

**NUCLEAR ENERGY AGENCY
NUCLEAR LAW COMMITTEE**

**Exposé des Motifs of the Brussels Supplementary Convention as amended by the
Protocols of 1964, 1982 and 2004**

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 and by the Protocol of 16 November 1982, is currently into force.

On 12 February 2004, the Contracting Parties to the Brussels Supplementary Convention signed the Protocol to Amend the Brussels Supplementary Convention, which has not yet entered into force.

On 23 December 2010, the Contracting Parties to the Brussels Supplementary Convention adopted this Exposé des Motifs of the Brussels Supplementary Convention as amended by the 2004 Protocol, which is of an explanatory nature. Please note that there is no Exposé des Motifs of the Brussels Supplementary Convention currently in force.

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**EXPOSÉ DES MOTIFS OF THE BRUSSELS SUPPLEMENTARY CONVENTION
AS AMENDED BY THE PROTOCOLS OF 1964, 1982 AND 2004**

INTRODUCTION¹

1. The *Paris Convention on Third Party Liability in the Field of Nuclear Energy*² (hereinafter called the “Paris Convention”) establishes a special regime assigning civil liability for damage incurred as a result of a nuclear incident and providing for the compensation of third parties who suffer damage as a result of such an incident.
2. While the Paris Convention imposes a fairly high minimum liability amount upon the operator of a nuclear installation situated in the territory of a Contracting Party, it does not address the case where an incident may result in damages exceeding the amount of compensation available from the liable operator.
3. Many Paris Convention States recognised that operator funds under the Paris Convention might not be adequate to compensate the damage suffered and that a supplementary system for compensating victims of a nuclear incident should be created. They favoured the establishment of an international system by which States would commit public funds in addition to those to be provided under the Paris Convention and the result was that on 31 January 1963, the Brussels Supplementary Convention was adopted.
4. As its name implies, the Brussels Supplementary Convention is “supplementary” to the Paris Convention. It establishes a system whereby compensation additional to that provided for under the Paris Convention is to be made available to victims who suffer nuclear damage as a result of a nuclear incident for which a Paris Convention nuclear operator is liable. The Brussels Supplementary Convention is subject to the provisions contained in the Paris Convention, including those which define the concepts of “nuclear incident”, “nuclear installation” and “nuclear damage”, and no State may become or remain a Contracting Party to the Brussels Supplementary Convention unless it is a Contracting Party to the Paris Convention. Similarly, the Brussels Supplementary Convention will only remain in force for as long as the Paris Convention remains in force.
5. The Brussels Supplementary Convention increases the amount of compensation to be made available to victims where the amount called for under the Paris Convention is insufficient. It does so, first, by requiring the Contracting Party in whose territory the liable operator’s nuclear installation is located to provide funds over and above those which the operator must make available under the Paris Convention, and secondly, by requiring all Contracting Parties collectively to make available an additional amount of compensation from public funds. In the first instance, the amount of funds to be provided by the Contracting Party in whose territory the liable operator’s nuclear installation is located is the difference between the amount of the

¹ A comprehensive commentary on the system created by the Brussels Supplementary Convention was authored by Messrs. Bette, Didier, Fornasier and Stein and published in Brussels in 1965.

² The full title of this Convention is: *Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960*. It was amended by the Additional Protocol of 28 January 1964, the Protocol of 16 November 1982 and the Protocol of 12 February 2004.

operator's liability under its national legislation and EUR 1 200 million,³ and in the second instance the additional compensation to be provided by the Contracting Parties collectively is EUR 300 million. Under the combined Paris-Brussels international nuclear liability regime therefore, a total of EUR 1 500 million is available to compensate victims of a nuclear accident.

³ If the operator's liability is fixed at the minimum amount of EUR 700 million under the Paris Convention, for example, the difference will be EUR 500 million.

<p><i>Articles 2, 13, 20(a) and Annex</i></p>	<p><u>SCOPE OF THE CONVENTION</u></p>
	<p>6. Since public funds are being made available to compensate nuclear damage and given the nature and origin of those funds, they should only be allocated to victims in States which have agreed to participate in the supplementary funding system.</p> <p>7. It is equally a requirement that the nuclear installation of the operator liable under the Paris Convention be used for peaceful purposes.</p> <p>8. (a) Where nuclear damage is caused by a nuclear incident that is not covered by the Convention solely because the relevant nuclear installation is not used for peaceful purposes and is thus not on the list referred to in Article 13(a), the Contracting Parties declare that compensation shall, in any event, be provided without discrimination among nationals of the Convention's Contracting Parties, up to not less than EUR 1 500 million. This declaration does not establish a parallel system of compensation for the damage to which it refers; it does, however, oblige the Contracting Party in whose territory the nuclear installation in question is located to pay compensation in accordance with the law in force in that Contracting Party, subject to the non-discrimination and minimum amount provisions contained in the declaration itself.⁴</p> <p>(b) The declaration applies to nuclear incidents where the relevant nuclear installation (not used for peaceful purposes and not on the list) is considered by one or more, but not necessarily all, of the Contracting Parties to fall outside the definition of "nuclear installation" contained in the Paris Convention.</p> <p>(c) Contracting Parties, are, in addition, to try to establish compensation rules for such incidents that are as close as possible to those established for incidents to which the Convention does apply.</p> <p>9. The geographical scope of application of the Brussels Supplementary Convention is more limited than that of the Paris Convention. The Brussels Supplementary Convention will apply to nuclear damage only if it is suffered in any one of the following three situations and subject to the Court of a Contracting Party having jurisdiction according to the Paris Convention:</p> <p>(a) first, it will apply to damage that is suffered in the territory of a Contracting Party;</p> <p>(b) secondly, it will apply to damage that is suffered in or above maritime areas beyond the territorial sea of a Contracting Party,⁵ as long as it is suffered (i) by a national of a Contracting Party, (ii) on board or by a ship flying the flag of Contracting Party, (iii) on board or by an aircraft registered in the territory of</p>

