

# NUCLEAR LAW

## Bulletin

S U P P L E M E N T T O N O . 3 7

BELGIUM

ACT OF 22ND JULY 1985 ON THIRD PARTY  
LIABILITY IN THE FIELD OF NUCLEAR ENERGY

June 1986



# *Belgium*

## ACT OF 22ND JULY 1985 ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY\*

(of 31st August 1985)

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, as well as the Protocol to amend that Convention, signed in Paris on 16th November 1982;
- 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, as well as the Protocol to amend that Convention, signed in Paris on 16th November 1982;
- c) the "Minister" shall denote the Minister whose responsibilities include nuclear insurance matters;
- d) "nuclear incident", "nuclear installation", "nuclear fuel", "radio-active products or waste" and "nuclear substances" shall have the meanings set out in Article 1 of the Paris Convention.

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\* Unofficial translation by the Secretariat.

- e) "nuclear installation" shall have the meaning set out in Article 1 of the Paris Convention, including any installation for the disposal of nuclear substances for the pre-closure phase, it being understood that each unit shall constitute one nuclear installation within the meaning of this Act.

## Section 2

1. The provisions of Part I shall apply to damage resulting from a nuclear incident for which the operator of a nuclear installation located in Belgian territory is liable, provided the incident occurs in the territory of a Contracting State or a non-contracting State or on or over the high 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)(11)(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 resulting from a nuclear incident 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.

The operator shall remain liable until final closure of the nuclear installation.

By Order made in the Council of Ministers the King may, taking into account criteria he has determined, set the date by which each nuclear installation may be deemed to be closed.

#### 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; however, in such a case, the sum of the insurance to be taken out by the operator shall be the sum of the amounts for each installation taken separately;
- 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 III

#### 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.

He shall be liable for damage caused by a nuclear incident, even if such incident is directly due to a grave natural disaster of an exceptional nature.

He shall not be liable for damage caused by a nuclear incident if such incident is directly due to an act of armed conflict, hostilities, civil war or insurrection.

#### Section 6

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 7(1) of this Act.

## Section 7

The maximum liability of the operator for damage caused by a single nuclear incident shall be B. Frs. 4,000 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 8

The operator of a nuclear installation shall be required, in accordance with Article 10(a) and (b) of the Paris Convention, to take out and maintain insurance or other financial security deemed appropriate by the Minister to cover his liability up to the amount fixed by or pursuant to Section 7 of this Act. He shall be required to renew such insurance or other financial security within sixty days following an incident.

The Minister is the public authority competent to receive the notice in writing prescribed by Article 10(b) of the Paris Convention.

The sums provided as insurance, reinsurance or other financial security may be drawn upon only for compensation for damage caused by a nuclear incident.

## Section 9

Without prejudice to the application of the law and regulations relating to protection of the public and workers 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 10

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 8.

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 8 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 8 so long as his liability continues.

### Section 11

The Minister may at any time request the operator to provide evidence that he is complying with the requirements of Section 8.

### Section 12

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 8 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 13

The Minister shall establish a register setting out the recognitions granted pursuant to Section 10. The register shall comprise in particular 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 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. This register shall be made available to the public in a locality designated by the Minister and in the administration of the communes on whose territory such installations are located.

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

This Section shall also apply to any nuclear installation operated by the State.

## CHAPTER V

### Transport of nuclear substances

#### Section 14

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

- 1) 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;
- 11) 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 8 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 15

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 8. The certificate must comply with Article 4(c) of the Paris Convention.

The King shall prescribe the arrangements for implementing this Section.

#### Section 16

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 17

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

## Section 18

If damage gives rise to liability of more than one operator in accordance with this Act, the liability of these operators shall be joint and several.

Where such liability arises as a result of damage caused by a nuclear incident involving nuclear substances in the course of carriage in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, the maximum amount for which such operators shall be liable shall be the highest amount established with respect to any of them pursuant to Section 7 of this Act.

In no case shall any one operator be required, in respect of a nuclear incident, to pay more than the amount established with respect to him pursuant to Section 7 of this Act or to this Section.

