

Belgium

Federal Public Service for the Economy, SMEs, Middle Classes and Energy

[C – 2014/11384]

29 June 2014 — Act amending the Act of 22 July 1985 on Third-Party Liability in the Field of Nuclear Energy (1)

PHILIPPE, King of the Belgians,

To all those present and to come, Greetings.

The Chambers have adopted and We sanction the following:

CHAPTER I. — *Introductory provision*

Article 1. The present Act governs a matter referred to in Article 78 of the Constitution.

CHAPTER II. — *Provisions amending the Act of 22 July 1985 on Third-Party Liability in the Field of Nuclear Energy*

Article 2. For Article 1 of the Act of 22 July 1985 on Third-Party Liability in the Field of Nuclear Energy there shall be substituted the following text:

“Article 1: The following definitions shall apply under the present Act:

- (1) The “Paris Convention”: 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 12 February 2004;
- (2) The “Supplementary Convention”: The Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960, as Amended by the Additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004;
- (3) The “Minister”: The Minister in charge of nuclear insurance;
- (4) The terms “nuclear incident”, “nuclear installation”, “nuclear fuel”, “radioactive products or waste”, “nuclear damage”, “measures of reinstatement”, “preventive measures” and “reasonable measures”: The notions defined in Article 1 of the Paris Convention.”

Article 3. For Article 2 of the same Act there shall be substituted the following text:

“Article 2. The provisions of Title 1 apply to nuclear damage resulting from a nuclear incident for which the operator of the nuclear installation located on Belgium’s territory is liable, provided that the nuclear damage is suffered in the territory of, or in any maritime zones established in accordance with international maritime law of, or, except in the territory of a Non-Contracting State not mentioned under paragraphs 2 and 3 below, on board a ship or aircraft registered by:

- (1) A Contracting Party to the Paris Convention;
- (2) A Non-Contracting State which, at the time of the nuclear incident, has no nuclear installations in its territory or in any maritime zones established by it in accordance with international law;

(3) Any other Non-Contracting State which, at the time of the nuclear incident, has in force nuclear liability legislation which affords equivalent reciprocal benefits, as defined in Article 2(a)(iv) of the Paris Convention.

The King may, by Decree deliberated in the Council of Ministers, extend the scope of application of Title 1 of the present Act to nuclear damage resulting from a nuclear incident for which the operator of a nuclear installation located on Belgium's territory is liable and which is sustained by a national of a Contracting State in the territory of States not mentioned in subsections (1) to (3) of paragraph 1 above.

Under the present Article, Belgium's territorial waters and exclusive economic zone in the North Sea are considered as integral parts of Belgium's territory."

Article 4. In Article 5 paragraphs 1, 2 and 3 of the same Act, for every instance of the phrase "damage caused" there shall be substituted "nuclear damage caused".

Article 5. Article 6 of the same Act shall be amended as follows:

(1) For paragraph 2 there shall be substituted the following text:

"(2) is liable for nuclear damage caused to the means of transport on which the substances were stored at the time of the nuclear incident, if it is liable for nuclear damage caused during their carriage in the cases provided for under Article 4 of the Paris Convention.

The compensation for such nuclear damage shall not reduce the operator's liability for other nuclear damage to an amount lower than that established in Article 7, paragraph 1, of the present Act."

(2) A paragraph 3 shall be inserted in Article 6 as follows:

"(3) is liable for damage caused by a non-nuclear incident, if such damage is caused jointly by a nuclear incident, to the extent that it is not reasonably separable from damage caused by the nuclear incident."

Article 6. In Article 7, paragraph 1 of the same Act, as amended by the Act of 11 July 2000 and by the Act of 13 November 2011, for every instance of the phrase "damage caused" there shall be substituted "nuclear damage caused".

Article 7. For Article 8 of the same Act there shall be substituted the following text:

"Article 8. The operator of a nuclear installation shall, in accordance with Article 10(a) and (d) of the Paris Convention, have and maintain insurance or other financial security deemed appropriate by the Minister, of the amount established in or by virtue of Article 7 of the present Act.

The Minister shall ensure that the amount is sufficient to meet the requirements of the present Act and that the provider of the security is solvent, unless said provider is a company that is subject to the prudential supervision of the National Bank.

The operator shall renew its insurance or other financial security within sixty days of the damage.

The Minister is the competent public authority to whom written notice shall be sent as required under Article 10(d) of the Paris Convention.

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."

