

UKRAINE

Law on Civil Liability for Nuclear Damage and its Financial Security*

adopted on 13 December 2001

This Law governs relations in respect of civil liability for nuclear damage, establishes the rules and procedures for compensation for damage caused by a nuclear incident, defines the methods of ensuring financial security of civil liability and establishes its limits.

Section I

GENERAL PROVISIONS

Article 1

Definition of terms

1. In this Law the terms “operating organisation”, “nuclear installation operator” (hereinafter referred to as “the operator”), “nuclear installation”, “nuclear material” and “nuclear damage” shall be used in the meaning given in the Law of Ukraine on the Use of Nuclear Energy and Radiation Safety.¹
2. Other terms included in this Law have the following meanings:
 - “Special Drawing Rights”: a unit of calculation established by the International Monetary Fund and employed by it in its transactions and agreements;
 - “agreement on compensation for nuclear damage”: an agreement reached between the person who has caused the nuclear damage, the operator responsible for its occurrence and the insurer (or other financial guarantor) for compensation by the operator of nuclear damage.

* Unofficial translation established by the NEA Secretariat.

1. The text of this Law is reproduced in the Supplement to *Nuclear Law Bulletin* No. 56.

Article 2

Legislation on Civil Liability for Nuclear Damage and its Financial Security

1. This Law governs relations in respect of civil liability for nuclear damage caused by a nuclear incident and the financial security for such liability. The rules of civil law, nuclear law, civil procedure and other legislation of Ukraine shall apply to relations not governed by this Law.
2. This Law prevails (*lex specialis*) over all other legislative acts of Ukraine governing relations in this field.
3. Nothing in this Law may be considered as terminating for Ukraine the validity of obligations of international agreements undertaken by decision of the Supreme Council of Ukraine. If rules other than those in this Law are established by international agreements, the rules of the international agreements shall apply.

Section II

BASIS FOR CIVIL LIABILITY FOR NUCLEAR DAMAGE

Article 3

Liability of the operator of a nuclear installation for nuclear damage

Liability of an operator for nuclear damage and the reasons for its occurrence shall be established in accordance with the Law of Ukraine on the Use of Nuclear Energy and Radiation Safety and the Vienna Convention on Civil Liability for Nuclear Damage.

Article 4

Damage subject to compensation and method of compensation

1. Nuclear damage is subject to compensation under this Law.
2. Compensation for nuclear damage shall be exclusively in monetary form.

Article 5

The procedure for compensation of nuclear damage

1. Compensation for nuclear damage may be effected on the basis of an agreement on compensation for nuclear damage or a court decision.

2. Nuclear damage may be compensated by an operator under the terms of an agreement on compensation for nuclear damage concluded by the operator between him and the victim with the participation of the insurer (or other financial guarantor). An agreement on compensation for nuclear damage must:
 - meet the requirements of Article 6, paragraphs 2-4, of this Law;
 - be notarised if a party to the settlement is a physical entity;
 - not violate the rights of the victims or other persons;
 - be registered under the procedure established by the Cabinet of Ministers of Ukraine .

When concluding an agreement on compensation for nuclear damage, a victim is implementing his right to compensation for nuclear damage.

3. In the event of agreement not being reached between the parties a dispute on compensation for nuclear damage shall be resolved by a court. A judicial enquiry must be conducted to establish the facts of a nuclear incident, the causation of nuclear damage and the established link between them.
4. Claims for compensation for nuclear damage may be submitted to a court of Ukraine at the location (place of residence) of the claimant, of the defendant or at the place the damage was caused.

Article 6

Limits of civil liability for nuclear damage

1. Operator liability for nuclear damage is limited to the equivalent of 150 million Special Drawing Rights in the currency of Ukraine for each nuclear incident.
2. Liability for death is limited to the equivalent of 2 000 times the official untaxed minimum income² at the time the court ruling is made (the agreement on compensation for nuclear damage is concluded) for each death.
3. Operator liability to each victim for damage to health shall be limited by an amount equal to 5 000 times the official untaxed minimum income² at the time the court ruling is made (or when the agreement on compensation for nuclear damage is concluded) but shall not exceed the amount of the actual damage caused.
4. Operator liability to a person for damage to property shall be limited to an amount equal to 5 000 times the official untaxed minimum income² at the time the court ruling is made (or when the agreement on compensation for nuclear damage is concluded) but shall not exceed the amount of the actual damage caused.

2. On 25 April 2002, the official untaxed minimum income was 17 Ukrainian Hryvnia (UAH) which corresponds to approximately 3.3 USD or 3.6 EUR.

5. Court costs are not included for the purposes of this article and shall be payable in full in addition to any compensation that may be established by the court.

Section III

FINANCIAL SECURITY OF CIVIL LIABILITY FOR NUCLEAR DAMAGE

Article 7

Financial security of civil liability for nuclear damage

1. The operator must have financial security to cover his liability for nuclear damage when applying to receive or extend an operating licence for a nuclear installation within limits equivalent to 150 million Special Drawing Rights for each nuclear incident. The procedure and terms of financial security to cover operator liability for nuclear damage shall be established by the Cabinet of Ministers of Ukraine.
2. The operator may provide financial security for civil liability for nuclear damage by:
 - insuring for civil liability for nuclear damage which may be caused as a result of a nuclear incident;
 - obtaining other types of financial security as envisaged in Ukrainian law.

In the part not covered by other forms of financial security, civil liability insurance for nuclear damage that may be caused as a result of a nuclear incident is mandatory.

The Cabinet of Ministers of Ukraine may grant the operator of a nuclear installation a state guarantee of financial security for civil liability for nuclear damage.