## ● Section 19

Where the Supplementary Convention applies, if the damage caused by a nuclear incident exceeds the amount fixed in accordance with Section 7, 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 Article 3(b)(ii) and (iii) and (3)(f) of the Supplementary Convention.

Where Section 18 of this Act applies, and in accordance with Article 4(b) of the Supplementary Convention, the total amount of the public funds made available pursuant to subsection 1 shall not exceed the difference between the highest amount established by Article 3(b)(iii) of the Supplementary Convention and the sum of the amounts established with respect to the operators liable.

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

## ● Section 20

Where total compensation does not exceed the funds available for this purpose under or pursuant to the Paris Convention, the Supplementary Convention and Sections 17 and 19 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 21

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.

Insofar as compensation for damage caused by a nuclear incident is not paid under Schemes mentioned in the previous subsection, and provided such beneficiaries are entitled to institute proceedings under the ordinary law against the person liable, they may claim compensation for damage in accordance with this Act.

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 or to claimants to the victims' rights, shall, subject to the limits referred to in Sections 17 and 19, be entitled to exercise their rights of action under such schemes against the operator, his insurer, any other financial guarantor or the State.

## Section 22

Without prejudice to the provisions of Section 19, the State shall pay compensation for damage not covered by insurance or financial security up to a 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 23

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

2. If a nuclear incident has caused damage in Belgium for which the operator is liable in accordance with Section 5 of this Act and if such damage was noted only after the rights of compensation which may be exercised against the operator have been extinguished pursuant to subsection 1 of this Section, but within the period of thirty years running from the date of the nuclear incident, the State shall pay compensation for the damage.

3. The right to claim compensation shall in any event 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, twenty or thirty-year periods laid down by this Section shall in no case be exceeded.

4. Any person having suffered damage caused by a nuclear incident who has brought an action for compensation within the period of time prescribed by this Section may amend his claim provided no judgment has been entered definitely establishing the amount of compensation.

## Section 24

When the nuclear incident or the damage is wilfully caused by the victim, he is not entitled to compensation.

## CHAPTER VII

### Rights of recourse

## Section 25

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 22, it has paid compensation for the damage in place of the operator.

2. Where payments have been made pursuant to Section 19 from public funds allocated by the Belgian State and other Contracting States shall, in accordance with Article 5(a) of the Supplementary Convention, be entitled by subrogation to a right of recourse in their own behalf against persons against whom such proceedings may be brought, pursuant to Article 6(f) of the Paris Convention.

The Belgian State shall be entitled to exercise rights of recourse on behalf of other Contracting States having allocated public funds as in its own behalf.

3. If pursuant to Section 19 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, within the limits of such funds, 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 gross negligence of the operator.

The cases of gross negligence which may give rise to an action against the operator shall be determined by the King, having regard to legal or regulatory prescriptions in connection with the safety of nuclear installations and technical operating conditions.

## CHAPTER VIII

### Rules of procedure for actions based on the Paris Convention and the Supplementary Convention

#### Section 26

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 27

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 22, against the State.

#### Section 28

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 enjoin the operator in any proceedings brought against them by the victim.

#### Section 29

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 30

For the purposes of paying compensation under Section 19 or 22, the King may set up an administrative or legal conciliation procedure which, in any case, must precede any hearing before the court.

## **PART 2 : ADDITIONAL MEASURES**

### **Section 31**

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 32**

Where sources of ionizing radiation not covered by the Paris Convention are kept or used in an installation designated as a nuclear installation 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 33**

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 7, where Section 31 or Section 32 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 34**

The King may, according to rules he has determined, decide to take charge of compensation of damage suffered on Belgian territory caused by a nuclear incident for which the operator of a nuclear installation located in the territory of a non-contracting State is liable, when the victim cannot obtain in that State compensation for the damage suffered.

## **PART 3 : PENAL AND FINAL PROVISIONS AND REPEALS**

### **Section 35**

Breaches of Sections 8, 9, 13(2) and 15 and of the decrees implementing Sections 31 and 32 shall be punishable by imprisonment for a period of three

months to five years and by a fine of B.Frs. 1,000 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, 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 sixty days of its entry into force.