⁴ The Declaration is contained in the Annex to the Convention and Article 20(a) of the Convention deems the Annex to be an integral part thereof.

⁵ The "territorial sea" of a Contracting Party is a maritime zone extending 12 nautical miles from the territorial sea baseline of that Contracting Party, in accordance with Article 3 of the United Nations Convention on the Law of the Sea.

<p><i>Article 2(b), (c)</i></p>	<p>a Contracting Party or (iv) on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party, excluding damage suffered in or above the territorial sea of a State not Party to this Convention;</p> <p>(c) finally, it will apply to damage that is suffered in or above the exclusive economic zone (EEZ) of a Contracting Party⁶ or on the continental shelf of a Contracting Party⁷ in connection with the exploitation or exploration of natural resources of that zone or shelf.⁸</p> <p>10. According to the Convention, “a national of a Contracting Party” includes a Contracting Party itself and any of its constituent sub-divisions, a partnership, and any public or private body, whether corporate or not, that is established in the territory of a Contracting Party. Furthermore, any Signatory or acceding Government may declare that individuals or categories of individuals who are considered under its law as having their habitual residence in its territory, are assimilated to its own nationals. In such case, it may be necessary to refer to the national law of the State concerned to determine “habitual residence” since national provisions on this subject vary greatly.</p>
<p><i>Articles 3, 11, 12, 12bis, 14(a), 14(b) and 15(b)</i></p>	<p><u>SUPPLEMENTARY COMPENSATION SYSTEM</u></p>
	<p>11. Subject to the limits on its scope described above, the Convention ensures that the Contracting Parties themselves, both individually and collectively, will assume responsibility for providing additional compensation in the event that the amount required to compensate nuclear damage caused by a particular incident exceeds the amount of compensation that can be made available by a nuclear operator and its insurers or other financial guarantors under the Paris Convention.</p> <p>12. As with the Paris Convention, the majority of Contracting Parties to the Brussels Supplementary Convention have adopted the euro as their common currency and consequently it has been selected as the unit of account for that Convention. Those Contracting Parties who do not use the euro will have to provide equivalent amounts in their national currency. Besides, the amounts mentioned in this Convention shall be converted into the national currency of the Contracting Party whose courts have jurisdiction in accordance with the</p>

⁶ The “exclusive economic zone” of a Contracting Party shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, in accordance with Article 57 of the United Nations Convention on the Law of the Sea.

⁷ The “continental shelf” of a coastal Contracting Party comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance, in accordance with Article 76 of the United Nations Convention on the Law of the Sea.

⁸ For example, nuclear damage suffered by a ship, regardless of the flag which it is flying, will be compensated if incurred while that ship is sailing in the EEZ of a Contracting Party in connection with the exploitation of resources of that EEZ.

