

NUCLEAR LAW

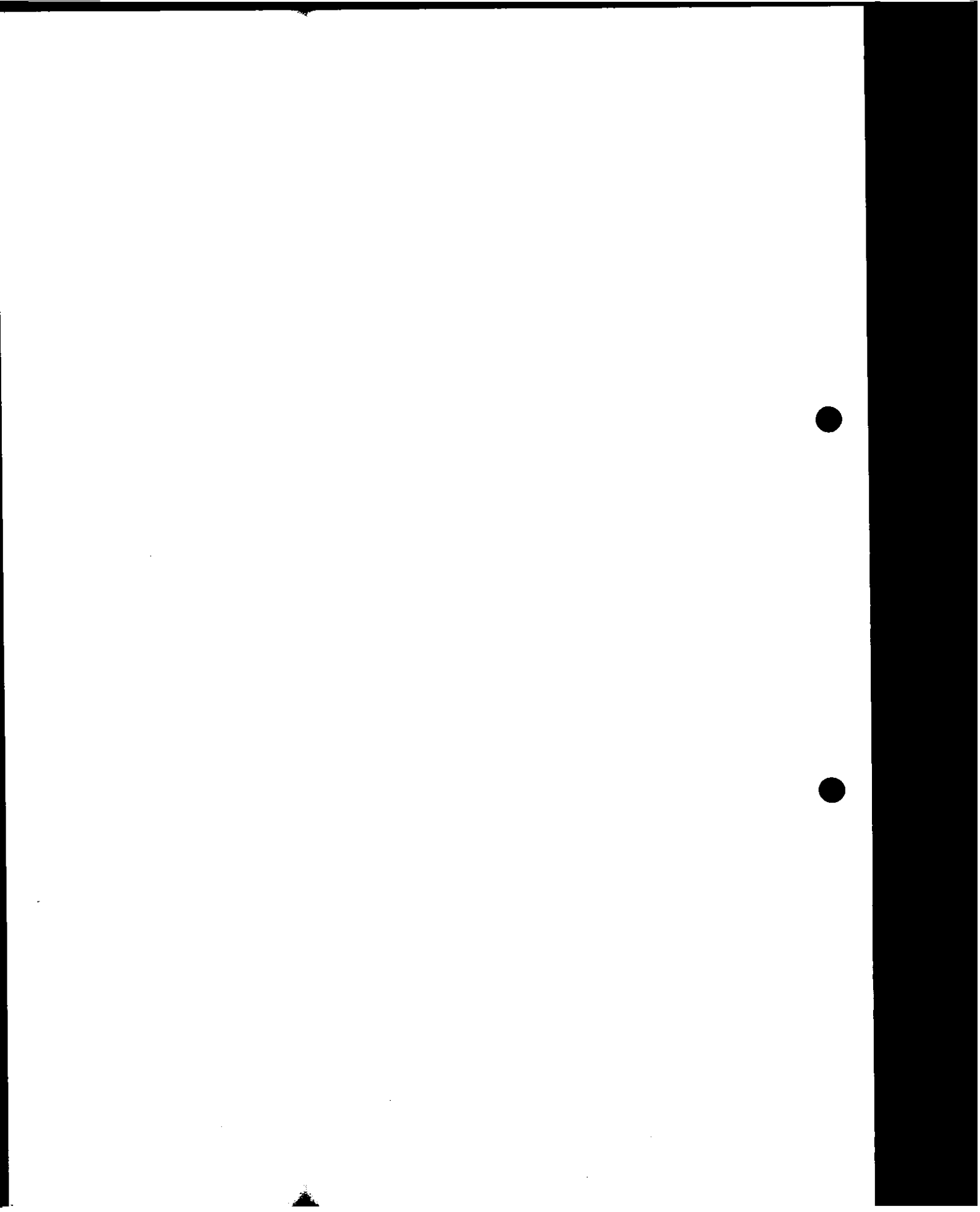
Bulletin

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B E L G I U M

BILL
ON THIRD PARTY LIABILITY
IN THE FIELD OF NUCLEAR ENERGY (1981)

