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**REVISED NUCLEAR THIRD PARTY LIABILITY CONVENTIONS  
IMPROVE VICTIMS' RIGHTS TO COMPENSATION**

The signing of the Protocols to amend the Paris Convention on Third Party Liability in the Field of Nuclear Energy and the Brussels Convention Supplementary to the Paris Convention will take place on 12 February, at OECD headquarters.

The revised Conventions will allow for a considerable increase in the amount of compensation available to victims of a nuclear accident and for the expansion of the scope of application of the Paris Convention.

**The most important features of the revised Paris Convention** include an increase in the nuclear operator's liability amount to a new *minimum* of €700 million. In addition, the minimum liability amount applicable to low-risk installations and transport activities will climb to €70 million and €80 million respectively.

The Convention will contain a detailed definition of "nuclear damage", allowing for a broader range of damage to be compensated than the existing personal injury and damage to property. The definition refers specifically to economic loss, the cost of measures to reinstate a significantly impaired environment, loss of income resulting from that impaired environment and the cost of preventive measures, all of which are likely to be considerable in the event of a serious nuclear accident. In addition, the geographical scope of the Paris Convention is being extensively expanded.

**The most important feature of the revised Brussels Supplementary Convention** is a substantial increase in the three tiers of compensation under the Convention. The first tier, corresponding to the minimum liability requirement under the Paris Convention, will jump to €700 million and continue to be provided by the operator's financial security, failing which it must be provided by the installation State from public funds. The second tier will climb to a new high of €500 million and continue to be provided from public funds made available by the installation State. The third tier (international) will rise to €300 million and continue to come from public funds provided by all Contracting Parties. Total compensation available under the revised Paris-Brussels regime will be €1.5 billion, compared to the current amount of €300 million IMF Special Drawing Rights (approximately €350 million euro).

Before the revised Conventions will come into force, they will need to be ratified by their respective Contracting Parties.

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## REVISION OF THE PARIS CONVENTION ON NUCLEAR THIRD PARTY LIABILITY AND OF THE BRUSSELS SUPPLEMENTARY CONVENTION

### BACKGROUND INFORMATION NOTE

From the very outset of the development of the nuclear industry, most States recognised that the consequences of an accident occurring at a nuclear installation or during the transport of nuclear substances would not stop at political or geographical borders, that victims should be compensated equitably and that such compensation could only be assured through the establishment of an international nuclear liability regime.

That regime was founded in 1960 by those Western European member countries of the OECD which adopted the Convention on Third Party Liability in the Field of Nuclear Energy, known as the "Paris Convention". Its purpose, both then and now, is to ensure that where a nuclear accident occurs in one country, adequate compensation will be available to victims in the accident State as well as in neighbouring countries and it does so by harmonising the national laws of its Contracting Parties, establishing rules for instituting cross-border legal actions and determining which State's courts will have jurisdiction to hear claims and which State's laws will apply.

The Paris Convention entered into force on 1 April 1968. It has 15 Contracting Parties<sup>1</sup> and is based upon five main principles with respect to liability for damage suffered by third parties:

- exclusive liability of the nuclear installation operator;
- absolute liability (no proof of fault or negligence required) of the nuclear installation operator;
- the nuclear installation operator's obligation to secure an insurance or other financial guarantee up to its liability amount;
- limitation on the amount of liability and the time for instituting damage claims;
- jurisdiction over claims generally to reside with the courts where the accident occurs.

A few years later, in 1963, many of the Paris Convention States adopted the "Brussels Supplementary Convention"<sup>2</sup>, an international instrument which operates hand-in-hand with the Paris Convention by making public funds available to compensate nuclear accident victims where the amounts called for under the latter are insufficient. The Brussels Supplementary Convention entered into force on 4 December 1974 and now has 12 Contracting Parties<sup>3</sup>.

In early 1998, the Contracting Parties to these two Conventions concluded that while the "Paris/Brussels" regime was viable and sound, it was in need of improvement<sup>4</sup>. The resulting amending Protocols ensure that in the unlikely event of a nuclear accident, much greater financial compensation will be available to compensate a much larger number of victims for a much broader range of damage suffered. Other modifications will ensure that the Paris/Brussels regime remains compatible with the 1963 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Protocol to Amend the Vienna Convention<sup>5</sup>, and that Paris Convention States will encounter no barriers to joining the 1997 Convention on Supplementary Compensation for Nuclear Damage.

