

## **Overview of the Nuclear Liability Regime under The Paris Convention and the Brussels Supplementary Convention**

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### **Development of the Conventions**

With the development of civilian nuclear power in the mid-1950s, the question of the need for a special liability regime soon arose in view of the perceived special and uncertain hazards of nuclear operations as well as the potentially far-reaching consequences of an accident that might cross national borders. The original liability regimes sought to balance the interests of potential victims of an accident and the interests of the nuclear power industry, i.e. by ensuring adequate compensation for injury to persons and for property damage resulting from a nuclear accident, while encouraging the industry to assume full responsibility for safety without exposure to an excessive liability burden. This background note provides an overview of the liability regime, particularly with respect to nuclear power plant operators, established under the Paris Convention on Third Party Liability in the Field of Nuclear Energy (the Paris Convention) and the Brussels Convention Supplementary to the Paris Convention (Brussels Supplementary Convention).

In the late 1950s, the Organisation for European Economic Co-operation (today the OECD) brought legal experts together to explore the development of a regional instrument that would provide a uniform liability system for western European countries. These efforts led to the adoption in 1960 of the Paris Convention, which entered into force in 1968. After the adoption of the Paris Convention, the Brussels Supplementary Convention was adopted in 1963 (and entered into force in 1974) to provide additional funds that would compensate damage as a result of a nuclear incident where funds available under the Paris Convention proved to be insufficient. The Belgian government is the depositary for the Brussels Supplementary Convention. The Paris Convention and the Brussels Supplementary Convention were modified by protocols adopted in 1964 and 1982. In 2004, the parties to the conventions concluded negotiations on Protocols to further modify both conventions, but as noted below neither of the 2004 Protocols has come into force as of January 2014.

In 1988, the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention was adopted under the joint auspices of the OECD and the International Atomic Energy Agency. The Joint Protocol, which came into force in 1992, provided a bridge between the two conventions and thereby broadened the geographic scope of the conventions' coverage. The goal was to extend the rights under one regime to victims of an accident in the territory of states party to the other, if both states were also contracting parties to the 1988 Joint Protocol.

### **Parties to the Conventions**

The Paris Convention is open to all OECD members *and* to non-members with the consent of the contracting parties. There are currently 15 parties to the Paris Convention. The following

European Union (EU) Member States are parties to the convention: Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Portugal, Slovenia, Spain, Sweden, and the United Kingdom. Norway and Turkey are also parties.

As noted above, the 2004 Protocol to amend the Paris Convention has not come into force. Under the terms of the Paris Convention, a two-thirds majority of the parties must ratify the 2004 Protocol for it to come into force. However, an EU Council Decision (2004/294/EC, Official Journal L 97/53) requires that the Paris Convention contracting parties which are also EU Member States simultaneously deposit their instruments of ratification. Although a number of EU states have completed their national process, Belgium, Italy and the United Kingdom have not; Turkey has also not completed its ratification process.

There are currently 12 parties to the Brussels Supplementary Convention: Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Slovenia, Spain, Sweden, and the United Kingdom. The Brussels Supplementary Convention is open only to Paris Convention states that provide the first tier of compensation as provided in the Paris Convention.

Switzerland has ratified the Paris Convention and the Brussels Supplementary Convention, as well as their subsequent Protocols, but entry into force for Switzerland will not occur until the 2004 Protocols to amend both conventions have not themselves entered into force.

### **Compensation Amounts available under the Conventions**

The following table provides a synopsis of the compensation available under the Paris Convention in its original and modernised form as well as under the additional compensation scheme provided by the Brussels Supplementary Convention.

<b>Original Paris Convention (1960)</b>	<b>15 million SDRs*</b> (In 1990 the NEA Steering Committee for Nuclear Energy recommended an increase to 150 million SDRs)
<b>Existing Paris Convention (1960) and Brussels Supplementary Convention (1963) regime</b>	<b>300 million SDRs</b> 1 <sup>st</sup> tier: 15 million SDRs per 1960 PC 2 <sup>nd</sup> tier: up to 175 million SDRs (i.e. 160 million SDRs) 3 <sup>rd</sup> tier: up to 300 million SDRs (i.e. 125 million SDRs)
<b>Revised Paris Convention (2004)</b> <b>[not yet in force]</b>	<b>Minimum 700 million EUR</b>
<b>Revised Paris Convention (2004) and Brussels Supplementary Convention regime (2004)</b> <b>[not yet in force]</b>	<b>Minimum 1.5 billion EUR</b> 1 <sup>st</sup> tier: min. 700 million EUR per PC 2 <sup>nd</sup> tier: up to 1.2 billion EUR (i.e. 500 million EUR max.) 3 <sup>rd</sup> tier: up to 1.5 billion EUR (i.e. 300 million EUR)

\* 1 SDR = 1.125 EUR = 1.537 USD on 14 January 2014

The original 1960 Paris Convention expressed the liability of the operator for damages related to a nuclear accident at a nuclear installation in terms of a *maximum* amount: 15

million special drawing rights (SDRs), as defined by the International Monetary Fund, with the minimum not being less than 5 million SDRs. In 1990, the Steering Committee for Nuclear Energy, the governing body over the OECD Nuclear Energy Agency (NEA), recommended an increase of this amount to 150 million SDRs in order to harmonise the levels of liability under national legislation to a level corresponding to the evolution of the capacity of the insurance market to provide coverage. In an Appendix to this note, a table is provided of the existing liability amounts and financial security limits applicable to nuclear power plant operators in EU countries that are parties to the Paris Convention. The 2004 Protocol substantially increases the operator's liability to a *minimum* of 700 million EUR, and therefore allows for the possibility of unlimited liability of the operator. In such circumstances, the operator must provide financial security of at least 700 million EUR.

