

Desarrollos en Derecho Nuclear/ Nuclear Law Developments

Salón de Actos, Ilustre Colegio de Abogados de Madrid

14 de marzo de 2023/ 14 March 2023

INLA ESPAÑA / INLA SPAIN



DESARROLLOS EN DERECHO NUCLEAR NUCLEAR LAW DEVELOPMENTS



Madrid

PERSPECTIVAS Y RETOS INSIGHTS AND CHALLENGES

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14 Marzo 14 March

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10.00: Bienvenida / Welcome

Evelyne Ameye, Presidente de la Sección España de INLA

Luis Robles, Secretario de la Sección España de INLA

10:15: Pilar Rosado, F4E

Nuclear Law & Fusion – Essentials

10:30: Miguel Ferro, Milberg

Crossroads between Nuclear Law and Competition Law

10:45: Mariano Bacigalupo, CNMV

**Régimen retributivo de la energía nuclear en tanto que energía
inframarginal**

11:00: Lenka Budinova, Head of Sector, Legal Matters, DG ENER (D.1V)

European Commission

**Euratom competences and most recent developments in the field
of international relations, safeguards and implementation of
secondary legislation.**

11:15: Clara Alcaraz, KPMG Abogados

Papel de la energía nuclear en la transición energética con el foco puesto en la taxonomía, ayudas de estado y definición del low carbon hydrogen en la nueva legislación europea

11:30: Thomas Garancher, Frêche Associes

The permitting of nuclear new build in France

11:45: Maria Laguna, Elini

Nuclear Insurance – Status and Trends

12.00: Coffee Break

12:45: Julius Weitzdörfer, Fernuniversität Hagen

Recent developments of nuclear liability case law

13:00: Sam Emmerechts, Legal adviser Council of the European Union

Lifetime Extension of Nuclear Power Plants and Environmental Assessments in the European Union

13:15: Karoly Olajos, Chair Working Group 8 INLA

How to maintain European leadership in fusion R&D?

13:30: Mariusz Swora, Swora Legal

Legal challenges for a new developer of nuclear projects:
the case of Poland

13.45: Clausura / Closing statements

Pilar Rosado, F4E

Nuclear Law & Fusion - Essentials





**FUSION
FOR
ENERGY**

**Fusion Law:
*Essentials of Nuclear Law vis-a-vis
fusión [ITER]***

Pilar Rosado

Senior Legal Officer

Fusion for Energy

INLA – Madrid – 14/03/2023



Essentials of Nuclear Law vis-a-vis fusión [ITER]

I. Why is it needed?

II. What is the applicable legal regime ?

III. What are the legal risks ?

https://www.youtube.com/watch?v=w8kwBAc_FrA

...In case of nuclear accident ...what happens?



INLA - Madrid - 14/03/2023



I. Why is it needed?

If an accident happens....

- ❖ Large number of potential victims
- ❖ Damages beyond geographical borders
- ❖ Different actors involved at different levels

Special international legal regimes

**Very low probability
that it occurs
but if it happens
consequences are very
large**



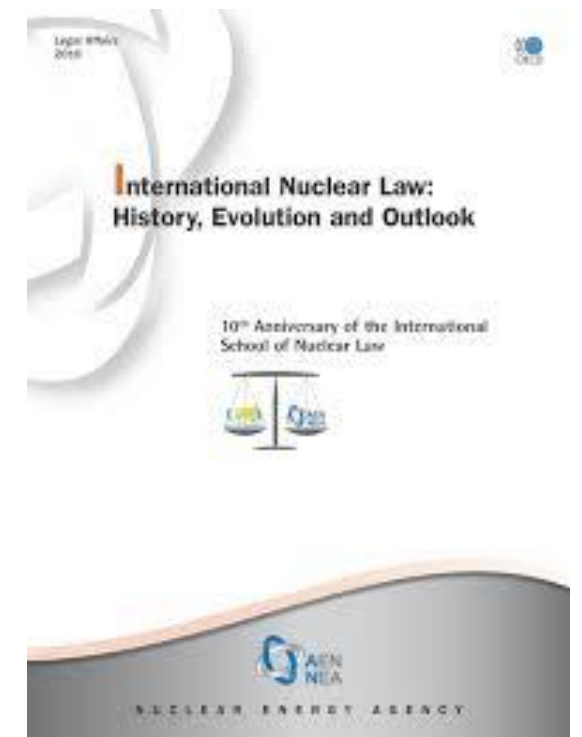
Special legal regime? International? Why?

- Establish liability for **damages**
- Establish rules for **cross-border legal actions**
- Determine **which laws** will apply
- Determine **which Courts** have jurisdictions to hear claims
- Ensure **enforceability** of judgments
- **Simplification** of claims procedure



What are the principles of International Nuclear Specific Regimes

- **Exclusive liability** of the nuclear operator
- **Strict liability** - Victims do not need to prove fault or negligence
- **Limited** liability in Scope, Amount, Time
- Mandatory **Financial warranty**
- **Unity of jurisdiction** - Courts in whose territory the accident took place



II. What is the applicable legal regime ?

There are several International Agreements on the matter, which one applies to ITER?

- The Paris Convention on Third Party Liability;
- The Vienna Convention on Civil Liability;
- The Brussels Supplementary Convention to the Paris Convention;
- The Convention on Early Notification of a Nuclear Accident;
- The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency;
- The Convention on Nuclear Safety;
- The Waste Management Convention; and The Convention on the Physical Protection of Nuclear Material.
- Council Directive 2009/71/Euratom as amended by Council Directive 2014/87/Euratom of 8 July 2014 establishing a Community framework for the nuclear safety of nuclear installations [underlines that each Member State has the final say (and responsibility) on the concrete regulation of nuclear energy within its territory the Nuclear Operator has to comply with, as the ultimate responsible for the nuclear installation].

II. What is the applicable legal regime ?

ITER is NOT directly covered under any of the International Specific Regimes
– nuclear fusion excluded by the Paris Convention!

.....what happens then if there is an accident ?



II. What is the applicable legal regime? IO and F4E responsibilities?

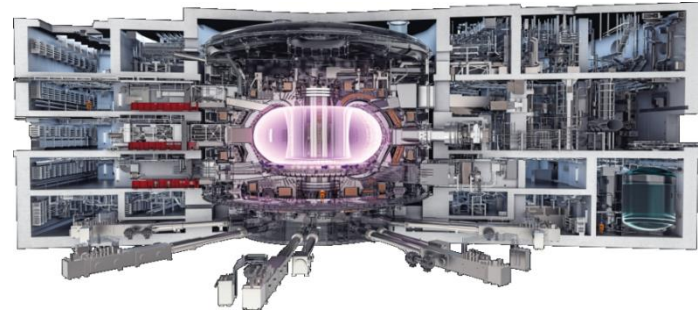
In line with the principle the polluter pays

**ITER IO as the Nuclear Operator is
the first responsible for Nuclear Safety and is liable for nuclear liabilities**

- **Article 14 of the ITER Agreement, which expressly waives its privileges and immunities regarding *“applicable national laws and regulations of [France] in the fields of (...) nuclear safety (...)”***
- **Decree No. 2012-1248, of 9 November 2012 which stipulates that *“The international Organisation for the development of fusion energy, called ‘ITER Organisation’ hereinafter referred to as ‘the Operator’ is authorised to build (...) a nuclear installation, called ‘ITER’ (...)”***

II. What is the applicable legal regime ?

- 1 ITER Agreement → article 14 states that ITER shall observe French law

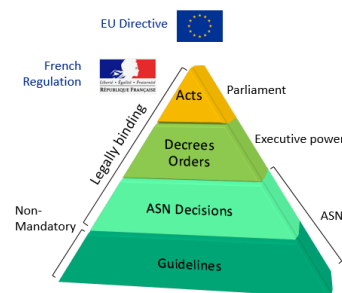


ITER Agreement
Article 14
Public Health, Safety, Licensing and Environmental Protection
The ITER Organization shall observe applicable national laws and regulations of the Host State in the fields of public and occupational health and safety, nuclear safety, radiation protection, licensing, nuclear substances, environmental protection and protection from acts of malevolence.

- 2 ITER is an INB (due to its radioactive/tritium inventory)



- 3 ITER Organization (IO) is the nuclear operator of INB 174 ITER



- 4 As an INB, **INB Order** is applicable to IO and its chain of suppliers

II. What is the applicable legal regime ?

ITER IO has assumed the responsibility in case of a nuclear accident as if it were a “Nuclear Operator” under the Paris Convention [RoD 4th ITER Council, 17-18 June 2009]

- ITER IO shall be **primarily liable** as nuclear operator



- Nuclear Liability Waiver** to the DA's and the Contractors



- Right of **compensation** in accordance with Article 15 of the ITER Agreement



II. What is the applicable legal regime? Who are we, F4E ?



What F4E is

External intervener

Procurement Agency

Publicly funded and
European Organization

What F4E is not

Nuclear ~~operator~~

Engineering company
Manufacturer

Private ~~company~~

II. What is the applicable legal regime?

IO and F4E responsibilities?



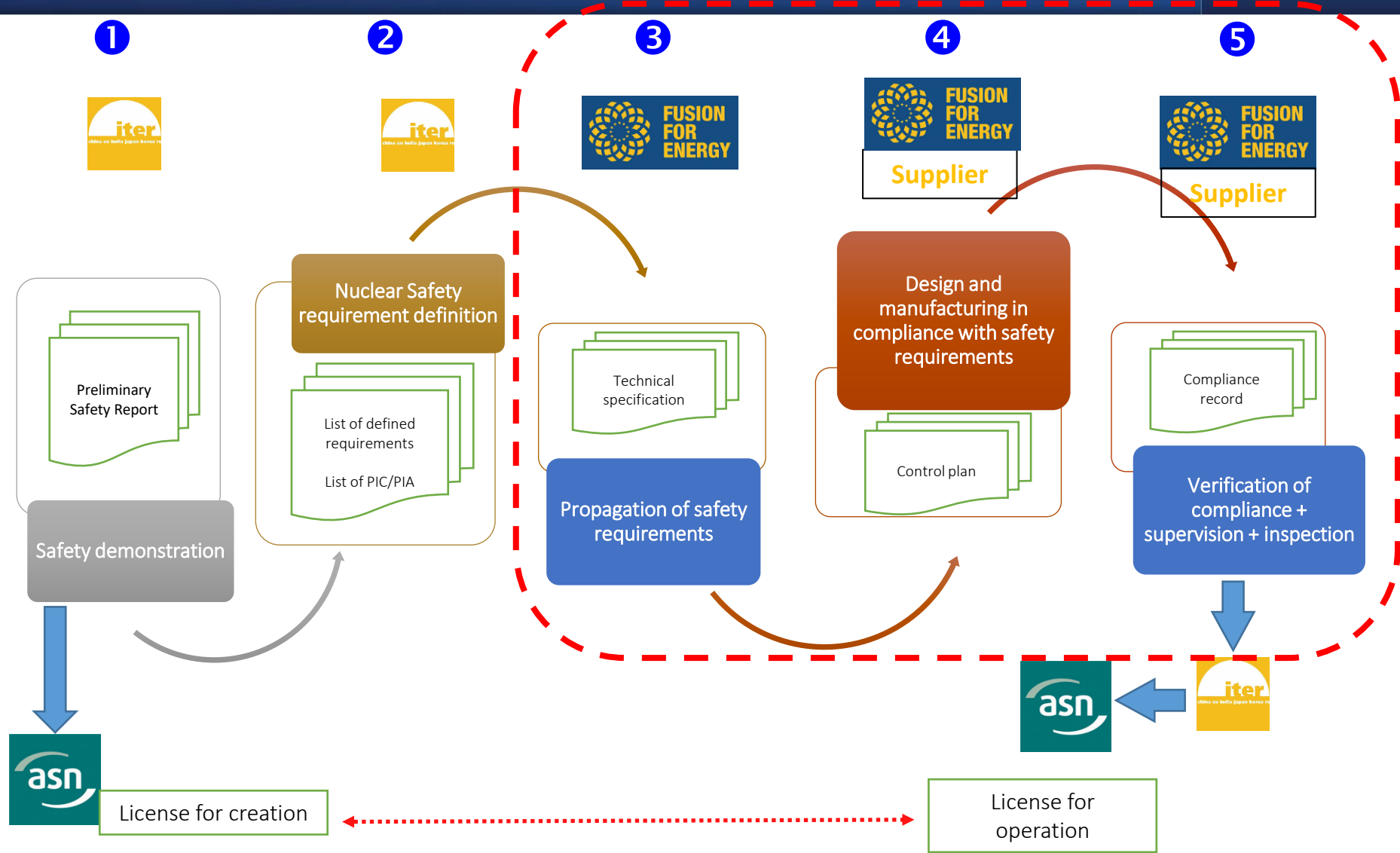
As nuclear operator, ITER ORGANIZATION is primarily responsible for nuclear safety.

The licensee retains the prime responsibility for safety throughout the lifetime of facilities and activities, and this responsibility cannot be delegated.

As external intervener, F4E bears a degree of responsibility to :

- Ensure First Priority is given to Nuclear Safety
 - Nuclear Safety Defined Requirements : collection / propagation / records / reporting to IO
 - Implement the F4E Policy on Nuclear Safety Management and apply it to All F4E and F4E Suppliers
- ➔ **Ultimate goal : deliver safe equipments/systems/buildings to IO**

II. What is the applicable legal regime? IO and F4E responsibilities?



II. What is the applicable legal regime ?

If ITER IO as the Nuclear Operator assumes nuclear liabilities and compensation....

Nothing to worry about then?



Exception: Gross negligence or willful misconduct



II. What is the applicable legal regime ?



Willful misconduct is intentional

E.g. Falsification of compliance with nuclear safety requirements

Gross negligence it is not intentional, but it has common features in its consequences.

3 criteria:

- **Review of doer's behavior**
- **Consciousness of the damage**
- **Repetition of faults**



E.g. Disregard of a nuclear safety obligations due to schedule, costs...

III. What are the legal risks ?

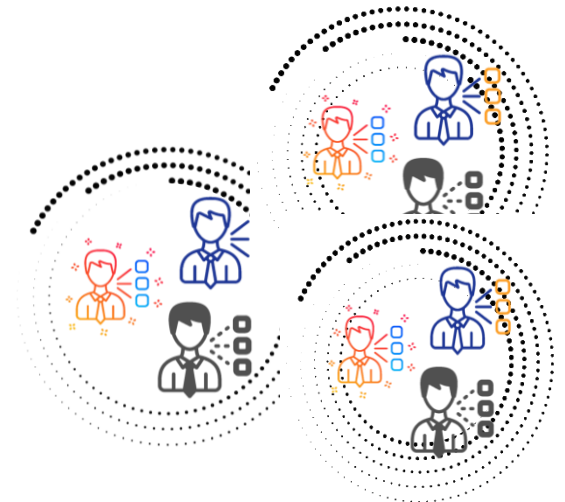
Since ITER is not covered by any international regime....

- **Multiple liability claims under**

- different Courts/jurisdictions
- different national laws



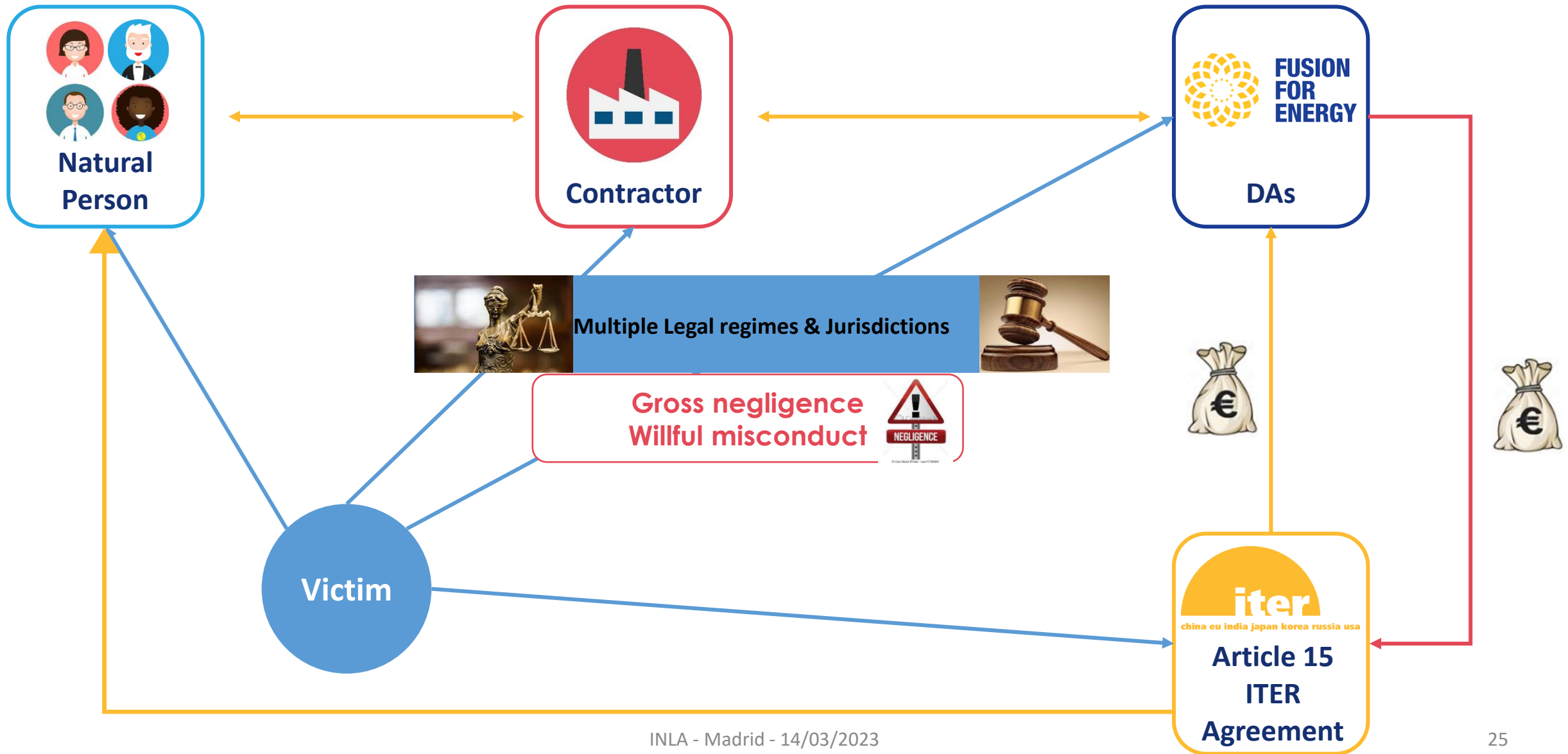
- **Multiple victims against different actors - IO, DAs, Suppliers.....**



- **Risk of damages and compensation exceeding financial capacities**



I.C What are the legal risks ?



I. Essentials of Nuclear Law

ITER IO is assuming liabilities as a Nuclear Operator in case of damage to or loss of life of any person or damage to property in case of a nuclear incident.



