THE EUROPEAN COMMISSION AND POSSIBLE REFORMS TO NUCLEAR THIRD-PARTY LIABILITY INSURANCE

Prospect Group experts have recently contributed to a study completed for the European Commission on nuclear third-party liability (NTPL) insurance. The EC's interest in more work on this topic was driven by the following factors:

- The differing legal regimes for NTPL evident within EU member states have led to wide disparity between the amounts of statutory financial security required by nuclear operators to pay for compensation to off-site victims that suffer nuclear damage (perhaps from a severe accident). For EU countries with nuclear power plants, these amounts range from €43.9 million in Bulgaria to €2.5 billion in Germany (the UK amount is currently £140 million). To fulfil their statutory obligations, nuclear operators normally buy insurance to cover these financial security amounts.

- A recognition that although the highest of these financial security amounts existing today globally apparently correspond to the insurance market's available capacity, they do not match the potential total costs resulting from a severe nuclear accident. For example, at the time of Japan's Fukushima accident in 2011, the financial security amount required of the operator was ¥120 billion (c. £844 million/$1.1billion) yet the compensation paid has already exceeded ¥9.33 trillion ($85 billion/£66 billion).

- There is currently some uncertainty as to whether the nuclear insurance market can offer insurance cover for the full scope of the revised liability regimes, due when the 2004 revisions to the 1960 Paris Convention are ratified – probably early in 2021. The insurers have expressed concerns over the insurability of some of the revised heads of damage and at present most have refused to cover the extension of the time limit to bring a claim for bodily injury or death from 10 to 30 years.

Despite these difficulties with the provision of nuclear insurance, insurers can meet much larger loss amounts for other events that cause widespread damage to businesses and homes, such as natural catastrophes, for which claims totalling more than $50 billion per event are now quite frequently paid. With other events easily able to call upon such sizeable amounts, the EC commissioned this latest study to discover whether insurers could provide substantially more insurance for severe nuclear accidents, and if so, under what conditions.

The previous EC work on this subject revealed some interest from certain insurers in providing materially higher insurance amounts for catastrophic nuclear losses, but with this insurance cover activated by a trigger of some sort. Of course, at present using a trigger to activate a nuclear site operator's required financial security for NTPL compensation is not permissible – the funds must be available for all nuclear damage, no matter how it arises.

However, if triggers are combined with other mechanisms or if new capacity is used to supplement the existing financial security requirements, could governments (and ultimately taxpayers), as the payers of last resort, be moved further away from the cost of a severe nuclear accident? The EC thinks the subject is worthy of further study, which is timely as the gradual merging of the capital and insurance markets is opening up new sources of capital and new ways of looking at risk.

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In addition, the EC feels that it has made progress on other fronts that could have relevance to the field of nuclear liability. For example, in the EC's view significant enhancements have been introduced to the EU legal framework, with the adoption of the revised Nuclear Safety directive and the revised Basic Safety Standards (BSS) directive; in particular, the revised BSS directive lays down uniform dose limits covering public exposures and occupational exposures and requires EU members to ensure that reference levels for emergency and existing exposure situations are established.

Will these changes permit greater EC intervention in the field of nuclear liability and will market developments encourage insurers to commit higher insurance capacity to nuclear liability? To find out, the EC commissioned the study to assess the latest structure and capacity of the insurance and financial markets in the nuclear third party liability arena, with a view to evaluating how and to what extent these private market providers could increase cover in the event of severe nuclear accident.

Two future blogs will follow the EC study, examining firstly the current state of the NTPL insurance market and then possible mechanisms that might see more private capital and insurance backing NTPL financial security amounts.

About the Author

Prospect Law is a multi-disciplinary practice with specialist expertise in the energy and environmental sectors with particular experience in the low carbon energy sector. The firm is made up of lawyers, engineers, surveyors and finance experts.

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