

PROTOCOL

TO AMEND THE CONVENTION OF 31 JANUARY 1963 SUPPLEMENTARY TO THE PARIS CONVENTION OF 29 JULY 1960 ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY, AS AMENDED BY THE ADDITIONAL PROTOCOL OF 28 JANUARY 1964 AND BY THE PROTOCOL OF 16 NOVEMBER 1982

THE GOVERNMENTS of the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the French Republic, the Italian Republic, the Kingdom of Norway, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the Republic of Slovenia, the Kingdom of Sweden and the Swiss Confederation;

CONSIDERING that certain provisions of the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, have been amended by the Protocol concluded at Paris on 12 February 2004 and of which they are Signatories;

CONSIDERING that it is desirable to amend also the Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982;

HAVE AGREED as follows:

I.

The Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, is amended as follows:

A. The second paragraph of the Preamble shall be replaced by the following text:

BEING PARTIES to the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, concluded within the framework of the Organisation for European Economic Co-operation, now the Organisation for Economic Co-operation and Development, and as amended by the Additional Protocol concluded at Paris on 28 January 1964, by the Protocol concluded at Paris on 16 November 1982 and by the Protocol concluded at Paris on 12 February 2004 (hereinafter referred to as the “Paris Convention”);

B. Article 2 shall be replaced by the following text:

Article 2

a) The system of this Convention shall apply to nuclear damage for which an operator of a nuclear installation, used for peaceful purposes, situated in the territory of a Contracting Party to this Convention (hereinafter referred to as a “Contracting Party”), is liable under the Paris Convention, and which is suffered:

i) in the territory of a Contracting Party; or

ii) in or above maritime areas beyond the territorial sea of a Contracting Party

1. on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party, or
2. by a national of a Contracting Party,

excluding damage suffered in or above the territorial sea of a State not Party to this Convention; or

iii) in or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf,

provided that the courts of a Contracting Party have jurisdiction pursuant to the Paris Convention.

b) Any Signatory or acceding Government may, at the time of signature of or accession to this Convention or on the deposit of its instrument of ratification, acceptance or approval, declare that, for the purposes of the application of paragraph (a)(ii) 2 of this Article, individuals or certain categories thereof, considered under its law as having their habitual residence in its territory, are assimilated to its own nationals.

c) In this Article, the expression “a national of a Contracting Party” shall include a Contracting Party or any of its constituent sub-divisions, or a partnership, or any public or private body whether corporate or not, established in the territory of a Contracting Party.

C. Article 3 shall be replaced by the following text:

Article 3

a) Under the conditions established by this Convention, the Contracting Parties undertake that compensation in respect of nuclear damage referred to in Article 2 shall be provided up to the amount of 1 500 million euro per nuclear incident, subject to the application of Article 12bis.

b) Such compensation shall be provided as follows:

- i) up to an amount of at least 700 million euro, out of funds provided by insurance or other financial security or out of public funds provided pursuant to Article 10(c) of the Paris Convention, such amount to be established under the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated, and to be distributed, up to 700 million euro, in accordance with the Paris Convention;
- ii) between the amount referred to in paragraph (b)(i) of this Article and 1 200 million euro, out of public funds to be made available by the Contracting Party in whose territory the nuclear installation of the operator liable is situated;
- iii) between 1 200 million euro and 1 500 million euro, out of public funds to be made available by the Contracting Parties according to the formula for contributions referred to in Article 12, subject to such amount being increased in accordance with the mechanism referred to in Article 12bis.

c) For this purpose, each Contracting Party shall either:

- i) establish under its legislation that the liability of the operator shall not be less than the amount referred to in paragraph (a) of this Article, and provide that such liability shall be covered by all the funds referred to in paragraph (b) of this Article; or

