



**COUNCIL OF
THE EUROPEAN UNION**

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PROPOSAL

from :	European Commission
dated :	11 July 2003
Subject:	<ul style="list-style-type: none">– Proposal for a COUNCIL DECISION authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to sign, in the interest of the European Community, the Protocol amending that Convention– Proposal for a COUNCIL DECISION authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to ratify the Protocol amending that Convention, or to accede to it, in the interest of the European Community

Delegations will find attached Commission proposals submitted under a covering letter from Ms Patricia BUGNOT, Director, to Mr Javier SOLANA, Secretary-General/High Representative.

Encl.: COM(2003) 409 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.7.2003
COM(2003) 409 final

2003/0150 (AVC)

Proposal for a

COUNCIL DECISION

authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to sign, in the interest of the European Community, the Protocol amending that Convention

Proposal for a

COUNCIL DECISION

authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to ratify the Protocol amending that Convention, or to accede to it, in the interest of the European Community

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. PURPOSE OF THE PROPOSALS

The Commission proposes that the Council authorise the Member States which are Parties to the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy ("Paris Convention") to sign and ratify the Protocol amending that Convention, which was adopted under the auspices of the Organisation for Economic Cooperation and Development, or to accede to it, in the interest of the European Community.

2. THE PROTOCOL OF AMENDMENT TO THE PARIS CONVENTION

2.1. The Paris Convention

The Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy was concluded in the framework of the Organisation for European Economic Cooperation, now the Organisation for Economic Cooperation and Development. It was adopted in order to provide adequate and fair compensation to the victims of damage caused by nuclear accidents.

The Paris Convention sets up a special system of third party liability in the field of nuclear energy which is adapted to the specific problems in this field and which derogates from common civil liability law on several points. This system is characterised by the objective (without fault) and exclusive liability of the operator of the nuclear installation, who is bound to pay compensation up to a certain amount and is obliged to have insurance or other financial security to cover this liability. The scope extends to nuclear accidents occurring in certain nuclear installations or during transport of the nuclear substances defined by the Convention on the territory of the Contracting States, including territorial waters.

The Paris Convention is supplemented by the Brussels Convention of 31 January 1963 Supplementary to the Paris Convention ("Brussels Supplementary Convention"), which sets up an additional damage payment system using public funds. This compensation system has three tiers. The first tier of compensation, relating to the liability of the operator of the nuclear installation, is covered by the operator's insurance or financial security. The second tier, which covers amounts over and above the amount for which the operator is liable, is funded by public funds allocated by the State where the nuclear installation is situated, up to 175 million special drawing rights (SDR).¹ The third tier, funded by contributions from the Contracting Parties, covers compensation for nuclear damage between 175 and 300 million SDR.

The Paris Convention was amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982. It is currently in force in 15 countries, 12 of which are Member States of the European Community (Austria, Ireland and Luxembourg are not Parties to the Convention).

¹ According to the values of currencies expressed in special drawing rights on 2 January 2002 published by the International Monetary Fund, 1 special drawing right = EUR 1.39732.

2.2. The Protocol of amendment

In order to improve the system of compensation for nuclear damage, the Contracting Parties to the Paris Convention started negotiations in 1998 to revise the Convention. The aim of the revision is to ensure that more funds are available to compensate a greater number of victims on the basis of a wider definition of damage.

The final text of a proposal for a Protocol amending the Paris Convention was approved by the Contracting Parties in February 2002 and was accepted by the OECD's Steering Committee for Nuclear Energy in May 2002.

The most notable amendments relate to extending the geographical scope of the Convention to nuclear damage occurring on the territory or in the maritime area of States which are not Contracting Parties to the Convention, and extending the concept of indemnifiable damage to non-material damage and to the cost of preventive measures and measures to restore the environment.

The most significant improvement is the increase in the liability amounts for operators of nuclear installations. The operator's liability is increased from a maximum amount of 15 million SDR in the current Convention to a minimum reference amount of €700 million, with national governments then being free to set a higher amount or to provide for the unlimited liability of the operator. This increase also concerns low risk installations, where the liability of the operator is increased from 5 million SDR to a minimum of €70 million and for accidents during the transport of nuclear substances, where the liability of the operator is increased from 5 million SDR to a minimum of €80 million.

This increase in the amounts for which operators of nuclear installations are liable is accompanied at the same time by an increase in the amount of supplementary funds provided for by the Brussels Supplementary Convention, which is also being revised. After the proposed amendment, the compensation tiers provided for by the Brussels Supplementary Convention will be as follows: the amount of the first tier relating to the operator's liability will be increased to a minimum of €700 million; the second tier, for which the State where the installation is located is responsible, will be between the amount of the first tier and €1.2 billion; the amount of the third tier will be €300 million. The total of these tiers will therefore amount to €1.5 billion.

