NUCLEAR LIABILITY after Fukushima

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Where the lack of care for victims of Chernobyl and before that the Mayak fire in the former USSR was often blamed on a system that did not care for its citizens, the continuing lack of care and priority for victims in Japan (and beyond) after Fukushima is the final proof that the extraordinary position of nuclear liability is not as claimed “a proper balance between the interests of victims and operators”, but, as the header for article 98 of the Euratom Treaty indicates, pure encouragement for the nuclear industry. There should be no talk about balance. Fukushima has shown that (potential) victims should come first and before all other considerations. Fukushima also showed that that is not the case.

0/ The current nuclear liability regime in Europe – positive: strict liability, compulsory insurance – but it is too lax, even laxer than the US Price Anderson based liability, which because of its cap and channelling leaves much to criticise. This is unacceptable. Europe should not be hijacked by countries operating nuclear power stations that refuse to face the reality. Whether that is Bulgaria with a financial reserve for operators of 50 Million EUR, France with 92 Million EUR or Germany with 2,5 Billion EUR. This situation is a shame. Starting point should not be the Paris, Vienna and CSC conventions which are structurally geared to benefit the industry and loose sight of the (potential) victims. We need to start from scratch – from the basic principles of normal tort and liability law: protection of (potential) victims, and providing financial feedback to producers, suppliers and others in the industry to put prevention first.

1/ Liability caps need to be removed. Full compensation must be guaranteed.

2/ Full supplier liability. Availability of first point of call (the operator), but free choice for victims to use other ways and jurisdictions when deemed appropriate.

3/ Discussions about financial reserves and insurance systems should reflect the actual direct need for cash in case of an accident. We talk about total damages in the order of magnitude of 100 Billion EUR and more – Chernobyl, Fukushima, IRSN studies. Victims should be the number one priority in the discussion. No time limits or maximums. No exemptions (for “acts of G_D”, terrorist attack, acts of war or others)

4/ Given the implications of nuclear accidents for health, environment and workers rights, nuclear liability should be organised as all other liabilities under the TFEU and be fully compliant with competition and state aid rules.

DISCUSSION POINTS

- legal channelling vs economic channelling? - NO – removing channelling leads to more flexibility for victims.

- Implementation: SHORT – 10 years is too much. This is hanging over the sector already for 60 years. No plant life-time extension beyond technical design life-time (PLEX) without uncapped strict full liability and sufficient reserve / insurance.

- BALANCE victim – operators. This is a false dichotomy. Priority has to be victims. The industry has to organise itself how it can reduce its costs, but never at the expense of victims. Current system is not a balance – only aspect for victims is strict liability. All others aspects are biased towards operators and suppliers in the industry.