

# Client Alert

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## Will Europe's Nuclear Liability Regime Change?

In most of the world, including Europe, the nuclear power industry has traditionally operated under specific liability regimes based on international conventions. These regimes provide for exclusive operator liability, financial caps, mandatory financial security, and other specific features. Financial liability caps and the amounts of mandatory financial security vary from country to country. The European Commission recently launched a public consultation on the possible harmonization of national liability regimes for nuclear damages.<sup>1</sup> The primary focus is on caps and insurance, but the Commission could go beyond these aspects to include the channeling of liability and other issues. If the liability regime changes for the approximately 132 nuclear reactors currently operative in the EU, this may have a spill-over effect on the international conventions and nuclear liability regimes in other countries that are also parties to these international conventions.

### Current Liability Regimes

While the EU has adopted a EU-wide legislative framework for regulating the safety of nuclear installations, the applicable liability regimes are a matter of national law. These national laws reflect one or the other of two international liability agreements: (i) the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 (PC), or (ii) the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 (VC); most have ratified follow-on agreements to these conventions. The vast majority of EU Member States have ratified either the PC and VC. These conventions are based on the same principles:

- *Strict and exclusive liability of the operator in respect of nuclear incidents:* The operator of a nuclear installation is exclusively liable for any nuclear damages arising from a nuclear incident on a no-fault basis.
- *Liability cap and financial security:* The liability of the operator is capped, i.e. subject to a financial limit. In exchange, however, the operator is required to maintain insurance or other financial security to cover its liability, up to the liability cap.
- *Limited recourse against supplier:* If nuclear damage occurs, the operator will have recourse against a supplier, but only if (i) a contract between the operator and supplier provides therefor, or (ii) the damage has been caused by the supplier's willful misconduct with intent to cause damage (but only where the supplier is an individual).
- *Exclusive jurisdiction:* If a nuclear incident occurs, the courts of the country in which the incident occurred generally have exclusive jurisdiction.
- *Non-discrimination:* Member States may not discriminate against victims on the grounds of nationality, domicile or residence, and foreign persons must have a right to file claims against national entities before the national courts.

These conventions contain additional provisions governing such matters as transportation of radioactive materials and liability for cross-border contamination, and they have been updated from time to time. They have not resulted in complete harmonization, however, and Member State laws vary in some

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<sup>1</sup> [http://ec.europa.eu/energy/nuclear/consultations/20130718\\_powerplants\\_en.htm](http://ec.europa.eu/energy/nuclear/consultations/20130718_powerplants_en.htm)

respects. The table below summarizes the current national law provisions regarding operator liability caps and minimum financial security amounts:<sup>2</sup>

	<b>Convention ratified by MS</b>	<b>Liability cap</b>	<b>Financial security minimum</b>
<b>Austria</b>	PC (signed but not ratified)	Unlimited	446.6 million
<b>Belgium</b>	PC	1.2 billion	1.2 billion
<b>Bulgaria</b>	VC	49.1 million	49.1 million
<b>Croatia</b>	VC	43.9 million	43.9 million
<b>Cyprus</b>	-	Unlimited	-
<b>Czech Republic</b>	VC	232 million	232 million
<b>Denmark</b>	PC	Unlimited	700 million
<b>Estonia</b>	VC	Unlimited	-
<b>Finland</b>	PC	Unlimited	700 million
<b>France</b>	PC	91.5 million	91.5 million
<b>Germany</b>	PC	Unlimited	2.5 billion
<b>Greece</b>	PC	16.3 million	-
<b>Hungary</b>	VC	109 million	109 million
<b>Ireland</b>	-	Unlimited	-
<b>Italy</b>	PC	5.4 million	5.4 million
<b>Latvia</b>	VC	114.2 million	to be determined by government
<b>Lithuania</b>	VC	154 million	€ 154 million
<b>Luxemburg</b>	PC (signed but not ratified)	Unlimited	-
<b>Malta</b>	-	Unlimited	-
<b>Netherlands</b>	PC	1.2 billion	1.2 billion
<b>Poland</b>	VC	345 million	345 million
<b>Portugal</b>	PC	16.3 million	-
<b>Romania</b>	VC	345 million	345 million
<b>Slovakia</b>	VC	75 million	75 million
<b>Slovenia</b>	PC	700 million	-
<b>Spain</b>	PC	1.2 billion	1.2 billion
<b>Sweden</b>	PC	Unlimited	1.2 billion
<b>United Kingdom</b>	PC	156.7 million	156.7 million

Note: All amounts are in €.

These limits, however, are not regarded as sufficient to cover possible damages in the event of a major nuclear incident; according to the Commission, total damages amounted to €187 billion in the case of Fukushima and €450 billion for Chernobyl.

### Public Consultation

The Commission's consultation on possible harmonization of nuclear liability regimes in the EU will consider several key aspects of nuclear liability, including the liability cap and the minimum insurance requirement. The exclusive channeling of liability is also subject to review, although modification of this feature would be inconsistent with the international conventions.

After closure of this public consultation, the Commission will make further decisions about the appropriate policy action. Possible policy measures could include a proposal for EU legislation on nuclear liability, a non-binding recommendation about nuclear liability addressed to the Member States, or a proposal for

<sup>2</sup> Source: [http://ec.europa.eu/energy/nuclear/consultations/20130718\\_powerplants\\_en.htm](http://ec.europa.eu/energy/nuclear/consultations/20130718_powerplants_en.htm)

the European Atomic Energy Community to join one of the international conventions. One thing seems clear, Europe's nuclear industry should not count on the current liability regimes being an acquired right.

This public consultation is open until 22 October 2013, and comments can be submitted through a form available at the following website address:

[http://ec.europa.eu/energy/nuclear/consultations/20130718\\_powerplants\\_en.htm](http://ec.europa.eu/energy/nuclear/consultations/20130718_powerplants_en.htm)

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The Hunton & Williams energy team has provided our clients on the full spectrum of energy-related matters, including:

- Liability
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- Project acquisitions and dispositions, and acquisition financings
- Environmental permitting
- Litigation and arbitration
- Public Policy
- Regulatory matters

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