

Recommendations of the International Atomic Energy Agency for the Polish Nuclear Energy Program in the area of "Legal Framework"

On September 16, 2024, the International Atomic Energy Agency handed over to Poland the report of the Integrated Nuclear Infrastructure Review 2 (INIR 2), which was conducted by IAEA experts in April 2024. The report's conclusions are generally positive: Poland is ready to move to the next stage of the nuclear program, but it is worth noting the section of the report that deals with the "Legal Framework" area. In this regard, the Agency has suggested that Poland take certain actions.

The first of the scopes assessed from the "Legal Framework" area concerned Poland's participation in acts of international law on nuclear activity (condition 5.1). In its suggestions, the IAEA encourages Poland to accede to the Convention on Supplementary Compensation for Nuclear Damage of September 12, 1997 (CSC). This is an act of international law on a special regime of civil liability for nuclear damage. Poland is a party to the Vienna Convention on Civil Liability for Nuclear Damage of May 21, 1963, and has also acceded to the Protocol Amending the Vienna Convention of September 12, 1997, and to the Joint Protocol for the Application of the Vienna Convention and the Paris Convention (on Liability for Nuclear Damage) of September 21, 1988. The basic principles of civil liability for nuclear damage under these international acts have been implemented in the Atomic Law (Chapter 12). However, the Vienna Convention is not global in scope, and more importantly, from the Polish point of view, the United States - the country of origin of the technology supplier for Poland's first nuclear power plant, as well as one of the suppliers of SMR reactor technology to be implemented in Poland - is not a party to it. Currently, Poland does not have a conventional relationship with the US in the area of civil liability for nuclear damage.

Why may this be important:

- The primary effect of the participation of the states of the supplier and importer of technology in the same act of international law on civil liability for nuclear damage is that the principles of the convention (in this case, the CSC) apply by virtue of law to the operator of the nuclear power plant, the supplier of the technology and the injured parties, including the principle of legal channeling (exclusive liability of the operating entity - the operator - with the exclusion of liability of other entities involved in the implementation of the investment) and the principle of exclusive jurisdiction of the state of the event (accident).
- If there is no relationship at the level of an international agreement between the state of the operator and the state of the technology supplier, as is the case in Poland's current situation (both with regard to the large-scale investment in Pomerania and with regard to investments in SMRs carried out based on BWRX-300 technology), the aggrieved parties could theoretically attempt to make their claims against the suppliers. Such actions were taken by those affected after the Fukushima disaster - the technology supplier was from the US, and Japan at the time was not a party to any convention; it joined the CSC only in 2015 on the wave of the Fukushima experience.
- A key benefit of Poland's accession to the CSC would be that victims would have access to additional financial resources in the event of a major nuclear accident in which damages exceeded national liability limits. The national liability limit for an operator is derived from nuclear law and currently consists of 300 million SDRs (International Monetary Fund settlement units).
- Additional funds to settle claims would come from an international fund established by CSC member states, including the US. The amount of available funds and each country's contribution depends, in simple terms, on the installed capacity of the country's nuclear power plants. However, the CSC Convention contains specific rules for the distribution of these funds. Among others. 50% of this amount is reserved for victims coming from outside the installation country.

We can also learn from the IAEA report that Poland is analyzing various options and effects of joining the CSC Convention.

The second of the scopes evaluated concerning the "Legal Framework" area concerned other legislation affecting the nuclear program (condition 5.3.). Here the Agency made the following suggestion: "Poland is encouraged to introduce a mechanism to conduct a comprehensive review of all other legislation affecting the nuclear power programme and ensure that all necessary amendments are enacted in a timely manner".

In its observations, the INIR team noted that the recent review and amendment of the 2023 Special Nuclear Investment Act and certain other laws did not cover all other legislation that may affect the implementation of the nuclear programme.

The Department of Nuclear Energy (now operating under the Ministry of Industry) told Agency experts that it is currently reviewing existing regulations. The results of this review will provide baseline data for the next update of the Polish Nuclear Energy Program. According to the Industry Minister's a draft update of the Polish Nuclear Power Programme (a strategic document) will be prepared soon. It is expected that it will also include proposals as to the current legal environment for nuclear power.

The recommendations of the International Atomic Energy Agency report are not binding. They are only suggestions of actions that Poland can take to improve the implementation of its nuclear programme. In particular, accession to acts of international law should be preceded by detailed analyses of the potential effects of such accession. The final decision in this regard is up to the state.

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