

EUROPEAN COMMISSION CONSULTATION ON NUCLEAR LIABILITY

Cheryl Parkhouse of Burgess Salmon provides an update on the recent consultation on harmonisation of nuclear liability rules across the EU

Words:
Cheryl Parkhouse
Burgess Salmon

On 29th July, following intense discussion over a number of years, the European Commission DG Energy opened a public consultation focusing on the harmonisation of nuclear liability rules at a European level. These nuclear liability rules govern the compensation payable to third parties by a nuclear operator responsible for a nuclear incident. The consultation is entitled 'Insurance and Compensation of Damages caused by accidents of nuclear power plants (nuclear liability)' (the 'Consultation'). The Consultation will close on 22nd October 2013 and can be accessed at: http://ec.europa.eu/energy/nuclear/consultations/20130718_powerplants_en.htm

The Consultation raises a number of concerns arising from the current patchwork of nuclear liability laws in Europe and, therefore, inconsistency for victims across Europe.

Background to the Consultation

This Consultation follows on from the June 2010 joint Brussels Nuclear Law Association/European Commission Workshop 'Prospects of a civil nuclear liability regime in the framework of the EU'. This was attended by Burgess Salmon, which also sponsored the event and publication of the proceedings and resulting papers. The Workshop was extremely well attended by European and International nuclear experts and representatives from a large number of countries, including signatories of both the Paris and Vienna Conventions; the Joint Protocol; the Convention on Supplementary Compensation; non-nuclear countries; the International Atomic Energy Agency and the US.

The principal aim of the Workshop was to discuss the outcomes of a study, commissioned in 2007 by the European Commission, on the harmonisation of nuclear third-party liability in Europe: http://ec.europa.eu/energy/nuclear/studies/doc/2009_12_accession_euratom.pdf.

The study emphasised the patchwork of different legal regimes governing third-party nuclear liability in place in the European Union. These legal regimes provide a framework through a number of core principles, to ensure the public is compensated for harm resulting from a nuclear incident. These principles ensure liability is channelled to the operator of the nuclear installation regardless of fault or negligence; provide a limitation period for claims; require mandatory financial security (e.g. insurance) to meet operator liability; and channel claims' jurisdiction to the same court. Whilst the majority of the Member States are signatories to the Paris Convention (mainly the Western European Member States), the Brussels Supplementary Convention or the Vienna Convention (mainly the Eastern Member States), there is a wide discrepancy across Europe as to how each State has ratified the international instrument into its national laws, particularly with regard to operator liability and limit of mandatory financial security from State to State. Furthermore, only some States are parties to the Joint Protocol (in basic terms, a bridging mechanism enabling the signatories to receive the benefits of both the Paris and Vienna conventions – although the UK has not ratified), whilst a few are not a member of an international instrument at all.

Consultation questionnaire

The Consultation raises a number of concerns arising from the current patchwork of nuclear liability laws in

Europe and, therefore, inconsistency for victims across Europe. These include the gap between the potential costs of a nuclear incident (such as Fukushima) and the amounts for which operators are liable; the potential inequality of treatment of victims across the European Union; and the potential distortion of operator competition. It states that DG Energy is currently assessing to what extent the remedies for victims of a nuclear incident in Europe could be improved and seeks views from stakeholders such as operators, public authorities, financial institutions and industry associations etc.

DG Energy is currently assessing to what extent the remedies for victims of a nuclear incident in Europe could be improved.

Responses are provided in the form of a questionnaire, focusing on the application and effectiveness of current nuclear liability legal principles such as operator vs economic channelling and strict liability. It also questions whether certain heads of damage should be prioritised; the means of compensation and the structure of pools such as for insurance; claims handling management; and the role and responsibility of the State of the incident.

Whilst interaction with the existing international instruments is not addressed in any detail in the summary of the Consultation, the Consultation will be of particular importance and interest to you. This is also particularly pertinent in light of the current work in the UK towards ratifying the 2004 Protocol to Amend the Paris Convention and also the recently issued joint US/France statement on civil nuclear liability emphasising their support for the establishment of a global nuclear liability regime allowing for adequate compensation for victims of a nuclear incident.

If these articles raise any issues you would like to discuss, please do not hesitate to contact Cheryl Parkhouse:
Email: cheryl.parkhouse@burgess-salmon.com
Tel: 0117 902 6640

If you would like to be registered for the free Burgess Salmon Nuclear Law Bulletin or if you would like to suggest subjects or collaboration for future articles, please contact Gareth Davies:
Email: gareth.davies@burgess-salmon.com
Tel: 0117 307 6920

The latest version of the Burgess Salmon Glossary of Nuclear Terms and Acronyms is now available to download free at www.niaukorg/a-to-z-glossary

■ ■
Images:
© [wlad074 - Fotolia.com](http://www.wlad074-fotolia.com)