- ii) establish under its legislation the liability of the operator at an amount at least equal to that established pursuant to paragraph (b)(i) of this Article or Article 7(b) of the Paris Convention, and provide that, in excess of such amount and up to the amount referred to in paragraph (a) of this Article, the public funds referred to in paragraphs (b)(i), (ii) and (iii) of this Article shall be made available by some means other than as cover for the liability of the operator, provided that the rules of substance and procedure laid down in this Convention are not thereby affected.
- d) The obligation of the operator to pay compensation, interest or costs out of public funds made available pursuant to paragraphs (b)(ii) and (iii) and (g) of this Article shall only be enforceable against the operator as and when such funds are in fact made available.
- e) Where a State makes use of the option provided for under Article 21(c) of the Paris Convention, it may only become a Contracting Party to this Convention if it ensures that funds will be available to cover the difference between the amount for which the operator is liable and 700 million euro.
- f) The Contracting Parties, in carrying out this Convention, undertake not to make use of the right provided for in Article 15(b) of the Paris Convention to apply special conditions, other than those laid down in this Convention, in respect of compensation for nuclear damage provided out of the funds referred to in paragraph (a) of this Article.
- g) The interest and costs referred to in Article 7(h) of the Paris Convention are payable in addition to the amounts referred to in paragraph (b) of this Article, and shall be borne in so far as they are awarded in respect of compensation payable out of the funds referred to in:
 - i) paragraph (b)(i) of this Article, by the operator liable;
 - ii) paragraph (b)(ii) of this Article, by the Contracting Party in whose territory the installation of the operator liable is situated to the extent of the funds made available by that Contracting Party;
 - iii) paragraph (b)(iii) of this Article, by the Contracting Parties together.
- h) The amounts mentioned in this Convention shall be converted into the national currency of the Contracting Party whose courts have jurisdiction in accordance with the value of that currency at the date of the incident, unless another date is fixed for a given incident by agreement between the Contracting Parties.

D. Article 4 shall be deleted.

E. Article 5 shall be replaced by the following text:

Article 5

Where the operator liable has a right of recourse pursuant to Article 6(f) of the Paris Convention, the Contracting Parties to this Convention shall have the same right of recourse, to the extent that public funds have been made available pursuant to Article 3(b) and (g).

F. Article 6 shall be replaced by the following text:

Article 6

In calculating the public funds to be made available pursuant to this Convention, account shall be taken only of those rights to compensation exercised within thirty years from the date of the nuclear incident in the case of loss of life or personal injury, and ten years from the date of the nuclear incident in the case of all other nuclear damage. Such period is, moreover, extended in the cases and under the conditions laid down in Article 8(e) of the Paris Convention. Amendments made to claims after the expiry of this period, under the conditions laid down in Article 8(f) of the Paris Convention, shall also be taken into account.

G. Article 7 shall be replaced by the following text:

Article 7

Where a Contracting Party makes use of the right provided for in Article 8(d) of the Paris Convention, the period which it establishes shall be a period of prescription of at least three years either from the date at which the person suffering damage has knowledge or from the date at which he ought reasonably to have known of both the damage and the operator liable.

H. Article 8 shall be replaced by the following text:

Article 8

Any person who is entitled to benefit from the provisions of this Convention shall have the right to full compensation in accordance with national law for nuclear damage suffered, provided that where the amount of such damage exceeds or is likely to exceed 1 500 million euro, a Contracting Party may establish equitable criteria for apportioning the amount of compensation that is available under this Convention. Such criteria shall be applied whatever the origin of the funds and, subject to the provisions of Article 2, without discrimination based on the nationality, domicile or residence of the person suffering the damage.

I. Article 9 shall be replaced by the following text:

Article 9

a) The system of payment of public funds made available pursuant to this Convention shall be that of the Contracting Party whose courts have jurisdiction.

b) Each Contracting Party shall ensure that persons suffering nuclear damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

c) A Contracting Party shall be required to make available the funds referred to in Article 3(b)(iii) once the amount of compensation under this Convention reaches the total of the amounts referred to in Article 3(b)(i) and (ii), irrespective of whether funds to be provided by the operator remain available or whether the liability of the operator is not limited in amount.