ITER is not covered by the International Conventions, there is a risk of multiple claims under different jurisdictions.



F4E would have the right of compensation from ITER IO except in case of gross negligence or wilful misconduct.



A residual risk of gross negligence and wilful misconduct remains.



Conclusions I



I. Essentials of Nuclear Law

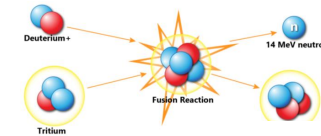
ITER IO is and international project



ITER is governed by National Law and private law



Is the above fit for fusion nuclear energy risks?



Should we start thinking of an international legal coverage?



Is the current license scheme fit for purpose for fusion reactors/industry?



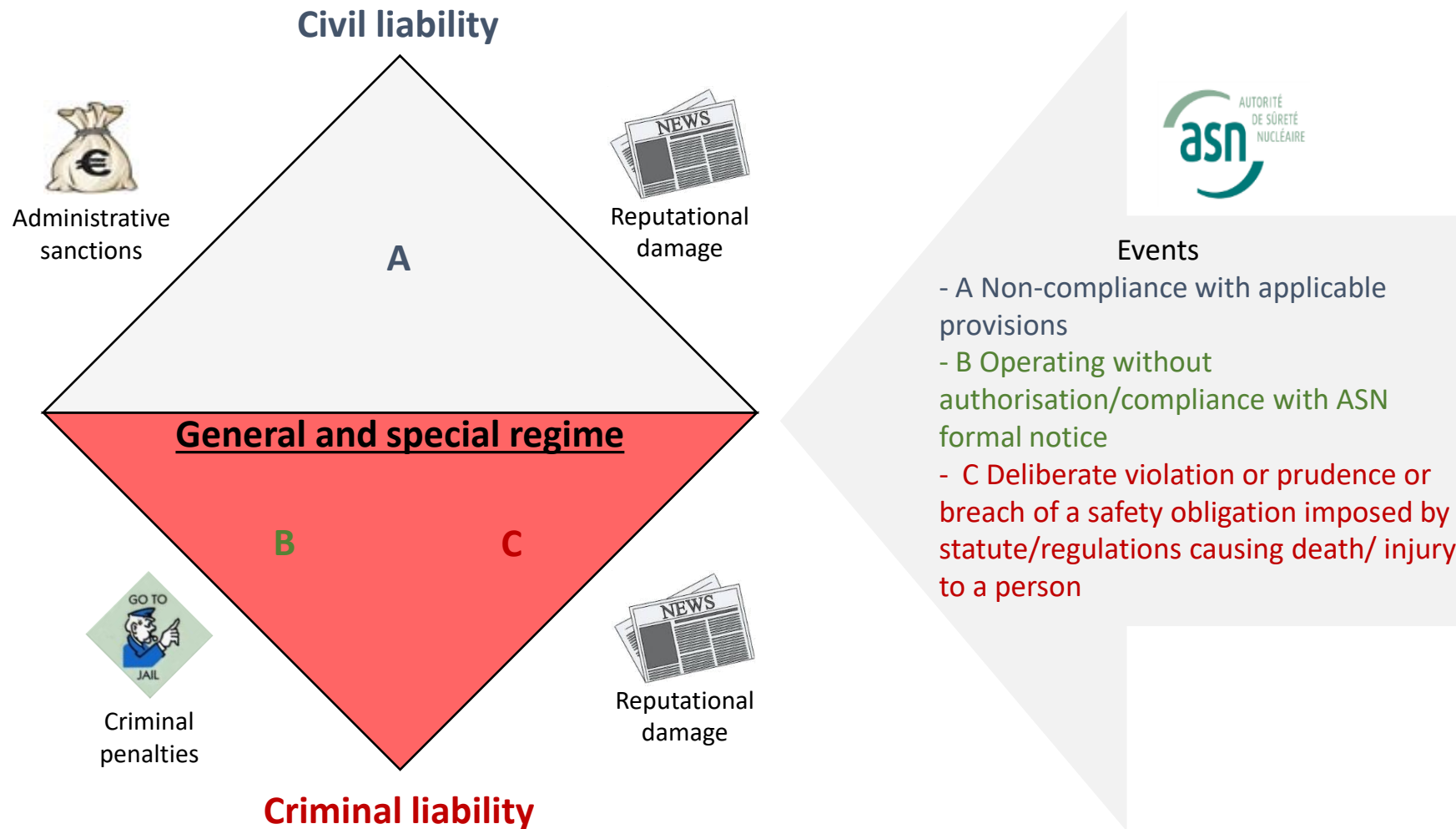
Conclusions II





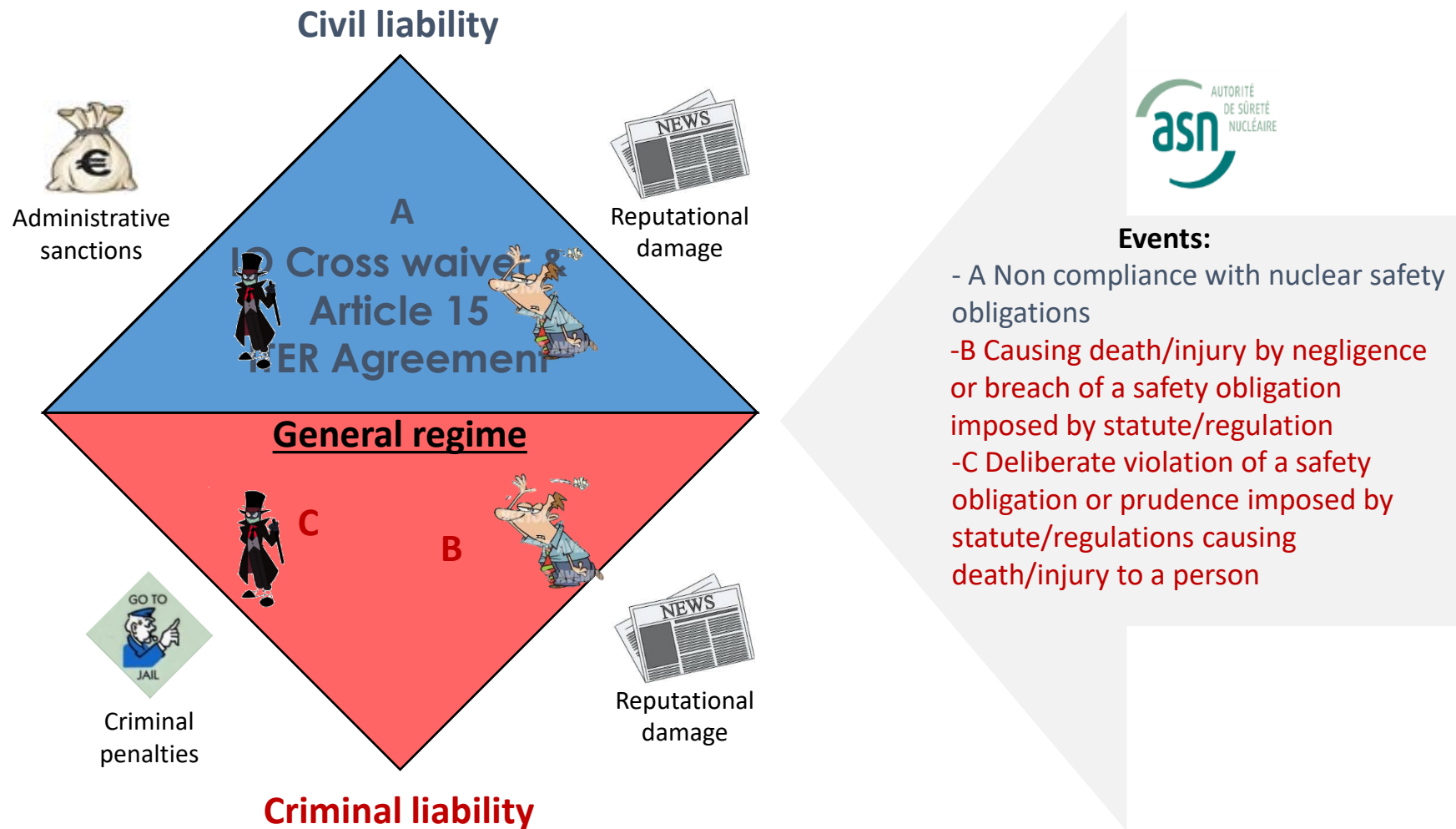
III. What are the legal risks?

ITER Organization



III. What are the legal risks?

Domestic Agencies



III. What are the legal risks?

Protocol 7 on the Privileges and Immunities of the EU

Officials and other servants:

Are Immune on act in official capacity.

Are subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union

Shall continue to enjoy this immunity after they have ceased to hold office.

Host Agreement F4E & Spain

Director :Enjoys the same privileges and immunities of a Head of diplomatic mission (for privigeles, immunities and facilities)

The Governing Board may waive the immunity of the Director

Staff: Immunity with respect of words, texts or other actions carried out in the exercise of their official duties, even once they are no longer active staff of the Joint Venture.

Exemption of national, regional or municipal tax over the salaries, emoluments and benefits received from the Joint Undertaking or on its behalf.

Privilege of import and export personal belongings for starting and ending hteir duties.

The director may waive immunity of F4E staff

Staff & the Director's privileges, immunities, exemptions and advantages **shall not apply** in respect of the commitment of a motor traffic offense and/or acts subjects to criminal or civil Jurisdiction.

Convention on Diplomatic Relations

The person of a diplomatic agent and his/her private residence are inviolable

A diplomatic agent shall not be liable to any form of arrest or detention.

The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him/her from the jurisdiction of the sending State.

A diplomatic agent shall not in the receiving State practice for personal profit any professional or commercial activity.

A diplomatic agent is not obliged to give evidence as a witness.

III. What are the legal risks?

Council Decision 2007/198/Euratom [Founding Decision of F4E]

▼ B

Article 9

Liability and jurisdiction of the Court of Justice

1. The contractual liability of the Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the contract in question.

The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Joint Undertaking.

2. In the case of non-contractual liability, the Joint Undertaking shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its servants in the performance of their duties.

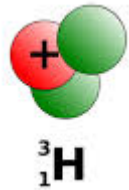
The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for such damage.

▼ M2

3. The Court of Justice of the European Union shall have jurisdiction in actions brought against the Joint Undertaking, including decisions of its Governing Board, under the conditions provided for in Articles 263 and 265 of the Treaty on the Functioning of the European Union.

4. Any payment by the Joint Undertaking in respect of the liability referred to in paragraphs 1 and 2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the Joint Undertaking and shall be covered by the resources of the Joint Undertaking.

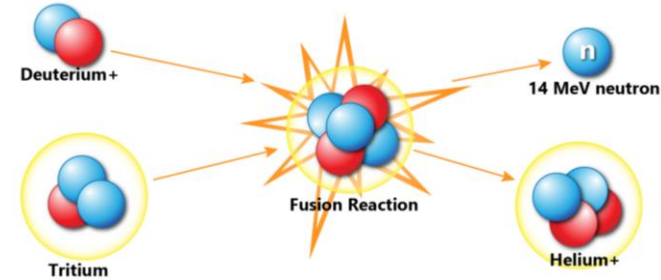
1 Fusion fuel = tritium (soft beta radiation)



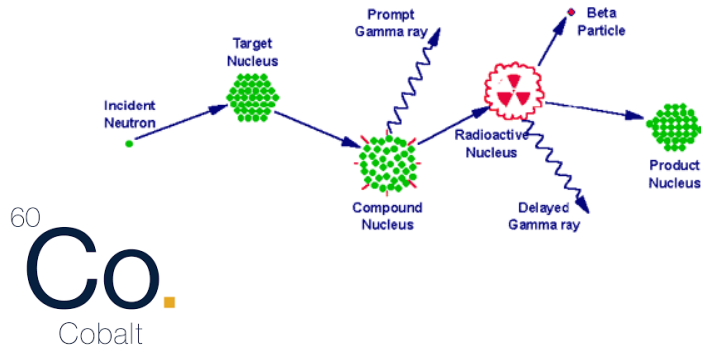
- Low radiotoxicity
- High mobility = difficult to confine

Around 4 kg of tritium in ITER: in tokamak and tritium plant various processes

2 High energy neutrons

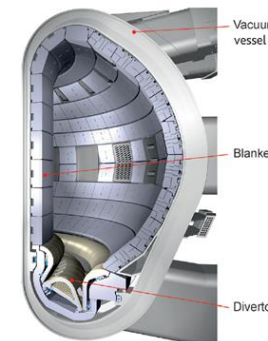


3 Neutron activation + contamination : water, dust, structures (beta-gamma radiation)



60
Co.
Cobalt

4 Production of radioactive materials and radioactive waste (beta-gamma radiation)



Miguel Ferro, Milberg

Crossroads between Nuclear Law
and Competition Law



Miguel Ferro, Milberg

Crossroads between Nuclear Law and Competition Law

- Competition law essentially aims at preventing harmful distortions of competition on the market which may be caused by agreements between companies, by abusive behaviours of dominant companies, by structural changes in the market due to mergers or by state aid.
- When applying Competition Law to the nuclear sector, specific legal and policy issues arise.
- This presentation dealt with those specific issues, showing how they have been tackled by the case-law of the CJEU and providing specific examples of the practice of EU Competition Law in the nuclear sector.

Mariano Bacigalupo, CNMV

Régimen retributivo de la energía nuclear en tanto que energía inframarginal



Lenka Budinova,
DG ENER, European Commission

Euratom competences and most recent developments in the field of international relations, safeguards and implementation of secondary legislation





INLA Spain's conference, General Developments in Nuclear Law
14 March 2023, Madrid

Euratom competences and latest developments

Lenka Budinova

Head of Sector, Legal Matters

Euratom Policy Coordination

European Commission, Directorate-General for Energy

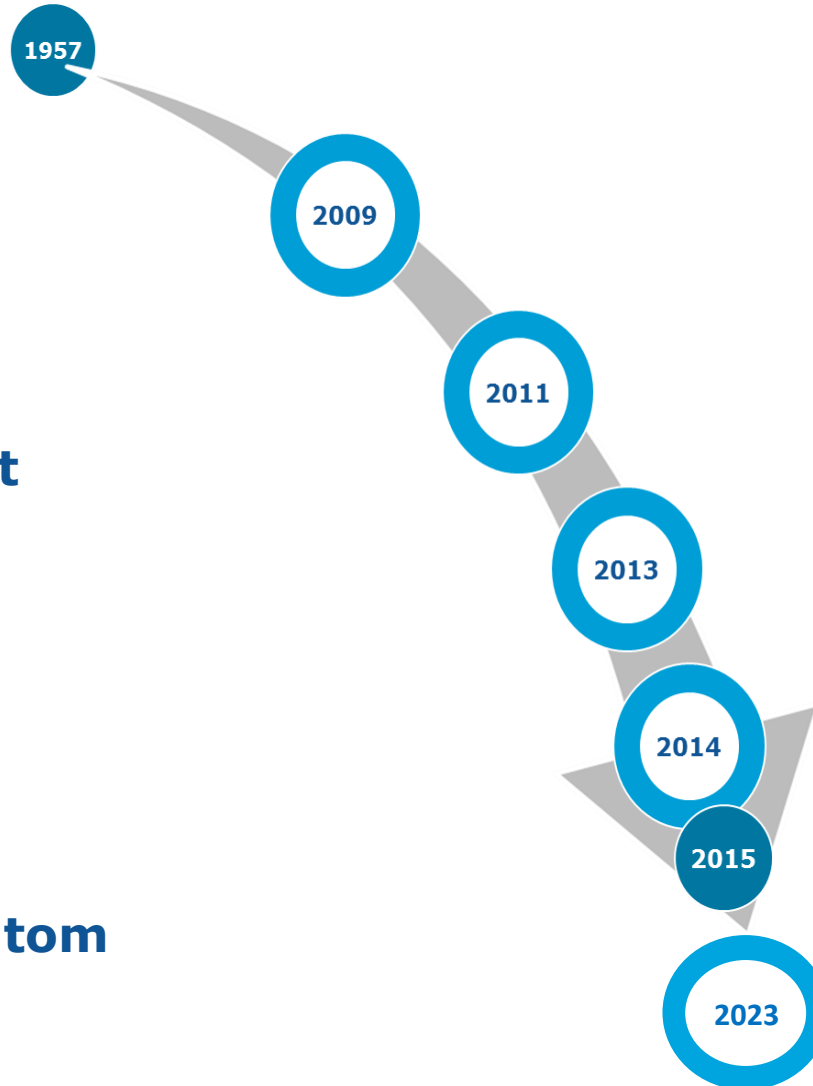
outline

- Euratom competences
- Recent updates
- Challenges in response to the war in Ukraine

Euratom competences

- Euratom Community and the EU: separate legal personalities, but same membership and common institutions
- Euratom Treaty covers all sources of ionising radiation – industrial, medical, natural radiation – in normal and emergency situations
- Euratom Treaty (*lex specialis*) and the TEU and TFEU (*lex generalis*) apply in parallel, the same legal value
- Since 1958 basically unchanged ... evolutionary nature: it has flexibly responded to ever-evolving needs and allows to close the remaining gaps in regulation at EU level: nuclear safety, waste management...
- The basis of a corpus of Euratom legislation

EURATOM secondary legislation (examples)



Directive 2009/71/Euratom
Nuclear Safety
of nuclear installations

Directive 2011/70/Euratom
Spent Fuel and Waste Management

Directive 2013/51/Euratom
Euratom Drinking Water Directive

Directive 2013/59/Euratom
Basic Safety Standards

Directive 2014/87/Euratom
amending Directive 2009/71/Euratom

Role of nuclear energy in decarbonisation

- Nuclear energy is a low carbon energy source
- EU Member States (MS) have the **right to decide on their energy mix** and to choose the most appropriate technologies **to achieve their climate goals**
- **All types of low-carbon energy sources are needed** to meet the 2050 climate neutrality target and the reduction of emissions by 50-55% by 2030
- Nuclear energy has a role to play during this transition for those EU MS deciding to rely on nuclear energy.
- Thirteen EU Member States - BG, HR & SI, CZ, FI, FR, HU, NL, PL (“newcomer” 2033), RO, SK, ES and SE - plan to rely on nuclear power to meet climate targets of 2030 as indicated in their National Energy and Climate Plans.

Euratom competences - new builds

Article 33

MS to notify **draft legislation** in the field of basic safety standards

Article 37

MS to provide data relating to its plan for discharge of radioactive effluents with potential cross-border effects

Article 41

Investors to notify nuclear investment projects

Article 52 and seq

MS to communicate information enabling Euratom Supply Agency to exercise its exclusive right to conclude supply contracts

[Authorization of supply contracts > 10 years-Article 60]

Article 78

Nuclear installations operators to comply with nuclear safeguards obligations, in particular the declaration of basic technical characteristics (BTCs) of the new installation

Article 103

MS to notify draft agreements / contracts with a third state, an international organization or a national of a third state in the field of the Euratom Treaty

Recent updates

- Euratom safeguards
- Taxonomy
- ECJ case-law

Euratom safeguards

- In-depth evaluation of [Regulation 302/2005](#) concluded in 2022
- Stakeholders consultation (85 operators, 23 national authorities)
- Conclusion:
 - the Regulation successfully implemented
 - its effectiveness gradually decreased (due to the technological progress and the developments in the nuclear sector over the last 17 years)
 - revision of the Safeguard Regulation is considered

Taxonomy Regulation (EU) 2020/852

Guiding private investments into activities that are needed to achieve climate neutrality in the next 30 years.

