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**NUCLEAR ENERGY AGENCY
NUCLEAR LAW COMMITTEE**

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Third International Workshop on the Indemnification of Damage in the Event of a Nuclear Accident

Questionnaire

Bratislava, 18-20 October 2017

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Third International Workshop on the Indemnification of Damage in the Event of a Nuclear Accident

– Bratislava, 18-20 October 2017 –

Questionnaire

[Please specify name of the country]

Purpose of the questionnaire

The Secretariat has developed this questionnaire to prepare the discussion sessions that will take place during the workshop and to gather information for the preparation of the presentations and final report on the implementation of the international nuclear liability instruments and the national legislations from convention and non-convention States.¹

The international nuclear liability instruments that will be assessed are the following:

- i) the Paris Convention on Third Party Liability in the Field of Nuclear Energy (the “Paris Convention” or “PC”) and the Brussels Supplementary Convention (the “Brussels Supplementary Convention” or “BSC”), both as amended by the 2004 Protocols (respectively the “Revised Paris Convention” and the “Revised Brussels Supplementary Convention”, or “RPC” and “RBSC”);²
- ii) the Vienna Convention on Civil Liability for Nuclear Damage (the “Vienna Convention” or “VC”);
- iii) the 1997 Protocol to amend the Vienna Convention (the “Revised Vienna Convention” or “RVC”);

1. “*Convention States*” means States that are parties to one or several nuclear liability conventions; and “*non-convention States*” means States that are not parties to any of the nuclear liability conventions.

2. The Contracting Parties to the Paris Convention who have adopted the relevant law(s) to implement the Paris Convention, and as applicable the Brussels Supplementary Convention, as amended by the 2004 Protocol(s) are invited to fill in the questionnaire taking into account the provisions provided in the implementing law(s). Please do not provide information based on draft laws, but only on adopted ones.

- iv) the Joint Protocol relating to the application of the Vienna Convention and the Paris Convention (the “Joint Protocol” or “JP”); and
- v) the Convention on Supplementary Compensation for Nuclear Damage (the “CSC”).

While the competent courts will have the final say on the matters mentioned below, the purpose of this questionnaire is to identify the laws and regulations applicable in each country in case a nuclear accident occurs at a nuclear power plant and to have an overview of how the legal systems are designed and would operate, especially when there are no treaty relations between the State in which territory the nuclear accident occurred (the “Installation State”) and the State in which territory nuclear damage is suffered (the “Affected State”).³ The workshop will not address matters relating to transport of nuclear substances (or nuclear material).

The accident scenario

You are kindly invited to fill in this questionnaire keeping in mind the following scenario:

OPTION 1 / Your country has at least one nuclear power plant

A nuclear accident has occurred at a land-based nuclear power plant located in your country’s territory that was caused by a grave natural disaster of an exceptional character (such as a large earthquake or flood). Your country is the Installation State.

This nuclear accident caused nuclear damage within your national territory and in the territory of Affected States, such as loss of life and personal injury, loss of and damage to property, and damage to the environment. No damage was suffered in the airspace or maritime / high sea areas.

Your country has treaty relations only with some of the Affected States.

OPTION 2 / Your country has no nuclear power plants

Your country is one of the Affected States of the accident described above.

Please confirm which option your country corresponds to *[Please tick the appropriate box]*

- Option 1: your country is the Installation State
- Option 2: your country is one of the Affected States

³ To “have treaty relations” means that your country (i) is a party to the same nuclear liability convention(s) as the Affected State; or (ii) is a party to the Joint Protocol and so is the Affected State.