December 1981



BELGIUM

BILL ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY* (1981)

Part I: APPLICATION OF THE PARIS CONVENTION AND THE BRUSSELS SUPPLEMENTARY CONVENTION ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY

CHAPTER I

General provisions

Section 1

For the purposes of this Act:

- a) the *Paris Convention* shall denote the Convention on Third Party Liability in the Field of Nuclear Energy, signed in Paris on 29th July 1960, and the Additional Protocol thereto signed in Paris on 28th January 1964, which were approved by the Act of 1st August 1966;
- b) the *Supplementary Convention* shall denote the Supplementary Convention to the Paris Convention, signed in Brussels on 31st January 1963, and the Additional Protocol thereto signed in Paris on 28th January 1964, which were approved by the Act of 1st August 1966;
- c) the *Minister* shall denote the Minister whose responsibilities include nuclear insurance matters;
- d) *nuclear incident, nuclear installation, nuclear fuel, radioactive products or waste and nuclear substances* shall have the meanings set out in Article 1 of the Paris Convention.

Section 2

1. The provisions of Part I shall apply to damage caused by a nuclear incident for which the operator is liable, provided the incident occurs in the territory of a Contracting State or on or over the high

* Unofficial translation by the Secretariat.

seas, and that the damage has been suffered in the territory of a Contracting State or on or over the high seas on board a ship or aircraft registered in the territory of a Contracting State, or on or over the high seas by a national of a Contracting State in accordance with Article 2(a)(ii)(3) of Supplementary Convention.

2. By Order made in the Council of Ministers the King may direct that Part I of this Act shall apply to damage caused by nuclear incidents within the meaning of subsection 1 and suffered by the national of a Contracting State in the territory of a non-Contracting State.

3. For the purposes of this Section, territorial waters shall be deemed to form part of the national territory.

CHAPTER II

The nuclear installation and the operator

Section 3

For the purposes of this Act an operator shall be any person who has in his possession or uses, in a nuclear installation, nuclear fuel, radioactive products or waste, or who takes charge of nuclear substances intended for his installation.

Section 4

For the purposes of this Act, the King may treat as a single nuclear installation:

- i) two or more nuclear installations run by one operator and located on the same site, together with any other premises on that site where radioactive material is stored;
- ii) one or more non-nuclear installations which are operated jointly for a common purpose with a nuclear installation located on the same site.

He may, in such cases, fix special conditions to be met by the operator, in particular with respect to insurance or other financial security.

CHAPTER 111

Third party liability

Section 5

The operator of a nuclear installation shall be liable for damage caused by a nuclear incident in accordance with the provisions of the Paris Convention, of the Supplementary Convention and of this Act.

Section 6

In addition, the operator of a nuclear installation shall be liable, in accordance with Article 3(c) of the Paris Convention, for any damage caused or resulting from ionizing radiation emitted by other radiation sources, other than those mentioned in Article 3(a) of that Convention, located in that installation.

Section 7

The operator of a nuclear installation:

- i) shall not be liable for damage to the nuclear installation itself or to any other nuclear installation located on the site, including those under construction, or for damage to any property on the site which is being or is to be used in connection with any such installation;
- ii) shall be liable for damage to the means of transport upon which the nuclear substances were at the time of the nuclear incident, if he is liable for damage caused during transport in the cases provided for in Article 4 of the Paris Convention.

The payment of compensation for such damage shall not reduce the liability of the operator for other damage so as to bring it below the amount prescribed in Section 8(1) below.

Section 8

The maximum liability of the operator for damage caused by a single nuclear incident shall be B. Frs. 3,000 million.

By order made in the Council of Ministers, the King may increase or reduce this figure, so as to keep its value constant, or having regard to the capacity and nature of the nuclear installation, the amounts of materials being transported or any other circumstance which may affect its value, provided it does not fall below the minimum amount specified in Article 7(b) of the Paris Convention.