2nd delegated act ([Commission Delegated Regulation 2022/1214](#)):

- includes **specific nuclear energy related activities** as transitional activities substantially contributing to climate change mitigation.
 - Refurbishment of existing nuclear fleet / investments to nuclear safety upgrades and better efficiency - sunset clause by 2040 (decision issued)
 - Construction of new reactors using best available technologies (Generation III/III+) - sunset clause by 2045 (construction permit granted)
 - Research and innovation to the advanced nuclear technologies (Generation IV nuclear reactors) with minimal waste from the fuel cycle – no sunset clause

Taxonomy Regulation (EU) 2020/852 (cont.)

- sets out **the highest achievable safety criteria** ensuring compliance with “do no significant harm” requirements and going beyond requiring mere compliance with existing legislation:
 - e.g. definite dates for operational disposal facilities (disposal facilities for low- and intermediate-level waste to have in place a detailed plan to have a disposal facility for high-level radioactive waste in operation by 2050), require the use of accident-tolerant fuels from 2025 onwards.

Recent actions against the inclusion of nuclear the 2nd delegated act:

- Feb 2022, request by NGOs for internal review under [Aarhus Regulation](#)
- Nov 2022, an application (case [T-625/22](#)) for its annulment before the ECJ

Paks II judgment challenge

In the Paks II judgment of 30 November 2022 ([Case T-101/18](#)), the General Court fully upheld the Commission's decision in finding that the aid granted for the construction of two nuclear reactors in Paks, Hungary, constituted a State aid compatible with the internal market pursuant to Article 107(3)(c) TFEU, subject to conditions. The General Court also reminded that the Member States are free to determine the composition of their own energy mix and to invest in nuclear energy.

Appeal [C-59/23 P - Austria v Commission](#)

Challenges in response to the war in Ukraine

- Security of nuclear fuel supplies.
- How to strengthen the international legal framework on nuclear safety in armed conflict?

Security of nuclear fuel supplies

The challenge is two-fold:

- A dependency on RF fuel for **VVER-type reactors** (5 EU Member States)
- A dependency of EU's **nuclear front-end services** (conversion and enrichment)
 - Ongoing discussions with EU stakeholders concerned (utilities, national regulatory authorities) and international partners
 - Role of [Euratom Supply Agency](#) (monitoring the nuclear market, supply contracts)

How to strengthen the international legal framework on nuclear safety in armed conflict?

A reflection by the international community is needed on the opportunity of reinforcing the international framework relating to nuclear facilities devoted to peaceful purposes in the situations of armed conflicts.

‘We call on the international community and all relevant actors to immediately start a reflection on how to improve existing international instruments to protect nuclear sites in the context of war, and on whether new specific instruments might be necessary.’

Joint Statement by EU Energy Commissioner Kadri Simson and EU HRVP Josep Borrell on the occasion of the 36th anniversary of the Chernobyl accident, 26 April 2022

Ideas for exploration and discussion

- **Geneva Conventions of 1949, Additional Protocol I**
 - limited and conditional prohibition of attacks against nuclear power plants
 - https://blogs.icrc.org/law-and-policy/wp-content/uploads/sites/102/2022/10/Dangerous-forces_the-protection-of-nuclear-power-plants-in-armed-conflict-Humanitarian-Law-Policy-Blog.pdf
- **The Statute of the IAEA**
 - Extension of the IAEA mandate to expressly cover assistance aimed at ensuring nuclear safety and security of nuclear facilities during armed conflicts
 - Mandate for on-site monitoring teams
- **Amending existing conventions? CPPNM/A, CNS, ICSANT**
- **New convention?**
- **Other ideas?**

Thank you

[Nuclear energy \(europa.eu\)](https://europa.eu)



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Clara Alcaraz, KPMG Abogados

Papel de la energía nuclear
en la transición energética





Papel de la energía nuclear en la transición energética

CLARA ALCARAZ TORRES

14/03/2023

La energía nuclear en el Acto Delegado Complementario de la Taxonomía

- **Finalidad de la Taxonomía y requisitos de las actividades relacionadas con la energía nuclear para ser incluidos en ella**
- **Actividades cubiertas por el Acto Delegado de Taxonomía Complementaria de 15 de julio de 2022:**
 - **Investigación, desarrollo, demostración y despliegue de tecnologías avanzadas con ciclo de combustible cerrado (“Generación IV”).**
 - **Construcción y operación segura de nuevos proyectos de centrales nucleares para la generación de energía, que utilizarán las mejores tecnologías existentes disponibles (“Generación III+”). Dichos proyectos serán reconocidos hasta 2045.**
 - **Modificaciones y mejoras de instalaciones nucleares existentes con el fin de prolongar su vida útil. Dichos proyectos serán reconocidos hasta 2040.**

El hidrógeno “rosa” en las normas en negociación del paquete de medidas «Objetivo 55»

- Actualmente, no está cubierto por la definición ni en REDII ni en la propuesta de REDIII.
- Tampoco se contempla como renovable en el Acto Delegado de Hidrógeno de 13 de febrero de 2023 (pendiente de votación). Sirve como medida de descarbonización de la industria pero no va a servir para cumplir con los objetivos de descarbonización.
- Francia ha estado presionando por una enmienda para hacer que el hidrógeno bajo en carbono cuente para los objetivos de reducción de emisiones de los Estados. Principalmente Alemania, junto con otros Estados miembros, se opone a dicha enmienda.
- La presidencia checa pidió la inclusión de hidrógeno bajo en carbono/no fósil en el Reglamento de Aviación RefuelEU, pero fue desestimado.
- Tampoco parece probable que en España se revise el PNIEC para considerar la nuclear como energía de transición.

Reglas en materia de Ayudas de Estado

Las Directrices de la Comisión sobre ayudas estatales en materia de clima, protección del medio ambiente y energía establecen las condiciones en las cuales se entiende que determinadas categorías de medidas en materia de protección del medio ambiente y energía se consideran compatibles con el art. 170, apartado 3, letra C del Tratado.

Sin embargo, tales directrices no se aplican a las ayudas de estado en materia de energía nuclear; tales ayudas deberán ser examinadas bajo los criterios del art.107, apartado 3, letra c) del Tratado.

Muchas Gracias.

claraalcaraz@kpmg.es



Thomas Garancher, Frêche & Associés

The permitting of nuclear new build
In France.





The permitting for nuclear new build in France

Thomas GARANCHER

Avocat au barreau de Paris

FRÊCHE & ASSOCIÉS

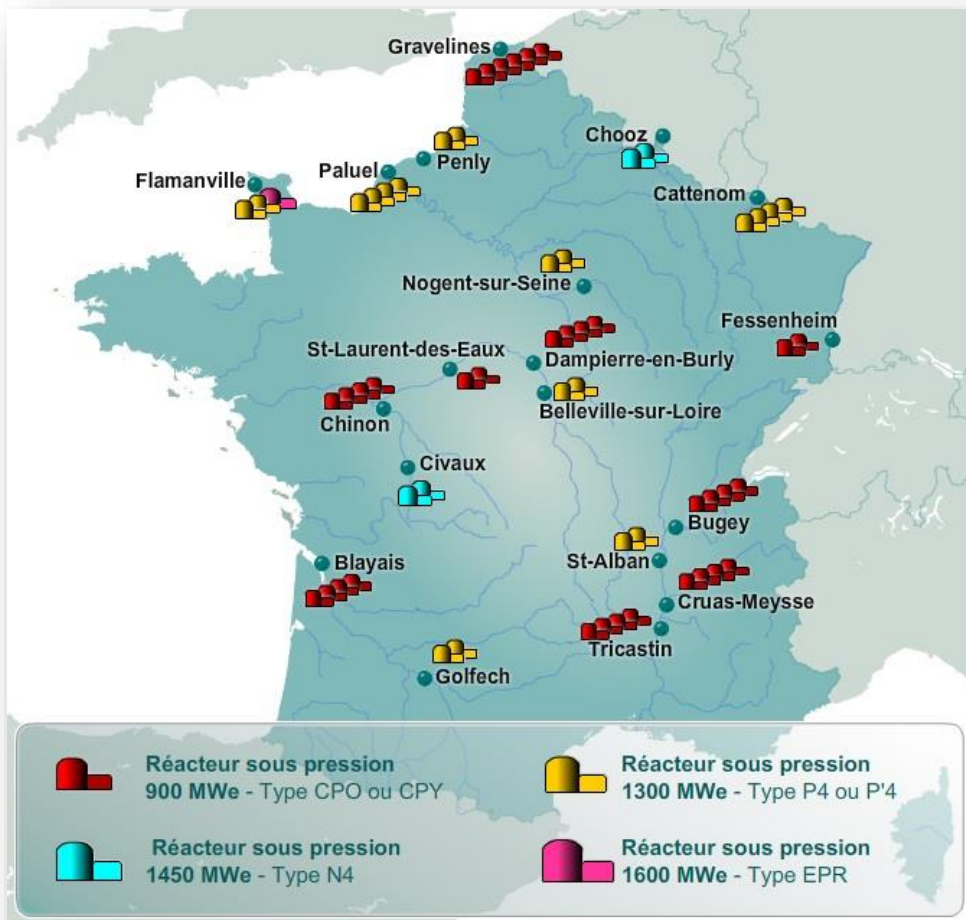
A.A.R.P.I.

14 March 2023

TABLE OF CONTENTS

1. Nuclear power production in France
2. Permitting process for NPPs
3. NPP Permitting timeline
4. Draft bill on the acceleration of NPPs construction proceedings
5. For which nuclear policy?

Nuclear power production in France



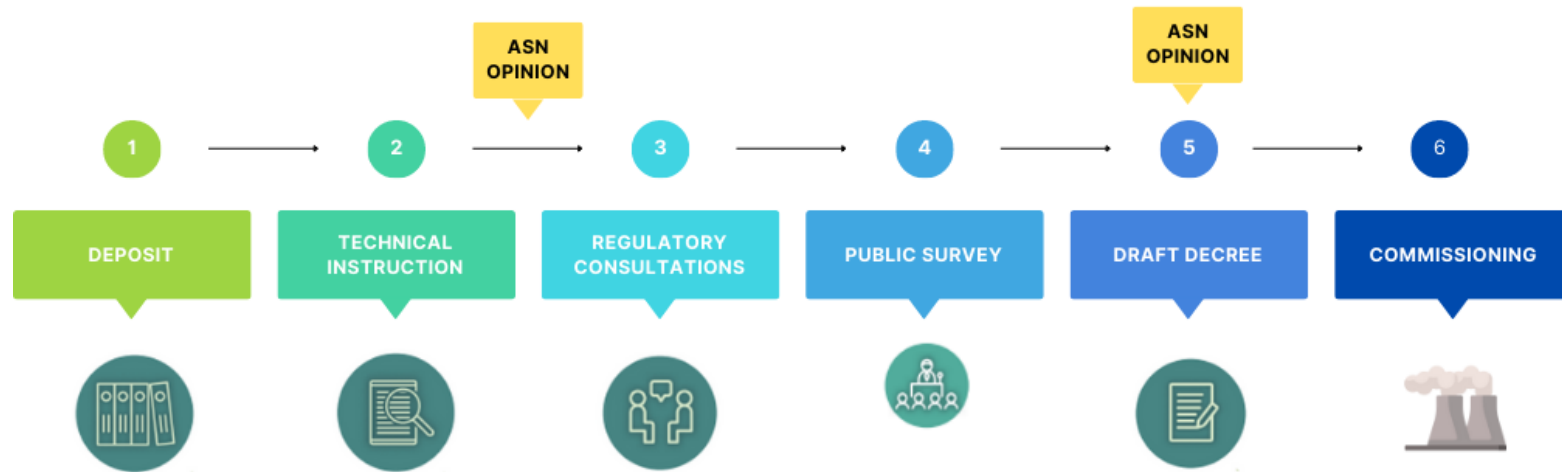
Nuclear power production accounts for an average 70% of all electricity produced in France

56 nuclear reactors spread over 18 nuclear sites

Permitting process for NPPs

➤ **Legal basis** : French Environmental Code (art. L. 593-1 et seq.)

➤ **ASN** : the French Nuclear Safety Authority (created in 2006)



NPP Permitting timeline

NPP	Initial Nuclear Permit	Beginning of Construction	Commissioning
Tricastin 1-2	July 2, 1976	1974	1980
Civaux 2	December 6, 1993	1991	1999
Flamanville 3 (EPR)	April 10, 2007	2007	? (Expected 2024)

Rationale for extended delays:

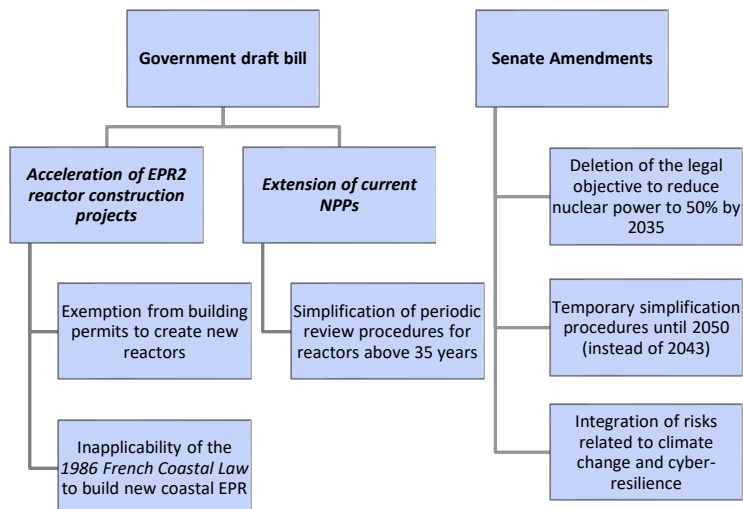
- ***Additional legal requirements*** concerning notably environmental protection and proceedings including EIA and public participation process (*Aarhus and EU Directive*)
- ***Enhanced safety standards*** (*Fukushima*)
- ***Specific EPR related causes*** (prototype in France, loss of know-how)

Draft bill on the acceleration of NPP's construction proceedings

Context : climate crisis and energy crisis, both linked with “our dependance on fossil fuels” (French Minister of Energy Transition)

Purpose : speed-up the proceedings to create new NPPs on existing sites (no green field)

Major provisions to date :



Status :

Proposed to the Council of Ministers on **November 2, 2022** and introduced to Parliament the same day

Approved by Senate as amended on **January 24, 2023**

Currently under review by the **National Assembly**

Is **expected to be approved** by **summer 2023** (due to the **accelerated procedure** chosen by the Government)

For which nuclear policy?

President Macron's declaration in Belfort on February 10, 2022 :

“What we have to build today, (...) it is the **rebirth** of French Nuclear Industry.”

- 6 EPR2s to be built + study 8 additional ones

Target : to start construction "by 2028, with the **first EPR2 commissioned by 2035**"

Launch of a public debate on the creation of new nuclear reactors

- Opened from **Oct. 26, 2022, to Feb. 27, 2023**
- Both **online and in person** (public meetings)
- **Report** to be published on **April 27, 2023**

"Energy and climate quinquennial programming law" (LPEC)

- Should be presented in **June 2023**
- Ambition : to set **trajectories** of the different energy sources in France **between 2028 and 2033**



Thank you for your attention!

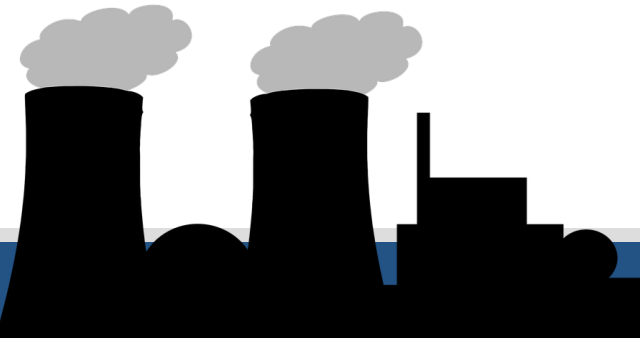
Thomas GARANCHER

FRÊCHE & ASSOCIÉS

A.A.R.P.I.