	<p>value of that currency at the date of the incident, unless another date is fixed for a given incident by agreement between the Contracting Parties.</p>
<i>Article 3(b)</i>	<p>13. The Convention ensures that compensation for nuclear damage falling within its scope will be provided, up to EUR 1 500 million⁹ per nuclear incident, by means of a 3 tier system.</p>
<i>Article 3(b)(i)</i>	<p>14. (a) The amount of the first tier will be equal to the amount of the nuclear operator's liability, established under the legislation of the Contracting Party in whose territory the liable operator's nuclear installation is located. Under the Paris Convention that amount must not be less than EUR 700 million except where reduced liability amounts have been established for low-risk installations (not less than EUR 70 million) or transport activities (not less than EUR 80 million). The established liability amount may, of course, be greater than EUR 700 million; it may even be unlimited, in which case there must be an associated minimum financial security requirement. That first tier is to come from private funds furnished by the nuclear operator's insurance or other financial security. Where, however, such insurance or other financial security is unavailable or insufficient to compensate nuclear damage claims, the Contracting Party in whose territory the liable operator's nuclear installation is located must provide the necessary funds up to the amount of the operator's liability (not less than EUR 700 million).</p> <p>(b) That first tier is also to be distributed in accordance with the provisions of the Paris Convention. Because the Paris Convention has a broader geographical scope of application than does the Brussels Supplementary Convention, more claimants may be compensated under it than under the latter Convention.</p>
<i>Article 3(e)</i>	<p>15. The Paris Convention contains a "phasing-in" provision [Article 21(c)] which allows States wishing to accede to that Convention after 1 January 1999 to fix their nuclear operators' liability amount at not less than EUR 350 million for a maximum period of five years from 12 February 2004, the date of adoption of the Protocol to Amend the Paris Convention. To ensure that equivalent obligations are imposed upon all Contracting Parties to the Brussels Supplementary Convention in connection with the provision of supplementary compensation, any State using that phasing-in provision and wishing to join the Brussels Supplementary Convention must ensure that funds will be available to cover the difference between the phasing-in amount applicable to its operators and the EUR 700 million minimum compensation amount required under the first tier of the Brussels Supplementary Convention. As a practical matter, this provision is no longer applicable because the "phasing-in" period has expired.</p>
<i>Article 3(b)(ii)</i>	<p>16. Generally, the amount of the second tier, being the difference between the first tier and EUR 1 200 million, is to be furnished from public funds made available by the Contracting Party in whose territory the liable operator's nuclear installation is located. However, the Convention allows for a certain amount of flexibility in the manner by which this second tier may be provided</p>

⁹ Subject to the application of Article 12bis, which provides for the increase of this amount with the accession of new Contracting Parties.

	<p>to accommodate Contracting Parties whose national legislation has fixed the operator's liability amount or its financial security limit (in the case of unlimited liability) at more than EUR 700 million. Where that liability amount or financial security limit is greater than EUR 700 million but less than EUR 1 200 million, the second tier will be furnished by the operator's insurance or other financial security up to the fixed amount, with the Contracting Party concerned providing the remainder from public funds. Where that liability amount or financial security limit is equal to or greater than EUR 1 200 million, the second tier will be furnished entirely by the operator's insurance or other financial security.</p>
<i>Article 11(a)</i>	<p>17. As jurisdiction to hear and determine claims for compensation lies, in principle, with the courts of the Contracting Party in whose territory the nuclear incident occurs, in most cases jurisdiction will lie with the courts of the Contracting Party in whose territory the liable operator's nuclear installation is located. However, where the nuclear incident occurs during the transport of nuclear substances, it may happen that the Contracting Party in whose territory the incident occurs is not the Contracting Party in whose territory the liable operator's nuclear installation is located. In such a case, the onus is upon the Contracting Party whose courts have jurisdiction to initially make available the public funds required under the second tier (including corresponding amounts for interest and costs), while the Contracting Party in whose territory the liable operator's nuclear installation is located is obliged to reimburse that other Contracting Party the sums paid out according to an agreed upon procedure for reimbursement. Such an arrangement obviously simplifies matters and allows for a more rapid payment of compensation to victims.</p>
<i>Article 11(b)</i>	<p>18. Where nuclear operators from two or more different Contracting Parties are held jointly and severally liable for nuclear damage arising from a nuclear incident,¹⁰ but where none of those Contracting Parties is the one whose courts have jurisdiction to hear and determine claims for compensation under the Convention, the situation is the same as that described in paragraph 17. While it is not likely that two or more operators from different Contracting Parties will be liable for such damage, such a case could occur.¹¹</p>
	<p>19. As a result, the Contracting Parties whose operators are liable will be required to reimburse the Contracting Party whose courts do have jurisdiction the amount which the latter has initially paid out under the second tier (including corresponding amounts for interest and costs) in accordance with an agreed upon procedure for reimbursement. The amount of the reimbursement will be based upon the extent to which each liable operator has contributed to the nuclear incident.</p>
<i>Article 11(c)</i>	<p>20. Where the Contracting Party in whose territory the liable operator's nuclear installation is located is not the Contracting Party whose courts have jurisdiction, the former will have a real interest in the procedures established by</p>

¹⁰ Article 5(d) of the Paris Convention provides that where two or more nuclear operators are liable for nuclear damage arising from the same nuclear incident, liability is joint and several.

¹¹ This might happen, for example, where nuclear substances originating with two different nuclear operators whose installations are located in two different Contracting Parties are being transported on one and the same means of transport.

