessments on the results of WG 1, 2 and 3

- **WG 1: one bridge too far ?**
  - -the temptation of EU-wide regulations might have the effect to erase legitimate national traditions and may cause concerns in the event of an accident
- **WG 2: one bridge too short ?**
  - - I fail to see any concrete proposal to increase the funds available
- **WG 3: too conservative ?**
  - - the group was too much influenced by stakeholders from the « Paris convention sphere» and failed to make any move useful to attract the « 5 »
  - - what about the economic channeling (no, please) or unlimited liability (why not)?
- **The idea behind a common reserve about article 98...**

# The stages of the EU reflections (IV-V-VI-VII-VIII)

- The assessment of the recommendations of WG 1, WG 2, WG 3
- The EU public consultation (July-October 2013)
  - The results are still unrevealed
- Some addtl interviews (November 2013)
  - Some questions raise concerns about the message given by WG 2
- The 2<sup>nd</sup> BNLA / EU workshop (January 2014)
- A legislative proposal ?

# We don't live in 1957 anymore...

- **Do we share all the same goals ?**
  - -attracting the « 5 »
  - -keeping Treaty relations with the non-EU Parties to the Vienna or Paris conventions ?
- **Do we learn lessons from the TFD accident ?**
  - -advance payments consume on their own the full cover available
  - -an efficient claims handling system avoids a time- and money-consuming intervention of the courts
- **Unlimited liability doesn't mean an insurance or guarantee up to full scale of an accident**
  - There are no examples of compulsory insurance covering in any circumstances the full scale of the liability of an insured person

## Some final wishes...

- If the EU initiative goes on, it should offer a solution coping with 4 concerns:
- - it should offer a progress to the victims on issues such as the compensation available and the claims handling;
- - it should remain realistic in terms of coverage;
- - it should attract the « 5 » within the system;
- - it shouldn't harm the existing Treaty relations with non-EU Parties