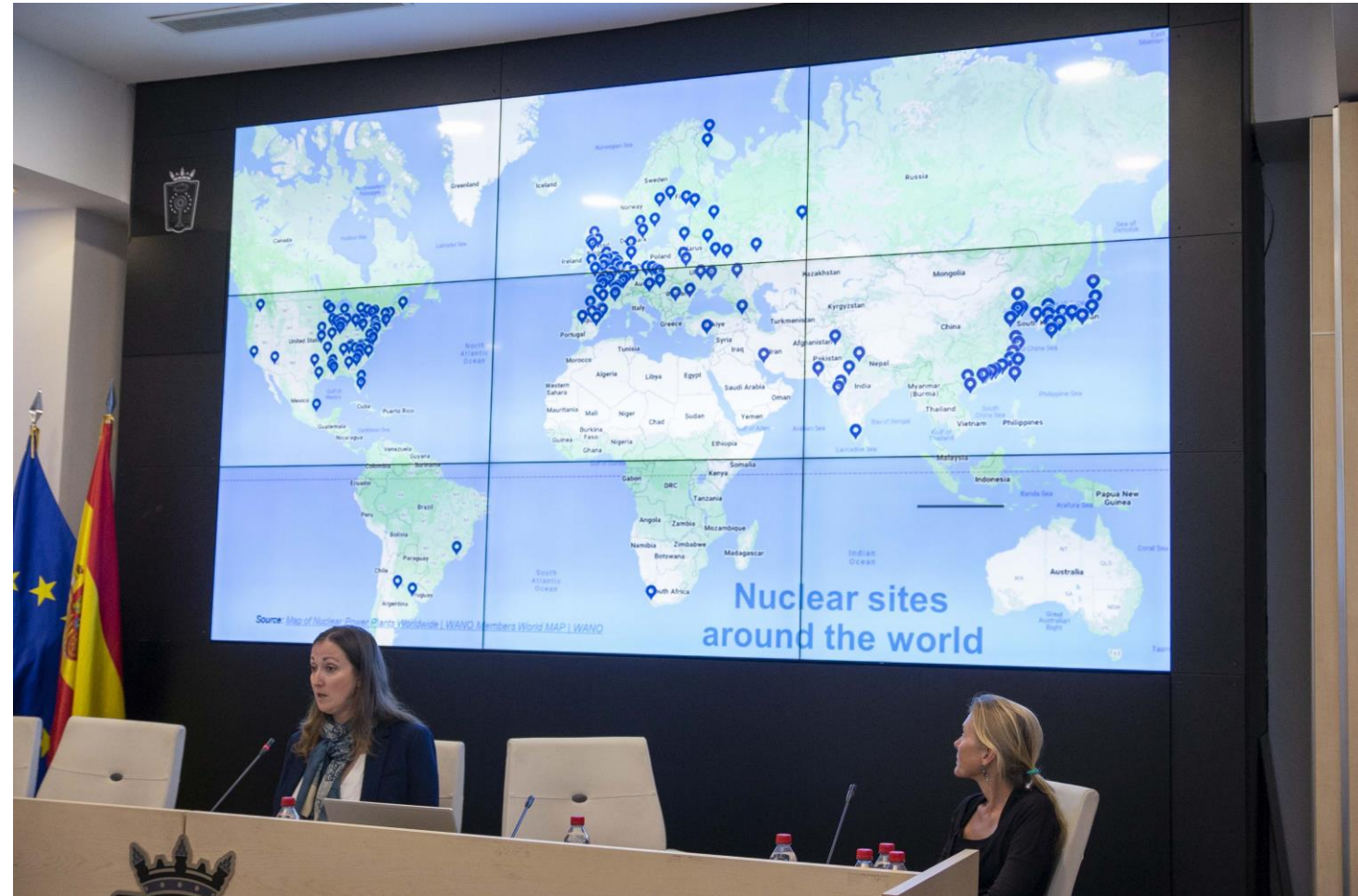
t.garancher@freche-associes.fr

www.freche-associes.fr



María Laguna, ELINI

Nuclear insurance – status and trends



INLA España
Novedades en Derecho Nuclear

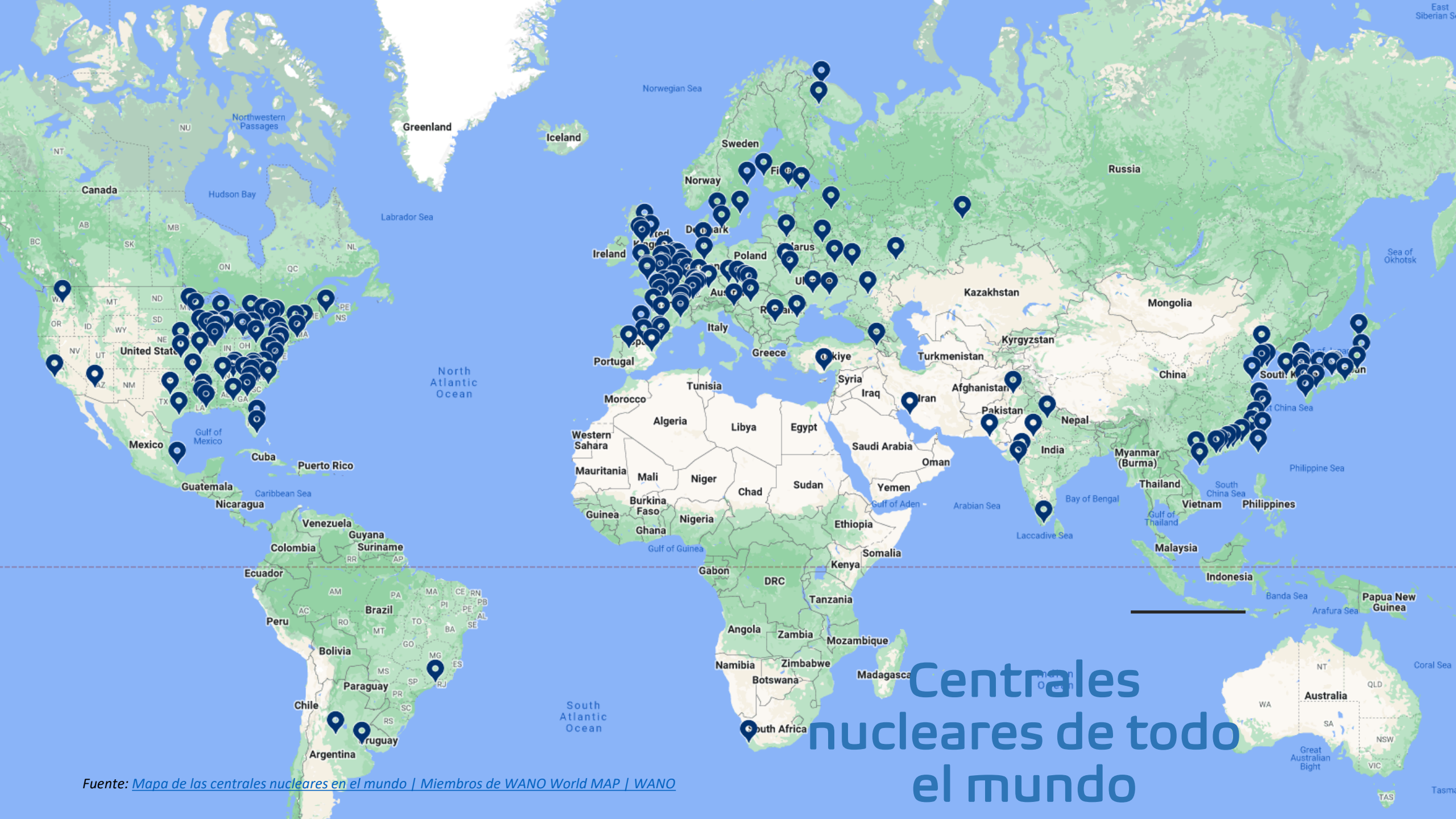
Seguro Nuclear Situación y tendencias

Madrid
14 de marzo, 2023
Maria Laguna - ELINI



Agenda

1. Centrales nucleares de todo el mundo
2. Ley de responsabilidad civil nuclear
3. Seguro nuclear - Participantes
4. Seguro nuclear - Estructura y capacidad
5. Gestión de siniestros
6. Conclusión

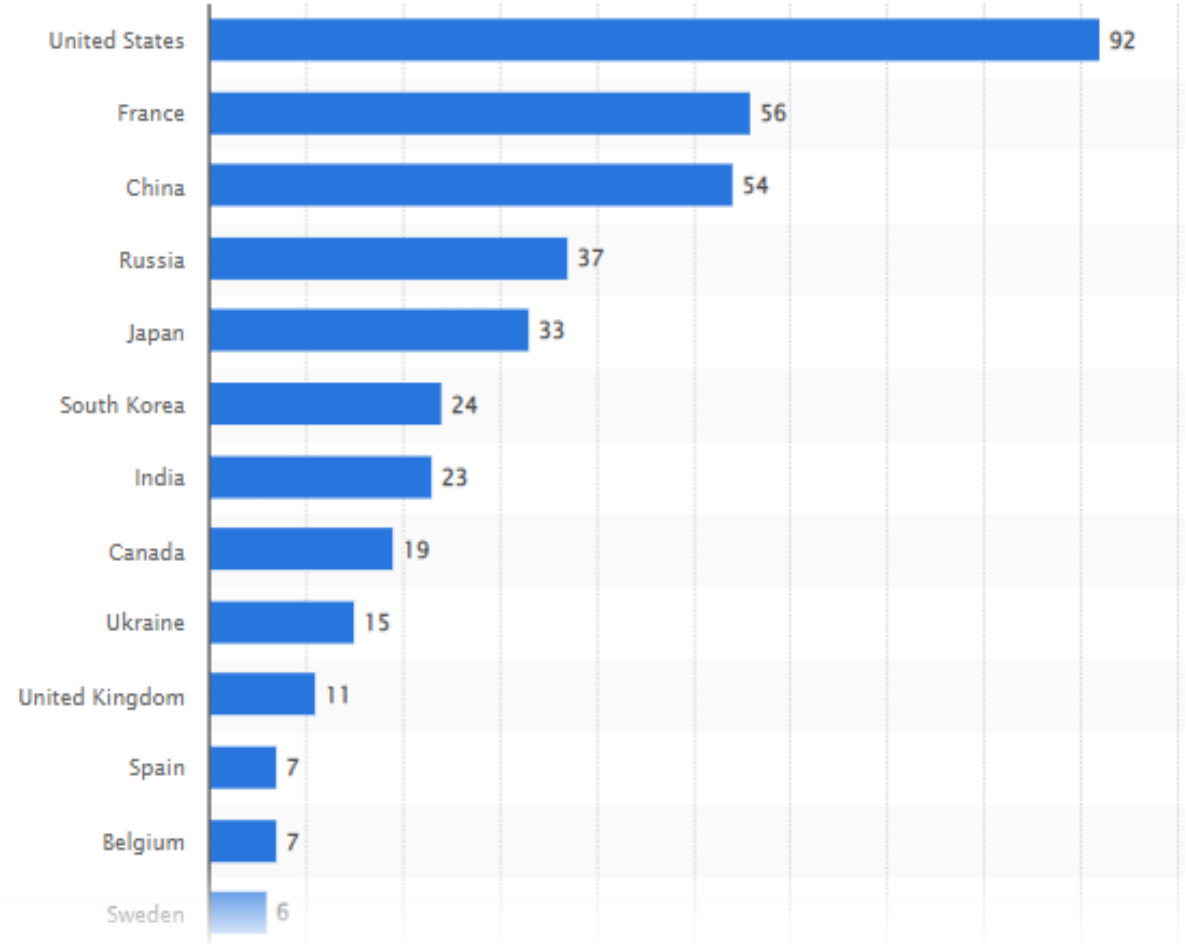


Fuente: [Mapa de las centrales nucleares en el mundo / Miembros de WANO World MAP / WANO](#)

Centrales nucleares de todo el mundo

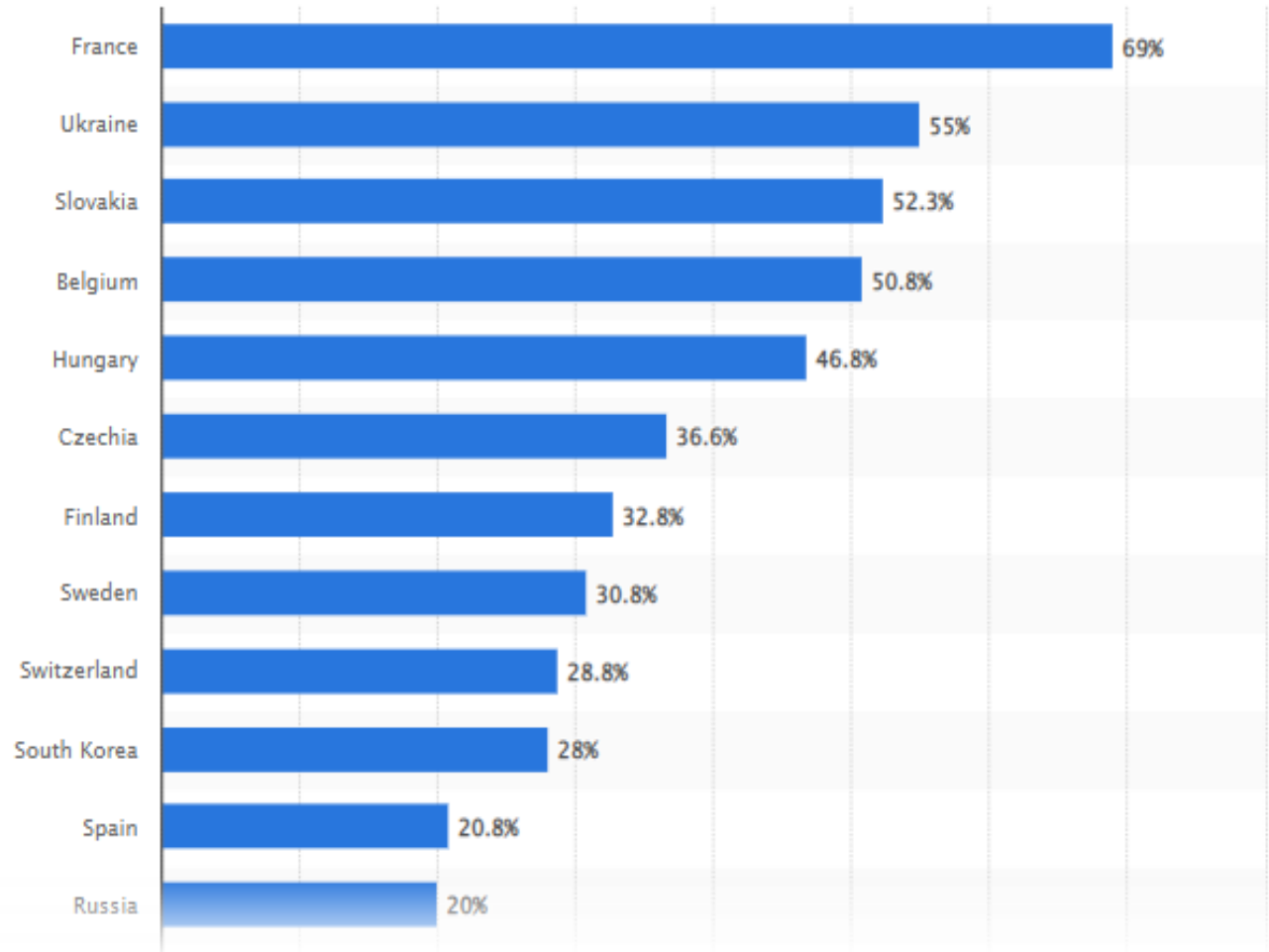
Número de reactores por país

439 reactores nucleares en funcionamiento en 30 países



Fuente: [Reactores nucleares en funcionamiento por país 2022](#) | Statista

Porcentaje de energía nuclear en la producción de electricidad nacional por país



Fuente: Reactores nucleares en funcionamiento por país 2022 | Statista

Marco Jurídico de la Responsabilidad Civil Nuclear

Los principios de Responsabilidad Civil en materia nuclear se basan en los convenios internacionales

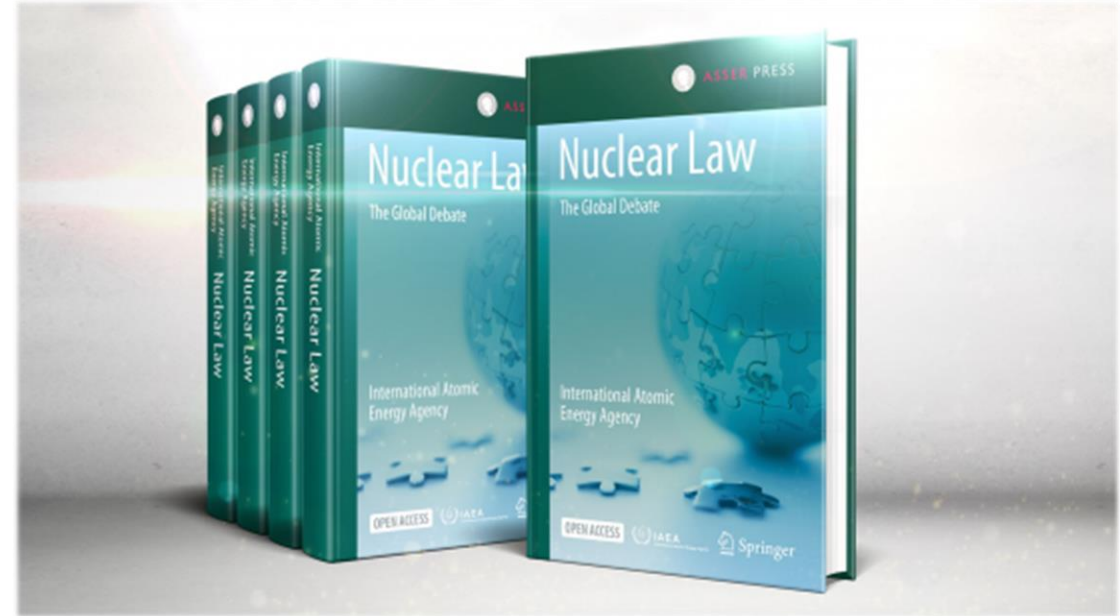
- **Convenio de París**
- **Convenio de Bruselas**
- **Convenio de Viena**
- Otras legislaciones nacionales

Responsabilidad objetiva: la víctima queda libre de demostrar culpa o negligencia del operador.

Responsabilidad exclusiva: en caso de accidente, todas las reclamaciones deben dirigirse contra el operador nuclear.

Cobertura financiera obligatoria: el operador debe ofrecer una garantía financiera que cubra un importe mínimo de protección a las víctimas.

Jurisdicción exclusiva: sólo los tribunales del país en el que se produce el accidente son competentes sobre las reclamaciones por daños y perjuicios



Seguro Nuclear - Participantes



EMANI
European Mutual
Association for Nuclear
Insurance

1



NIRA
Nuclear Industry Re-
insurance Association

2



ELINI
European Liability
Insurance for the
Nuclear Industry

3



BlueRe m.a.
Re-insurance association
for Nuclear Liability

4

Seguro nuclear - Participantes



Nuclear Pools

- Country by country – Reciprocity



NEIL

- Mutual Insurance company mainly active in the US
- ONEIL out of Ireland



Northcourt

- Underwriting Agency

Seguro Nuclear - Estructura y Capacidad



Prevenir, autoasegurar, mancomunar y transferir riesgos

- **Pooling de riesgos** es la esencia del seguro
- El riesgo también puede **prevenirse** y **autoasegurarse** (mediante cautivas o mutuas industriales)
- Los seguros también implican la **transferencia de riesgos** mediante reaseguros, diversas formas de mecanismos alternativos de transferencia de riesgos: titulización (bonos) y estructuras de capital contingente.