3. COUNCIL REGULATION (EC) No 44/2001

Council Regulation (EC) No 44/2001 of 22 December 2000² lays down rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Regulation binds all the Member States except for Denmark. The 1968 Brussels Convention remains in force in relations between Denmark and the other Member States.

The rules on jurisdiction provided for by Council Regulation (EC) No 44/2001 apply when the defendant is domiciled in one of the Member States bound by the Regulation, while a defendant not domiciled in a Member State may in theory be brought before the courts of each Member State in accordance with the national rules on jurisdiction of that State, subject to Articles 22 (exclusive jurisdiction) and 23 (choice of forum clauses).

² OJ L 12, 16.1.2001, p. 1.

The jurisdiction regime is based in the first place on the domicile of the defendant. In addition, in matters relating to tort, delict or quasi-delict, a person domiciled in a Member State may be sued in the Member State where the harmful event occurred or may occur. The place where the harmful event occurred is understood by the Court's case law to mean the place of the act giving rise to the harmful event or the place where the damage occurred. In matters relating to insurance, an insurer domiciled in a Member State may be sued (a) in the courts of the Member State where he is domiciled, or (b) in the Member State where the plaintiff is domiciled, in the case of actions brought by the policyholder, the insured person or a beneficiary, or (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer. In respect of liability insurance, the insurer may in addition be sued in the courts of the place where the harmful event occurred, and also, if the law of the court so permits, be joined in proceedings brought by the injured party against the insured person.

Council Regulation (EC) No 44/2001 stipulates that a judgment given in a Member State must be recognised and enforced in the other Member States without any special procedure being required. However, a limited number of grounds of non-recognition are provided to take account of public policy considerations, respect for the rights of the defence and the existence of certain irreconcilable judgments.

4. COMMUNITY JURISDICTION

There is no Community legislation governing nuclear third party liability. However, the new Protocol amending the Paris Convention contains provisions which affect Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In fact, in contrast to the multiple grounds of jurisdiction available under the Regulation, Article 13 of the Paris Convention, as amended by the Protocol, in principle provides for the exclusive jurisdiction of the State Party on whose territory the nuclear accident occurred.

Article 13 of the Paris Convention henceforth allocates exclusive jurisdiction to the courts of the Contracting State on whose territory a nuclear accident has occurred in relation to claims for compensation for damage caused by the accident. If the accident occurred outside the territory of the Contracting Parties or if the place of the accident cannot be determined with certainty, the relevant courts are those of the Contracting State on whose territory the nuclear installation of the operator liable is situated.

In addition, owing to the principle of the unity of jurisdiction, the final judgments given by the relevant court will be subject to a reduced exequatur to become enforceable in Contracting States other than that of the relevant court, with no new basic examination of the matter.

The Protocol of amendment also provides for the exclusive jurisdiction of the courts of the Contracting Coastal Party for nuclear accidents which have occurred in its exclusive economic zone (EEZ). This jurisdiction is granted on the condition that the depositary of the Convention received notification of such a zone before the nuclear accident. The Protocol specifies that neither the notification of an exclusive economic zone to the depositary nor the exercise of the competence under the terms of this new provision will create a right or obligation with regard to the delimitation of the maritime borders between States having opposite or adjacent coasts.

On the other hand, if a nuclear accident occurs in a maritime area which is subject to a dispute regarding the delimitation of the maritime borders, jurisdiction should be granted to the court which is judged to be the most directly connected with the accident and affected by its consequences.

The Community has exclusive jurisdiction as regards the provisions on jurisdiction and the recognition and enforcement of the judgments contained in the Protocol of amendment, as these affect, within the meaning of the Court's case law, the corresponding rules of Council Regulation (EC) No 44/2001. The Member States therefore no longer have the right either to derogate from these rules among themselves, or to contract obligations with non-member countries which affect these rules.³

In order to allow the Community to exercise its powers, on 13 September 2002 the Council mandated the Commission to negotiate the Protocol to the Paris Convention of 29 July 1960, for matters falling within the jurisdiction of the European Community. On an exceptional basis, the Council did not provide for the Community's accession to the Convention in this particular case. This situation will not constitute a precedent for the future.

The negotiating directives specified that the Community would keep the proposed amendment of Article 13 of the Paris Convention drawn up by the Contracting Parties and accepted by the Steering Committee for Nuclear Energy in May 2002. This proposal ensures the principle of exclusive jurisdiction of the Paris Convention which is necessary to ensure a fair distribution of the funds available for compensation between victims.

In accordance with the negotiating directives, the Commission officially informed the OECD's Nuclear Energy Agency, the depositary of the Paris Convention, on 25 October 2002, that the Community would accept the proposed amendment of Article 13 of the draft Protocol as approved in February 2002 and that the reservation expressed regarding this Article by twelve of the Contracting States, which are Members of the European Union, could be withdrawn. This acceptance, which was confirmed in an exchange of correspondence between the Commission and the Nuclear Energy Agency, concluded the negotiations.

