

CONFÉRENCE ORGANISÉE PAR

- LA COMMISSION EUROPÉENNE (DG ENERGIE),
- LE COMITÉ ECONOMIQUE ET SOCIAL EUROPÉEN ET
- LA BRUSSELS NUCLEAR LAW ASSOCIATION (BNLA)

## **« Taking nuclear third party liability into the future / Fair compensation for citizens and level playing field for operators “ Bruxelles, 20-21 janvier 2014**

- **Session 3. Les conventions internationales en pratique**
  - **Les conclusions du groupe d'experts voué**
    - **aux montants de responsabilité civile et aux questions associées**
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  - *Disclaimer: les vues exprimées ici le sont à titre personnel*

# 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.”*

## How art. 98 remained a *sleeping Beauty* and the genesis of the European « patchwork » in the field of nuclear liability

- 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 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, Lithuania, 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
Total	28	

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# 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- and other 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
  - -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

- The study by Gomez-Acebo y Pombo abogados (2007-2008)
- The Joint BNLA/Commission workshop (June 2010)
- 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
- 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 ?

## The main issues dealt with by WG3

- The balance between the interests of the « 5 » EU members which are not Parties to either the Vienna or the Paris Conventions and the « 23 » others
- The legitimate right of the victims to be indemnified
- The pertinence of the deal « limited liability / absolute liability »
- The pertinence of the legal channeling vs the economic channeling
- The issue of the different insurance capacity limits within the EU
- The need (?) to keep Treaty relations with non-EU members
- The need (?) to promote the Joint Protocol
- The result: a set of recommendations largely supported but not unanimously



### 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)**
- **A1.** 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 **A1** 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 1, compensation available under their legislation shall indemnify victims in all EU Member States without discrimination based upon nationality, domicile or residence.

# Conclusions

- What do the recommendations of WG 3 achieve ?
  - -a fully integrated system of nuclear liability within the EU
  - -an harmonization at the highest level offered by the Paris Convention, as amended
  - -the preservation of the Treaty relations with the non-EU Parties
  - -the continuation of the existing systems and principles, well known and accepted by operators and insurers
- Do they fulfill all the concerns ?
  - -the concerns of the victims
  - -the concerns of the « 5 »
- Some personal views