J. Article 10 shall be replaced by the following text:

Article 10

a) The Contracting Party whose courts have jurisdiction shall be required to inform the other Contracting Parties of a nuclear incident and its circumstances as soon as it appears that the nuclear damage caused by such incident exceeds, or is likely to exceed the sum of the amounts provided for under Article 3(b)(i) and (ii). The Contracting Parties shall, without delay, make all the necessary arrangements to settle the procedure for their relations in this connection.

b) Only the Contracting Party whose courts have jurisdiction shall be entitled to request the other Contracting Parties to make available the public funds required under Article 3(b)(iii) and (g) and shall have competence to disburse such funds.

c) Such Contracting Party shall, when the occasion arises, exercise the right of recourse provided for in Article 5 on behalf of the other Contracting Parties who have made available public funds pursuant to Article 3(b)(iii) and (g).

d) Settlements effected in respect of the payment of compensation for nuclear damage out of the public funds referred to in Article 3(b)(ii) and (iii) in accordance with the conditions established by national legislation

shall be recognised by the other Contracting Parties, and judgements entered by the competent courts in respect of such compensation shall become enforceable in the territory of the other Contracting Parties in accordance with the provisions of Article 13(i) of the Paris Convention.

K. Article 11 shall be replaced by the following text:

Article 11

a) If the courts having jurisdiction are those of a Contracting Party other than the Contracting Party in whose territory the nuclear installation of the operator liable is situated, the public funds required under Article 3(b)(ii) and (g) shall be made available by the first-named Contracting Party. The Contracting Party in whose territory the nuclear installation of the operator liable is situated shall reimburse to the other Contracting Party the sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.

b) If more than one Contracting Party is required to make available public funds pursuant to Article 3(b)(ii) and (g), the provisions of paragraph (a) of this Article shall apply mutatis mutandis. Reimbursement shall be based on the extent to which each operator has contributed to the nuclear incident.

c) In adopting all legislative, regulatory or administrative provisions, after the nuclear incident has occurred, concerning the nature, form and extent of the compensation, the procedure for making available the public funds required under Article 3(b)(ii) and (g) and, if necessary, the criteria for the apportionment of such funds, the Contracting Party whose courts have jurisdiction shall consult the Contracting Party in whose territory the nuclear installation of the operator liable is situated. It shall further take all measures necessary to enable the latter to intervene in proceedings and to participate in any settlement concerning compensation.

L. Article 12 shall be replaced by the following text:

Article 12

a) The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in Article 3(b)(iii) shall be determined as follows:

- i) as to 35%, on the basis of the ratio between the gross domestic product at current prices of each Contracting Party and the total of the gross domestic products at current prices of all Contracting Parties as shown by the official statistics published by the Organisation for Economic Co-operation and Development for the year preceding the year in which the nuclear incident occurs;
- ii) as to 65%, on the basis of the ratio between the thermal power of the reactors situated in the territory of each Contracting Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties. This calculation shall be made on the basis of the thermal power of the reactors shown at the date of the nuclear incident in the lists referred to in Article 13, provided that for the purposes of this calculation, a reactor shall only be taken into consideration as from the date when it first reaches criticality and a reactor shall be excluded from the calculation when all nuclear fuel has been removed permanently from the reactor core and has been stored safely in accordance with approved procedures.

b) For the purposes of this Convention, “thermal power” means:

- i) before the issue of a final operating licence, the planned thermal power;
- ii) after the issue of such licence, the thermal power authorised by the competent national authorities.

M. A new Article 12bis shall be added after Article 12 as follows:

Article 12bis

- a) In case of accession to this Convention, the public funds mentioned in Article 3(b)(iii) are increased by:
- i) 35% of an amount determined by applying to the above-mentioned sum the ratio between the gross domestic product at current prices of the acceding Party and the total of the gross domestic products at current prices of all the Contracting Parties, excluding that of the acceding Party, and
 - ii) 65% of an amount determined by applying to the above-mentioned sum the ratio between the thermal power of the reactors situated in the territory of the acceding Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties, excluding that of the acceding Party.
- b) The increased amount referred to in paragraph (a) shall be rounded up to the nearest amount expressed in thousands of euro.
- c) The gross domestic product of the acceding Party shall be determined in accordance with the official statistics published by the Organisation for Economic Co-operation and Development for the year preceding the year in which the accession comes into force.
- d) The thermal power of the acceding Party shall be determined in accordance with the list of nuclear installations communicated by that Government to the Belgian Government pursuant to Article 13(b), provided that for the purpose of calculating the contributions under paragraph (a)(ii) of this Article, a reactor shall only be taken into consideration as from the date when it first reaches criticality and a reactor shall be excluded from the calculation when all nuclear fuel has been removed permanently from the reactor core and has been stored safely in accordance with approved procedures.