At the end of the negotiations, the version of the Protocol of amendment which had been approved by the European Commission was finally adopted by the Contracting Parties. The Steering Committee of the Nuclear Energy Agency officially noted its adoption in its 106th session on 24 April 2003 in the presence of a representative from the Commission. The Steering Committee of the Nuclear Energy Agency also noted that the Contracting Parties were ready to sign this Protocol as soon as the authorisation procedure underway within the European Community would allow this.

The text of the Protocol of amendment to the Paris Convention complies with the negotiating directives adopted by the Council. The Community's powers in these fields mean that the European Community becomes a Party to the Protocol of amendment. However, insofar as the Protocol of amendment does not allow the participation of regional integration organisations, the Community is not in a position to sign or ratify the Protocol, or to accede to it.

³ ECJ, Case 22/70, ("EART"), [1971] ECR 263.

The new Protocol to the Paris Convention, by improving protection for victims in the event of nuclear accidents, is particularly important for the European Community and its Member States and, on an exceptional basis, it is therefore justified that the Community exercises its powers through its Member States which are Parties to the Paris Convention.

However, three of the Member States of the European Union, namely Austria, Ireland and Luxembourg, are not Parties to the Paris Convention. It has been deemed objectively justified, on an exceptional basis, to allow these three Member States not to become Parties to the Protocol and therefore to continue to apply the rules of Council Regulation (EC) No 44/2001. This difference in the application of the rules on jurisdiction within the Community is justified for three reasons:

- the Protocol amends a convention to which these three Member States are not Contracting Parties;
- Council Regulation (EC) No 44/2001 does not affect conventions to which the Member States are Parties; and
- the Protocol does not make any fundamental amendments to the Convention's rules on jurisdiction.

As a result, the negotiating directives provided that the procedures will be started so that only the Member States which are currently Parties to the Paris Convention sign and ratify the Protocol, or accede to it, in the interest of the European Community.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not bound by Council Regulation (EC) No 44/2001 nor subject to its application. Consequently, Denmark is not taking part in the adoption of these decisions, which do not bind Denmark and do not apply to Denmark.

CONCLUSION

For these reasons, the Commission recommends that the Council adopt the following Decisions:

- firstly, a Decision authorising the Member States which are Parties to the Paris Convention to sign, in the interest of the European Community, the Protocol amending that Convention;
- secondly, a Decision authorising the Member States which are Parties to the Paris Convention to ratify the Protocol amending that Convention, or to accede to it, in the interest of the European Community.

Proposal for a

COUNCIL DECISION

authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to sign, in the interest of the European Community, the Protocol amending that Convention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c), Article 67(5) and the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,⁴

Whereas:

- (1) The Protocol amending the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereinafter referred to as the "Paris Convention") was negotiated with a view to improving compensation for victims of damage caused by nuclear accidents. It provides for increasing liability amounts and extending the system of nuclear third party liability to environmental damage.
- (2) In accordance with the Council's negotiating directives of 13 September 2002, the Commission negotiated the Protocol of amendment to the Paris Convention for matters falling within the jurisdiction of the European Community. However, the Council's negotiating directives did not provide for negotiating a clause allowing the accession of the Community to the Protocol.
- (3) The Protocol was finally adopted by the Contracting Parties to the Paris Convention. The text of the Protocol complies with the Council's negotiating directives.
- (4) The Community has exclusive jurisdiction with regard to amending Article 13 of the Paris Convention where such amendment would affect the rules laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Member States retain their jurisdiction for matters covered by the Protocol which do not affect Community law. Given the subject matter and the aim of the Protocol of amendment, acceptance of the provisions of the Protocol which come under Community jurisdiction cannot be dissociated from the provisions which come under the jurisdiction of the Member States.

⁴ OJ C [...], [...], p. [...] .

- (5) The Protocol of amendment to the Paris Convention is particularly important in the light of the interests of the Community and its Member States, because it improves compensation for damage caused by nuclear accidents.
- (6) The Paris Convention and its Protocol of amendment are not open to participation by regional organisations. As a result, the Community is not in a position to sign or ratify the Protocol, or to accede to it. Under these circumstances, and only on a very exceptional basis, it is justified that the Member States sign the Protocol in the interest of the Community.
- (7) However, three of the Member States of the European Community, namely Austria, Ireland and Luxembourg, are not Parties to the Paris Convention. Given that the Protocol amends the Paris Convention, that Council Regulation (EC) No 44/2001 authorises the Member States bound by that Convention to continue to apply the rules on jurisdiction provided for in it and that the Protocol does not substantially amend the rules on jurisdiction of the Convention, it has been deemed objectively justified, on an exceptional basis, to allow these three Member States not to become Parties to the Protocol.
- (8) The Member States which are Parties to the Paris Convention should therefore sign, in the interest of the European Community and subject to the conditions laid down in this Decision, the Protocol amending the Paris Convention, subject to its possible conclusion at a later date.
- (9) Consequently, the provisions of the Protocol, as regards the European Community, will be applied only by those Member States which are currently Parties to the Paris Convention.
- (10) The United Kingdom and Ireland are bound by Council Regulation (EC) No 44/2001 and are therefore taking part in the adoption of this Decision. The United Kingdom is also taking part in the application of this Decision.
- (11) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is therefore not bound by it or subject to its application.

