

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

### ***Cross border claims management: how to ensure equal treatment of potential victims of nuclear accidents?***

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When I agreed to provide a perspective from the point of view of civil society on the issue of nuclear third party liability I did so knowing that I knew virtually nothing about the subject. However, I thought that this was probably the best qualification to speak on behalf of civil society. I felt certain then, and I am even more certain now, that although nuclear power is a widely discussed subject in many EU countries the question of liability in the event of an accident is one of the least understood topics. Although the consultation responses on the topic showed an average return it should be noted that the overall numbers of individual responses was just 62.

Another reason for agreeing to speak was that, as chair of the Transparency Working Group of the European Nuclear Energy Forum, I felt I should have at least an outline knowledge of this topic. So I began to put together information. I Googled, I talked to people in the Commission, to legal experts, to people in the nuclear industry, to the NGOs, I even read the proceedings from the workshop on the subject which the EESC had hosted in June 2010. And, to be honest, I found myself becoming more confused that when I started.

To address the topic of this session – though it could also be said for the whole question of liability, the reality is that civil society **does not have any coherent perspective** on cross border claims management in case of a nuclear accident. At best there are unarticulated expectations. And this is where I think my ignorance of the subject might be helpful. I gave up on the Grand Tour approach – seeing what was available in the Paris, Brussels and Vienna conventions and began to approach the topic as an ordinary EU citizen.

Atomic power was originally placed at the heart of Europe. It had – and still does have – its own Community in the form of EURATOM. There were great hopes, still symbolised by the Atomium out at Heysel. In fact the Atomium

replaced one of the early suggestions for the Brussels Expo, which was to have a functioning nuclear reactor at the centre of the site! Of course attitudes to nuclear power have changed but some public expectations remain the same. Euratom is mature, there has been time to explore and make provision for issues not covered in those early years of unlimited possibilities. The citizen, I feel, would rightly expect the members of Euratom, the same member states who are part of the European Union and, in effect, operating as one body, to have resolved those issues which might have a direct and negative impact on their lives.

However, here we are, 56 years and ten months after the Euratom treaty was signed, still discussing such vital issues. The best opportunity to resolve such issues was in the very beginning when nuclear power was effectively state power and there was a possibility, perhaps even then a faint hope, of establishing a position of joint and several liability for the financial consequences of nuclear accidents amongst all member states, irrespective of whether they had operating plants. In this way a massive pressure for high, consistent standards and regulation would have been established and it is possible that effective, regularly reviewed nuclear safety directives would have been in place for a generation.

Today the situation is much more complex than in the late 1950s when the ground rules of today's liability regime were being developed. The main factor is that we now understand the huge potential cost of a nuclear accident. We know from the impact of Fukushima and Chernobyl that meeting in full the costs of a major accident would bankrupt several Member States. However, the expectations of citizens, as we are seeing in Japan, will still remain high. We have to start from the position that, however awkward or uncomfortable, citizens expectations are valid, not only in terms of natural justice but because our nations adhere to the principles contained in the charter of human rights, itself part of the EU treaty. So there are expectations because we are signed up to commitment to equality before the law, non-discrimination and environmental protection.

An initial surprise for the citizen might be in discovering that the main instruments defining their rights in this area are not EU instruments at all – the Paris Convention on Third Party Liability in the Field of Nuclear Energy is, of course, an OECD instrument and the IAEA is the depository of the Vienna convention. A further surprise will be that these conventions, as well as defining rights, also limit them. Citizens in nuclear states will find that their

compensation rights have been limited by entering the Vienna or the Paris Conventions whereas people living in non-convention countries will wonder whether their countries approach in not recognising limited liability will, in practice, deliver compensation in the event of an accident.

Progress has been slow, Fukushima did not, it seems, stimulate that sense of urgency about resolving the liability issue in the same way that it stimulated the need for a consistent European approach to nuclear safety – leading to the stress tests and the revised NSD. But questions, understandably, have been asked about why this approach should not also apply to nuclear liabilities. This, of course, has been recognised by the Commission, and is the reason we are here today.

But let me return to the issue of what the EU citizen might reasonably expect in practice. I think we can identify some clear principles. Adequate compensation for loss, damage or disruption; absolutely equal treatment for EU citizens, irrespective of nationality or location; a clear, well-defined, accessible procedure for registering and proceeding with claims; a responsive process which minimises delay and which is as simple as possible; clear accountability and definition of where claims management responsibility lies; and finally a process of redress if there are failures in the system. From what I understand of the current state of play it is no exaggeration to say that none of these expectations can be said to be met fully under the present arrangements.

The existing conventions fall short of meeting these expectations in many ways. To take just one example, it would seem reasonable that any MS with an operating NPP would have a claims management system up and running, available for access in the languages of the countries most likely to be affected. This, of course, is not the case. Nor is consistency and I believe that the average citizen would assume, as a general principle, that any claim can be applied in the same manner, in each of the 28 EU Member States, irrespective of the nuclear liability legislation/convention in force.

There is a major discussion to be had (and this conference is part of that discussion) about whether this is possible, how those clear principles which I previously mentioned can be enshrined in either national law based on a directive, an EU regulation with an oversight and implementation body, or whether – far more likely given the political differences and financial implications – a series of recommendations are proposed.

There is a risk in the recommendation route. Here is clearly a cross-border issue that could affect any and every Member State. It is the type of issue that the EU was established to simplify and deal with effectively, in a spirit of solidarity and for the common good. Legitimate questions are being asked about how the inequitable patchwork of provisions can exist in a union that claims solidarity and equality as founding principles.

Is a single, cohesive approach to this issue too much to ask? Although the sums involved could be huge they are also **potential**, and cohesive action will, as a consequence, further strengthen safety measures and further reduce the already very low probability of a nuclear accident and the liability potential.

A much more cohesive approach is possible because we already have an example, however imperfect, of large scale joint action in the face of a pan-European catastrophe. I am referring to the Eurozone crisis which has led to the establishment of a €440 billion facility guaranteed jointly and severally (if proportionally) by Eurozone governments. Certainly, consistency in operator liabilities needs to be established, and effective claims mechanisms defined and tested, and these steps, together with action on the issue of an assurance of last-resort compensation, which realistically can only be met by a small number of Member States, will provide the citizen with the sort of guarantee and action that will affirm their trust in the value of the European Union as a whole.