Article 8

Mandatory insurance for civil liability of an operator of a nuclear installation for nuclear damage which may be caused as a result of a nuclear incident

1. The object of mandatory insurance of civil liability of an operator of a nuclear installation for nuclear damage that may be caused as a result of a nuclear incident is the operator's property interests necessary for indemnification of such damage. The operator's obligation to pay any court expenses and interest set by the court may only be insured separately from the insurance of civil liability for nuclear damage. Insurance against such interest and expenses is not mandatory. The amount of insurance established to cover interest and expenses shall not be considered as financial security for civil liability for nuclear damage for the purposes of Article 7, paragraph 1, of this Law.
2. Insured events under mandatory insurance for civil liability for nuclear damage are considered to be valid judgements on compensation for nuclear damage or the conclusion of an agreement on compensation for nuclear damage, to which the relevant insurer is a party.

3. Payment of compensation through insurance shall be made within a time scale not exceeding one month from the date of the insured event.
4. The procedure for assessing tariffs under mandatory civil liability insurance for nuclear damage shall be established by the Cabinet of Ministers of Ukraine.
5. The insurer providing mandatory civil liability insurance for operators of nuclear installations in respect of damage that may be caused as a result of a nuclear incident must hold a licence to provide this type of insurance and be a member of a nuclear insurance pool. The procedure for setting up and operating the nuclear insurance pool is governed by regulations approved by the Cabinet of Ministers of Ukraine.

Article 9

Participation of foreign insurers in relations in respect of mandatory civil liability insurance for nuclear damage

Under civil liability insurance contracts for nuclear damage, insurers may enter into re-insurance contracts with non-resident insurers on condition that these non-resident insurers are members of the relevant foreign nuclear insurance pools.

Section IV

STATE PARTICIPATION IN COMPENSATION FOR NUCLEAR DAMAGE

Article 10

State participation in compensation for nuclear damage

1. The state will grant funds to compensate for nuclear damage if the execution order for compensation for nuclear damage has been returned to the person claiming compensation because the debtor has no assets from which the compensation claimed might be paid as stipulated in the Law of Ukraine on Executive Proceedings.
2. In order to obtain funds to compensate for nuclear damage from the state, the applicant shall submit to the body authorised by the Cabinet of Ministers of Ukraine to make payments in compensation for nuclear damage:
 - an application in any form for compensation for nuclear damage;
 - the execution order for compensation for nuclear damage;
 - a ruling by the state executive office to return the executive order to the applicant.
3. If the documents listed in paragraph 2 of this Article are available, the body authorised by the Cabinet of Ministers of Ukraine must, within a month, take a decision to pay out the funds due to the applicant under the execution order. Payment will be to the account of sources stipulated by law.

4. After effecting compensation for nuclear damage pursuant to this article, the state shall acquire the right of regressive claim which will be effected by presenting the relevant execution order for performance in the state's favour within five years of compensation being made.

Article 11

Details of the financial security for civil liability of the operator of the nuclear installation at the Chernobyl Nuclear Power Station

The state shall provide financial cover for civil liability for nuclear damage to the operator of the nuclear installation at the Chernobyl Nuclear Power Station under the procedure established by the Cabinet of Ministers of Ukraine.

Section V

FINAL PROVISIONS

1. This Law comes into force at the time of publication.
2. Within one year of this Law coming into force, operators of nuclear installations already in possession of operating licences for nuclear installations must obtain licences to operate nuclear installations which meet the requirements of this Law. Payment for the acquisition of a licence in this respect shall not be levied.
3. Until operators of nuclear installations receive the licences pursuant to paragraph 2 of Section V "Final Provisions", their actions under the terms of licences issued previously will not be considered to be violations of the provisions of this Law.
4. Amendments are to be made to the following Laws of Ukraine:
 1. Law of Ukraine on Insurance (*Bulletin of the Supreme Council of Ukraine* 1996, No. 18, p. 78; with amendments introduced by the Law of Ukraine No. 2745-III of 4 October 2001), Article 7, part 1, point 12 to be amended to read:

"12. civil liability insurance for the operator of a nuclear installation for nuclear damage which may be caused as a result of a nuclear incident";
 2. in the Law of Ukraine on Executive Proceedings (*Bulletin of the Supreme Council of Ukraine* 1999, No. 24, item 207). Article 34 is to be supplemented by a point 9 with the following wording:

"9. pay to the debtor or other guarantor, under the procedure envisaged by law (including under the terms of agreements on compensation for nuclear damage), the costs of compensation for nuclear damage that are equal to or greater than the legally established limit of liability for an operator of a nuclear installation. For calculation purposes, such costs paid out shall be converted into Special Drawing Rights as established by the International Monetary Fund at the official rate of the National Bank of Ukraine on the day of payment.";

In Article 36, part 2 paragraph 3, the words and figures “point 3 of Article 34” are to be replaced by the words and figures “points 3 and 9 of Article 34”.

5. The Cabinet of Ministers of Ukraine is tasked, within six months of this Law coming into force:
 1. to draw up and ratify, in accordance with the requirements of this Law:
 - specific licensing terms for activities with civil liability insurance for nuclear damage;
 - a Statute on a nuclear insurance pool for Ukraine;
 - a standard form of agreement for compulsory civil liability insurance for nuclear damage;
 - a procedure for calculating tariffs for compulsory civil liability insurance for nuclear damage;
 2. to bring its normative legal enactments into line with this Law;
 3. to ensure that ministries and other central executive offices bring their normative legal enactments into line with this Law.