N. Paragraphs (a), (b), (f) and (i) of Article 13 shall be replaced by the following text:

Article 13

- a) Each Contracting Party shall ensure that all nuclear installations used for peaceful purposes situated in its territory, and falling within the definition in Article 1 of the Paris Convention, appear on a list.
- b) For this purpose, each Signatory or acceding Government shall, on the deposit of its instrument of ratification, acceptance, approval or accession, communicate to the Belgian Government full particulars of such installations.
- f) If a Contracting Party is of the opinion that the particulars, or any modification to be made to the list, communicated by another Contracting Party do not comply with the provisions of this Article, it may raise objections thereto only by addressing them to the Belgian Government within three months from the date on which it has received notice pursuant to paragraph (h) of this Article.
- i) The list referred to in this Article shall consist of all the particulars and modifications referred to in paragraphs (b), (c), (d) and (e) of this Article, it being understood that objections submitted pursuant to paragraphs (f) and (g) of this Article shall have effect retrospective to the date on which they were raised, if they are sustained.

O. Article 14 shall be replaced by the following text:

Article 14

- a) Except in so far as this Convention otherwise provides, each Contracting Party may exercise the powers vested in it by virtue of the Paris Convention, and any provisions made thereunder may be invoked against the other Contracting Parties in order that the public funds referred to in Article 3(b)(ii) and (iii) be made available.

b) Any such provisions made by a Contracting Party pursuant to Article 2(b) of the Paris Convention as a result of which the public funds referred to in Article 3(b)(ii) and (iii) are required to be made available may not be invoked against any other Contracting Party unless it has consented thereto.

c) Nothing in this Convention shall prevent a Contracting Party from making provisions outside the scope of the Paris Convention and of this Convention, provided that such provisions shall not involve any further obligation on the part of the Contracting Parties in so far as their public funds are concerned.

d) Where all of the Contracting Parties to this Convention ratify, accept, approve or accede to any other international agreement in the field of supplementary compensation for nuclear damage, a Contracting Party to this Convention may use the funds to be provided pursuant to Article 3(b)(iii) of this Convention to satisfy any obligation it may have under such other international agreement to provide supplementary compensation for nuclear damage out of public funds.

P. Article 15 shall be replaced by the following text:

Article 15

a) Any Contracting Party may conclude an agreement with a State which is not a Party to this Convention concerning compensation out of public funds for damage caused by a nuclear incident. Any Contracting Party intending to conclude such an agreement shall notify the other Contracting Parties of its intention. Agreements concluded shall be notified to the Belgian Government.

b) To the extent that the conditions for payment of compensation under any such agreement are not more favourable than those which result from the measures adopted by the Contracting Party concerned for the application of the Paris Convention and of this Convention, the amount of damage caused by a nuclear incident covered by this Convention and for which compensation is payable by virtue of such an agreement may be taken into consideration, where the proviso to Article 8 applies, in calculating the total amount of damage caused by that incident.

c) The provisions of paragraphs (a) and (b) of this Article shall in no case affect the obligations under Article 3(b)(ii) and (iii) of those Contracting Parties which have not given their consent to such agreement.

Q. Article 17 shall be replaced by the following text:

Article 17

a) In the event of a dispute arising between two or more Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to settling the dispute by negotiation or other amicable means.

b) Where a dispute referred to in paragraph (a) is not settled within six months from the date upon which such dispute is acknowledged to exist by any party thereto, the Contracting Parties shall meet in order to assist the parties to the dispute to reach a friendly settlement.

c) Where no resolution to the dispute has been reached within three months of the meeting referred to in paragraph (b), the dispute shall, upon the request of any party thereto, be submitted to the European Nuclear Energy Tribunal established by the Convention of 20th December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.

d) Where a nuclear incident gives rise to a dispute between two or more Contracting Parties concerning the interpretation or application of the Paris Convention and of this Convention, the procedure for resolving such dispute shall be the procedure provided for under Article 17 of the Paris Convention.