1. National legal regime – General information

a. Has your country adopted a nuclear liability law? *[Please tick the appropriate box]*

Yes

No

[Please provide reference to the law that would apply to compensate victims of a nuclear accident and send a copy (if possible in English) to the Secretariat for information, and potentially translation and publication in the Nuclear Law Bulletin]

[If your country has not adopted a nuclear liability law, please continue filling the questionnaire adapting your responses as necessary; e.g. considering “nuclear damage” as “damage”]

b. Has your country ratified an international nuclear liability instrument? *[Please tick the appropriate box(es)]*

PC/RPC

BSC/RBSC

VC

RVC

CSC

JP

c. Under your legal system, is your country required to have an implementation law or is an international instrument directly applicable? *[Please tick the appropriate box]*

An implementing law is required

The international instrument is directly applicable

d. Does your country have bilateral agreements with other States that include provisions on nuclear liability that would apply in case a nuclear accident causes transboundary nuclear damage? *[Please tick the appropriate box]*

Yes

No

[If yes, please provide reference to the relevant instrument and, if possible, a copy to the Secretariat for information)]

2. Notification of an accident

a. **Is your country party to the 1986 Convention on Early Notification of a Nuclear Accident?** *[Please tick the appropriate box]*

Yes

No

b. **Does your country have bilateral agreements in the area of notification that would apply in case a nuclear accident has transboundary effects?** *[Please tick the appropriate box]*

Yes

No

[If yes, please provide reference to the relevant instrument and, if possible, a copy to the Secretariat for information]

c. **Does your country have a notification system and/or an emergency preparedness and response scheme that would apply in the case of a nuclear accident with potential transboundary effects (whether your country is the Installation State or an Affected State)? What are the main principles/rules of such system/scheme?** *[Please tick the appropriate box]*

Yes

No

[If yes, please provide reference to the relevant law(s)/ regulation(s) and give a brief description]

d. **In accordance with your national law, what is the applicable procedure (if any) and what means would be used for disseminating information in the case of a nuclear accident (whether your country is the Installation State or an Affected State)? Who will be responsible for such dissemination?** *[Please specify as relevant]*

3. Evacuation process

Who is responsible in your country for making decisions with respect to evacuation measures and imposing restrictions (on harvesting, production and consumption of food products, etc.) following a nuclear accident (whether your country is the Installation State or an Affected State)? *[Please specify and provide the relevant legal/regulatory basis]*

4. Determining the damage to be compensated

a. Does your national legislation provide for a definition of “nuclear damage”? *[Please tick the appropriate box]*

Yes

No

If yes, does it reflect the one provided in any of the following international nuclear liability conventions? *[Please tick the appropriate box]*

RPC

VC

RVC

CSC

No

[If no, please provide the definition that would apply in your national legislation]

b. Does your national legal system provide for definition(s) of heads of damage that would entitle victims to receive compensation that are more detailed than those provided under the international nuclear liability convention(s)? *[Please tick the appropriate box]*

Yes

No

[If yes, please list the heads of damage and provide reference to the relevant law/regulation that defines them]

c. Does your national legal system designate an authority/commission to provide for a mechanism to further specify which damage shall be compensated?⁴ *[Please tick the appropriate box]*

Yes

No

[If yes, what are the main principles / rules of such mechanism? Please provide a brief description of the mechanism]

4 For example, the Japanese Compensation Act provides that a Dispute Reconciliation Committee for Nuclear Damage Compensation may be established to, among other functions, draft guidelines establishing the scale of the nuclear damage to be compensated in case of a nuclear accident, as well as other general instructions to help operators reach a voluntary settlement.

d. In accordance with your national legislation, for which of the following types of damage would victims of a nuclear accident be compensated? *[Please tick the appropriate box]*

direct damage indirect damage both

If “indirect damage” is compensated under your national legislation, is there a legal or judicial definition of that term? *[Please specify]*

e. Is there a system to assess the extent of compensation to be paid in order to determine whether the nuclear damage caused by a nuclear accident on your country’s territory appears to exceed or is likely to exceed a certain threshold, or to provide the operator, the insurer(s), the competent court and/or the Installation State to have a rough estimate of compensation to be paid?⁵ *[Please tick the appropriate box]*

Yes No

[If yes, please provide a brief description]

f. Which authority is entitled to take measures of reinstatement (i.e. measures to reinstate or restore damaged or destroyed components of the environment) and/or is competent to approve them?