Article 8. An Article 10/1 shall be inserted in the same Act and shall be worded as follows:

"Article 10/1

§ 1. If an operator has established that the insurance or financial security made compulsory under this Act for certain types of risk is not available on the market, the operator may request the Government to provide a security, subject to the payment of a fee for the coverage of these types of risk.

Such request shall be made to the Ministry of the Economy, which shall determine its admissibility.

The King may, by Decree deliberated in the Council of Ministers, set the terms and conditions governing the granting of such security.

§ 2. The King, upon advice from the Treasury, the Financial Services and Markets Authority and the Insurance Committee (Commission des Assurances), shall set the fee of the security by Decree deliberated in the Council of Ministers. The Minister for Finance shall set a reasonable deadline for the Treasury to give advice. Once that deadline has passed, the advice shall no longer be necessary. The fee shall be paid annually and shall cover the risk incurred by the Government as well as the costs incurred in determining its amount. Such fee shall also cover the costs incurred in verifying that the damage actually occurred and that all the requirements were met for the security to be called upon, as well as loss adjustment expenses in the event the security comes into play.

§ 3. Should the security be called upon, the Government shall be subrogated in all the rights and remedies of the victims against the operator for the sums it will have provided.”

Article 9. Article 14 of the same Act shall be amended as follows:

(1) Under (2), for every instance of the phrase “damage caused” there shall be substituted “nuclear damage caused”;

(2) A paragraph 3 shall be added to Article 14, and shall read as follows:

“(3) The operator of a nuclear installation may only transfer its liability to the operator of another nuclear installation if that second operator has a direct economic interest in the nuclear substances in the course of carriage.”

Article 10. In Article 15 of the same Act, for the words “4, c” there shall be substituted the words “4, d”.

Article 11. In the same Act, for the title of Chapter VI there shall be substituted the following:

“Chapter VI. On compensation for nuclear damage”

Article 12. In Article 17 of the same Act, for every instance of the phrase “damage caused” there shall be substituted “nuclear damage caused”.

Article 13. In Article 18 of the same Act, the following amendments shall be made:

(1) In paragraph 1, for the word “damage” there shall be substituted “nuclear damage”;

(2) In paragraph 1, the words “and cumulative” shall be deleted;

(3) In paragraph 2, for the words “damage caused” there shall be substituted “nuclear damage caused”.

Article 14. In Article 19 of the same Act, the following amendments shall be made:

(1) In paragraph 1, for every instance of the word “damage” there shall be substituted the words “nuclear damage”;

(2) In paragraph 1, for the words “3, f” there shall be substituted the words “3, g”;

(3) Paragraph 3 shall be repealed.

Article 15. In Article 20 of the same Act, for paragraph 2 there shall be substituted the following:

“If total compensation exceeds or may exceed the funds referred to in the previous paragraph, the King shall, by Decree deliberated in the Council of Ministers, set out the conditions for an equitable distribution.”

Article 16. In Article 21, paragraph 2, for every instance of the word “damage” there shall be substituted the words “nuclear damage”.

Article 17. An Article 21/1 shall be added to the same Act, worded as follows:

“Article 21/1

The King may, by Decree deliberated in the Council of Ministers, set out the provisions governing the system for compensating costs incurred in relation to preventive measures and measures of reinstatement of the environment following a nuclear incident.”

Article 18. In Article 22 of the same Act, the word “nuclear” shall be inserted before the words “damage which”.

Article 19. An Article 22/1 shall be added to the same Act, worded as follows:

“Article 22/1

The Government shall compensate, up to the amount established in Article 7 paragraph 1, nuclear damage caused by a nuclear installation or carriage, the amount of which exceeds the maximum amount established under Article 7, paragraph 2(2).”

Article 20. for Article 23 of the same Act there shall be substituted the following text:

“Article 23

Actions for compensation brought against the operator pursuant to this Act shall be brought within:

- (1) Thirty years of the nuclear incident in the case of personal injury;
- (2) Ten years of the nuclear incident in the case of any other nuclear damage;

Those time limits passed, actions shall lapse.

In any event, such actions shall lapse after three years from the day on which the injured party was made aware of the nuclear damage and of the identity of the operator or from the day on which he or she should reasonably have been aware of it, subject to the ten and thirty-year limitations set by the present Article.

Any individual who sustained damage caused by a nuclear incident and brought action for compensation within the time limits set in the present Article may lodge an additional claim should the damage have aggravated after the time limits provided no final ruling was issued regarding the final amount of compensation.”