HAS DECIDED AS FOLLOWS:

Article 1

- 1. Without prejudice to the Community's powers, the Member States which are currently Parties to the Paris Convention shall sign, in the interest of the European Community, the Protocol amending the Paris Convention, subject to its possible conclusion at a later date.
- 2. The text of the Protocol amending the Paris Convention is attached to this Decision.
- 3. In this Decision, the term "Member State" shall mean all Member States which are currently Parties to the Paris Convention, with the exception of Denmark.

Article 2

Member States shall endeavour to sign the Protocol before 31 December 2003.

Article 3

When signing the Protocol of amendment to the Paris Convention, Member States shall inform the Secretary-General of the Organisation for Economic Cooperation and Development in writing that signature has taken place in accordance with this Decision.

Done at Brussels, [...]

*For the Council
The President*

Proposal for a

COUNCIL DECISION

authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to ratify the Protocol amending that Convention, or to accede to it, in the interest of the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c), Article 67(5), the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,⁵

Having regard to the assent of the European Parliament,⁶

Whereas:

- (1) The Protocol amending the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereinafter referred to as the "Paris Convention") was negotiated with a view to improving compensation for victims of damage caused by nuclear accidents. It provides for increasing liability amounts and extending the system of nuclear third party liability to environmental damage.
- (2) In accordance with the Council's negotiating directives of 13 September 2002, the Commission negotiated the Protocol of amendment to the Paris Convention for matters falling within the jurisdiction of the European Community. However, the Council's negotiating directives did not provide for negotiating a clause allowing the accession of the Community to the Protocol.
- (3) The Protocol was finally adopted by the Contracting Parties to the Paris Convention. The text of the Protocol complies with the Council's negotiating directives.
- (4) The Community has exclusive jurisdiction with regard to amending Article 13 of the Paris Convention where such amendment would affect the rules laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Member States retain their jurisdiction for matters covered by the Protocol which do not affect Community law. Given the subject matter and the aim of the Protocol of amendment,

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

acceptance of the provisions of the Protocol which come under Community jurisdiction cannot be dissociated from the provisions which come under the jurisdiction of the Member States.

- (5) The Protocol of amendment to the Paris Convention is particularly important, in the light of the interests of the Community and its Member States, because it improves compensation for damage caused by nuclear accidents.
- (6) The Protocol was signed by the Member States which are Parties to the Convention, on behalf of the European Community, on 2003, subject to its possible conclusion at a later date, in accordance with Council Decision../.../EC of 2003.⁷
- (7) The Paris Convention and its Protocol of amendment are not open to participation by regional organisations. As a result, the Community is not in a position to sign or ratify the Protocol, or to accede to it. Under these circumstances, it is justified, on a very exceptional basis, that the Member States ratify or accede to the Protocol in the interest of the Community.
- (8) However, three of the Member States of the European Community, namely Austria, Ireland and Luxembourg, are not Parties to the Paris Convention. Given that the Protocol amends the Paris Convention, that Council Regulation (EC) No 44/2001 authorises the Member States bound by that Convention to continue to apply the rules on jurisdiction provided for in it and that the Protocol does not substantially amend the rules on jurisdiction of the Convention, it has been deemed objectively justified, on an exceptional basis, to allow these three Member States not to become Parties to the Protocol.
- (9) The Member States which are Parties to the Paris Convention, should therefore ratify the Protocol amending the Paris Convention, or accede to it, in the interest of the European Community, subject to the conditions laid down in this Decision.
- (10) Consequently, the provisions of the Protocol, as regards the European Community, will be applied only by those Member States which are currently Parties to the Paris Convention.
- (11) The United Kingdom and Ireland are bound by Council Regulation (EC) No 44/2001 and are therefore taking part in the adoption of this Decision. The United Kingdom is also taking part in the application of this Decision.
- (12) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is therefore not bound by it or subject to its application.

⁷ OJ L [...], [...], p. [...].

HAS DECIDED AS FOLLOWS:

Article 1

1. Without prejudice to the Community's powers, the Member States which are currently Parties to the Paris Convention shall ratify the Protocol amending the Paris Convention, or accede to it, in the interest of the European Community.
2. The text of the Protocol amending the Paris Convention is attached to this Decision.
3. In this Decision, the term "Member State" shall mean all Member States which are currently Parties to the Paris Convention, with the exception of Denmark.