CHAPTER IV

Cover for third party liability and recognition of the operator

Section 9

The operator of a nuclear installation shall be required, in accordance with Article 10(a) of the Paris Convention, to take out and maintain insurance or other financial security to cover his liability up to the amount fixed by or pursuant to Section 8 of this Act.

Section 10

Without prejudice to the application of the law and regulations relating to the protection of the public against the hazards of ionizing radiation, no operator of a nuclear installation may keep or use any nuclear fuel, radioactive products or waste or take charge of nuclear substances intended for such nuclear installation unless he has been recognised beforehand as an operator in accordance with this Act and the rules laid down by the King.

Section 11

The operator shall be recognised as such by the King, upon supplying proof that, for the purpose of covering his liability, he has taken out insurance or financial security in accordance with Section 9.

The decree granting recognition may do so for a limited period.

Recognition may be withdrawn if the operator ceases to fulfil the conditions laid down in Section 9 or if he ceases his activities.

Any decree refusing or withdrawing recognition shall state the grounds therefor.

Any decree granting, refusing or withdrawing recognition shall be communicated to the operator by the Minister or his representative. An extract shall be published in the Belgian Official Gazette within three months of notification.

In the event of recognition being withdrawn, the operator shall remain bound by the requirements of Section 9 so long as his liability continues.

Section 12

The Minister may at any time request the operator to provide evidence that he is complying with the requirements of Section 9.

Section 13

The State shall be liable in accordance with this Act for the nuclear installations operated by it.

The obligation to take out insurance under Section 9 shall not apply to the State as operator.

Decisions by the State to operate nuclear installations shall be mentioned in the Belgian Official Gazette.

Section 14

The Minister shall establish and maintain a public register specifying those nuclear installations whose operators have been recognised pursuant to Section 11. The register shall comprise a map showing the location and boundaries of the site of each nuclear installation and, where appropriate, the boundaries of sites where several nuclear installations are located.

Every operator shall be required to inform the Minister, in accordance with the procedure laid down by the King, of any modifications affecting the installations or their sites.

Third parties shall not be deemed to have notice of the boundaries of a nuclear installation unless such boundaries appear in the aforementioned register.

The list of recognised operators shall be published each year in the Belgian Official Gazette.

This Section shall apply *mutatis mutandis* to any nuclear installation operated by the State.

CHAPTER V

Transport of nuclear substances

Section 15

Without prejudice to the application of the law and regulations concerning protection of the public and workers against the dangers of ionizing radiation:

- i) the operator of a nuclear installation shall be liable, in accordance with Article 4 of the Paris Convention, for the transport of nuclear substances including storage during transport;
- ii) subject to the agreement of the operator and the Minister, the operator may be replaced by the carrier for purposes of liability for damage caused by a nuclear incident occurring outside the installation provided the conditions in Section 9 are fulfilled.

In this case, the carrier shall, for nuclear incidents occurring during the transport of nuclear substances, be regarded as the operator of a nuclear installation located within Belgian territory.

Section 16

Any carrier of nuclear substances must be in possession of a certificate issued by or on behalf of the insurer or other financial guarantor stating that he satisfies the requirements of Section 9. The certificate must comply with Article 4(c) of the Paris Convention.

The King shall prescribe the arrangements for implementing this Section.

Section 17

The King may direct that Section 16 shall not apply to transport effected exclusively within Belgian territory.

Section 18

In accordance with Article 7(e) of the Paris Convention and without prejudice to the application of Article 7(f) thereof, the transit of nuclear substances through Belgian territory shall be subject to the foreign operator assuming the same obligations as the operator of a nuclear installation located in Belgian territory.

CHAPTER VI

Compensation for damage

Section 19

In accordance with Article 7(a) of the Paris Convention, total compensation payable for damage caused by a nuclear incident shall not exceed the maximum amount fixed by or pursuant to Section 8 of this Act.