Article 21. In Article 24 of the same Act, for the words “damage is” there shall be substituted the words “nuclear damage is”.

Article 22. In Article 25 of the same Act, the following amendments shall be made:

- (1) In paragraph 2, for the words “5, a,” there shall be substituted the word “5”;
- (2) Paragraph 3 is repealed.

Article 23. In Article 26, paragraph 2 of the same Act, for the word “This” there shall be substituted the words “The present”.

Article 24. In Article 27 of the same Act, the following amendments shall be made:

- (1) For the words “damage resulting” there shall be substituted the words “nuclear damage resulting”;
- (2) For the phrase “in the case referred to in Article 22” there shall be substituted the phrase “in the cases referred to in Articles 22 and 22/1”.

Article 25. An Article 28/1 shall be added to the same Act, worded as follows:

“Article 28/1. Actions brought under the Paris Convention, the Supplementary Convention or the present Act are brought at the request of:

- 1) Victims of nuclear damage resulting from a nuclear incident;
- 2) The Government;
- 3) A foreign State acting in the name of and on behalf of persons that are nationals of such State or who have their domicile or residence on its territory and who have agreed to being represented by such State;
- 4) Any person who, under the Paris Convention, the Supplementary Convention or the present Act, enjoys rights by subrogation or assignment.”

Article 26. An Article 28/2 shall be added to the same Act, worded as follows:

“Article 28/2

The Government of Belgium may bring actions in the name and on behalf of persons who have their domicile or residence in its territory and who have agreed to being legally represented by the Government, if such persons have fallen victim to a nuclear incident outside the jurisdiction of the Belgian courts.

The King may set out the procedures and criteria that victims of a nuclear incident falling under the jurisdiction of a foreign court have to comply with in order for the Government of Belgium to represent them in court.”

Article 27. In Article 30 of the same Act, for the words “or 22” there shall be substituted the words “, 22 or 22/1”.

Article 28. In Article 32 of the same Act, for the words “damage caused” there shall be substituted the words “nuclear damage caused”.

Article 29. In Article 33 of the same Act, for the words “damage suffered” there shall be substituted the words “nuclear damage suffered”.

Article 30. In Article 34 of the same Act, for the words “damage suffered” there shall be substituted the words “nuclear damage suffered”.

CHAPTER III. — *Provision amending the Judicial Code*

Article 31. In Article 569(17) of the Judicial Code, for the words “the Act of 18 July 1966 on Third-Party Liability in the Field of Nuclear Energy” there shall be substituted the words “the Act of 22 July 1985 on Third-Party Liability in the Field of Nuclear Energy”.

CHAPTER IV. — *Transitional provision*

Article 32. Operators that were recognised as such under the Act of 22 July 1985 on Third-Party Liability in the Field of Nuclear Energy, as amended on 11 July 2000 and 13 November 2011, shall retain their operator status provided that they amend their insurance or any other financial security covering their liability so as to comply with the requirements of the present Act within ninety days of its entry into force.

The ninety-day time limit set in paragraph 1 may be extended by the Minister to allow for the time necessary to process a request filed under Article 10/1, inserted by Article 8 of the present Act, provided that such request was made within thirty days of the entry into force of Article 8.

CHAPTER V. — *Final provision*

Article 33. The King shall set the date of entry into force of each of the provisions of the present Act, which will enter into force no later than the first day of the eighteenth month following its

publication in the Moniteur belge except for the present Article, which will come into force on the day the present Act is published in the Moniteur belge.

We promulgate the present law, order the Seal of State to be affixed thereto and for it to be published in the Moniteur belge.

Brussels, 29 June 2014

PHILIPPE

By the King:

The Minister for the Economy,

Johan Vande Lanotte

The Interior Minister,

Joëlle Milquet

The Minister for Finance,

Koen Geens

The Secretary of State for Energy,

Melchior Wathelet

Sealed with the Seal of State:

The Minister for Justice,

Stefaan De Clerck

(1) Note

Chamber of representatives (www.lachambre.be):

Documents: 53-3431 – 2013/2014

Full record: 22 April 2014

Senate (www.senate.be):

Documents: 5-2867 – 2013/2014

Senate annals: 24 April 2014

Belgium

Federal Public Service for the Economy, SMEs, Middle Classes and Energy

[C – 2016/11496]

7 December 2016. — Act amending the Act of 22 July 1985 on Third-Party Liability in the Field of Nuclear Energy (1)

PHILIPPE, King of the Belgians,

To all those present and to come, Greetings.