Article 2

1. Member States shall take the necessary steps to deposit their instruments of ratification of the Protocol, or accession to it, with the Secretary-General of the Organisation for Economic Cooperation and Development within a reasonable time and, if possible, before 31 December 2008.
2. Member States shall inform the Council and the Commission, before 31 December 2006, of the prospective date of conclusion of their ratification or accession procedures.
3. Member States shall endeavour to exchange information on the state of their ratification or accession procedures.

Article 3

When ratifying or acceding to the Protocol of amendment to the Paris Convention, Member States shall inform the Secretary-General of the Organisation for Economic Cooperation and Development in writing that ratification or accession has taken place in accordance with this Decision.

Done at Brussels, [...]

*For the Council
The President*

ANNEX

CONTRACTING PARTIES TO THE PARIS CONVENTION

PROTOCOL

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

[NEA/LEG/CPPC(98)10/FINAL/REV1]

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 Hellenic Republic, the Italian Republic, the Kingdom of Norway, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland, the Republic of Slovenia, the Kingdom of Sweden, the Swiss Confederation and the Republic of Turkey;

CONSIDERING that it is desirable to amend the Convention on Third Party Liability in the Field of Nuclear Energy, concluded at Paris on 29 July 1960 within the framework of the Organisation for European Economic Co-operation, now the Organisation for Economic Co-operation and Development, as amended by the Additional Protocol signed at Paris on 28 January 1964 and by the Protocol signed at Paris on 16 November 1982;

HAVE AGREED as follows:

I

The Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, shall be amended as follows:

A. Sub-paragraphs *(i)* and *(ii)* of paragraph *(a)* of Article 1 shall be replaced by the following text:

i) “A nuclear incident” means any occurrence or series of occurrences having the same origin which causes nuclear damage.

ii) “Nuclear installation” means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; installations for the disposal of nuclear substances; any such reactor, factory, facility or installation that is in the course of being decommissioned; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the Organisation (hereinafter referred to as the “Steering Committee”) shall from time to time determine; any Contracting Party may determine that two or more nuclear installations of one operator which are located on the same site shall, together with any other premises on that site where nuclear fuel or radioactive products or waste are held, be treated as a single nuclear installation.

B. Four new sub-paragraphs *(vii)*, *(viii)*, *(ix)* and *(x)*, shall be added to paragraph *(a)* of Article 1 as follows:

vii) “Nuclear damage” means,

1. loss of life or personal injury;
2. loss of or damage to property;

and each of the following to the extent determined by the law of the competent court,

3. economic loss arising from loss or damage referred to in sub-paragraph 1 or 2 above insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;

4. the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph 2 above;

5. loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph 2 above;

6. the costs of preventive measures, and further loss or damage caused by such measures,

in the case of sub-paragraphs 1 to 5 above, to the extent that the loss or damage arises out of or results from ionising radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear substances coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

viii) “Measures of reinstatement” means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The legislation of the State where the nuclear damage is suffered shall determine who is entitled to take such measures.

ix) “Preventive measures” means any reasonable measures taken by any person after a nuclear incident or an event creating a grave and imminent threat of nuclear damage has occurred, to prevent or minimise nuclear damage referred to in sub-paragraphs *(a)(vii) 1* to 5, subject to any approval of the competent authorities required by the law of the State where the measures were taken.

x) “Reasonable measures” means measures which are found under the law of the competent court to be appropriate and proportionate, having regard to all the circumstances, for example:

1. the nature and extent of the nuclear damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

2. the extent to which, at the time they are taken, such measures are likely to be effective; and

3. relevant scientific and technical expertise.

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

a) This Convention shall apply to nuclear damage suffered in the territory of, or in any maritime zones established in accordance with international law of, or, except in the territory of a non-Contracting State not mentioned under *(ii)* to *(iv)* of this paragraph, on board a ship or aircraft registered by,

i) a Contracting Party;

ii) a non-Contracting State which, at the time of the nuclear incident, is a Contracting Party to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for that Party, and to the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, provided however, that the Contracting Party to the Paris Convention in whose territory the installation of the operator liable is situated is a Contracting Party to that Joint Protocol;

iii) a non-Contracting State which, at the time of the nuclear incident, has no nuclear installation in its territory or in any maritime zones established by it in accordance with international law; or

iv) any other non-Contracting State which, at the time of the nuclear incident, has in force nuclear liability legislation which affords equivalent reciprocal benefits, and which is based on principles identical to those of this Convention, including, *inter alia*, liability without fault of the operator liable, exclusive liability of the operator or a provision to the same effect, exclusive jurisdiction of the competent court, equal treatment of all victims of a nuclear incident, recognition and enforcement of judgements, free transfer of compensation, interests and costs.

b) Nothing in this Article shall prevent a Contracting Party in whose territory the nuclear installation of the operator liable is situated from providing for a broader scope of application of this Convention under its legislation.