[If more than one authority, please specify how they are expected to co-ordinate]

5 This system should allow the States parties to the BSC or the CSC to inform the other Contracting Parties if it appears that the nuclear damage caused exceeds or is likely to exceed, the threshold that would trigger the international tier; and may help States with priority rules and a limited nuclear liability amount to manage payments.

5. Proving the causal link

- a. In accordance with your national law, who may claim compensation for nuclear damage suffered:

[Please specify hereunder]

- (i) within your territory?

[Installation States and Affected States, please consider natural or legal persons]

- (ii) outside your territory?

[Installation States, please consider natural or legal persons from Affected States with which your country has no treaty relations]

- b. Does your national legislation provide a mechanism(s) to determine the causal link to nuclear damage so that victims avoid bearing the burden of proof before the courts (especially with regard to latent damage, such as personal injury that would appear between 10 to 30 years after the date of the nuclear accident)? *[Please tick the appropriate box]*

Yes

No

[If yes, what are the main principles/ rules of such mechanism? Please specify hereunder]

6. Identifying the liable entity

a. Under your national law, who is or may be primarily liable for the nuclear damage caused by the nuclear accident, if

(i) your country is the Installation State?

(ii) your country is an Affected State?

[Please specify here above]

[Please take into consideration whether your country has, or does not have, treaty relations with the Affected State or the Installations State (as appropriate) if it raises a difference in treatment]

b. Under your national law, is it possible that in the case of a nuclear accident occurring at a nuclear power plant:

(i) more than one operator may be held liable for nuclear damage? *[Please tick the appropriate box]*

Yes

No

(ii) another natural or legal person may be held liable in addition to or instead of a nuclear operator (e.g. a parent company or an entity jointly holding the operating licence of the nuclear power plant where the nuclear accident occurred)? *[Please tick the appropriate box]*

Yes

No

[Please specify further if you have ticked any of the "Yes" boxes above]

c. Under your national law, may the liable operator be:*[Please tick the appropriate box(es)]***(i) exempt from paying compensation (or part of it) with respect to:**

- nuclear damage suffered by a person whose own gross negligence wholly or partly caused the nuclear damage;
- nuclear damage suffered by a person who acted or omitted to act with the intent to cause damage;
- any other scenarios? *[If yes, please specify]*

(ii) exonerated from liability in case of:

- armed conflict;
- hostilities;
- civil war;
- insurrection;
- grave natural disaster of an exceptional character;
- any other scenarios? *[If yes, please specify]*

In cases (i) and (ii) above, who will be compensating the victims? *[Please specify]***d. Under your national law, is the liable operator entitled to have a right of recourse:***[Please tick the appropriate box]*

- against the individual (natural person) who acted or omitted to act with the intent to cause damage;
- if expressly provided by contract;
- any other scenario? *[If yes, please specify]*

7. Financial securities

a. Under your national legislation, what are the option(s) available for the operator to cover its nuclear liability?

[Please tick the appropriate box(es)]

- insurance;
- mutuals;
- State insurance;
- State re-insurance;
- State guarantee;
- self-insurance;
- corporate guarantee;
- captive insurance (i.e. insurance company owned by the operator's company or company group);
- private bank alternatives (bonds, letter of credit, etc.);
- other type of financial security *[Please specify hereunder such other types]*

If the operator is State owned, is it still legally compelled to have insurance or other financial security to cover its nuclear liability? *[Please tick the appropriate box]*

Yes

No

[If yes, please specify under which conditions]

b. Does your country have a national nuclear insurance pool? *[Please tick the appropriate box]*

Yes

No

[If yes, please provide reference]

c. Does your country have a national nuclear operators' pooling arrangement? *[Please tick the appropriate box]*

Yes

No

[If yes, please provide an overview of the arrangement (e.g. whether it is compulsory for all nuclear operators,

how the contributions to the pool are calculated, etc.)]

