



NUCLEAR THIRD PARTY LIABILITY

An industry perspective

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Nuclear third party liability

Industry perspectives

Today, nuclear companies have to :

- **develop and operate nuclear installations worldwide,**
- **secure their assets and investments,**
- **guarantee adequate indemnification of victims without discrimination in the event of a nuclear accident.**

These objectives can be achieved through :

- **Legal framework,**
- **Appropriate financial coverage,**
- **Safety regime.**



French legal framework

The French legal framework is based on :

- the 1960 Paris Convention, which has been amended by the 2004 Protocol (not yet in force).
- the 1963 Brussels Convention, supplementary to the Paris Convention, which has been amended by the 2004 Protocol (not yet in force).
- a Law of 3 October 1968 specifying the measures that are left to the initiative of the Contracting Parties by the two Conventions. This Law, as modified in 1990, is still in force today and has been codified in the Environmental Code (Book V, Title IX, Chapter VII, Section 2).
- Article 55 of the Law of 13 June 2006 amending the afore-mentioned Law of October 1968 (codified in the Environmental Code: Book V, Title IX, Chapter VII, Section 1) in order to implement the 2004 Protocols which is not yet in force but is ready to be applied when the Protocols themselves will enter into force.

International legal framework

Key issues

From the operator point of view, the existing legal framework should be :

- **maintained within the :**
 - **nuclear third party liability (NTPL) regime defined by the International Conventions,**
 - **based on the existing well-balanced principles of these Conventions ;**
- **improved, through the entry into force of, and more widespread adherence to :**
 - **the revised Paris / Brussels Conventions,**
 - **the revised Vienna Convention and the Joint Protocol.**

The need for international instruments

- **The best way to attain the operator objectives as outlined on the previous slide is to maintain the liability regime governed by the existing International Conventions. In some countries, a national law on NTPL can be a first step towards such a regime but legal security and efficient indemnification of victims can only be guaranteed through the ratification of international conventions that are legally binding for all the States Parties.**
- **The Paris/Brussels and Vienna regimes, supplemented by the Joint Protocol or the CSC could cover all countries world-wide.**
- **So, the primary objective should be adherence by all States that could be affected by a nuclear incident to one of the relevant international instruments.**
- **Concerning upcoming EU initiatives in the field of NTPL, the creation of another supplementary regime that could jeopardize the balance of the Conventions should be avoided.**



Founding principles - quest for a balance -

The following principles are the pillars of the international regime. They ensure that the victims are compensated as fully as possible by the operator alone, exempting all other entities (builders or suppliers associated with construction or operation) from liability:

- **Strict liability, relieving victims of the burden of proving fault or negligence,**
- **Exclusive liability (channelling), ensuring that the operator is the only entity liable to compensate damage even if caused by the constructor or the supplier,**
- **Obligation for the operator to have and maintain financial security in respect of its liability, ensuring that funds are available to indemnify victims,**
- **Limitation of operator liability in time and in amount, enabling the operator to set a cost-effective mechanism for financing coverage of the established liability amount,**
- **One single competent court to hear victims' claims, ensuring identical treatment and the recognition and execution of judgments amongst Contracting Parties.**

The necessity to revise the regime

- **Ten years after the adoption of the 2004 Protocols amending the Paris and Brussels Conventions and eight years after the publication of the French law adopted for their implementation, these important new provisions are not yet in force in spite of the commitment of the Contracting parties to ratify before 2006.**
- **Major improvements will be made to the regime with their entry into force, in particular the revised :**
 - **definition of damage,**
 - **liability amounts,**
 - **prescription periods,**
 - **geographical scope.**
- **This entry into force could be facilitated by amendment of Council Decision 2004/294/EC which provides for the simultaneous ratification of the Paris Protocol by all EU MS.**



“Globalising” the regime The Joint Protocol

- **Establishing a bridge between Paris and Vienna Parties, the IAEA Joint Protocol of 1988 relating to the application of the Vienna Convention and the Paris Convention is in force since 1992 and has already been ratified by 28 States.**
- **A law authorising the approval of this Protocol by France was adopted on 7 March 2014 and France deposited its instrument of approval on 30 April 2014. It will enter into force for France on 30 July 2014.**
- **This approval allows France to enter, in the field of TPL, into Treaty relations with 31 States Parties to the Vienna Convention and the Joint Protocol situated in Europe, Asia, South America and Africa (as opposed to 14 States today, all parties, like France, to the Paris Convention).**

“Globalising” the regime

The Joint Protocol

- ◆ **This ratification will constitute a major improvement of the NTPL regime. It will provide in particular for :**
 - **the indemnification of victims of nuclear damage in France following a nuclear accident in a State party to the Vienna Convention and to the Joint Protocol ;**
 - **the indemnification of victims of nuclear damage in States Party to the Vienna Convention and to the Joint Protocol following a nuclear accident in France ;**
 - **enhanced legal certainty for these victims (no obligation to prove fault or negligence or to identify the liable entity, compulsory financial security, no problems with the recognition of judgments handed down in foreign courts) ;**
 - **enhanced legal certainty for industrials in the nuclear sector (not only for French companies but also for foreign companies situated in countries party to the Vienna Convention and to the Joint Protocol which pursue civil nuclear trade interests in France).**

- ◆ **Indeed, the Joint Protocol:**
 - **limits the areas where tort law is applicable ;**
 - **clearly allocates liabilities between suppliers and operators.**

Globalising and improving the regime

- **IAEA initiatives as well as a Joint US / French declaration in favour of the adherence of all Member States to the Conventions should be supported.**
- **Such adherence should concern :**
 - **first States with nuclear installations and activities,**
 - **but also other States that could be affected by a nuclear incident.**
- **Member States that are already Party to the Conventions should be encouraged to ratify the revised Paris or Vienna Conventions.**

FINANCIAL COVERAGE OF THE LIABILITY

- **EDF's current liability is covered by insurance schemes involving mixed providers: traditional "market" insurers, operator's mutuals, and captive insurers.**
- **ELINI (European Liability Insurance for the Nuclear Industry) has been created in 2003 and has been completed by Blue Re in 2011 to prepare the coverage of the important increase of financial guaranty imposed by the revised conventions.**
- **Indemnification of Victims guarantee is reinforced by the use of Insurance (Insurance companies are regulated financial institutions - enhancements in progress via Solvency II).**
- **It is important to cover all the head of damages of the revised Paris Convention as all of them should be compensated in case of a nuclear accident.**
- **Some difficulties still exist with some coverages (30 years prescription periods, environmental damage) and States should be allowed to complement the market to cover them when needed in return of an adequate premium.**
- **Competition between various providers is for EDF the adequate solution to guarantee coverage and its cost are optimised for the end customer.**

Prevention : safety first

- **A strong nuclear safety regime and continuous improvement of operational safety by operators are the best protection against nuclear accidents.**
- **And, in the event of a nuclear accident the consequences can be significantly reduced by taking measures to ensure the prevention and mitigation of long-term off-site contamination.**

Thank you