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

a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage other than:

i) damage to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

ii) damage to any property on that same site which is used or to be used in connection with any such installation,

upon proof that such damage was caused by a nuclear incident in such installation or involving nuclear substances coming from such installation, except as otherwise provided for in Article 4.

b) Where nuclear damage is caused jointly by a nuclear incident and by an incident other than a nuclear incident, that part of the damage which is caused by such other incident,

shall, to the extent that it is not reasonably separable from the nuclear damage caused by the nuclear incident, be considered to be nuclear damage caused by the nuclear incident. Where nuclear damage is caused jointly by a nuclear incident and by an emission of ionizing radiation not covered by this Convention, nothing in this Convention shall limit or otherwise affect the liability of any person in connection with that emission of ionizing radiation.

E. Paragraphs *(c)* and *(d)* of Article 4 shall be renumbered as paragraphs *(d)* and *(e)* respectively and a new paragraph *(c)* shall be added to read as follows:

c) The transfer of liability to the operator of another nuclear installation pursuant to paragraphs *(a)(i)* and *(ii)* and *(b)(i)* and *(ii)* of this Article may only take place if that operator has a direct economic interest in the nuclear substances that are in the course of carriage.

F. Paragraphs *(b)* and *(d)* of Article 5 shall be replaced by the following text:

b) Where, however, nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving only nuclear substances stored therein incidentally to their carriage, the operator of the nuclear installation shall not be liable where another operator or person is liable pursuant to Article 4.

d) If nuclear damage gives rise to liability of more than one operator in accordance with this Convention, the liability of these operators shall be joint and several, provided that where such liability arises as a result of nuclear 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 total amount for which such operators shall be liable shall be the highest amount established with respect to any of them pursuant to Article 7. 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 Article 7.

G. Paragraphs (c) and (e) of Article 6 shall be replaced by the following text:

c) i) Nothing in this Convention shall affect the liability:

1. of any individual for nuclear damage caused by a nuclear incident for which the operator, by virtue of Article 3(a) or Article 9, is not liable under this Convention and which results from an act or omission of that individual done with intent to cause damage;

2. of a person duly authorized to operate a reactor comprised in a means of transport for nuclear damage caused by a nuclear incident when an operator is not liable for such damage pursuant to Article 4(a)(iii) or (b)(iii).

ii) The operator shall incur no liability outside this Convention for nuclear damage caused by a nuclear incident.

e) If the operator proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the competent court may, if national law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person.

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

a) Each Contracting Party shall provide under its legislation that the liability of the operator in respect of nuclear damage caused by any one nuclear incident shall not be less than 700 million euros.

b) Notwithstanding paragraph (a) of this Article and Article 21(c), any Contracting Party may,

i) having regard to the nature of the nuclear installation involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower

amount of liability for that installation, provided that in no event shall any amount so established be less than 70 million euros; and

- ii)* having regard to the nature of the nuclear substances involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for the carriage of nuclear substances, provided that in no event shall any amount so established be less than 80 million euros.

c) Compensation for nuclear damage caused to the means of transport on which the nuclear substances involved were at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other nuclear damage to an amount less than either 80 million euros, or any higher amount established by the legislation of a Contracting Party.

d) The amount of liability of operators of nuclear installations in the territory of a Contracting Party established in accordance with paragraph *(a)* or *(b)* of this Article or with Article 21(*c*), as well as the provisions of any legislation of a Contracting Party pursuant to paragraph *(c)* of this Article shall apply to the liability of such operators wherever the nuclear incident occurs.

e) A Contracting Party may subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, if it considers that such amount does not adequately cover the risks of a nuclear incident in the course of the transit, provided that the maximum amount thus increased shall not exceed the maximum amount of liability of operators of nuclear installations situated in its territory.

f) The provisions of paragraph *(e)* of this Article shall not apply:

- i)* to carriage by sea where, under international law, there is a right of entry in cases of urgent distress into the ports of such Contracting Party or a right of innocent passage through its territory; or
- ii)* to carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of such Contracting Party.

g) In cases where the Convention is applicable to a non-Contracting State in accordance with Article 2(*a*)(*iv*), any Contracting Party may establish in respect of nuclear damage amounts of liability lower than the minimum amounts established under this Article or under Article 21(*c*) to the extent that such State does not afford reciprocal benefits of an equivalent amount.

h) Any interest and costs awarded by a court in actions for compensation under this Convention shall not be considered to be compensation for the purposes of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this Article.

i) The sums mentioned in this Article may be converted into national currency in round figures.