The House of Representatives has adopted and We sanction the following:

CHAPTER I. — *Introductory provision*

Article 1. The present Act governs a matter referred to in Article 74 of the Constitution.

CHAPTER II. — *Amendments to the Act of 22 July 1985 on third-party liability in the field of nuclear energy*

Article 2. Article 1 of the Act of 22 July 1985 on Third-Party Liability in the Field of Nuclear Energy, substituted by the Act of 29 June 2014, shall be amended as follows:

a) for subsection (4) there shall be substituted:

“(4) The terms “nuclear incident”, “nuclear fuel”, “nuclear installations”, “radioactive products or waste” and “nuclear substances”: The notions defined in Article 1 of the Paris Convention.”

b) for the same Article, there shall be inserted a subsection (5), worded as follows:

“(5) The terms “nuclear damage”, “reinstatement measures”, “preventive measures” and “reasonable measures”: The notions defined in Article 1 of the Paris Convention.”

Article 3. In Article 2, paragraph 1 of the same Act, substituted by the Act of 29 June 2014, for subsection (2), there shall be substituted:

“(2) A Non-Contracting State which, at the time of the nuclear incident, has no nuclear installations in its territory or in any maritime zones established by it in accordance with international law if the King, by decree deliberated in the Council of Ministers, extends the scope of application of Title I of the present Act to such State;”

Article 4. Article 7, paragraph 1 of the same Act, as amended by the Acts of 11 July 2000, 13 November 2011 and 29 June 2014 shall be construed as follows:

“Article 7: The maximum amount of nuclear damage for which the operator is liable is set at EUR 1.2 billion for each nuclear incident.”

Article 5. In Article 23 of the same Act, substituted by the Act of 29 June 2014, there shall be inserted the following paragraph:

“Compensation for personal nuclear injury within ten to thirty years from the day the incident occurred rests with the Government. Operators shall be responsible for compensating any nuclear incident that may occur as from 1 January 2018. The King may establish an earlier or later date. In any event, operators shall be responsible for compensation as from the 1 January of the year

following the entry into force of the 12 February 2004 Protocol amending the Convention of 29 July 1960 on Third-Party Liability in the Field of Nuclear Energy.”

CHAPTER III – *Transitional and final provisions*

Article 6. Operators who were recognised as such by virtue of the Act of 22 July 1985 on Third-Party Liability in the Field of Nuclear Energy shall retain their operator status provided that they amend their insurance or any other financial security covering their liability so as to comply with the requirements of the present Act within ninety days of its entry into force or of the entry into force of Article 2(b).

The time limit set in paragraph 1 may be extended by the Minister to allow for the time necessary to process an application filed under Article 10/1 of the Act of 22 July 1985 on Third-Party Liability in the Field of Nuclear Energy, provided that such application was made within thirty days of the entry into force of the present Act or of Article 2(b).

Article 7. Article 2(b) shall enter into force on 1 January 2018. However, the King may establish an earlier or later entry into force date. In any event, this Article shall enter into force no later than the 1 January of the year following the entry into force of the 12 February 2004 Protocol amending the Convention of 29 July 1960 on Third-Party Liability in the Field of Nuclear Energy.

Until entry into force, the term “nuclear damage” shall mean damage to persons and goods as provided in the Civil Code.

We promulgate the present Law, order the Seal of State to be affixed thereto and for this Law to be published in the *Moniteur belge*.

Done in Brussels on 7 December 2016

PHILIPPE

By the King:

The Minister for the Economy,

K. PEETERS

The Minister for Energy,

Ms M.C. MARGHEM

Sealed with the Seal of the State:

The Minister for Justice,

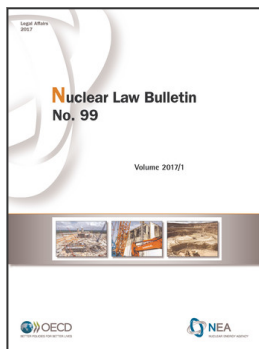
K. GEENS

(1) Note:

House of Representatives (www.lachambre.be):

Documents: 54 2085

Full record: 24 November 2016



From:
Nuclear Law Bulletin

Access the journal at:
<https://doi.org/10.1787/16097378>

Please cite this article as:

OECD (2018), "Documents and Legal Texts", *Nuclear Law Bulletin*, Vol. 2017/1.

DOI: https://doi.org/10.1787/nuclear_law-2017-5j8jpss81c9x

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