Section 20

By way of exception to Section 19 and where the Supplementary Convention applies, if the damage caused by a nuclear incident exceeds the amount fixed in accordance with Section 8, compensation in excess of that amount shall be paid out of public funds allocated for a purpose other than that of covering the operator's liability in accordance with Section 3(b)(ii) and (iii) and (3)(f) of the Supplementary Convention.

The amounts may be converted into national currency by Royal Decree.

Section 21

Where total compensation does not exceed the funds available for this purpose under or pursuant to the Paris Convention, the Supplementary Convention and Sections 19 and 20 of this Act, compensation shall be awarded in accordance with the ordinary law.

Where total compensation exceeds or is likely to exceed the funds referred to in the previous subsection, the King shall determine criteria for the fair apportionment of the compensation.

Section 22

Beneficiaries under schemes for sickness and disability insurance or for compensation for industrial accidents and occupational diseases shall remain subject to the legislation governing such schemes even in the event of a nuclear incident.

Such beneficiaries shall be entitled to claim compensation for damage caused by a nuclear incident, in accordance with this Act, the Paris Convention and the Supplementary Convention, insofar as compensation therefor is not paid under schemes mentioned in the previous subsection and insofar as such persons are not prohibited by law from exercising rights to compensation against a third party responsible for the incident.

The persons or organisations which, under the schemes referred to in subsection 1 of this Section, have paid out benefits to the victims of a nuclear incident, shall, subject to the limits referred to in Sections 19 and 20, be entitled to exercise their rights of action under such schemes against the operator, his insurer, any other financial guarantor or the State.

Section 23

Without prejudice to the provisions of Section 20, the State shall pay compensation for damage not covered by insurance or financial security up to the maximum amount of the operator's liability. In this case, the State shall, up to the amount it has paid, acquire by subrogation all the rights and actions of the victims.

Section 24

Action for compensation under this Act must, on pain of forfeiture, be brought within ten years from the date of the nuclear incident.

In the case of damage caused by a nuclear incident involving nuclear fuel or radioactive products or waste which, at the time of the incident, were stolen, lost, jettisoned or abandoned and had not been recovered, rights of action for compensation not exercised within ten years after the incident shall also be forfeited. However, no action may be brought more than twenty years after the date on which the nuclear fuel or radioactive products or waste were stolen, lost, jettisoned or abandoned.

The right to claim compensation shall be forfeited three years after the time when the injured party becomes aware of the damage and the identity of the operator concerned, or from the time he ought reasonably to have become aware of these facts, provided that the ten- or twenty-year periods laid down by this Section shall in no case be exceeded.

Special legal provisions shall remain fully applicable.

Section 25

When the nuclear incident or the damage is wilfully caused by the victim, the court may reduce the compensation by a fair amount.

CHAPTER VII

Rights of recourse

Section 26

1. The insurer or person providing financial security shall be entitled by subrogation to exercise the right of recourse of the operator under Article 6(f) of the Paris Convention. The Belgian State shall be entitled by subrogation to exercise the same right insofar as, pursuant to Section 23, it has paid compensation for the damage in place of the operator.

2. Where payments have been made pursuant to Section 20 from public funds allocated by the Belgian State or other Contracting States, the Belgian State shall be entitled by subrogation to a right of recourse in its own behalf against persons against whom such proceedings may be brought, pursuant to Article 6(f) of the Paris Convention.

3. If pursuant to Section 20 of this Act payments have been made from public funds allocated by the Belgian State or by other Contracting Parties, then, having regard to Article 10(c) of the Supplementary Convention, the Belgian State and other Contracting States shall, pursuant to Article 5(b) of the Supplementary Convention, have a right of recourse against the operator for the recovery of the public funds allocated, provided the damage for which the payments have been made was caused by a nuclear incident attributable to the manifest gross negligence of the operator. The right of recourse shall be restricted to an amount equal to the public funds that may be allocated under Article 3(b)(ii) and 3(f)(ii) of the Supplementary Convention. However, the King may fix a different amount having regard to the maximum cover likely to be obtained by the operator on reasonable terms on the insurance market.