	<p>the latter for making those funds available and for distributing them to victims. To ensure that this interest is respected, the Contracting Party whose courts have jurisdiction is obliged to consult with the Contracting Party in whose territory the liable operator's nuclear installation is located, when adopting, after the accident, provisions relating to the nature, form and extent of compensation, the procedure for making second tier funds available and, if necessary, the criteria for apportioning those funds to victims. In addition, the Contracting Party whose courts have jurisdiction must take all steps necessary to enable that Contracting Party in whose territory the liable operator's nuclear installation is located to intervene in legal proceedings and to participate in any settlement negotiations concerning the payment of compensation.</p>
<p>Articles 3(b)(iii), 9(c), 12 and 12bis</p>	<p>21. The third tier, consisting of an additional EUR 300 million (the difference between EUR 1 200 million and EUR 1 500 million) is to be furnished from public funds to be provided by all Contracting Parties¹² with the amount of each Party's contribution being determined in accordance with a specific formula that is set out in Article 12. A Contracting Party is obliged to make available its contribution to the third tier once the amount of compensation under the Convention has reached EUR 1 200 million.</p>
<p>Article 14(a),(b)</p>	<p>22. As noted above, the Convention applies only to nuclear damage for which an operator of a nuclear installation used for peaceful purposes and located in the territory of a Contracting Party is liable under the Paris Convention. In general, each Contracting Party may exercise the powers vested in it by that Convention and may invoke any provisions made under that Convention in order to obtain the public funds to be provided for under Article 3(b)(ii) and (iii) of the Brussels Supplementary Convention. There are, however, certain exceptions to this rule. For example, while the Paris Convention clearly delineates its own geographic scope of application in Article 2(a), it also permits a Contracting Party in whose territory the liable operator's nuclear installation is located to extend the geographical scope of application of the Convention under its national legislation [Article 2(b)]. Where a Contracting Party does so, and where a nuclear incident occurs which results in nuclear damage occurring in that extended territorial field, no other Contracting Party to the Brussels Supplementary Convention is required to contribute second or third tier public funds to compensate that nuclear damage unless it has actually consented to that particular extension. The reason for this rule is straightforward. An extension of the geographical scope of application of the Paris Convention would normally entitle more victims to compensation, thus exhausting the funds available under that Convention earlier than otherwise, and thus allowing the Contracting Party in whose territory the liable operator's nuclear installation is located to call upon third tier funds under the Brussels Supplementary Convention at a correspondingly earlier date, than would otherwise be the case.</p>
<p>Article 3(c)</p>	<p>23. This three tier supplementary compensation system may be implemented by a Contracting Party in one of two ways. The first method is to provide that the amount of its nuclear operator's liability is at least EUR 1 500</p>

¹² In accordance with Article 12bis, the amount of the third tier may increase with the accession of new Contracting Parties. See paragraphs 32 and 33.

<p><i>Article 3(g)</i></p>	<p>million and that this amount will be covered by the 3 sources of funds referred to in Article 3(b), that is, the operator's financial security, public funds provided by the Contracting Party in whose territory the liable operator's nuclear installation is located, and public funds provided collectively by all Contracting Parties. The second method is to fix the amount of its nuclear operator's liability at the minimum amount provided by the Paris Convention of not less than EUR 700 million or at not less than EUR 70 or 80 million (for low risk installations and for transport respectively) and provide that the difference between that fixed amount and EUR 1 500 million will be made available through public funds, but not as cover for the operator's liability [Article 3(c)], as long as the rules of substance and procedure are not affected.¹³</p> <p>24. In addition to the amounts of compensation payable under the three tiers, interest and costs that are awarded by the court in an action for compensation under the Paris Convention are also payable. To the extent that interest and costs relate to the first tier of compensation, they are borne by the operator liable in accordance with the Paris Convention; to the extent that they relate to the second tier of compensation, they are borne by the Contracting Party in whose territory the liable operator's nuclear installation is located; and to the extent that they relate to the third tier of compensation, they are borne by the Contracting Parties collectively.</p>
<p><i>Article 3(d)</i></p>	<p>25. Where a nuclear operator is obliged to provide compensation, interest or costs out of public funds that are to be made available to it for that purpose, the obligation is only enforceable to the extent that those public funds have, in fact, been made available. This provision has special relevance for the first method of implementation referred to in paragraph 23. Where an operator is held liable up to the amount of EUR 1 500 million and where the third tier to be provided by the Contracting Parties is not yet available, claims for compensation can only be enforced against the operator up to the amount of the second tier, namely EUR 1 200 million.</p>
<p><i>Article 3(f)</i></p>	<p>26. Under Article 15(b) of the Paris Convention, the Contracting Parties to that Convention may derogate from its provisions with regard to the payment of compensation for nuclear damage in excess of EUR 700 million. Thus, they may discriminate on the basis of nationality, domicile, residence or any other factor in the payment of those excess funds. The Contracting Parties to the Brussels Supplementary Convention also undertake not to derogate from the provisions of the Paris Convention with regard to the payment of compensation for nuclear damage up to the amount of the first tier (not less than EUR 700 million), but they equally undertake not to apply any special conditions to the payment of compensation for nuclear damage furnished from public funds under the second and third tiers (between not less than EUR 700 million and EUR 1 500 million), other than the special conditions laid down in the Brussels Supplementary Convention itself. Thus, the Brussels Supplementary Convention restricts, to</p>

¹³ This means essentially that the same rules of substance and procedure will apply to all claims for damage regardless of whether the compensation is paid out of the first, second or third tier provided by the Convention.