8. Claims handling

a. Does your country have a claims handling procedure set up? *[Please tick the appropriate box]*

Yes

No

[If yes, please provide reference to the relevant legislation and a brief description of the procedure]

b. In accordance with your national legislation, who is (are) responsible for handling compensation claims for nuclear damage:

[Please tick the appropriate box(es)]

- insurers / insurance pool;
- public authorities;
- operator;
- other entities *[Please specify]*

c. In case different entities are providing financial security(ies) to the liable operator, are there any principles/rules to co-ordinate between these different financial security providers? *[Please tick the appropriate box]*

Yes

No

[If yes, what are the main principles/ rules applicable?]

d. Under your national law, against whom can the victims directly claim compensation? *[Please tick the appropriate box(es)]*

- the operator;
- the insurer;
- any financial security provider;
- other options? *[Please specify]*

e. **What is the applicable time limitation for bringing compensation claims?** *[Please specify]*

f. **Under your national law, is there a possibility of grouping compensation claims (“class actions”)?** *[Please tick the appropriate box(es)]*

Yes No

[If yes, what are the main principles/ rules of such a mechanism?]

May your State (whether the Installation State or an Affected State) organise a class action?⁶

Yes No

[If yes, what are the main principles/ rules of such a mechanism?]

g. **Is there any specific process already set up in your country to handle transboundary claims?** *[Please tick the appropriate box]*

Yes No

[If yes, what are the main principles/ rules of such a mechanism?]

h. **Does your country have a bilateral (or multilateral) agreement with neighbouring countries that addresses transboundary claims handling issues?** *[Please tick the appropriate box]*

Yes No

[If yes, please provide reference to the relevant instrument]

⁶ For example, see Article 13(g) of the RPC, which provides that “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; [...]”.

9. Resolving disputes

- a. Does your national law provide for an alternative dispute resolution (ADR) mechanism(s) in case the operator and victims disagree on the extent of the compensation to be paid for nuclear damage, as a first step before going to court?

[Please tick the appropriate box]

Yes

No

[If yes, please provide reference to the relevant law/regulation and describe the type of ADR that is available]

- b. If your country is an Installation State, which court will have jurisdiction under your national law to rule on compensation for nuclear damage? *[Please consider, among others, the situation where your country has no treaty relations with some Affected States]*

- c. If you are an Affected State and do not have treaty relations with the Installation State, will your courts have jurisdiction under your national law to rule on compensation for nuclear damage? *[Please tick the appropriate box]*

Yes

No

[If yes, please specify]

- d. If you are an Installation State and do not have treaty relations with an Affected State, will decisions by the Affected State's competent courts (according to their respective national law) be enforceable in your country under your national law?

[Please tick the appropriate box]

Yes

No

[In either case, please specify]

10. Amounts available

a. Under your national law, what is the operator's nuclear liability amount?

[Please specify]

b. How does your national law address the situation where the amount of compensation for nuclear damage exceeds the amount of the operator's nuclear liability or the amount provided by the international funds established by the RBSC or the CSC?

[Please specify as relevant]

c. Is there any reciprocity principle provided for in your national legislation? *[Please tick the appropriate box]*

Yes

No

[If yes, please explain how such reciprocity principle would apply when compensating foreign victims]

d. Does your national law provide for priority rules for compensation of nuclear damage?⁷ *[Please tick the appropriate box]*

Yes

No

[If yes, what are the main principles/rules of such mechanism? For instance, does your national legislation provide for funds to be set aside to compensate damage that manifests itself in the medium and long term? If not, will the State provide funds to compensate these heads of damage?]

⁷ Please note that Article VIII of the consolidated version of the RVC provides that “where in respect of claims brought against the operator the damage to be compensated under [the RVC] exceeds, or is likely to exceed, [the operator's nuclear liability amount], priority in the distribution of the compensation shall be given to claims in respect of loss of life or personal injury”.

e. Does your legislation or regulation provide for emergency assistance payments to be paid, or establish a mechanism to determine such payments? *[Please tick the appropriate box]*

Yes

No

[If yes, what are the main principles? Which are the entities that will pay the emergency assistance payments (e.g. the liable operator, insurers, the State, etc.) and who will receive such payments (e.g. the victims directly, the operator, the insurers, etc. ? In the absence of legislation or regulation providing for such payments, would such payments take place anyway based on common practice)?]