Seguro Nuclear - Estructura y Capacidad

Asegurabilidad en sentido estricto y en sentido amplio

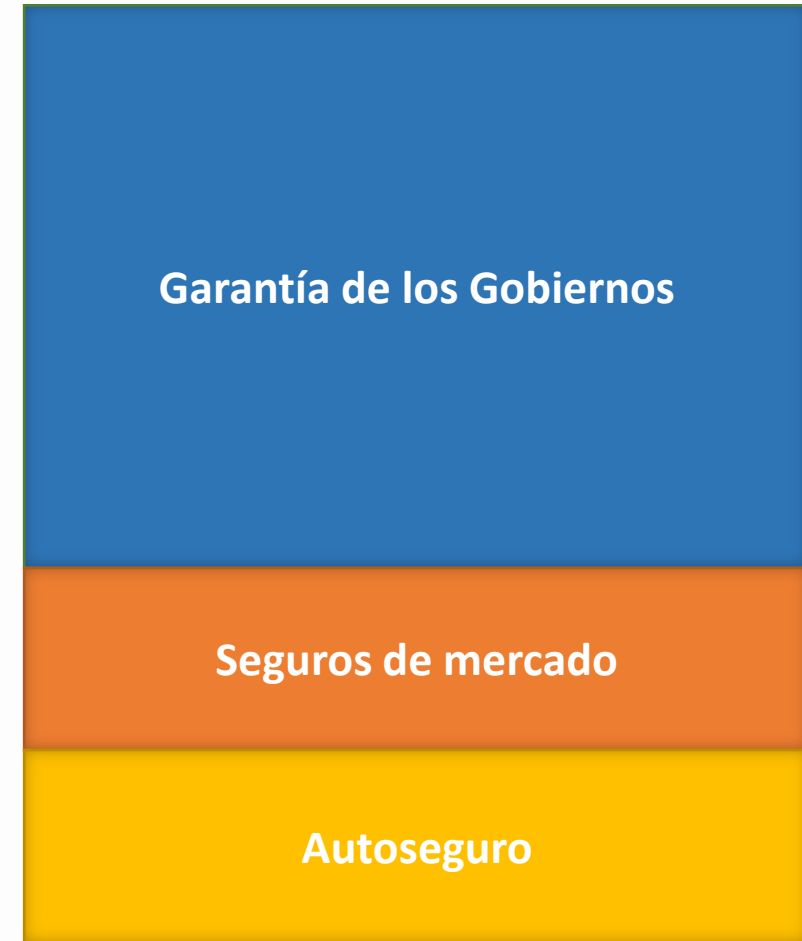
- En **sentido estricto**, la asegurabilidad de un riesgo se refiere a la capacidad de las compañías de seguros para ofrecer una cobertura suficiente mediante técnicas de mutualización. Entre estas técnicas se encuentran los pools de compañías de seguros, las mutuas especializadas o las cautivas)
- En un sentido **más amplio**, se refiere a la posibilidad de que las entidades financieras cubran el riesgo mediante diversas formas de transferencia del riesgo



Estructura del seguro nuclear

Los riesgos nucleares suelen asegurarse mediante la combinación de:

- **Autoseguro** de los operadores nucleares
- **Seguros comerciales** (incluidas las agrupaciones de aseguradoras y mutuas) **y reaseguros**, bajo la responsabilidad limitada de los operadores nucleares
- **Garantía de los gobiernos**



Seguro Nuclear - Estructura y Capacidad

Resumen de la cobertura

R.P.C. 700 € a 1.200 € millones		Convenios modificados				
Daños materiales y corporales	Daños corporales 10 años	Daños corporales 30 años	Pérdidas económicas	Restablecimiento del medio ambiente deteriorado	Pérdida de ingresos / Deterioro del medio ambiente	Medidas preventivas

El mercado de seguros frente a los Convenios revisados

- Capacidad del mercado de seguros privados: **insuficiente** en el momento de la revisión de los Convenios, pero **suficiente** ahora
- Parece resuelta la dificultad de cubrir todos los **nuevos tipos de daños**, excepto
- Dificultad para cubrir periodos prolongados de **10 a 30 años por daños corporales**

¿Y cubrir lo que no proporciona el mercado?

- Bélgica: existe una garantía del Estado, pero no es necesaria, ya que está totalmente cubierta
- Reino Unido: garantía de BEIS
- Francia: garantía de la RCC
- España: garantía del Consorcio de Seguros

Gestión de siniestros tras un accidente nuclear

- Objetivo principal: indemnizar a las **víctimas** de la forma más eficaz para **proteger** tanto a las **víctimas** como al **operador** responsable.
- En este caso, los proveedores de seguros no compiten, sino que **colaboran** para alcanzar este objetivo.



Gestión de siniestros tras un accidente nuclear

- Activación del plan de gestión de crisis 24/7
- Ayudar al operador a proporcionar a las víctimas los documentos requeridos: hojas de reclamaciones
- Plataforma web multilingüe de recogida de datos
- Centro de llamadas
- Asistencia transfronteriza - Tramitación de siniestros
- Comité de Gestión de Siniestros
- Peritos
- Seguimiento estrecho del agotamiento de los límites asegurados, así como de las participaciones de las distintas aseguradoras implicadas
- Informes

SOLUCIÓN WIN - WIN



Gracias por su atención



INLA Spain
Nuclear Law Developments

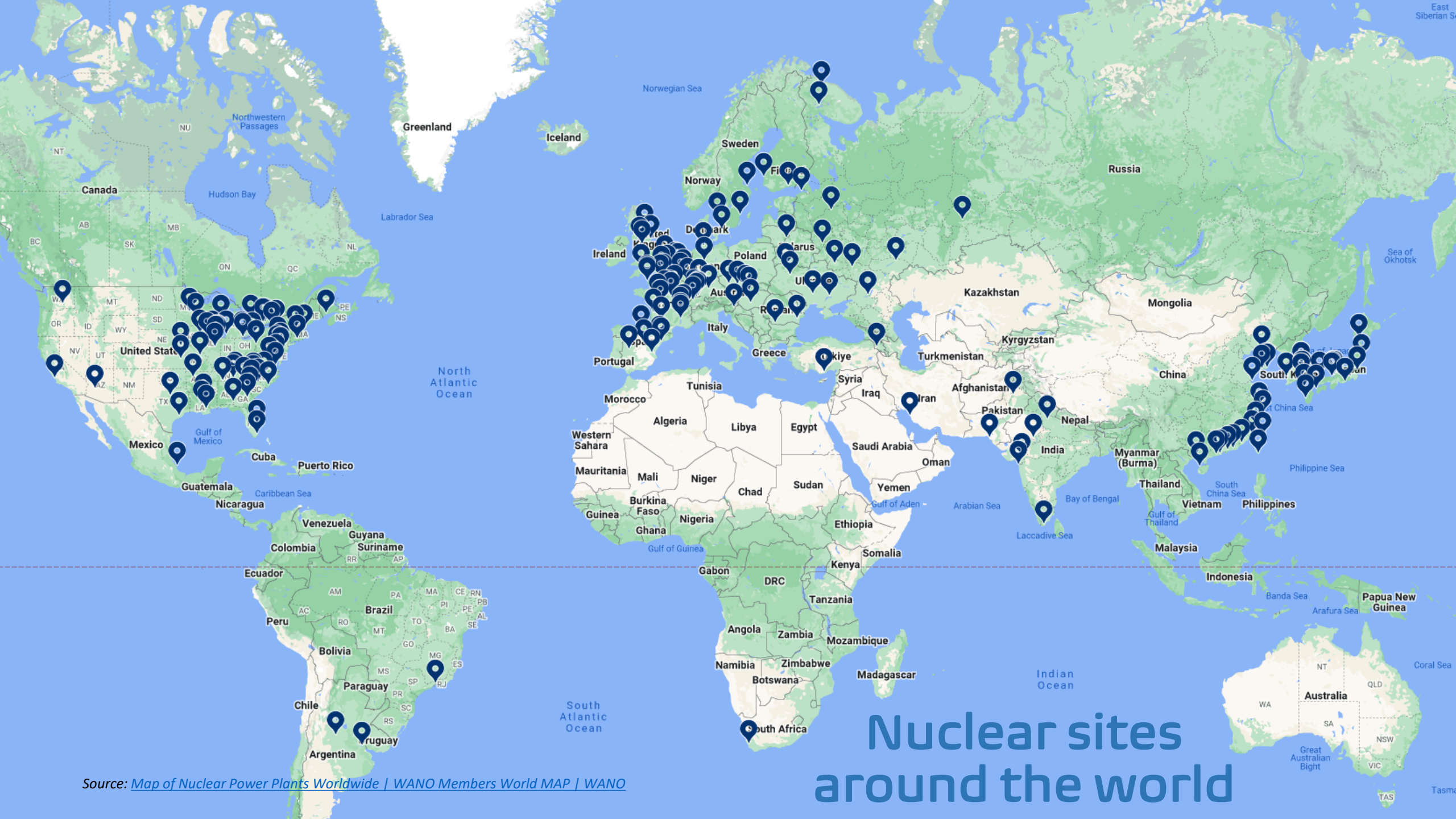
Nuclear Insurance Status & Trends

Madrid
March 14th, 2023
Maria Laguna – ELINI



Agenda

1. Nuclear sites around the world
2. Nuclear Third Party Liability Law
3. Nuclear Insurance – Players
4. Nuclear Insurance – Structure & Capacity
5. Claims Handling
6. Conclusion

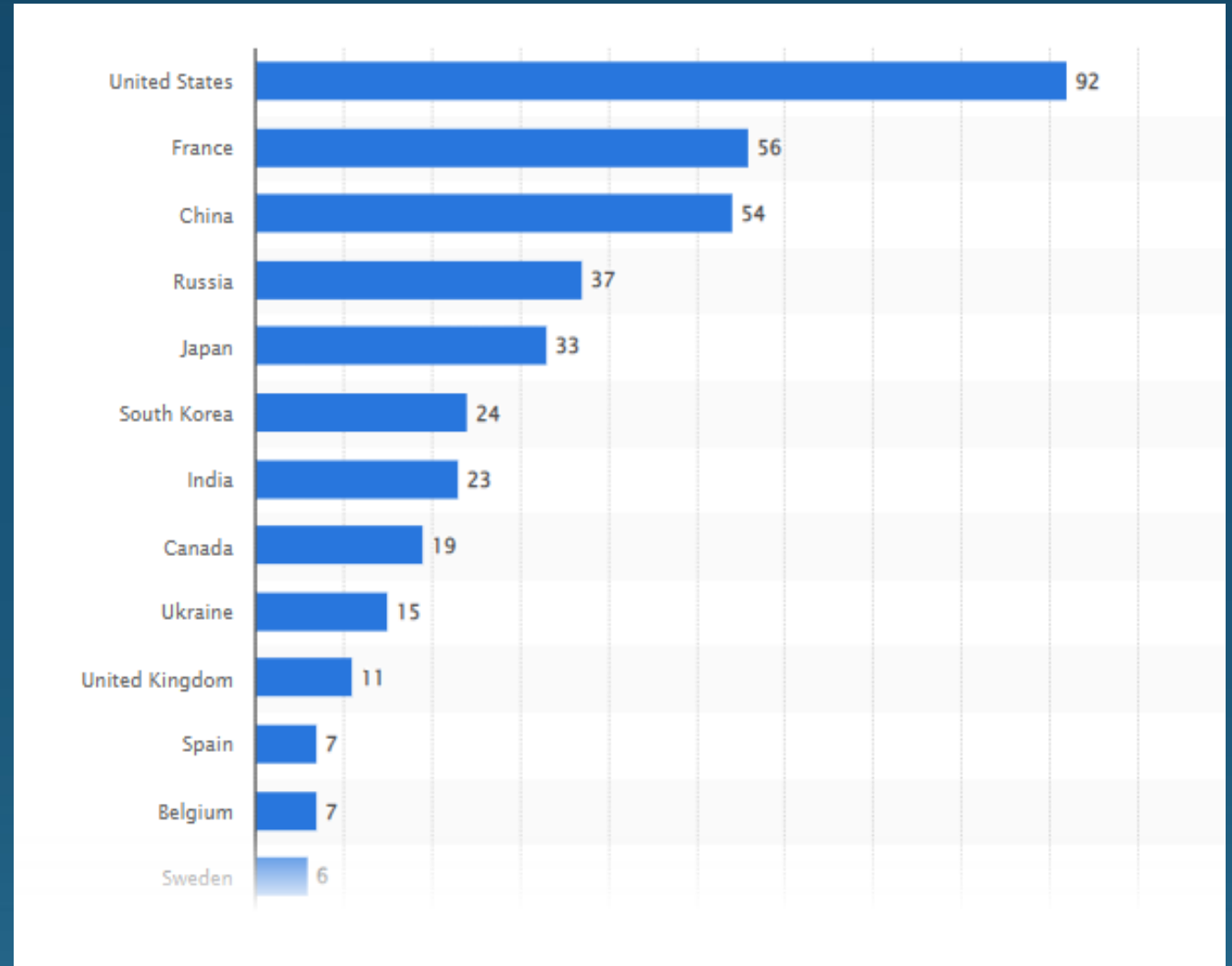


Source: [Map of Nuclear Power Plants Worldwide](#) | [WANO Members World MAP](#) | [WANO](#)

Nuclear sites around the world

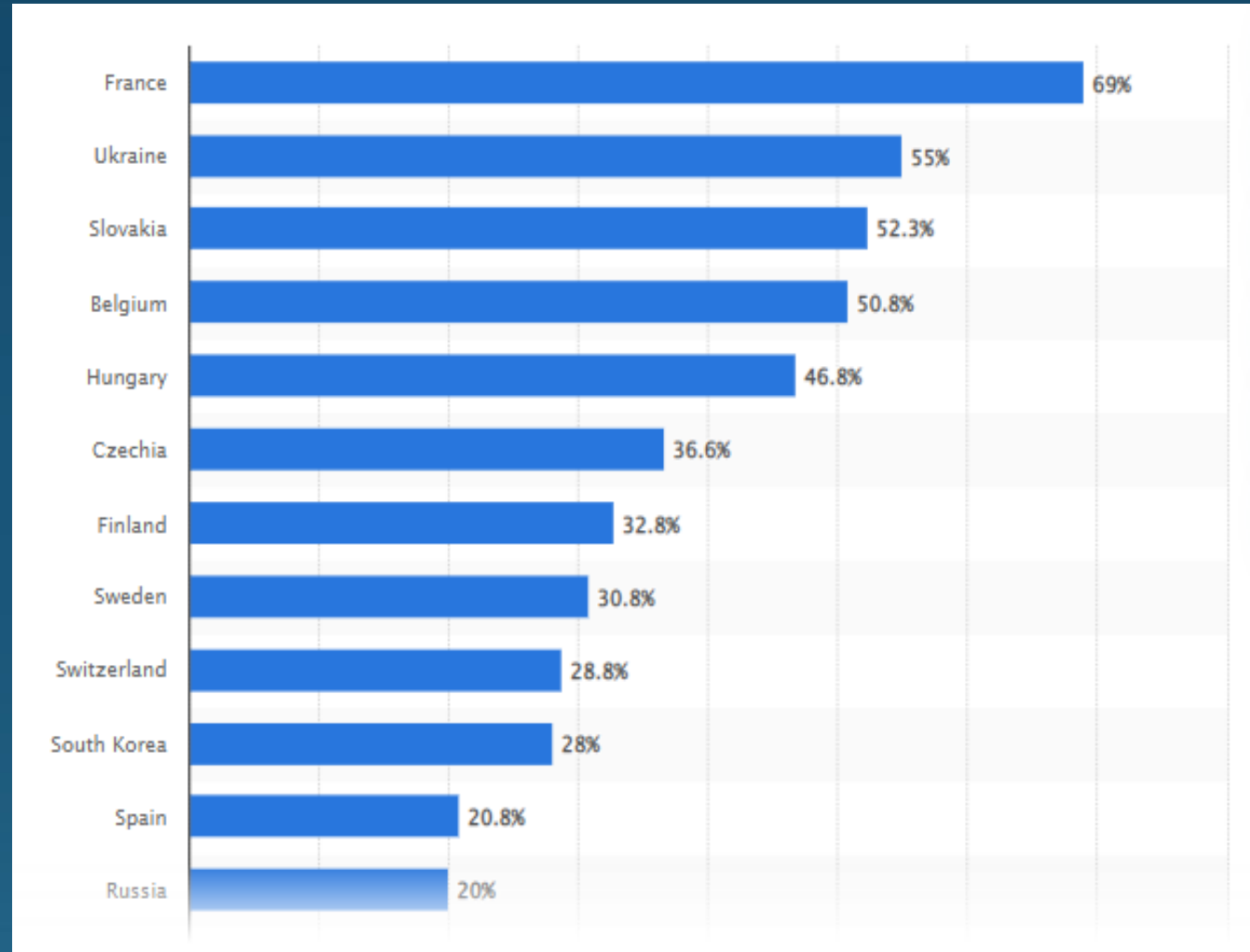
Number of reactors per country

439 nuclear reactors in operations in 30 countries



Source: [Nuclear power reactors in operation by country 2022](#) | Statista

Share of nuclear power in domestic electricity per country



Source: [Nuclear power reactors in operation by country 2022](#) | Statista

Nuclear Third Party Liability Law

Nuclear Third Party Liability (TPL) principles are based on International Conventions

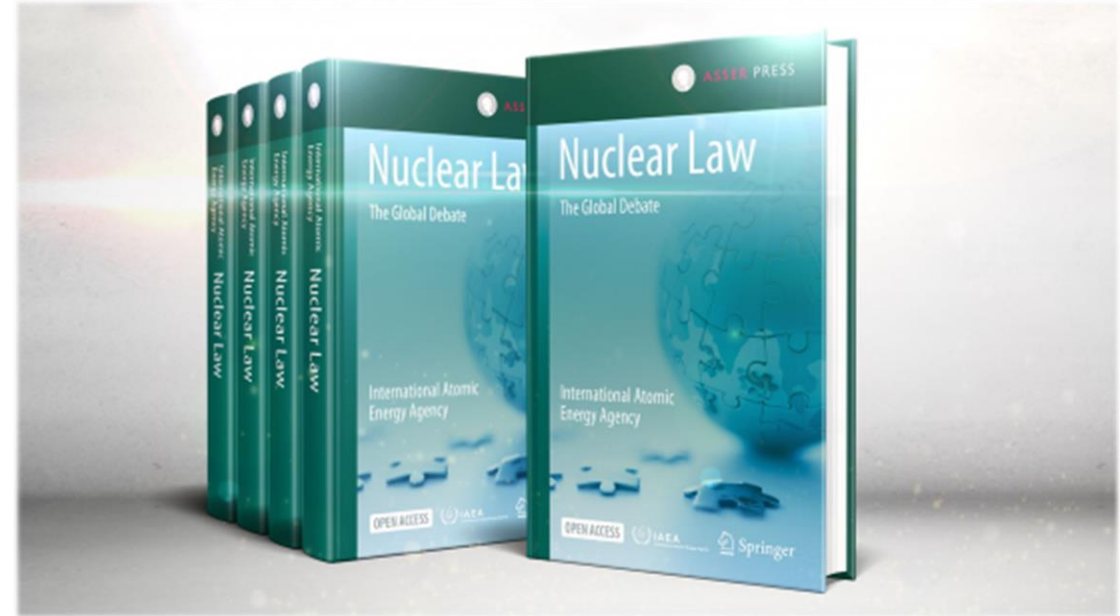
- Paris Convention
- Brussels Convention
- Vienna Convention
- Other national legislations

Strict Liability: the victim is relieved from providing fault or negligence of the operator

Exclusive liability: in case of an accident, all claims are to be brought against the nuclear operator

Mandatory financial coverage: the operator must provide a financial guarantee covering a minimum amount of protection to victims

Exclusive jurisdiction: only the courts of the country in which the accident occurs have jurisdiction over damage claims



Nuclear Insurance – Players



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1



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Nuclear Insurance – Players



Nuclear Pools

- Country by country – Reciprocity



NEIL

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- ONEIL out of Ireland



Northcourt

- Underwriting Agency

Nuclear Insurance – Structure & Capacity



Preventing, self-insuring, pooling and transferring risks

- **Risk pooling** is the essence of insurance
- Risk can also be **prevented** and **self-insured** (through captives or industry captives/mutual)
- Insurance also involves **risk transfer** through reinsurance, various forms of alternative risk transfer mechanism: securitization (bonds) and contingent capital structures

Nuclear Insurance – Structure & Capacity

Insurability in a strict sense and in a broader sense

- In the **strictest sense** of the word, the insurability of a risk refers to the ability of insurance companies to offer enough coverage through mutualisation techniques. Pools of insurance companies or dedicated mutuals (industry captives) are among these techniques
- In a **broader sense**, it refers to the possibility for financial institutions to cover the risk through various forms of risk transfer



Nuclear Insurance – Structure & Capacity

Structure of nuclear insurance

Nuclear risks are usually insured by the mix of:

- **Self-insurance** by nuclear operators for the low-tier risks (captive arrangements)
- **Market insurance** (including pools of insurers and mutuals) **and reinsurance**, under the limited liability of nuclear operators
- **Guarantee by governments**



Nuclear Insurance – Structure & Capacity

Overview of coverage

Full R.P.C. € 700 to €1.200 Mio		Amended Conventions				
Material damage and bodily injury	Bodily injury 10 years	Bodily injury 30 years	Economic loss	Reinstatement of impaired environment	Loss of income / impairment environment	Preventive measures

Nuclear Insurance – Structure & Capacity

Insurance market versus revised Conventions

- Private insurance market capacity: **insufficient** at the moment of the revision of the Conventions but **sufficient** now
- Difficulty to cover all the **new heads of damages** seems to be solved
- Difficulty to cover extended periods from **10 to 30 years for bodily injury**

What about covering what is not provided by the market?