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

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

a) The right of compensation under this Convention shall be subject to prescription or extinction if an action is not brought,

i) with respect to loss of life and personal injury, within thirty years from the date of the nuclear incident;

ii) with respect to other nuclear damage, within ten years from the date of the nuclear incident.

b) National legislation may, however, establish a period longer than that set out in sub-paragraph *(i)* or *(ii)* of paragraph *(a)* of this Article, if measures have been taken by the Contracting Party within whose territory the nuclear installation of the operator liable is situated to cover the liability of that operator in respect of any actions for compensation begun after the expiry of the period set out in sub-paragraph *(i)* or *(ii)* of paragraph *(a)* of this Article and during such longer period.

c) If, however, a longer period is established in accordance with paragraph *(b)* of this Article, an action for compensation brought within such period shall in no case affect the right of compensation under this Convention of any person who has brought an action against the operator,

i) within a thirty year period in respect of personal injury or loss of life;

ii) within a ten year period in respect of all other nuclear damage.

d) National legislation may establish a period of not less than three years for the prescription or extinction of rights of compensation under the Convention, determined from the date at which the person suffering nuclear damage had knowledge, or from the date at which that person ought reasonably to have known of both the nuclear damage and the operator liable, provided that the periods established pursuant to paragraphs *(a)* and *(b)* of this Article shall not be exceeded.

e) Where the provisions of Article 13(*f*)(*ii*) are applicable, the right of compensation shall not, however, be subject to prescription or extinction if, within the time provided for in paragraphs *(a)*, *(b)* and *(d)* of this Article,

i) prior to the determination by the Tribunal referred to in Article 17, an action has been brought before any of the courts from which the Tribunal can choose; if the Tribunal determines that the competent court is a court other than that before which such action has already been brought, it may fix a date by which such action has to be brought before the competent court so determined; or

ii) a request has been made to a Contracting Party concerned to initiate a determination by the Tribunal of the competent court pursuant to Article 13(*f*)(*ii*) and an action is brought subsequent to such determination within such time as may be fixed by the Tribunal.

f) Unless national law provides to the contrary, any person suffering nuclear damage caused by a nuclear incident who has brought an action for compensation within the period provided for in this Article may amend his claim in respect of any aggravation of the nuclear damage after the expiry of such period, provided that final judgement has not been entered by the competent court.

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

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

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

a) To cover the liability under this Convention, the operator shall be required to have and maintain insurance or other financial security of the amount established pursuant to Article 7(*a*) or 7(*b*) or Article 21(*c*) and of such type and terms as the competent public authority shall specify.

b) Where the liability of the operator is not limited in amount, the Contracting Party within whose territory the nuclear installation of the liable operator is situated shall establish a limit upon the financial security of the operator liable, provided that any limit so established shall not be less than the amount referred to in Article 7(*a*) or 7(*b*).

c) The Contracting Party within whose territory the nuclear installation of the liable operator is situated shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the insurance or other financial security is not available or sufficient to satisfy such claims, up to an amount not less than the amount referred to in Article 7(*a*) or Article 21(*c*).

d) No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph (*a*) or (*b*) of this Article without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial security relates to the carriage of nuclear substances, during the period of the carriage in question.

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

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

Compensation payable under this Convention, insurance and reinsurance premiums, sums provided as insurance, reinsurance, or other financial security required pursuant to Article 10, and interest and costs referred to in Article 7(*h*), shall be freely transferable between the monetary areas of the Contracting Parties.

M. Article 13 shall be replaced by the following text

a) Except as otherwise provided in this Article, jurisdiction over actions under Articles 3, 4 and 6(*a*) shall lie only with the courts of the Contracting Party in whose territory the nuclear incident occurred.

b) Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party, provided that the Contracting Party concerned has notified the Secretary-General of the Organisation of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction or the delimitation of a maritime zone in a manner which is contrary to the international law of the sea.

c) Where a nuclear incident occurs outside the territory of the Contracting Parties, or where it occurs within an area in respect of which no notification has been given pursuant to paragraph (*b*) of this Article, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Contracting Party in whose territory the nuclear installation of the operator liable is situated.

d) Where a nuclear incident occurs in an area in respect of which the circumstances of Article 17(*d*) apply, jurisdiction shall lie with the courts determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article 17 as being the courts of that Contracting Party which is most closely related to and affected by the consequences of the incident.

e) The exercise of jurisdiction under this Article as well as the notification of an area made pursuant to paragraph (*b*) of this Article shall not create any right or obligation or set a

precedent with respect to the delimitation of maritime areas between States with opposite or adjacent coasts.

f) Where jurisdiction would lie with the courts of more than one Contracting Party by virtue of paragraph *(a)*, *(b)* or *(c)* of this Article, jurisdiction shall lie,

- i)* if the nuclear incident occurred partly outside the territory of any Contracting Party and partly in the territory of a single Contracting Party, with the courts of that Contracting Party; and
- ii)* in any other case, with the courts determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article 17 as being the courts of that Contracting Party which is most closely related to and affected by the consequences of the incident.

g) The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage:

- i)* any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and
- ii)* any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

h) The Contracting Party whose courts have jurisdiction under this Convention shall ensure that only one of its courts shall be competent to rule on compensation for nuclear damage arising from any one nuclear incident, the criteria for such selection being determined by the national legislation of such Contracting Party.

i) Judgements entered by the competent court under this Article after trial, or by default, shall, when they have become enforceable under the law applied by that court, become enforceable in the territory of any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgements.

j) If an action is brought against a Contracting Party under this Convention, such Contracting Party may not, except in respect of measures of execution, invoke any jurisdictional immunities before the court competent in accordance with this Article.