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<sup>1</sup> Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Turkey, the United Kingdom.

<sup>2</sup> The full title of the Convention is the "Convention of 31<sup>st</sup> January 1963 Supplementary to the Paris Convention of 29<sup>th</sup> July 1960 on Third Party Liability in the Field of Nuclear Energy".

<sup>3</sup> Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Slovenia, Spain, Sweden and the United Kingdom.

<sup>4</sup> In fact, both Conventions were previously revised in 1964 and 1982.

<sup>5</sup> This is particularly important for those Paris Convention States which are party to the 1988 Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention, an international instrument which generally extends to Paris or Vienna Convention States adhering to it the coverage provided under the Convention to which it is not already a Contracting Party.

The most significant improvement to the Paris Convention is the increase in amounts for which an operator will be liable together with a corresponding change to the Convention's unit of account. While the existing Convention specifies that an operator's liability shall be limited to a *maximum* of 15 million Special Drawing Rights (SDRs)<sup>6</sup>, the revised Convention will provide for a *minimum* operator liability amount of 700 million euro. In addition, the existing minimum liability amount of 5 million SDRs applicable to incidents arising from both low-risk installations and the transport of nuclear substances will be raised to 70 million euro and 80 million euro respectively. The unit of account will change to the euro to avoid fluctuations in the value of the SDR which could seriously affect the level of corresponding national currencies for most Contracting Parties.

Another principal amendment to the Paris Convention is the introduction of a detailed definition of what is comprised in the notion of "nuclear damage". Following the Chernobyl accident in 1986, it became clear that economic losses, the cost of preventive measures, the cost of measures to reinstate an impaired environment and certain other losses resulting from such an impaired environment were likely to constitute major portions of the damage resulting from a nuclear incident. Recognising the significance of these categories of damage, the Contracting Parties have agreed to add them to the Convention's already existing general categories of personal injury and damage to property.

Equally important is the expansion of the geographical scope of coverage of the Convention, allowing for victims in more countries to be compensated than ever before. Currently, a nuclear incident must occur in the territory of a Contracting Party and damage must be suffered there before the Convention will apply. The revised Convention, however, will apply to nuclear damage suffered in any territory or maritime zone<sup>7</sup> of a Contracting Party or of a non-Contracting State as long as the latter is a party to the Vienna Convention and the Joint Protocol, or it has no nuclear installations in its territory or maritime zones, or it has adopted legislation that affords equivalent reciprocal benefits and is based upon the principles of the Paris Convention.

The most noteworthy enhancement to the Brussels Supplementary Convention is the increase in the three tiers of compensation payable under that Convention, as noted below:

- the 1<sup>st</sup> tier, corresponding to the operator's liability amount under the Paris Convention, will rise from its current minimum of 5 million SDRs to a revised minimum of 700 million euro,<sup>8</sup>
- the 2<sup>nd</sup> tier, to be paid by the State in which the liable operator's installation is located, will increase from a maximum of 175 million SDRs to a maximum of 500 million euro;
- the 3<sup>rd</sup> tier, to be provided by contributions from all of the Contracting Parties, will increase from a maximum of 125 million SDRs to a maximum of 300 million euro.

The revised Paris/Brussels regime will thus provide for up to 1.5 billion euro of compensation.

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<sup>6</sup> Special Drawing Right is a unit of account defined by the International Monetary Fund, calculated on the basis of a basket of currencies of several of the most important trading nations. Based upon the IMF exchange rate on 28 January 2004 of 1 SDR = €1.188, this amount is equivalent to €17.82 million. In 1990 the NEA Steering Committee for Nuclear Energy recommended that Contracting Parties increase this amount to at least 150 million SDRs.

<sup>7</sup> Including on board a ship or aircraft registered by that Contracting Party.

<sup>8</sup> The fact that the Paris Convention, as revised, now sets a minimum amount of liability instead of a maximum means that the Contracting Parties will be free to establish, in their domestic legislation, an amount higher than €700 million or, as the case may be, to remove any limitation of liability from the nuclear operator.