The Brussels Supplementary Convention provides for additional compensation in terms of a three-tiered system, the first tier being the amount equivalent to the operator's liability under the Paris Convention. The second tier is comprised of funds provided by the State party to the Brussels Supplementary Convention in which the liable operator is located. The third tier consists of contributions provided by all States party to the Brussels Supplementary Convention and calculated according to a prescribed formula. The existing Brussels Supplementary Convention formula calls for contributions based 50% on gross national product and 50% on installed nuclear capacity, whereas the new method of calculation under the 2004 Protocol is based 35% on gross domestic product and 65% on installed nuclear capacity. In case of accession to the Brussels Supplementary Convention, the third tier is increased according to another prescribed formula based on gross domestic product and installed nuclear capacity.

### **Changes in the 2004 Protocol Amending the Paris Convention**

A number of important changes are introduced in the 2004 Protocol that expand the types of damage covered as well as the class of potential victims who may be entitled to compensation, some of which are described below.

A longer prescription period (30 vs. 10 years) is provided for loss of life or personal injury, although the 10 year period remains for all other nuclear damage.

The original Paris Convention provided that victims of a nuclear incident could receive compensation for damages resulting from loss of life or personal injury and from loss of or damage to property. Under the 2004 Protocol, additional types of damage are included:

- economic loss arising from loss or damage to person or property;
- costs of measures of reinstatement of impaired environment;
- loss of income deriving from a direct economic interest in use or enjoyment of environment;
- costs of preventive measures and loss or damage caused thereby.

The 2004 Protocol also expands the class of potential victims who may claim compensation. Under the original Paris Convention, the nuclear incident and the damage suffered must occur

in the territory of a Paris Convention State (including the territorial sea). Under the 2004 Protocol, the convention applies to Paris Convention States and non-convention States (including their territories and maritime zones) which (1) are party to the 1963 Vienna Convention on Civil Liability for Nuclear Damage (and any amendment thereto) and the 1988 Joint Protocol (when the installation of the liable operator is in a Paris Convention State that is also party to the Joint Protocol), or (2) have no nuclear installations, or (3) have nuclear liability legislation that affords equivalent reciprocal benefits and is based on principles identical to those provided in the Paris Convention.


In terms of judicial administration, the 2004 Protocol to the Paris Convention provides that the State having jurisdiction over claims (generally the State in which the nuclear incident occurred) shall ensure that only one of its courts shall be competent to rule on compensation for nuclear damage arising out of the nuclear incident.

Finally, it should be noted that the 2004 Protocol removes the exoneration from liability for “grave natural disasters”.

*Appendix -- European Union Member States Party to the Paris Convention: Current Liability Amounts Applicable to Nuclear Power Plants*

## APPENDIX: EUROPEAN UNION MEMBER STATES PARTY TO THE PARIS CONVENTION: LIABILITY AMOUNTS APPLICABLE TO NUCLEAR POWER PLANTS

**1 SDR = 1.125 EUR = 1.537 USD on 14 January 2014**

Country	Nuclear liability conventions ratified (signed)	Operator's liability amount	Financial security limit
 Belgium	PC, BSC, (RPC), (RBSC), (JP)	EUR 1.2 billion	EUR 1.2 billion
 Denmark	PC, BSC, (RPC), (RBSC), JP	SDR 60 million (approx. EUR 67.5 million)	SDR 60 million (approx. EUR 67.5 million)
 Finland	PC, BSC, (RPC), (RBSC), JP	Unlimited for damage suffered in Finland SDR 600 million for damage suffered outside Finland	SDR 600 million (approx. EUR 675 million)
 France	PC, BSC, (RPC), (RBSC), (JP)	EUR 91.5 million	EUR 91.5 million
 Germany	PC, BSC, (RPC), (RBSC), JP	Unlimited	EUR 2.5 billion
 Greece	PC, (RPC), JP	SDR 15 million (approx. EUR 16.9 million)	SDR 15 million (approx. EUR 16.9 million)
 Italy	PC, BSC, (RPC), (RBSC), JP	SDR 5 million (approx. EUR 5.63 million)	SDR 5 million (approx. EUR 5.63 million)
 Netherlands	PC, BSC, (RPC), (RBSC), JP	EUR 1.2 billion	EUR 1.2 billion
 Portugal	PC, (RPC), (JP)	SDR 15 million (approx. EUR 16.9 million)	SDR 15 million (approx. EUR 16.9 million)
 Slovenia	PC, BSC, (RPC), (RBSC), JP	SDR 150 million (approx. EUR 168.8 million)	SDR 150 million (approx. EUR 168.8 million)
 Spain	PC, BSC, (RPC), (RBSC), (JP)	EUR 700 million	EUR 700 million
 Sweden	PC, BSC, (RPC), (RBSC), JP	SDR 300 million (approx. EUR 337.5 million)	SDR 300 million (approx. EUR 337.5 million)
 United Kingdom	PC, BSC, (RPC), (RBSC), (JP)	GBP 140 million (approx. EUR 168.8 million)	GBP 140 million (approx. EUR 168.8 million)

**PC** – ratified Paris Convention / **RPC** - ratified 2004 Paris Protocol / **BSC** - ratified Brussels Supplementary Convention / **RBSC** - ratified 2004 BSC Protocol / **(RPC)** - 2004 Paris Protocol signed but not ratified / **(RBSC)** - 2004 BSC Protocol signed but not ratified / **JP** – ratified 1988 Joint Protocol / **(JP)** - Joint Protocol signed but not ratified