-
- Belgium: guarantee from the State in place but not needed as fully covered
- UK: guarantee from BEIS
- France: guarantee by the CCR
- Spain: guarantee by the Consorcio de seguros

Claims Handling

Claims Management post nuclear accident

- Main goal: victims indemnification in the most efficient way to **protect** both the **victims** but also the responsible **operator**
- Insurance providers are in this case not competing but **collaborating** in order to achieve this goal



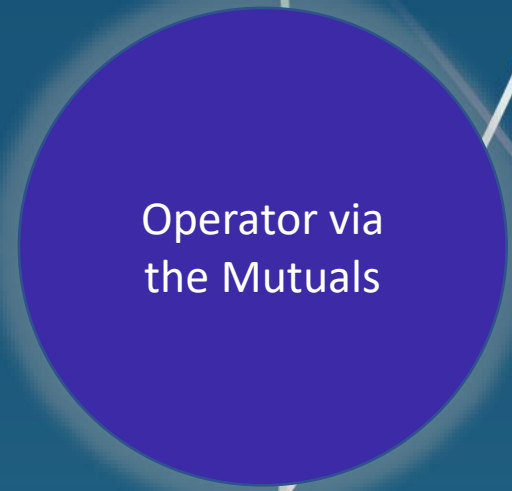
Claims Management post nuclear accident

- Activation of crisis management plan 24/7
- Support the operator in providing third party victims the required documents – claims forms
- Multilingual web based platform for collecting data
- Call centre
- Transboundary assistance – Claims handling
- Claims Management Committee
- Loss adjusters
- Close follow-up of the exhaustion of the insured limits as well as the shares of the various insurers involved
- Reporting tools

Thanks for your attention

Conclusion

WIN + WIN SOLUTION



Julius Weitzdörfer, FernUniversität in Hagen

Recent developments of nuclear
liability case-law





Recent developments in nuclear liability case law

Desarrollos en Derecho Nuclear, Madrid 14/03/23

Breadth of nuclear law → our book project: “Fukushima and the Law”

→ A critical, comparative book still needs to be written on the global legal implications of Fukushima!

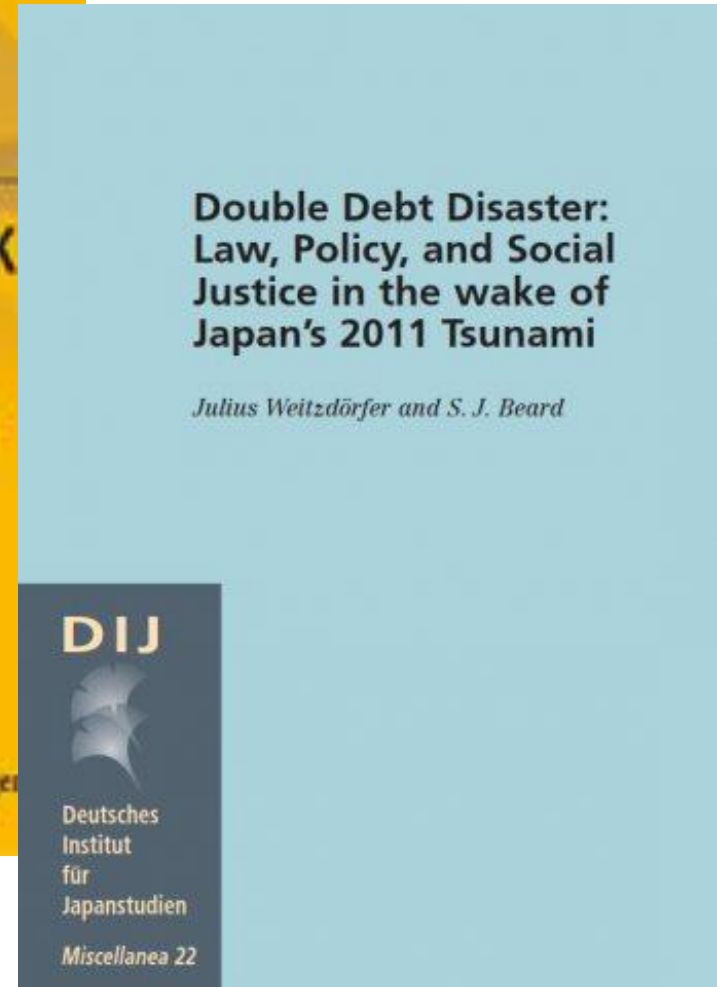
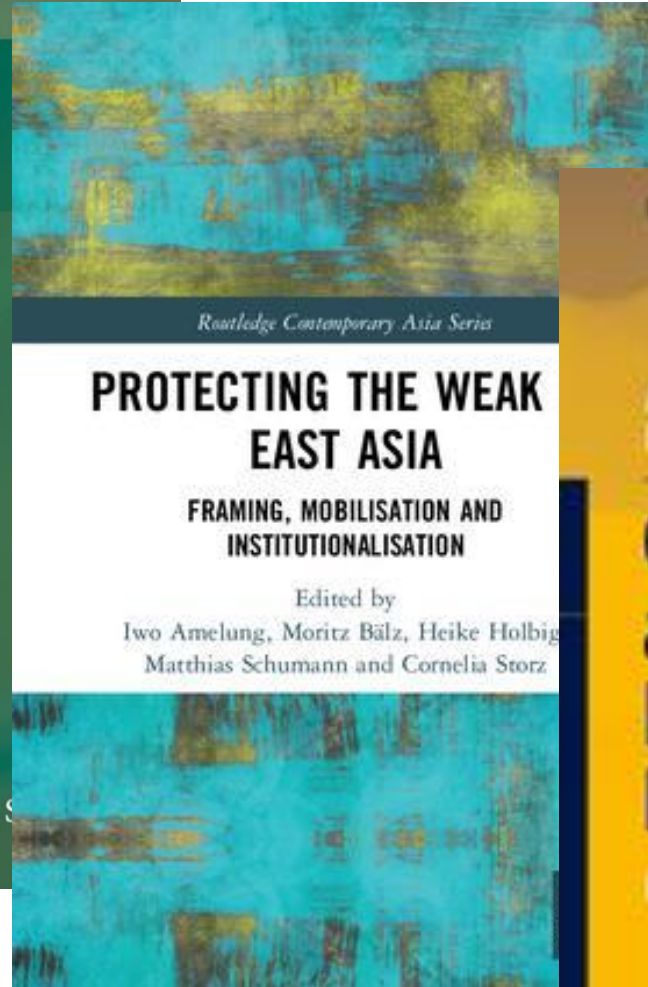
- 31 jurisdictions, 18 chapters
- forthcoming with CUP, but still open to suggestions!

Abbreviations	
REES – Preface	
WEITZDOERFER / LAUTA – Foreword	
INTRODUCTION	
1. WEITZDOERFER / LAUTA – The Legal Case of Fukushima	<i>world-wide</i>
2. BERGKAMP – Fukushima, Risk Society and Risk Regulation	<i>world-wide</i>
PART I. PREVENTION	
3. TROMANS – Fukushima and the Law of Plant Licensing	<i>UK, LAEA</i>
4. VEUCHELEN – Fukushima and Nuclear Safety Law	<i>JP, EURATOM</i>
5. KOPPENBORG – Fukushima and Regulatory Oversight	<i>JP</i>
6. RAMSEYER – Fukushima and Corporate Law	<i>JP, US</i>
7. NAKAMURA – Fukushima and the Law of Injunctions	<i>JP</i>
PART II. RESPONSE	
8. ROEVEKAMP – Fukushima and Crisis Management	<i>JP, DE, EU, UK</i>
9. LAUTA – Fukushima and Civil Protection	<i>EU</i>
10. REIHER – Fukushima and Food Safety	<i>JP, EU, UKR, Belarus</i>
11. CARROLL – Fukushima, Decommissioning and Waste	<i>JP & Int'l law</i>
12. KAWAZOE – Fukushima, Evacuation and Resettlement	<i>JP</i>
PART III. LIABILITY	
13. FAURE – Fukushima and Liability Caps	<i>Int'l law</i>
14. AMEYE – Fukushima and Liability Channelling	<i>Int'l law</i>
15. BÄLZ – Fukushima, ADR and Justice	<i>JP, US</i>
16. KAWAMURA – Fukushima, Litigation and Causation	<i>JP, UK, Int'l. law</i>
17. DOI – Fukushima and Criminal Prosecution	<i>JP, IT</i>
CONCLUSIONS: LEGAL LESSONS FROM FUKUSHIMA	
18. LAUTA / AVIN / WEITZDOERFER / LIU – Lessons for Global Catastrophic Risks	
APPENDIX	
Executive summary of law and policy lessons	
Table of Japanese legislation	
Table of Japanese cases	
References	
Index	

Simon Butt
Hitoshi Nasu
Luke Nottage *Editors*

Asia-Pacific Disaster Management

Comparative and Socio-legal
Perspectives



Sam Emmerechts

Legal adviser Council of the European Union

Lifetime extension of nuclear power plants and environmental assessments in the European Union





INLA

INTERNATIONAL NUCLEAR
LAW ASSOCIATION

Spanish Section

14 March 2023

**Lifetime extensions and environmental impact assessments in
the European Union**

Sam EMMERCHTS

Council of the European Union

Central question

Are lifetime extensions of nuclear reactors in the European Union subject to an environmental impact assessment?

Legislative framework in the European Union

- ❑ **Euratom Treaty**, Article 37

- ❑ ***EIA Directive: Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended*** – *applies in all EU member states*

See also: EU Commission notice regarding application of the EIA Directive to changes and extension of projects (2021/C 486/01), including chapter on nuclear reactors

Espoo Convention and lifetime extensions (1)

- **Espoo Convention:** *Convention on Environmental Impact Assessment in a Transboundary Context – the EU and its member states are contracting parties*
- *2014:* The Meeting of the Parties to the Espoo Convention endorses findings by its Implementation Committee that Ukraine was in non-compliance with the Espoo Convention with respect to the ***lifetime extension of Rivne 1&2 nuclear power reactors***

Espoo Convention and lifetime extensions (2)

- ❑ 2017: The Meeting of the Parties to the Espoo Convention decides to work on guidance on the applicability of the Convention to the lifetime extension of nuclear power reactors
- ❑ 2020: The Meeting of the Parties to the Espoo Convention endorses the ***Guidance on the Applicability of the Convention to the Lifetime Extension of Nuclear Power Reactors***. However, the situation remains uncertain for countries with operating licences for an indefinite term.

Judgment by the EU Court of Justice of 29 July 2019 in case C-411/17 (1)

- ❑ **Central question:** should an EIA be conducted prior to authorising the lifetime extension of nuclear power reactors in the European Union?
- ❑ **Current situation in the European Union:** the answer differs from one member state to another in the EU. Sometimes the answer is yes, sometimes no but very often the answer is unclear in the legislative and regulatory framework

Judgment by the EU Court of Justice in case C-411/17 (2)

Judgment relates to the situation in one EU Member State, Belgium:

- 2 reactors at Doel nuclear power station near Netherlands and Germany
- operating licence for indefinite term
- Nuclear Phase Out Act (2003): cease operation after 40 years
- Nuclear Lifetime Extension Act (2015) revisits 2003 Act: lifetime extension until 50 years conditional upon safety improvement investment of EUR 700 million
- Nuclear Safety Regulator decided that there was no need to conduct EIA
- Plea for annulment of Nuclear Lifetime Extension Act for failure to conduct EIA prior to authorising lifetime extension

EU Court of Justice judgment in case C-411/17 (3)

Court ruled that conducting an EIA was obligatory prior to authorising lifetime extension of Doel nuclear power reactors because of the combination of two factors:

- ❑ Significant extension of the lifetime of the reactors by 10 years
- ❑ Major upgrading works to bring the reactors into line with safety standards required physical alterations to the site

The Court concluded that the risk of the environmental effects resulting from these combined factors is comparable to the risk when these reactors were first put into service

Conclusion & Take Away Points

- ***Increasing number of disputes on need of EIA for lifetime extensions in European Union***

Grey zone in international and EU environmental law whether or not an EIA must be conducted prior to lifetime extension of nuclear reactors in the EU-27 increasingly leads to disputes in courts and international bodies

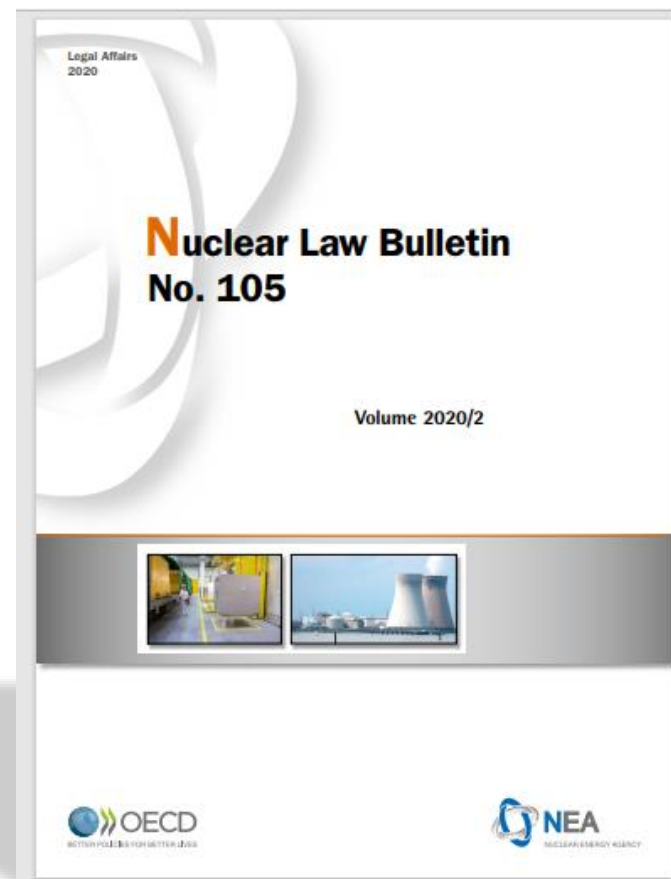
- ***Growing tendency to enhanced environmental scrutiny in European Union***

Growing tendency in judicial and regulatory environment in EU-27 towards increased environmental scrutiny over lifetime extensions of nuclear power reactors, as illustrated by the Espoo Convention Guidance on Lifetime Extensions (2020), the EU Court of Justice judgment on Doel nuclear power reactors (2019) and EU Commission notice on EIA Directive

More information

Article « Environmental impact assessments and long-term operation of nuclear power reactors: Increasing importance of environmental protection in the European Union? », by Sam Emmerechts and Pierre Bourdon, published in Nuclear Law Bulletin No. 105/VOL. 2020/2.

Available at: www.oecd-nea.org/jcms/pl_58810/nuclear-law-bulletin-no-105-volume-2020/2



More information

Report «Legal Frameworks for Long-Term Operation of Nuclear Power Reactors by the OECD NEA». Available at:

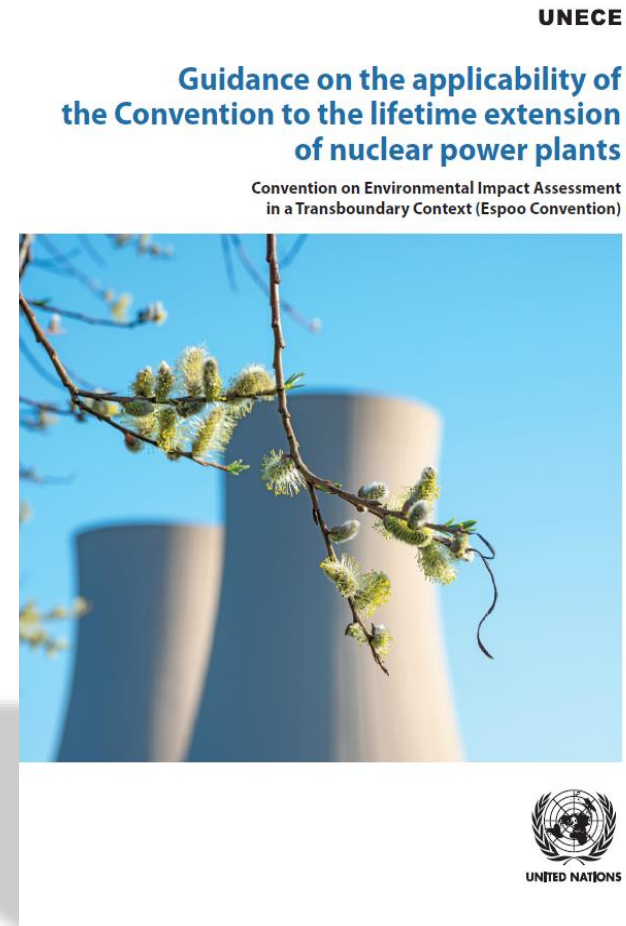
www.oecd.org/publications/legal-frameworks-for-long-term-operation-of-nuclear-power-reactors-c7b6dbb2-en.htm



More information

Guidance on the Applicability of the [Espoo] Convention to the Lifetime Extension of Nuclear Power Plants. Available at:

https://unece.org/sites/default/files/2021-07/2106311_E_WEB-Light.pdf



Karoly Olajos, Chair WG8 INLA

How to maintain European leadership in fusion R&D?