Section 27

Legal proceedings based on the Paris Convention, the Supplementary Convention and this Act shall, at first instance, be brought before the Brussels Court of first Instance, sitting as a civil court.

Section 28

The victim of damage resulting from a nuclear incident shall have a direct right of action against the insurer or other financial guarantor, and in the case referred to in Section 23, against the State.

Section 29

1. The State may intervene in any proceedings based on the provisions of the Paris Convention, the Supplementary Convention and this Act.

If the State has not intervened, the claimant must summon it to take part before the close of the hearing.

2. A judgment delivered in a case arising from damage caused by a nuclear incident cannot be appealed against by the operator, the victim or claimants to the victim's rights, the insurer or other financial guarantor unless they have appeared before the court or have been summoned to do so.

Nevertheless, a judgment delivered in a case between a victim and the operator shall be enforceable against the insurer or other financial guarantor if it is established that the insurer or guarantor was in fact in control of the proceedings.

The insurer or other financial guarantor shall be entitled to join the operator in any proceedings brought against them by the victim.

Section 30

The King shall supervise the payment of compensation by the insurers or other financial guarantors. He shall also determine the conditions under which those entitled to compensation pursuant to the Paris Convention, the Supplementary Convention or this Act may obtain information concerning insurance policies or contracts for financial security.

Section 31

For the purposes of paying compensation under Section 20 or 23, the King may set up an administrative or legal conciliation procedure which, in any case, must precede any hearing before the court.

Part II: ADDITIONAL MEASURES

Section 32

In the event of transit of nuclear substances through Belgium, including storage, the carrier shall be held liable for any damage suffered on Belgian territory as a result of any nuclear incident involving such substances, and in relation to which the Paris Convention makes no arrangements for compensation.

The King may make appropriate rules to make the provisions of Part I partly or wholly applicable to the carrier mentioned in the preceding subsection.

Section 33

Where sources of ionizing radiation not covered by the Paris Convention are kept or used in a nuclear installation in a category specified by the King, the operator shall be liable for damage caused in Belgium as a result of the radioactive properties alone or in combination with other toxic or harmful properties of the ionizing radiation sources.

The King may make appropriate rules to make the provisions of Part I partly or wholly applicable to the operator referred to in the preceding subsection.

Section 34

For damage suffered in Belgium, the King shall determine the manner whereby the State shall bear that portion of the compensation which exceeds the maximum amount fixed by Section 8, where Section 32 or Section 33 of this Act is applied, or where the provisions for compensation in the Supplementary Convention do not apply even though liability has been established in accordance with Part I and the Paris Convention.

Section 35

Breaches of Section 9, 10, 14(2) and 16 and of the decrees implementing Sections 32 and 33 shall be punishable by imprisonment for a period of 3 months to 5 years and by a fine of B.Frs. 1000 to B.Frs. 50,000 or by one of these penalties.

The provisions of Book I of the Penal Code, including Chapter VII and section 85, shall apply to such offences.

Without prejudice to the powers of officers of the criminal investigation department and on the proposal of the Ministers responsible either for insurance, the protection of the public and workers against the hazards of ionizing radiation or for nuclear safety, the King shall designate the officials and agents of the State entitled to investigate and, by means of the official record deemed correct in the absence of contrary evidence, report the offences referred to in the first subsection of this Section.

Section 36

The Act of 18th July 1966 on third party liability in the field of nuclear energy, containing certain provisions for the immediate application of the Paris Convention and its Additional Protocol, is hereby repealed.

Section 37

Operators who have been recognised as such under the Act of 18th July 1966 shall continue to benefit from such recognition provided they adjust the insurance or other financial guarantee covering their liability to the provisions of this Act within ninety days of its publication.