<p>Article 12</p>	<p>some degree, the right of derogation permitted by Article 15(b) of the Paris Convention.</p> <p>27. The formula for calculating each Contracting Party's contribution to the third tier of compensation under the Convention comprises two factors: 35% of the amount of the contribution is based upon the ratio between the gross domestic product ("GDP") of that Contracting Party and the total of the GDPs of all Contracting Parties; the remaining 65% of the amount of the contribution is based upon the ratio between the thermal power of the reactors situated in the territory of that Contracting Party and the total thermal power of all reactors situated in the territories of all Contracting Parties. The allocation of a much larger percentage of the calculation to the thermal power of the reactors situated in territories of the Contracting Parties rather than to the Contracting Parties' GDPs reflects the "polluter pays" principle <i>mutatis mutandis</i>. Nevertheless, it must be recognised that the formula is the result of a compromise and the fact that those Contracting Parties which do not generate nuclear power contribute to the system at all is an acknowledgement of their solidarity with those Contracting Parties which do generate such power.</p> <p>28. GDP was selected because it is the preferred choice of international statistics for "national income" and the official GDP statistics to be used in calculating each Contracting Party's contribution are those published by the Organisation for Economic Co-operation and Development for the year preceding the year in which the nuclear incident takes place.</p>
<p>Article 12(b)</p>	<p>29. Thermal power was selected because it is considered an appropriate factor for measuring the risks presented by all the nuclear installations situated in the territory of a particular Contracting Party. If a final operating licence for a reactor has not been issued, then the "thermal power" for that reactor is its planned thermal power, whereas if a final operating licence has been issued for that reactor then its "thermal power" is that which is authorised by the competent authorities.</p>
<p>Article 13</p>	<p>30. The thermal power of the reactors situated in the territory of a Contracting Party is that shown on the list referred to in Article 13 at the date of the nuclear incident. A list is prepared by each Contracting Party to cover all nuclear installations situated within its territory which are used for peaceful purposes. Each list is to be deposited with the Belgian Government, as depositary of the Convention, at the time of that Contracting Party's ratification, acceptance, approval or accession to the Convention. Each Contracting Party is equally obliged to notify the Belgian Government of any modification to the list, including the addition or deletion of nuclear installations and changes to the particulars¹⁴ of such installations.</p>
<p>Article 12(a)(ii)</p>	<p>31. The Paris Convention defines the term "nuclear installation" to include a reactor other than that comprised in any means of transport and the Brussels</p>

¹⁴ "Particulars" of a nuclear installation, as set out in Articles 13(c) and (d) include the expected date upon which the risk of a nuclear incident will exist for installations which have not yet been commissioned, or the exact date of the existence of such risk, and the expected date upon which reactors will first reach criticality or the exact date upon which they first reach criticality, as well as the thermal power of reactors.

<i>Article 12bis</i>	<p>Supplementary Convention incorporates by reference the definition of “nuclear installation” contained in the Paris Convention [Article 1]. However, neither Convention actually defines the term “nuclear reactor” for the purpose of calculating a Contracting Party’s contribution to the third tier of the Brussels Supplementary Convention. Nevertheless, the Convention does specify that reactors which have not yet reached criticality are not counted for the purpose of the formula for working out contributions to the third tier, nor are reactors from the core of which all nuclear fuel has been permanently removed and stored safely in accordance with approved procedures.</p> <p>32. The amount of the third tier of compensation is partially “open”, in that it will vary according to the increase in the number of Contracting Parties to the Convention. While it is true that a “closed” tier¹⁵ has the advantage of simplicity, a partially “open” tier allows for new states acceding to the Convention to make their own contributions to the third tier without reducing the amount of contributions to be made by existing Contracting Parties. In the end, more compensation will thus be made available to victims in the event of a nuclear incident.</p> <p>33. The formula for determining the contribution to be made by acceding States is almost identical to that used for calculating the contributions of the existing Contracting Parties. An acceding State will be required to contribute an amount which is composed of the total of two components: the first component is 35% of the amount obtained by applying to the third tier of EUR 300 million the ratio between the acceding State’s GDP at current prices and the total GDPs at current prices of all Contracting Parties excluding that of the acceding State; the second component is 65% of the amount obtained by applying to EUR 300 million the ratio between the thermal power of the acceding State’s nuclear reactors and the total thermal power of all Contracting Parties’ nuclear reactors excluding that of the acceding State. The acceding State’s contribution, as so calculated, would be made available in addition to the EUR 300 million which is to be contributed by the existing Contracting Parties.</p>
<i>Articles 5 and 10(c)</i>	<p><u>CONTRACTING PARTY’S RIGHTS OF RECOURSE</u></p>
	<p>34. Where the liable operator under the Paris Convention has a right of recourse pursuant to Article 6(f) of that Convention¹⁶ the Contracting Parties to the Brussels Supplementary Convention have the same right of recourse, to the extent that they have made public funds available under either the second or third tiers of the supplementary compensation system. The rationale behind this provision is to give Contracting Parties which have contributed public funds</p>

¹⁵ With a “closed” tier, the amount of the tier does not vary with the number of Contracting Parties to the Convention. When new States wish to accede to the Convention, the tier remains constant and the amount of each Contracting Party’s contribution to that tier is reduced accordingly.