N. Paragraph (b) of Article 14 shall be replaced by the following text:

b) “National law” and “national legislation” mean the law or the national legislation of the court having jurisdiction under this Convention over claims arising out of a nuclear incident, excluding the rules on conflict of laws relating to such claims. That law or legislation shall apply to all matters both substantive and procedural not specifically governed by this Convention.

O. Paragraph (b) of Article 15 shall be replaced by the following text:

b) In so far as compensation for nuclear damage is in excess of the 700 million euros referred to in Article 7(a), any such measure in whatever form may be applied under conditions which may derogate from the provisions of this Convention.

P. A new Article 16*bis* shall be added after Article 16 as follows:

Article 16bis

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

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

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 20 December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.

d) Disputes concerning the delimitation of maritime boundaries are outside the scope of this Convention.

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

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, or accession to, this Convention or prior to the time of notification under Article 23 in respect of any territory or territories mentioned in the notification, and shall be admissible only if the terms of these reservations have been expressly accepted by the Signatories.

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 Secretary-General of the Organisation in accordance with Article 24.

c) Any reservation admitted in accordance with this Article may be withdrawn at any time by notification addressed to the Secretary-General of the Organisation.

S. Article 19 shall be replaced by the following text:

a) This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Organisation.

b) This Convention shall come into force upon the deposit of instruments of ratification, acceptance or approval by not less than five of the Signatories. For each Signatory ratifying, accepting or approving thereafter, this Convention shall come into force upon the deposit of its instrument of ratification, acceptance or approval.

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

Amendments to this Convention shall be adopted by mutual agreement of all the Contracting Parties. They shall come into force when ratified, accepted or approved by two-thirds of the Contracting Parties. For each Contracting Party ratifying, accepting or approving thereafter, they shall come into force at the date of such ratification, acceptance or approval.

U. A new paragraph (*c*) shall be added to Article 21 to read as follows:

c) Notwithstanding Article 7(*a*), where a Government which is not a Signatory to this Convention accedes to this Convention after 1 January 1999, it may provide under its legislation that the liability of the operator in respect of nuclear damage caused by any one nuclear incident may be limited, for a maximum period of five years from the date of the adoption of the Protocol of ...(date) to amend this Convention, to a transitional amount of not less 350 million euros in respect of a nuclear incident occurring within that period.

V. Paragraph (*c*) of Article 22 shall be renumbered as paragraph (*d*) and a new paragraph (*c*) shall be added to read as follows:

c) The Contracting Parties shall consult each other at the expiry of each five year period following the date upon which this Convention comes into force, upon all problems of common interest raised by the application of this Convention, and in particular, to consider whether increases in the liability and financial security amounts under this Convention are desirable.

W. Paragraph (b) of Article 23 shall be replaced by the following text:

b) Any Signatory or Contracting Party may, at the time of signature, ratification, acceptance or approval of, or accession to, this Convention or at any later time, notify the Secretary-General of the Organisation that this Convention shall apply to those of its territories, including the territories for whose international relations it is responsible, to which this Convention is not applicable in accordance with paragraph (a) of this Article and which are mentioned in the notification. Any such notification may, in respect of any territory or territories mentioned therein, be withdrawn by giving twelve months' notice to that effect to the Secretary-General of the Organisation.

X. Article 24 shall be replaced with the following text:

The Secretary-General of the Organisation shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval, accession or withdrawal, of any notification under Articles 13(b) and 23, of decisions of the Steering Committee under Article 1(a)(ii), 1(a)(iii) and 1(b), of the date on which this Convention comes into force, of the text of any amendment thereto and the date on which such amendment comes into force, and of any reservation made in accordance with Article 18.

Y. The term “damage” appearing in the following articles shall be replaced by the term “nuclear damage”:

Article 4 (a) and (b)

Article 5 (a) and (c)

Article 6 (a), (b), (d), (f) and (h)

Z. In the first sentence of Article 4 of the French text the word “stockage” shall be replaced by the word “entreposage”, and in this same Article the word “transportées” is replaced by the words “en cours de transport”. In paragraph (h) of Article 6 of the English text, the word “workmen’s” shall be replaced by the word “workers”.

AA. Annex II of the Convention shall be deleted.

II

- a)* The provisions of this Protocol shall, as between the Parties thereto, form an integral part of the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, 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 on Third Party Liability in the Field of Nuclear Energy 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.....”.
- b)* This Protocol shall be subject to ratification, acceptance or approval. An instrument of ratification, acceptance or approval shall be deposited with the Secretary-General of the Organisation for Economic Co-operation and Development.
- 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 21 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 20 of the Convention.
- f)* The Secretary-General of the Organisation for Economic Co-operation and Development shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval or accession to this Protocol.