R. Article 18 shall be replaced by the following text:

Article 18

- a) Reservations to one or more of the provisions of this Convention may be made at any time prior to ratification, acceptance or approval of this Convention if the terms of these reservations have been expressly accepted by all Signatories or, at the time of accession or of the application of the provisions of Articles 21 and 24, if the terms of these reservations have been expressly accepted by all Signatories and acceding Governments.
- b) Such acceptance shall not be required from a Signatory which has not itself ratified, accepted or approved this Convention within a period of twelve months after the date of notification to it of such reservation by the Belgian Government in accordance with Article 25.
- c) Any reservation accepted in accordance with the provisions of paragraph (a) of this Article may be withdrawn at any time by notification addressed to the Belgian Government.

S. Article 20 shall be replaced by the following text:

Article 20

- a) The Annex to this Convention shall form an integral part thereof.
- b) This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Belgian Government.
- c) This Convention shall come into force three months after the deposit of the sixth instrument of ratification, acceptance or approval.
- d) For each Signatory ratifying, accepting or approving this Convention after the deposit of the sixth instrument of ratification, acceptance or approval, it shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

T. Article 21 shall be replaced by the following text:

Article 21

Amendments to this Convention shall be adopted by agreement among all the Contracting Parties. They shall come into force on the date when all Contracting Parties have ratified, accepted or approved them.

U. Article 25 shall be replaced by the following text:

Article 25

The Belgian Government shall notify all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval, accession or withdrawal, and shall also notify them of the date on which this Convention comes into force, the text of any amendment thereto and the date on which such amendment comes into force, any reservations made in accordance with Article 18, any increase in the compensation to be provided under Article 3(a) as a result of the application of Article 12bis, and all notifications which it has received.

V. The Annex shall be replaced by the following text:

Annex

TO THE CONVENTION OF 31 JANUARY 1963 SUPPLEMENTARY TO THE PARIS CONVENTION OF 29 JULY 1960 ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY, AS AMENDED BY THE ADDITIONAL PROTOCOL OF 28 JANUARY 1964, BY THE PROTOCOL OF 16 NOVEMBER 1982 AND BY THE PROTOCOL OF 12 FEBRUARY 2004

THE GOVERNMENTS OF THE CONTRACTING PARTIES declare that compensation for nuclear damage caused by a nuclear incident not covered by the Supplementary Convention solely by reason of the fact that the relevant nuclear installation, on account of its utilisation, is not on the list referred to in Article 13 of the Supplementary Convention (including the case where such installation, which is not on the list, is considered by one or more but not all of the Governments to be outside the Paris Convention):

- shall be provided without discrimination among the nationals of the Contracting Parties to the Supplementary Convention; and
- shall not be limited to less than 1 500 million euro.

In addition, if they have not already done so, they shall endeavour to make the rules for compensation of persons suffering damage caused by such incidents as similar as possible to those established in respect of nuclear incidents occurring in connection with nuclear installations covered by the Supplementary Convention.

II.

a) The provisions of this Protocol shall, as between the Parties thereto, form an integral part of the Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereinafter referred to as the “Convention”), which shall be known as the “Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960, as amended by the Additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004”.

b) This Protocol shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval of this Protocol shall be deposited with the Belgian Government.

c) The Signatories of this Protocol who have already ratified or acceded to the Convention express their intention to ratify, accept or approve this Protocol as soon as possible. The other Signatories of this Protocol undertake to ratify, accept or approve it at the same time as they ratify the Convention.

d) This Protocol shall be open for accession in accordance with the provisions of Article 22 of the Convention. Accessions to the Convention will be accepted only if they are accompanied by accession to this Protocol.

e) This Protocol shall come into force in accordance with the provisions of Article 21 of the Convention.

f) The Belgian Government shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval or accession.