¹⁶ The liable operator under the Paris Convention has a right of recourse against an individual where the damage caused by a nuclear incident results from an act or omission of that individual done with the intent to cause damage. Such a right also exists if it is expressly provided for by contract, but the contract may limit the amount which the operator may recover in the exercise of its right.

	<p>under the Convention the same rights as are given to a liable operator under the Paris Convention with respect to the payment of private funds.</p> <p>35. Where such a right of recourse exists and where the legislation of a Contracting Party so provides, as it may do under Article 3(c)(i), the operator may exercise its right of recourse up to EUR 700 million (first tier), the Contracting Party in whose territory the liable operator's nuclear installation is located may exercise its right of recourse up to EUR 500 million (the second tier), and each of the Contracting Parties may exercise its right of recourse up to the amount of its contribution to the third tier of EUR 300 million. In actual fact, each Contracting Party which has furnished compensation would have the same rights of recourse as the operator but in respect of amounts the Contracting Party has contributed over and above the operator's liability of not less than EUR 700 million. Similarly, the Contracting Party whose courts have jurisdiction shall exercise the rights of recourse on behalf of the other Contracting Parties who have contributed public funds.</p>
<i>Articles 6 and 7</i>	<p><u>TIME LIMITS UPON RIGHTS TO COMPENSATION</u></p>
<i>Article 7</i>	<p>36. The time limits within which rights to claim compensation under the second and third tiers of the Convention's compensation system may be exercised are integrally linked to the prescription and extinction periods set out in Article 8 of the Paris Convention. That Article provides that rights to compensation shall be subject to prescription or extinction if an action is not brought within 30 years from the date of the nuclear incident for actions in respect of personal injury or loss of life, and within 10 years from the date of the nuclear incident for all other actions for damages. Upon the expiry of these periods, any rights to compensation under the second tier of the supplementary compensation system can no longer be enforced against the Contracting Party in whose territory the installation of the liable operator is situated, and any contribution under the third tier cannot be claimed from any Contracting Party to the Convention.</p> <p>37. Under article 8(b) of the Paris Convention, longer periods may be established under national legislation as long as the Contracting Party in whose territory the liable operator's nuclear installation is located ensures that insurance or other financial security is available to cover the operator's liability for actions begun after the 30 and 10 year periods respectively and during that longer period. However, under the Brussels Supplementary Convention, an extension of the time limit(s) for making claims is only valid where Article 8(e) or 8(f) of the Paris Convention applies. In addition, under Article 8(d) of the Paris Convention, a Contracting Party may establish, by national legislation, a period of not less than 3 years from the date at which the victim had knowledge or ought reasonably to have known of both the nuclear damage and the operator liable, for the prescription or extinction of rights of compensation under the Convention, provided that the periods established pursuant to paragraphs (a) and (b) of Article 8 are not exceeded. Where a Contracting Party establishes such a period, that same period shall apply to actions under this Convention.</p>

<i>Article 8</i>	<u>FULL OR APPORTIONED COMPENSATION</u>
	<p>38. Under the Convention, a victim who is entitled to compensation generally has the right to full compensation, in accordance with national law, for the nuclear damage which it has suffered. It will be the law of the court with jurisdiction to determine what “full compensation” is and this determination may vary from one Contracting Party to another.</p> <p>39. However, the Contracting Parties recognise that the amount of damage suffered by victims may be greater than the total amount of compensation to be made available under the Convention. If this should happen, the Contracting Parties are free to establish equitable criteria for apportioning the amount of compensation available under the Convention, such as the setting of priorities or determining whether compensation for the same type of damage should be made on a fixed amount or pro-rata basis. While there is no obligation to establish such criteria, they would likely be very useful in the distribution of compensation should the need arise. If no such criteria are established, then the court having jurisdiction to hear and determine compensation claims would determine the apportionment among victims according to its national law.¹⁷</p> <p>40. Where criteria are established, they are to be applied regardless of whether the compensation is made available under the first, second or third tier. They must also be applied without any discrimination on the basis of the nationality, domicile or residence of the person suffering damage, subject to the provisions of Article 2 concerning the geographic scope of application of the Convention. It should be noted that the distribution of first tier funds will be made according to the geographic scope provisions contained in the Paris Convention [Article 3(b)(i)].</p>
<i>Article 9</i>	<u>AVAILABILITY OF PUBLIC FUNDS</u>
<i>Article 9(b)</i>	<p>41. Article 9 provides that the system for paying out the public funds made available under the Convention is that of the Contracting Party whose courts have jurisdiction. In order to effectively implement this provision, it may be preferable for each Contracting Party to establish a procedure by which those funds are to be distributed, such as by giving them directly to the victims concerned, providing them to the liable operator or providing them to the liable operator’s insurer [Article 9(a)]. Such a procedure should, in any event, take account of the choice made by that Contracting Party under Article 3(c)(i) or (ii) with respect to establishing the amount of the operator’s liability.</p> <p>42. Notwithstanding that compensation funds under the Convention are provided by three different sources according to the three compensation tiers (the operator’s financial security, public funds from the Contracting Party in whose territory the liable operator’s nuclear installation is located and public funds from all Contracting Parties collectively), Contracting Parties shall ensure that victims are not required to institute separate actions for compensation according to the source of the funds. Such a requirement, if imposed, would</p>

