



**FUSION  
FOR  
ENERGY**

## **12<sup>th</sup> ILO meeting**

**ILOs' questions transmitted before meeting**

*28<sup>th</sup> June 2011 - Cadarache*

### **Contractual condition in general (CH ILO)**

Implementation of petitions from Industry and ILO's in the new Model Contracts of F4E. The example chosen to illustrate our petitions is the model contract for OPE 305. Indeed, since the 11th ILO meeting on April 15, 2011, only one Call for Tender using the Open Procedure has been issued. This call (OPE 305) was even issued on the day preceding our meeting (April 14th, 2011). The remarks in the attached table may therefore not be applicable to really "future" Calls for tender. Nevertheless, this table illustrates the present situation and confirms our wish for reform. Out of the 5 petitions mentioned here, only 1 has been implemented by F4E. In particular, we'd appreciate seeing the word "Generally" disappear from the comment to the 5th petition.

### **F4E answer:**

Topic under consideration by Legal.

Pending new ExCo scope of competences being implemented September 2011.

### **Limit of liability (UK ILO)**

**ILOs comment:** It's very encouraging to see that F4E have started to listen to industry and have moved on some of the issues. Nevertheless, the limitation of the Contractors liability is still not in a form acceptable to many organisations. The cap needs to be expressed as applying in contract, in tort or otherwise. We are not seeking to cap anything that cannot be capped under the law but we are looking for a comprehensive and enforceable limit.

### **F4E answer:**

F4E liability arrangement is now mostly in line with usual EU practices. Significant improvements have been done. Other still to be made. We are now in an area where each small steps requires lots of effort, consideration and time.

Topic under consideration by Legal, and F4E Director, and F4E ExCo, and European Commission...

### **Indirect & Consequential Damages (UK ILO)**

**ILOs comment:** F4E are resisting the requests for an exclusion of consequential & indirect losses. This is at odds with the ITER IO position who have now started to include a clause in their contracts. This will become more of an issue for industry as contract values increase and we move out of consultancy and into design, manufacture & construction.

### **F4E answer**

Topic under consideration by Legal.

Pending new ExCo scope of competences being implemented September 2011.

### **Nuclear indemnity (UK ILO)**

**ILO comment:** Draft contracts are being issued with no nuclear indemnity. The RH contract included a clause stating that an IO indemnity would be provided but this clause was deleted when a copy of the indemnity was requested. Again, this will and is becoming more of a concern as the project progresses towards construction.

### **F4E answer**

The clause was in a Framework contract which is not the legal instrument where it could be.

If applicable, it could be part of task agreements.

**End of Part 3**

**Questions / Comments**

**Next meeting**