CHANGING THE PERSPECTIVE IN FUSION R&D TO MAINTAIN EUROPEAN LEADERSHIP

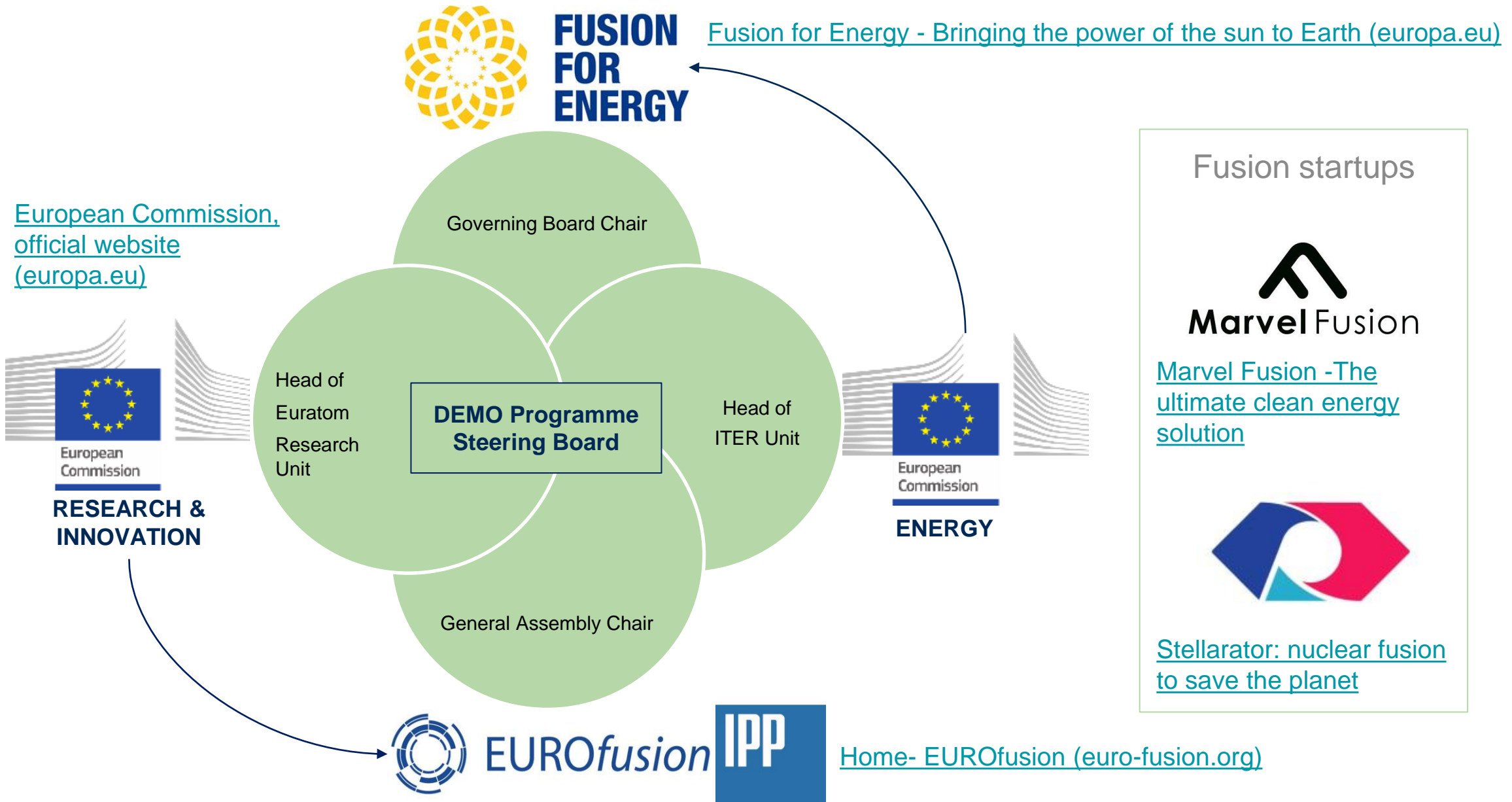
Karoly Tamas OLAJOS

The perspective from which fusion R&D is looked at today needs to change so as to maintain European leadership for tomorrow because the **European strategy for fusion that once guaranteed European leadership in the world of fusion R&D no longer appears to be relevant** in the volatile, uncertain, complex & ambiguous world of the 21st century that requires agility more than ever

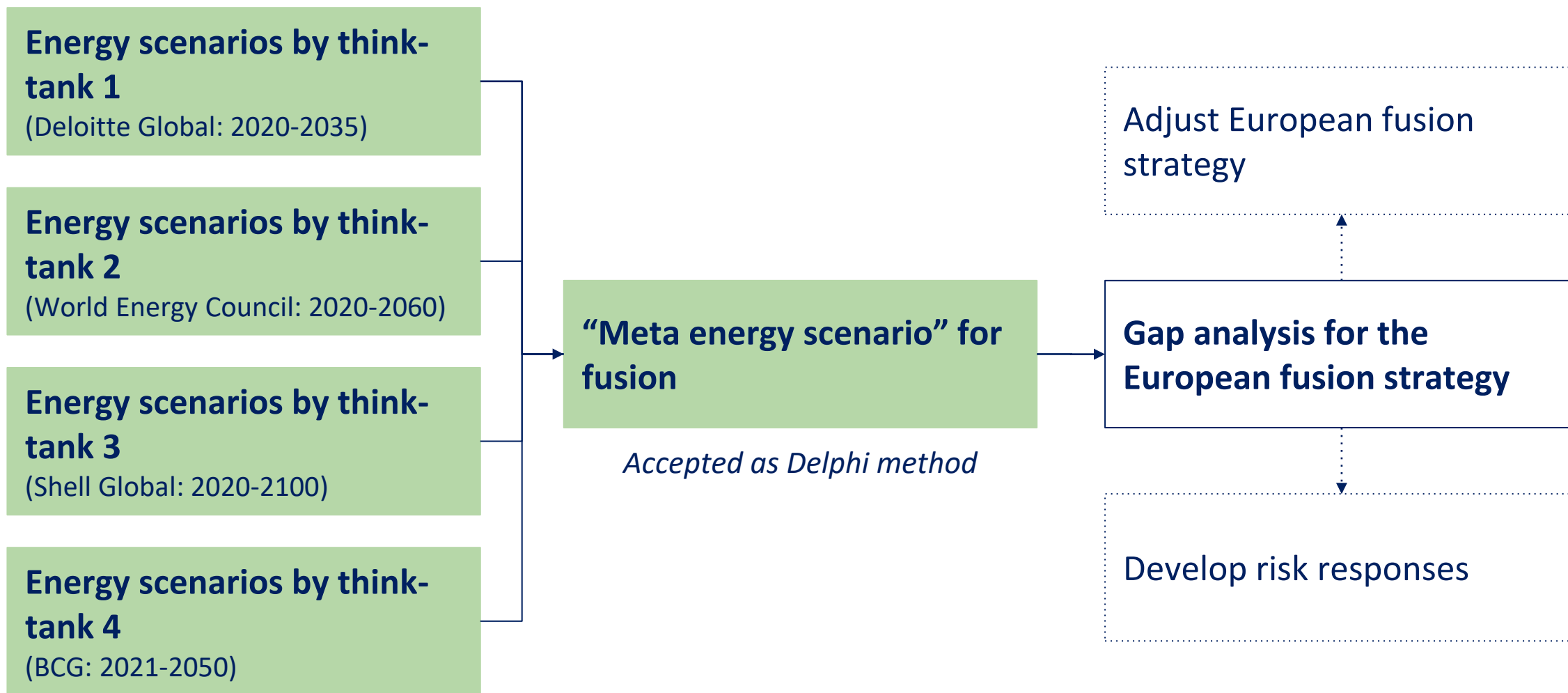
European leadership in fusion R&D today: guaranteed by a single & high-quality Community programme with a global budget

- **The fusion bet:** race for the ultimate energy source
- **“European Research Roadmap to the Realisation of Fusion Energy”:** a deliberate - unaltered & inward-looking - strategy for fusion development with a focus on magnetic confinement & electricity production
- **European Fusion Demonstration Reactor (DEMO):** the final output of the strategy, expected to be bigger & costlier than a nuclear power plant
- **Europe’s leadership is challenged:** competition - fuelled by alternative (agile) approaches to fusion - intensifies

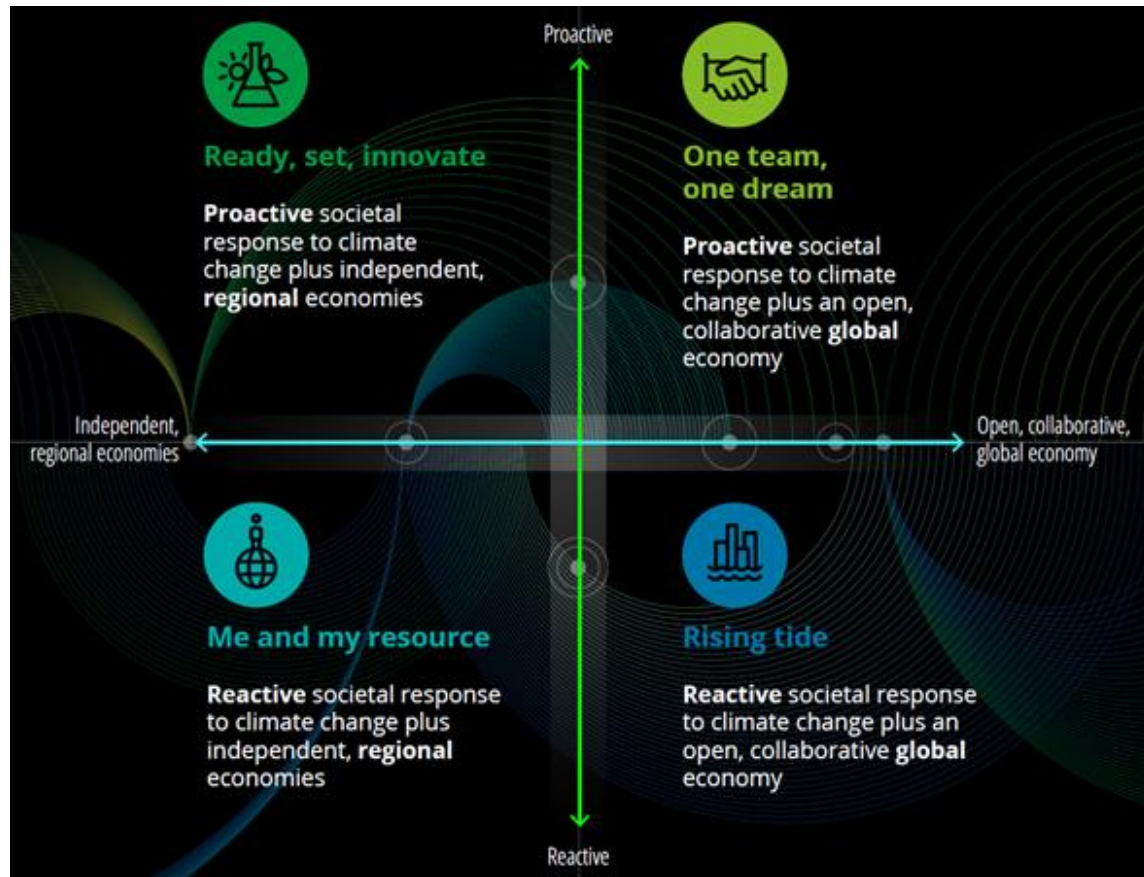
European fusion landscape: operating as a viable system



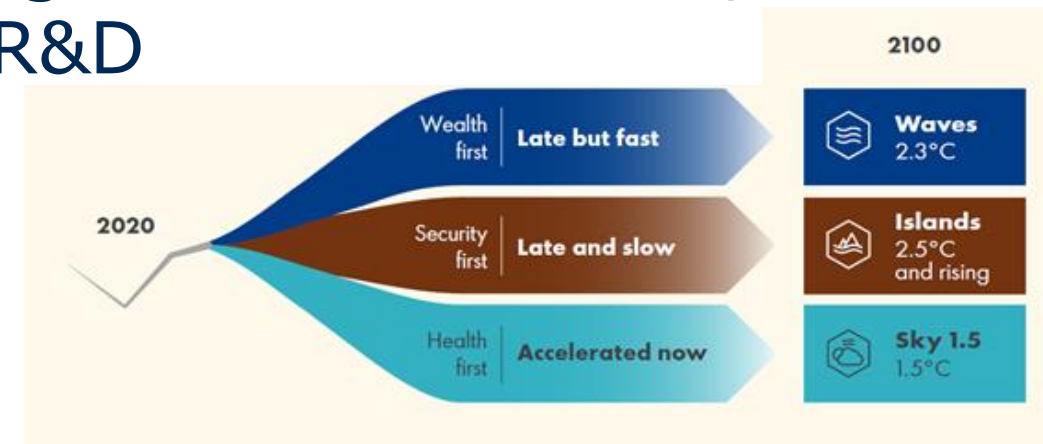
Energy scenario planning: adopting a systems thinking approach can inform strategic choices for fusion development



Fusion's "meta energy scenario": global collaboration, regulation & investment drive fusion R&D

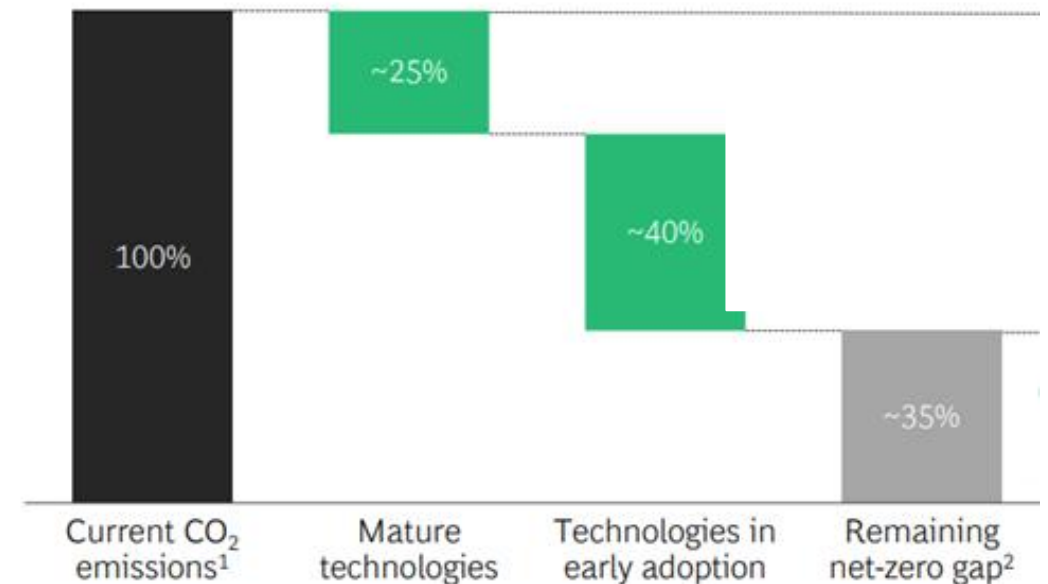


Energy Scenarios In Focus | Deloitte US



The Energy Transformation Scenarios | Shell Global

Technology gap in net-zero emissions



Environmental dynamics: trigger the need to adjust the European fusion strategy to maintain its relevance

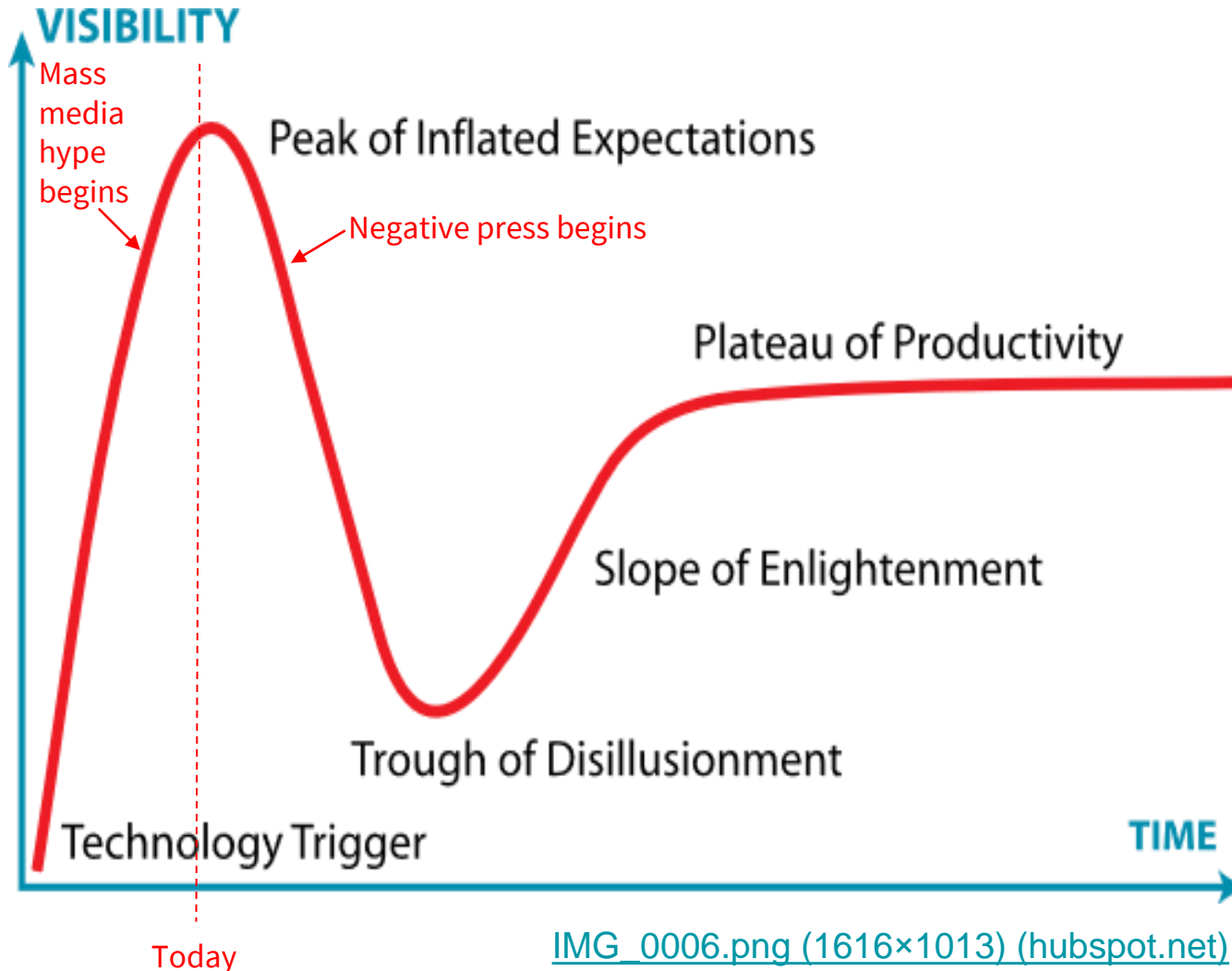
- **Electricity market trends:** future disruptions in the electricity market are inevitable
- **Disruption theory:** fusion as a new technology is not intrinsically disruptive
- **Uncertainties in fusion development:** uncertainties (*such as tritium supply, availability of critical raw materials, supply chain robustness, appropriateness of regulation, & scale of investment, etc.*) will remain with us for a long time