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See the Exposé des Motifs of the Paris Convention (revised), paragraphs 89-90.

<p><i>Article 9(c)</i></p>	<p>result in expensive and time consuming procedures both for victims and for those against whom the claims are instituted. It would also be inconsistent with the principles of exclusive liability and unity of jurisdiction laid down under the Paris Convention, principles which are designed to ease a victim's ability to claim compensation for nuclear damage.</p> <p>43. In keeping with the Convention's objective of making additional compensation available on a "tier by tier" basis, the Contracting Parties must make available their contributions to the third tier once the amount of compensation paid or payable under the Convention reaches the total amount of the first two tiers, being EUR 1 200 million. This obligation applies in all cases, even where an operator is required, under its national law, to maintain financial security that exceeds the total amount of the first two tiers under the Convention and those excess funds remain available to compensate nuclear damage. The rationale for this obligation is to avoid "penalising" Contracting Parties which impose financial security limits greater than EUR 700 million, the minimum required under the first tier of the Convention and Article 10 of the Paris Convention, as compared to those which do not. All Contracting Parties are thus required to make available only EUR 1 200 million under the first two tiers before the third tier may be called upon with the result that the third tier is mobilised at the same time for all Contracting Parties.</p>
<p><i>Articles 2, 10 and 13</i></p>	<p><u>JURISDICTION</u></p>
<p><i>Article 10(a),(b),(c)</i></p>	<p>44. The Convention will only apply if the courts of one of its Contracting Parties has jurisdiction to hear and determine nuclear damage claims pursuant to Article 13 of the Paris Convention. Under Article 13 of that Convention, jurisdiction normally lies with the courts of the Contracting Party in whose territory the nuclear incident has occurred. Although highly unlikely, it may happen that jurisdiction will lie with the courts of a State which is Party to the Paris Convention but not to the Brussels Supplementary Convention. This could occur, for example, where a nuclear incident takes place in country X (a Paris Convention State), and causes damage in country Y (a Paris-Brussels Convention State). The courts of country X will have jurisdiction to hear and determine nuclear damage claims under Article 13 of the Paris Convention, but because country X is not a Party to the Brussels Supplementary Convention, that latter Convention will not apply. The requirement that jurisdiction lie with the courts of a Contracting Party to the Brussels Supplementary Convention is essential in order to prevent courts in States not party to that Convention from rendering judgements which could require compensation to be paid from the Contracting Parties' public funds under the second and third tiers of the Convention.</p> <p>45. A number of special obligations are imposed upon the Contracting Party whose courts have jurisdiction under the Convention. First, it is required to inform the other Contracting Parties of a nuclear incident as soon as it appears that the amount of nuclear damage will exceed the total of the first and second tiers. In this way, the Contracting Parties can, between themselves, make the arrangements necessary for the remittance of their collective contributions under the third tier. Secondly, it is only that Contracting Party who may request from</p>

