

FORATOM response to the EC Consultation on Nuclear Liability

A. Introduction

Nuclear third party liability is an important issue for all FORATOM members. It is therefore essential for FORATOM to respond to the consultation launched by the EC.

However, the closed nature of the consultation based upon a questionnaire with multiple choice answers and the lack of sections allowing for justification or explanation of responses makes it difficult to answer. Therefore FORATOM resolved to submit this Position Paper instead.

Before proceeding to outline our position, we would first like to comment on three issues raised by the EC questionnaire and the associated on-line Introduction.

Firstly, the EC documents refer extensively to the term “accident”, whereas in reality the text predominantly relates to *severe* accidents, of which there has never been a single example within the EU. Recognising the safety measures already in place in the EU, and additional measures recommended following the Fukushima safety reassessments, FORATOM believes that the chances of an accident with major off-site consequences occurring in the EU are remote.

Secondly, the EC Introduction is incorrect when implying that the international conventions and unlimited liability are mutually exclusive. All the EU Member States (MS) with nuclear power plants (NPPs) that have adopted unlimited liability also adhere to the Paris Convention.

Thirdly, the figures in the table included in the Introduction are misleading in that they only show the operators’ liability and financial security and do not refer to the amounts available under the second and third tiers of the Brussels Supplementary Convention.

B. General remarks on the current Nuclear Liability Regime

Since the introduction of nuclear energy for the production of electricity, the safety of installations has been subject to very strict measures in an international framework (IAEA) and at national level (States are responsible via their national safety authorities). These provisions are regularly updated and improved based on the latest technological developments and lessons learnt from past experience (cf. the recent safety reassessments).

The Paris Convention (1960) and the Vienna Convention (1963) were adopted in order to ensure that adequate compensation was available to the victims of a nuclear accident. The

conventions have been modified since to revise their liability and financial security requirements and to incorporate additional improvements in the interests of victims.

All of the EU MS operating NPPs adhere to either the Paris or the Vienna Convention.

The conventions follow two primary objectives: ensuring that victims of a nuclear accident can, without undue complication, claim and obtain adequate compensation for damage incurred, and ensuring the minimum limit of nuclear operators' liability.

The existing liability regime has several specific characteristics

Victims are not required to prove fault or negligence of the liable entity, as the operator is strictly liable for nuclear damage – thus victims take advantage of not having to engage in lengthy legal proceedings to determine who is liable.

Liability is channelled (“exclusive liability of the operator”) to ensure that the operator of a nuclear installation is the only entity liable to compensate damage, even if such damage is caused by a contractor or supplier. Channeling of liability to the operator allows insurance capacity to be concentrated on the operator, thereby making capacity as high as possible.

As a corollary of this strict and exclusive liability, the operator's liability is limited in amount and in time but is fully backed by insurance or some other financial security, which ensures the full amount is available for victims.

The conventions provide for one single competent court to hear victims' claims, in order to ensure that there is no differentiation in treatment. They further provide for recognition and execution of judgments amongst Contracting Parties.

FORATOM believes that all the above essential principles of the existing liability regime are sound and should be maintained.

C. Room for improvement

The EC argues that measures could be taken to address the inconsistency that currently exists within the EU in terms of the implementation of applicable third party liability regimes.

FORATOM considers that progress could be made in the short term by the EU taking measures to facilitate the entry into force of the revised Paris Convention (2004) which provides not only for increased amounts of compensation but also introduces considerable improvements in the interests of victims (*inter alia*, wider geographical scope, broader definition of damage, extended prescription periods). This entry into force could be facilitated by revising Council Decision 2004/294/EC which provides for the simultaneous ratification of the Paris Protocol by all EU MS (especially since Vienna Convention States have been authorised by a Council decision of 15 July 2013 to ratify or to accede to the revised Vienna Convention without condition of simultaneous ratification).

FORATOM considers that the EU should encourage all of its members to become parties to the Paris or Vienna Conventions in their revised versions, and to ratify the Joint Protocol which provides a bridge between these two instruments.

As regards the legislative vehicle that may be used by the EU, FORATOM notes that the consultation is intended to support the EC's ongoing assessment of the extent to which the situation of victims of a potential nuclear accident in Europe could be improved within the limits of EU competence. Nothing in this response should be construed as implying that

FORATOM accepts the legal competence of EURATOM or any other European Institution to adopt a Directive in the field of nuclear third party liability.

FORATOM also considers that its members are situated in States which have existing international obligations pursuant to the Paris and Vienna Conventions and that these obligations should not be jeopardized by a potential EU instrument.

D. Response to the detailed Issues raised in the EC Questionnaire

1. Claims Management

FORATOM acknowledges that this subject is not covered by the existing nuclear liability conventions and supports the measures proposed by WG1 of the Nuclear Liability Expert Group organized by the European Commission with regards to claims registration, handling and settlement, i.e.:

- a) Member States having nuclear installations on their territories should have a claims management system up and running.
- b) Member States should establish a “one stop shop” for claims registration and record.
- c) Member States should set up “one single desk” for claims handling at national level.
- d) Criteria should be established for EU wide claims handling communication in case of a potential nuclear accident.
- e) Member States should assess the insurers/pools’ technical abilities for providing coverage in order to guarantee the availability of adequate competence and resources for claims management.
- f) Rules should be set up for advance payments on compensation.
- g) It should be clarified who must bear claims management costs and ensure that compensation funds are not used for claims management costs.

2. Heads of Damage

FORATOM does not wish to make a recommendation on priorities regarding heads of damage, since the extent and type of damage depends on the nature of a specific accident. Member States should remain free to decide this issue in their national legislation, as is the case under the existing international conventions.

3. Insurance System

A number of financial security instruments exist to ensure the availability of funds in the event of a nuclear accident. FORATOM considers that no specific financial security instrument should be selected at EU level as being the most appropriate, but rather supports having a diversity of options. The international conventions already provide that any financial security guarantee must be approved by the competent national authority.

4. Levels of Compensation

As stated above, FORATOM considers that liability amounts could be increased and harmonized if the EU were to facilitate entry into force of the revised Paris Convention.

Although this is still under debate amongst FORATOM members, many believe that alignment over time of the Vienna Convention amounts up to Paris Convention levels should be targeted. The potential cost of a nuclear accident can be dramatically reduced by taking measures to ensure that accidents cannot give rise to long-term off-site contamination. FORATOM considers that the implementation of a robust regulatory regime and continuous improvement by operators of their operational safety are the best protection against nuclear accidents and their consequences.

Limitation of the operator's liability is the corollary of the strict and exclusive nature of that liability, with its compulsory financial guarantee. It is FORATOM's opinion that a regime including strict, channeled and limited liability provides a firm foundation for investments in the nuclear energy sector and helps address the challenge of security of energy supply, both of which the EURATOM Treaty seeks to enhance.