Organizational responses: outline possible directions to make the European fusion strategy relevant again

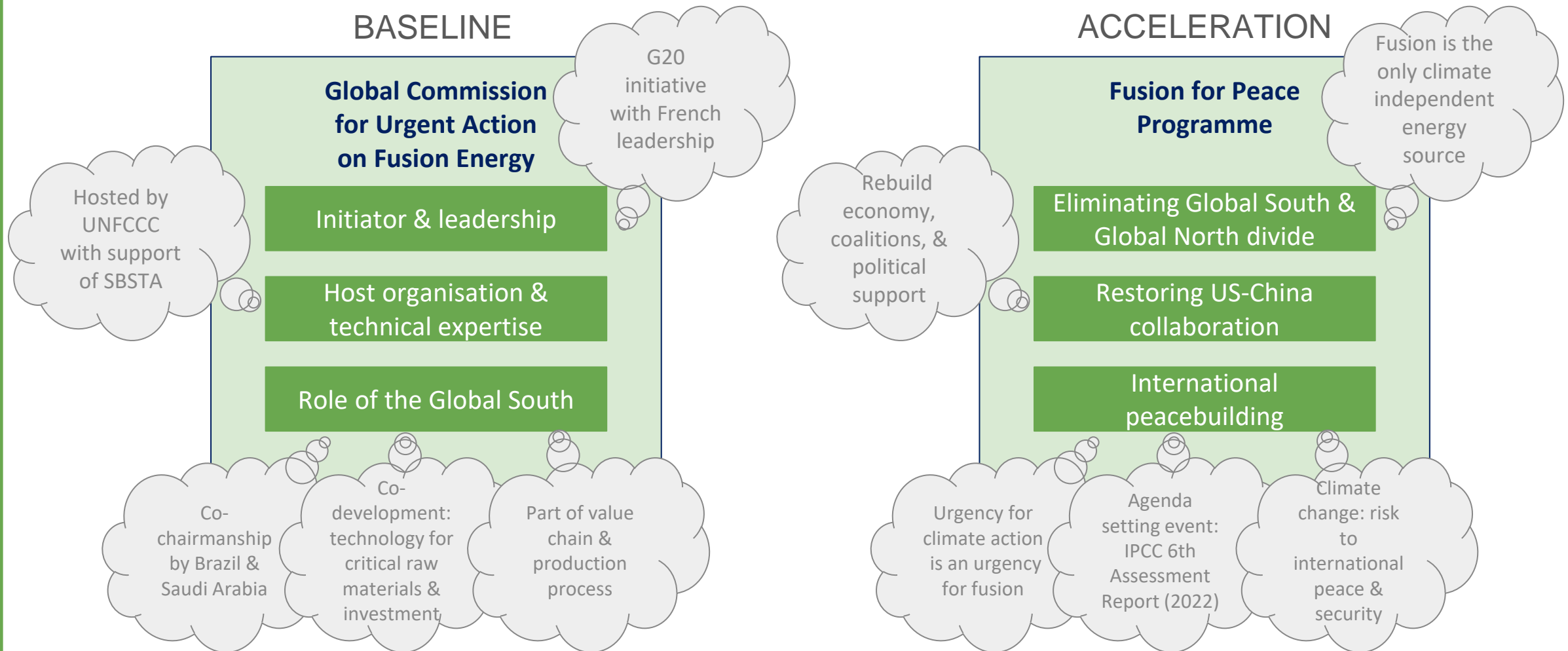
- **Impossible to define a market strategy for the fusion enterprise today:** substitutability of fusion products needs urgent addressing
- **Need for a nonmarket strategy for fusion:** politics-led development must bring fusion to the international arena where infratechnologies (regulation) can kickstart coalition-building for a comprehensive global fusion policy
- **Fusion needs to be approached as a wicked problem:** from the coordination problem of quasi public goods to the global collaboration imperative
- **Fusion's clumsy solution is policy innovation:** fusion can win support of all stakeholders with a view to reaching a global consensus

Action 1: build up momentum for a global fusion policy to accelerate fusion R&D

Gartner Technology Hype Cycle

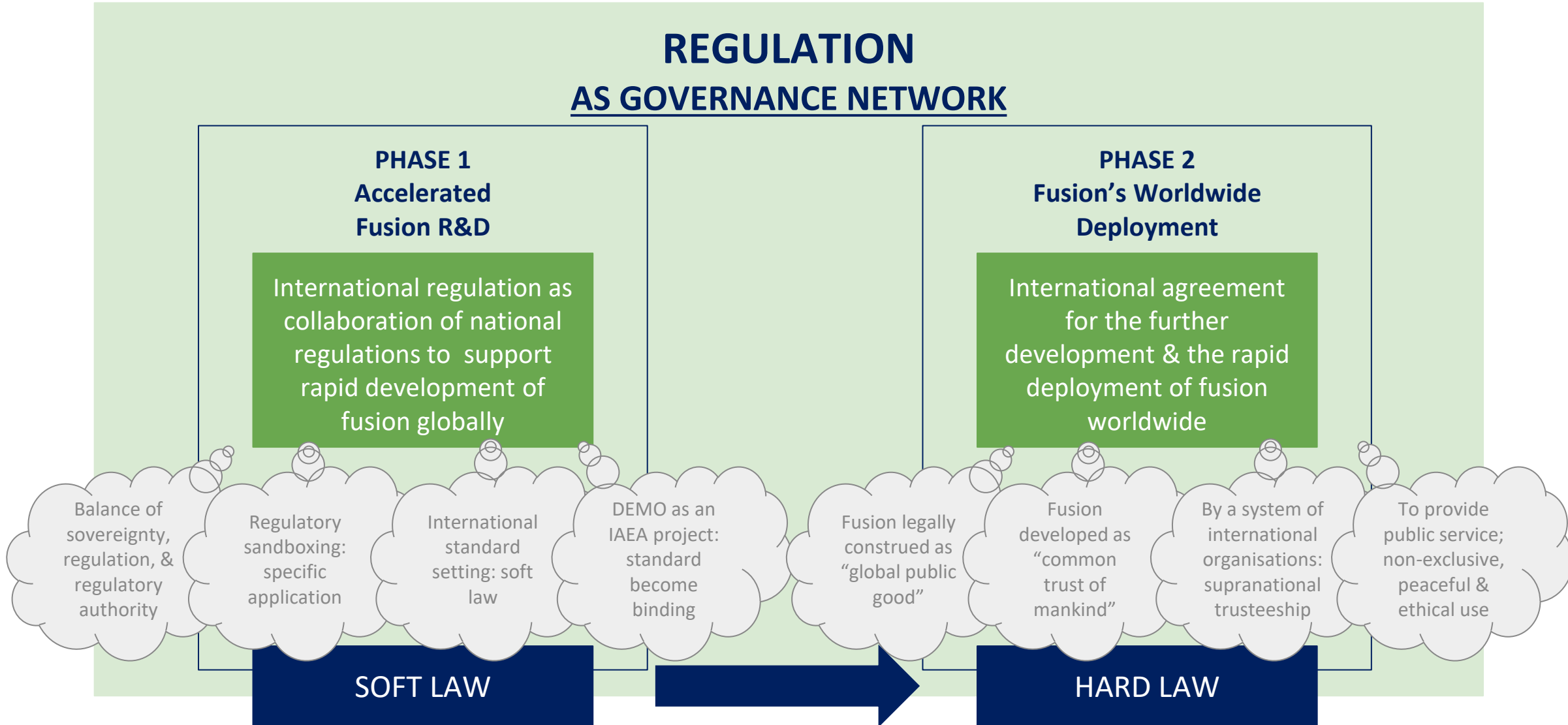


Action 2: reach a global consensus for fusion & adopt a common baseline for action



Based on (Carayannis, Draper & Bhaneja, 2020)

Action 3: move incrementally towards a multilateral, global & inclusive regulation of fusion



Action 4: construct fusion legally as “global public good”

National regulations of fusion
with standard forms of regulation

International regulation of fusion
with innovative forms of regulation

Red Ocean Strategy

Compete in **existing** market space.

Beat the competition.

Exploit **existing** demand.

Make the value-cost trade-off.

Align the whole system of a firm’s activities with its **strategic choice of differentiation or low cost.**

VS

Blue Ocean Strategy

Create **uncontested** market space.

Make the competition **irrelevant.**

Create and capture **new** demand.

Break the value-cost trade-off.

Align the whole system of a firm’s activities in **pursuit of differentiation and low cost.**

With the help of international law

Sovereign states as subjects of international law

Will deliver fusion as fulfilment of international obligations

Focused differentiation strategy based on sovereign equality

Regulation can gradually reduce fusion’s deployment cost

(Chan Kim & Mauborgne, 2004)

Fusion gives relevance to Euratom: Euratom is liable to maintain leadership in fusion R&D if it becomes a role model for fusion's global governance network

Supranational law

- Euratom law - **regional** outreach
- Possibility of adopting **binding standards**
- Compulsory **enforcement mechanism**
- Existence of enhanced **collaboration of national nuclear safety authorities**

Joint investment vehicle

- Joint undertakings
- Privileges & immunities - **flexibility to apply nuclear regulation**
- Third countries / international organisations may become members & provide financing
- **No concern of state aid** in Euratom R&D efforts

Stability & credibility

- Euratom is a political endeavour with a **stable & extendable legal system**
- Several decades of day-to-day collaboration among national actors reinforcing mutual trust
- **Credible actor** in the international fora that strives for the highest level of nuclear safety
- **Peaceful use** of nuclear energy

Euratom model in Phase 1: building on an existing governance network



Euratom model in Phase 2: building on an existing governance network

Alternative Compensation Mechanism for Fusion Nuclear Damage



Unified & Binding Standards & Codes

Prescriptive Regulatory Approach

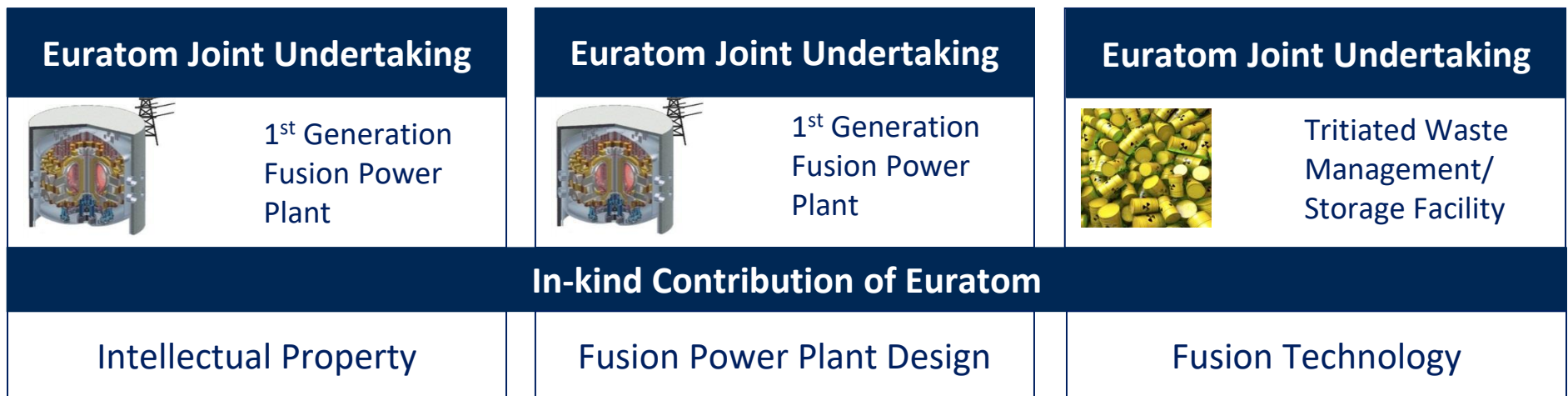
ENSREG

Delegated Powers from National Regulatory Authorities

Licensing Decision

Licensing Decision

Licensing Decision



Court of Justice of the European Union

Articles 263 & 268
TFEU
Articles 106a & 188
EAECT

THANK YOU



Get in touch if you
want to pay & draw
attention to fusion
energy

Mariusz Swora, Swora Legal

Legal challenges for a new developer
of nuclear projects: the case of Poland





Legal challenges for a new developer of nuclear projects (the case of Poland)

by dr hab. Mariusz Swora, Attorney at Law

Nuclear Law Congress, 14 March 2023, Madrid

Law is our Energy

Swora Legal Law Firm





AREAS OF EXPERTISE

- Energy law, business law, competition law & state aid
- The energy market – whole value chain (energy production, T&D, wholesale market & power exchanges, capacity market, cross-border energy trading, etc.)
- Analysis & implementation of EU energy law (network codes, market regulations, renewables & energy efficiency, EU ETS)
- Compliance programs & policies/procedures implementing regulatory requirements related to ensuring integrity and transparency of energy & other commodities markets (REMIT/EMIR/MIFID/MIFIR)
- Risk analysis – antitrust (in particular abuse of dominant position) & state aid rules
- Legislative process & regulation – draft laws, legal opinions & positions on EU & PL legislative & regulatory developments
- Litigation in cases related to regulatory matters and commercial disputes
- State aid and Energy law advice for the main nuclear power project in Poland



Why nuclear energy in Poland?

Poland has to meet EU climate goals while assuring the security of supply

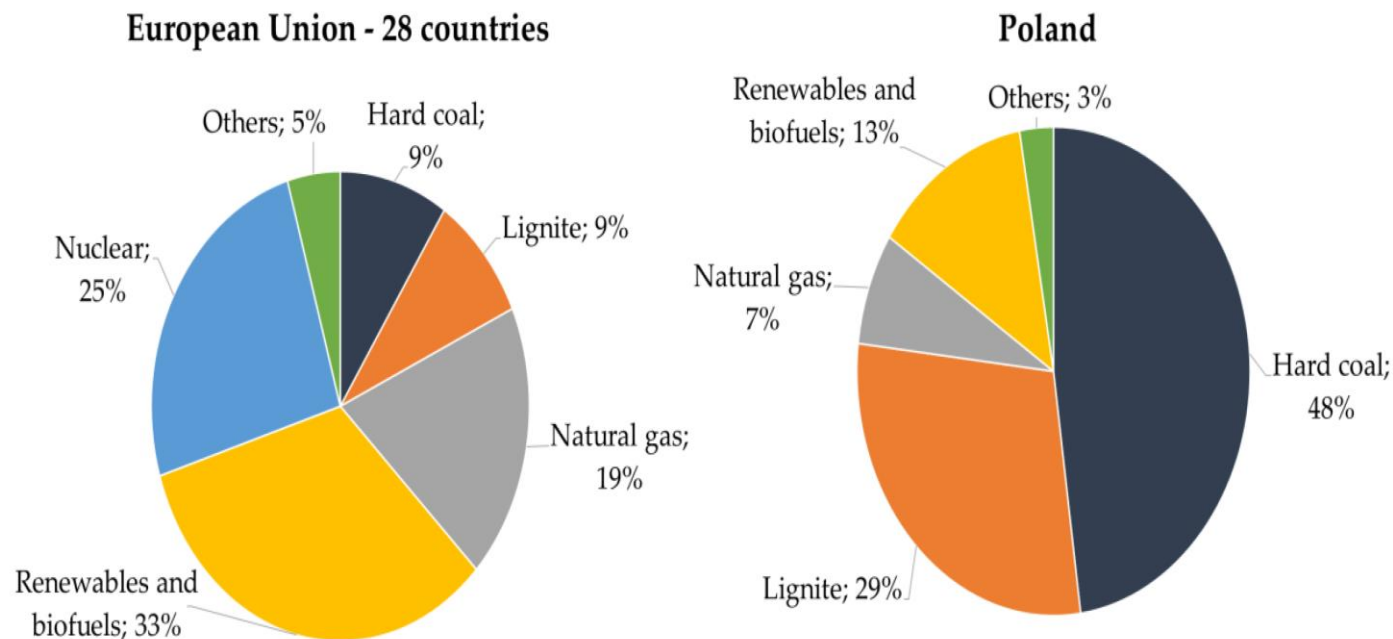


Table: Polish Energy mix J. Paska et al., Electricity Generation from Renewable Energy Sources in Poland as a Part of Commitment to the Polish and EU Energy Policy (Energies 2020).

M.Swora, Polish Pathway to Just Transition: Energy Law and Policy Trapped Between Sustainability and Security of Supply, in G. Belluntuono et al., Handbook of Energy Law in the Low-Carbon Transition (forthcoming April 2023, De Gruyter).



Nuclear energy projects landscape

- **Main nuclear project:** a nuclear power plant with an electrical capacity of up to 3,750 MWe, based on American AP1000 reactor technology. The first block will be built by 2033. The power plant will be located in northern Poland. (Polskie Elektrownie Jądrowe sp z o.o.) – Resolution NO. 215/2022 of the Council of Ministers of November 2, 2022, on the construction of large-scale nuclear power plants in the Republic of Poland
- **Second location:** PGE/ZE PAK/KHNP – based on Korean APR1400 located in Patnów (MoU of 31 October 2022 and subsequent arrangements between parties)
- **Third Location** – probably Zloczew – technology & developer yet unknown
- **SMRs** to be developed mainly by large industrial Energy end users (PKN Orlen, KGHM, Synthos, Unimot, Ciech)



National legal/policy framework

LAW

- Atomic law (Act of 29 November 2000) establishing the framework for a nuclear power sector in Poland - from the beginning of preparations for the construction of a power plant to its shutdown and decommissioning
- The Act of 29 June 2011 on Preparing for and Performing Investments Involving Nuclear Power Facilities and Accompanying Investment - includes the conditions for issuing a Location Permit and the requirements an investor must meet to obtain the title to the site where the plant is to be built.

PUBLIC POLICIES

- Energy Policy of Poland until 2040 (Resolution NO. 264/2021 of the Council of Ministers of March 10, 2021)
- Polish Nuclear Power Programme (Resolution NO. 141/2020 of the Council of Ministers of October 2, 2020)
- Resolution NO. 215/2022 of the Council of Ministers of November 2, 2022, on the construction of large-scale nuclear power plants in the Republic of Poland

Legal challenges/dilemmas/considerations

- Creating favorable legal conditions regarding administrative procedures (primarily achieved by recent amendments to the Act of 29 June 2011 on Preparing for and Performing Investments Involving Nuclear Power Facilities and Accompanying Investment), assuring meeting deadlines (2033).
- Is there a need to extend special regulations related to investments in SMRs (first attempts unsuccessful)?
- Choosing a proper state aid scheme to suit planned investments and meet policy objectives (esp. avoiding direct burdening of end-users bills) compatible with EU state aid rules.
- Should there be a „one-size-fits-all” scheme (Hinkley Point and CFDs probably not an option; Dukovany: a mix of state loan/PPA/mechanism of protection? other solutions)?
- Draft EMD (Article 19b) („two-way contract for differences or an equivalent contractual formulation” for RES and nuclear.) too restrictive
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