<i>Article 10(d)</i>	<p>the other Contracting Parties their respective contributions under the third tier, including any interest and costs associated therewith. It is that same Contracting Party which must exercise the right of recourse granted by Article 5 on behalf of all other Contracting Parties, with regard to the collective contributions which they have paid under the third tier, including any interest and costs associated therewith.</p> <p>46. Finally, where a settlement involving public funds from either the second or third tier is effected in accordance with conditions established by the national legislation of a Contracting Party, that settlement shall be recognised by the other Contracting Parties. Judgements by the competent courts in respect of compensation are enforceable in the territory of the other Contracting Parties in accordance with paragraph 13(i) of the Paris Convention.</p>
<i>Articles 14(c), (d) and 15</i>	<p><u>OTHER COMPENSATION ARRANGEMENTS</u></p>
<i>Article 14(c)</i>	<p>47. A Contracting Party remains free at all times to take additional measures to compensate nuclear damage, over and above those required by the Paris Convention and the Brussels Supplementary Convention. Such measures may be taken on a national basis, or on an international basis such as through bilateral or multilateral agreements. Where such additional measures are taken, they shall not impose any obligation upon the other Contracting Parties with respect to their public funds.</p>
<i>Article 15</i>	<p>48. Article 15 allows a Contracting Party to conclude an agreement with a non-Contracting State pursuant to which public funds will be used to compensate nuclear damage suffered by victims in that State. This provision has never been used.</p>
<i>Article 16</i>	<p><u>DISPUTE RESOLUTION PROCEDURE</u></p>
<i>Article 17</i>	<p>49. It is recognised that consultations amongst the Contracting Parties may be necessary or desirable from time to time to attempt to resolve problems of common interest that may arise in connection with the application of either the Brussels Supplementary Convention or the Paris Convention. In particular, it is anticipated that where amendments are made to the Paris Convention, there will more than likely be a need to amend this Convention in order that the two instruments remain consistent. In addition, the Contracting Parties are to consult each other on the desirability of revising the Convention at any time on the request of a Contracting Party.</p> <p>50. The Brussels Supplementary Convention contains the same basic dispute resolution procedure as that contained in the Paris Convention. In the case of a dispute as to the interpretation or application of the Convention, the disputing Contracting Parties will attempt to settle the matter by negotiation or other amicable means, but if they cannot do so within six months of the beginning of the dispute, then all of the Contracting Parties will meet to help them settle the matter on a cordial basis. If the dispute is still unresolved three months after that meeting, the matter may be submitted, upon the request of a Contracting Party concerned, to the European Nuclear Energy Tribunal set up</p>

<p><i>Articles 18, 19, 20, 21, 22, 23, 24 and 25</i></p>	<p>by the Security Control Convention of 20th December 1957. The Tribunal will act in accordance with the rules governing its organisation and functioning, which are set out in the Protocol annexed to the Security Control Convention and in its Rules of Procedure. However, where there is a dispute concerning the application or interpretation of both the Paris Convention and the Brussels Supplementary Convention, only the dispute resolution procedure under Article 17 of the Paris Convention will apply.</p> <p>51. The final clauses of the Convention deal with reservations, adherence to the Paris Convention, ratification and entry into force, amendments, accession, duration and withdrawal, application of the Convention to territories to which the Paris Convention applies, and notice to Signatories and acceding Governments of receipt of various instruments deposited pursuant to the final clauses.</p>
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**RECOMMENDATION ON THE APPLICATION OF
THE RECIPROCITY PRINCIPLE
TO NUCLEAR DAMAGE COMPENSATION FUNDS**

This Recommendation was adopted on 12 February 2004 by the Diplomatic Conference convened to adopt and sign the 2004 Protocols to amend the Paris and Brussels Supplementary Convention (Annex III of the Final Act of the Conference, which is available at www.oecd-nea.org/law/final-act-conference-revision-pc-bc.pdf).

THE CONFERENCE,

CONSIDERING that, pursuant to Article 15(b) 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, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004 (hereinafter referred to as the “Paris Convention”), a Contracting Party may derogate from the provisions of that Convention insofar as compensation for nuclear damage is in excess of 700 million euro;

CONSIDERING that, pursuant to Article 3(f) of 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 (hereinafter referred to as the “Brussels Supplementary Convention”), a Contracting Party may not, in carrying out that Convention, make use of the right provided for in Article 15(b) of the Paris Convention to apply special conditions, other than those laid down in the Brussels Supplementary Convention itself, to the compensation of nuclear damage using funds referred to in that latter Convention;

DESIROUS of clarifying the right of a Contracting Party to establish conditions of reciprocity for the compensation of nuclear damage using funds which remain available under the Paris Convention after having satisfied its obligations under the Brussels Supplementary Convention;

RECOMMENDS that if a Contracting Party to the Brussels Supplementary Convention has satisfied its obligations under that Convention up to the amount referred to in Article 3(a) thereof, if the amount of nuclear damage to be compensated exceeds the aforementioned amount and if funds remain available, whether provided by insurance or other financial security pursuant to Article 10 of the Paris Convention or by public funds pursuant to national legislation enacted prior to the nuclear incident which requires that a specified amount of public funds will be provided to compensate nuclear damage, it should not make use of the right provided for in Article 15(b) of the Paris Convention to apply special conditions to the compensation of nuclear damage using such remaining funds in respect of:

- a) a State referred to in Article 2(a)(i), (ii) or (iv) of the Paris Convention which, at the time of the nuclear incident, has a nuclear installation in its territory or in any maritime zone established by it in accordance with international law and which affords reciprocal benefits of an equivalent amount;
- b) any other State which, at the time of the nuclear incident, has no nuclear installation in its territory or in any maritime zone established by it in accordance with international law;

RECOMMENDS that the Contracting Parties to the Brussels Supplementary Convention should notify the Secretary-General of the OECD of the steps that they have taken to implement this Recommendation;

INVITES the Secretary-General of the OECD to communicate any such notification to all Contracting Parties.