



# **LEGAL FRAMEWORK GOVERNING NUCLEAR THIRD PARTY LIABILITY IN FRANCE**

Recent developments

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# THE FRENCH LEGAL FRAMEWORK

- In the French legal framework, international conventions are, from the date of their ratification by Parliament, directly applicable, pursuant to the conditions foreseen for their entry into force.
- A law and, if necessary, a decree, specify the measures that are left to the initiative of the Contracting Parties by the international Conventions.

# THE LEGAL INSTRUMENTS IN FORCE AND THEIR REVISION

- France is a Party to the Paris Convention of 1960, which has been revised by a Protocol of 2004 (not yet in force).
- France is a Party to the Brussels Convention of 1963, supplementary to the Paris Convention, which has been revised by a Protocol of 2004 (not yet in force).
- France adopted a Law on 3 October 1968 specifying the measures that are left to the initiative of the Contracting Parties by the two Conventions. This Law, as modified in 1990, is still in force today.
- Article 55 of the Law of 13 June 2006 amending the afore-mentioned Law of October 1968 in order to implement the 2004 Protocols is not yet in force but it is ready to be applied when the Protocols themselves will enter into force.

# THE NUCLEAR THIRD PARTY LIABILITY OF THE OPERATOR

- **The liability of the operator is :**
  - ✓ **strict, without fault,**
  - ✓ **exclusive, channeled on this operator,**
  - ✓ **limited in amount and in time,**
  - ✓ **covered by insurance or other financial security.**
  
- **The nuclear damage, the competent court and the duration of the prescription period are defined by the Paris Convention completed by the French law when necessary.**

# **THE LIABILITY OF THE NUCLEAR OPERATOR IS STRICT AND EXCLUSIVE**

**These two principles are two major pillars of the Paris Convention and are directly applicable in the French legal Framework, without any particular provision of the national law :**

- the operator is liable for the nuclear damage caused by a nuclear incident in its installation regardless of fault ;**
- the liability in case of an nuclear incident is channeled onto the operator of the nuclear installation ; the insurance capacity is therefore concentrated on the operator ; there is no need for complicated and lengthy actions to establish who is legally liable.**

# THE LIABILITY OF THE NUCLEAR OPERATOR LIMITED IN AMOUNT

- Today : the nuclear third party liability of the operator is limited in France to 91,5 M€. This amount is reduced to 22,8 M€ in the case of an accident in a low-risk installation and in case of an accident of carriage of nuclear substances.
- When the Paris 2004 Protocol and the new French law will enter into force, these amounts will be raised to :
  - 700 M€ per accident ,
  - 70 M€ in the case of an accident in a low-risk nuclear installation,
  - 80 M€ in the case of a carriage of nuclear substances.
- When the 2004 Brussels Protocol will be in force :
  - the second tier (for which the Installation State is liable) will be raised from 195 M€ to 1 200 M€ ;
  - the third tier (international fund) will be increased from 330 M € to 1 500 M€.

# COMPETENT COURT AND PRESCRIPTION PERIODS

## ▪ Competent court :

- ✓ When a nuclear accident occurs on the territory of the French Republic, or, if under application of the Paris Convention, jurisdiction is granted to a French court, the Tribunal de Grande Instance de Paris is alone competent.

## ▪ Prescription period :

- ✓ the existing Paris Convention establishes a prescription period of 10 years from the date of the accident ;
- ✓ the 2004 Paris Protocol will introduce a distinction between damage to persons, which is extended to 30 years, and « any other nuclear damage » for which the 10-years period is maintained. The new 2006 French law simply makes reference to the relevant article of the amended Paris Convention.

# DEFINITION OF NUCLEAR DAMAGE

- Today, nuclear damage includes : damage to or loss of life of any person and damage to or loss of property.
- When the Paris 2004 Protocol will be applicable, the following categories of damages will be added :
  - economic loss resulting from damage to persons or damage to property,
  - cost of measures taken or to be taken to reinstate an impaired environment,
  - loss of income arising from a direct economic interest in any use or enjoyment of the impaired environment,
  - and cost of preventive measures taken after an incident or after an imminent threat of nuclear incident.

# THE ENTRY INTO FORCE OF THE 2004 PROTOCOLS

Pursuant to the 2004 Protocols, the requirements for entry into force of the revised Paris and Brussels Conventions are :

- for the Paris Protocol : ratification by two-thirds of the Contracting Parties,
- for the Brussels Protocol : ratification by all Contracting Parties.

The new provisions on nuclear liability of the French law of 2006 will enter into force automatically following entry into force of the Protocols themselves and the deposit of the French instruments of ratification.

However, 9 years after the adoption of these 2 Protocols and 7 years after the publication of the French law, these important new provisions are not yet in force.

# THE ENTRY INTO FORCE OF THE 2004 PROTOCOLS

Two main reasons why the revised Conventions are not yet in force :

- the first one is the difficulty in obtaining insurance or other financial guarantees for some of the new types of damage (environmental damage and extension of the prescription period to 30 years for personal injury) ;
- the second one is the rule established by the European Union that requires simultaneous deposit of the instruments of ratification by all the Contracting Parties, members of the Union. And three States have not yet adopted national legislation necessary to deposit their instrument of ratification : Italy, United Kingdom and Belgium are still finalising their draft laws.

The first problem is on its way to a solution : some States envisaging a State guarantee to cover the damages that cannot be covered by the insurance market.

# **THE ENTRY INTO FORCE OF THE 2004 PROTOCOLS**

**Particularly since the Fukushima accident, many voices (French cour des comptes, parliament, associations) can be heard, asking for a rapid entry into force of the improvements to the regime and particularly of increased operator liability amounts.**

**Without waiting for the entry into force of the Protocols, a Draft Law has been presented to French Parliament to raise the liability of the operator to 700 M Euros.**

**This draft law will be examined at the end of the year or at the beginning of next year. It will be included among other provisions of the draft law on energy transition under elaboration do-day.**

# ISSUES UNDER DISCUSSION – EU DIRECTIVE

The European Commission established in 2011 a Group of experts on nuclear liability to make proposals for European initiatives : a directive or a recommendation. The objective is to harmonize the regime for all EU members, especially with regard to the amounts of liability of the operator.

Three working groups have made proposals on :

- claims handling and related matters,
- insurance by operator's pools – financial guaranties,
- liability amounts an others.

Today, it would appear unlikely that we will see a draft directive before the end of this year. But a public consultation is in preparation and it is envisaged that the Commission organise a workshop during the next months.

# ISSUES UNDER DISCUSSION – THE JOINT PROTOCOL

A draft law authorising the ratification of the IAEA Joint Protocol of 1988 relating to the application of the Vienna Convention and the Paris Convention was adopted by the French Senate on 17 April of this year. It should be adopted by the National Assembly in the coming months.

This ratification will allow, for France, reciprocal application between the Parties to the two Conventions by linking the two regimes, extending considerably the scope of application of the Paris Convention and, among other benefits, ensuring harmonisation regarding the issue of the single competent court.

The 27 Contracting Parties to the Joint Protocol already benefit from this « bridge » instrument that will constitute an important improvement of the French legal framework in the field of nuclear third party liability.

# **ISSUES UNDER DISCUSSION – THE JOINT PROTOCOL**

**After the Fukushima accident, the IAEA called upon its members to ratify the international conventions and particularly those dealing with nuclear liability.**

**The Agency emphasized the necessity of establishing treaty relations among States Parties to the Paris and the Vienna Conventions.**

**In this respect, the ratification by France of the Joint Protocol contributes to the achievement of a global nuclear third party liability regime.**

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