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THE EUROPEAN UNION**

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**ATO 133**

**PROPOSAL**

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from:	European Commission
dated:	26 September 2012
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Subject:	Proposal for a Council Decision authorising the Member States which are Contracting Parties to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 ("Vienna Convention") to ratify the Protocol amending that Convention in the interest of the European Union, or to accede to it

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2012) 550 final



EUROPEAN COMMISSION

Brussels, 26.9.2012  
COM(2012) 550 final

2012/0262 (NLE)

Proposal for a

**COUNCIL DECISION**

**authorising the Member States which are Contracting Parties to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 ("Vienna Convention") to ratify the Protocol amending that Convention in the interest of the European Union, or to accede to it**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Purpose of the proposal

Currently, the international nuclear liability regime is governed primarily by two instruments: the "Vienna Convention" as amended by the 1997 Protocol and the "Paris Convention" on Third Party Liability in the Field of Nuclear Energy of 1960 which was amended by several protocols and supplemented by the Brussels Convention of 31 January 1963 (hereinafter "Brussels Convention"). Both these Conventions share similar main principles on substance. However, some of the EU Member States are Contracting Parties to the Paris Convention, others to the Vienna Convention.

Articles 12 to 14 of the 1997 Protocol include provisions on the jurisdiction and on recognition and enforcement of judgments relating to the application of the Vienna Convention. These rules affect provisions contained in the European Union law, in particular, in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Union therefore has exclusive competence over those provisions set up in the 1997 Protocol. Consequently the Member States cannot become Contracting Parties to the 1997 Protocol as far as those provisions are concerned. In a similar situation concerning the Protocol of 12 February 2004 amending the Paris Convention, Council Decisions were adopted in order to authorise the concerned Member States to sign and ratify or accede to the Protocol in the interest of the Union. A similar solution is suggested in this case.

The Commission proposes that the Council authorizes the Member States which are Contracting Parties to the Convention of 21 May 1963 on Civil Liability for Nuclear Damage ("Vienna Convention") – i.e. Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland (ex post) and Slovakia - to ratify or conclude, in the interest of the European Union, the Protocol<sup>1</sup> amending the Convention, which was adopted on 12 September 1997 under the auspices of the International Atomic Energy Agency.

Finally, while it would be preferable to apply a single system for nuclear liability in the European Union, flexibility is nevertheless possible given that the systems established in the Vienna Convention and in the Paris Convention are compatible.

#### 1.2. Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage

The Vienna Convention was adopted in order to provide adequate and fair compensation to victims of damage caused by nuclear accidents. It sets up a special system of civil liability in the field of nuclear energy based on the following basic principles: (a) "absolute" liability, i.e. liability without fault; (b) exclusive liability of the operator of the nuclear installation; (c) limitation of liability in amount and/or limitation of liability cover by insurance or other financial security; (d) limitation of liability in time.

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<sup>1</sup> OJ L 12, 16.1.2001, p. 1.

### *The 1997 Protocol*

The Vienna Convention was amended by the 1997 Protocol (which entered into force on 4 October 2003) in order to improve the system of compensation for nuclear damage.

*Inter alia*, the 1997 Protocol contains a new definition of nuclear damage (now also addressing the concept of environmental damage and preventive measures), extends the geographical scope of the Vienna Convention, extends the period during which claims may be brought for loss of life and personal injury and substantially raises the minimum limits of compensation. It also encompasses new provisions on jurisdiction which have implications in cases where the nuclear incident occurs during the transport of nuclear material to or from an installation situated in the territory of a State which is Party to the Vienna Convention.

Under Article 19(1) of the 1997 Protocol, a State which is a Party to the Protocol but not to the 1963 Vienna Convention, is bound by the provisions of that Convention as amended by the Protocol, in relation to other States which are Party to the Protocol, and failing an expression of a different intention by that State at the time of deposit of its instrument of ratification, acceptance, approval or accession, will be bound by the 1963 Vienna Convention in relation to States which are only Parties thereto.

### *The Joint Protocol of 1988*

On 21 September 1988 the Conference on the relationship between the Paris Convention and the Vienna Convention adopted the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention ("the 1988 Joint Protocol"), since the Paris Convention, the Brussels Convention and the Vienna Convention share the same principles. The primary goal was to coordinate application of the Conventions.

The 1988 Joint Protocol links the two Conventions in two main ways.

First, it provides for a mutual extension of the operator's liability under the Paris and Vienna systems (Article II). Thus, if a nuclear incident occurs for which an operator is liable under both the Vienna Convention and the Joint Protocol, the operator will be liable in accordance with the Vienna Convention for nuclear damage suffered not only in the territory of Parties thereto, but also in the territory of Parties to both the Paris Convention and the Joint Protocol. Conversely, if an incident occurs for which an operator is liable under both the Paris Convention and the Joint Protocol, reciprocity will apply.

Second, the 1988 Joint Protocol is meant to eliminate conflicts which might otherwise arise, especially in the case of transport cases from the simultaneous application of the two Conventions (Article III).

The 1988 Joint Protocol was signed by five Member States and entered into force for 17 more following ratification, accession, approval, or acceptance.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The amendments to the Vienna Convention contain aspects that are beneficial to potential victims of a nuclear accident, i.e. an increase in the amounts of liability and a wider definition of nuclear damage. Therefore, in line with the conclusions of a study published in 2009 and a

workshop held in June 2010 on nuclear liability<sup>2</sup>, it is recognized, after consultation with the stakeholders, that any initiative in the field of nuclear liability must not hamper the accession by Member States to any international convention improving the situation of potential victims in the European Union. Adherence to the 1997 Protocol is therefore beneficial for improving victim compensation across the European Union.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. The Member States concerned**

The following nine Member States of the European Union have ratified or acceded to the Vienna Convention: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, Poland and Romania. The United Kingdom and Spain signed but have not ratified the Convention (these two countries became Contracting Parties to the Paris Convention). The Convention has ceased to apply to Slovenia.

The 1997 Protocol was signed by the Czech Republic, Hungary, Lithuania and Italy (the latter is a Contracting Party to the Paris Convention). The Protocol was ratified by Romania and Latvia (before their accession to the EU) and by Poland (after accession to the EU).

The Council decision should therefore be addressed to the Member States which are Contracting Parties to the Vienna Convention, i.e. Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland (ex post) and Slovakia. Given that Italy, the United Kingdom and Spain, while signatories to the Vienna Convention, are Contracting Parties to the Paris Convention which establishes a similar system of nuclear liability, these countries should not be covered by the Council decision.

#### **3.2. Council Regulation (EC) No 44/2001**

Council Regulation (EC) No 44/2001 of 22 December 2000<sup>3</sup> lays down rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Regulation binds all the Member States (special arrangements exist with regard to Denmark).

The rules on jurisdiction provided for by Council Regulation (EC) No 44/2001 apply when the defendant is domiciled in one of the Member States bound by the Regulation. Defendants not domiciled in a Member State may be brought before the courts of each Member State in accordance with the national rules on jurisdiction of that State, subject to Articles 22 (exclusive jurisdiction) and 23 (choice of forum clauses).

Jurisdiction is based, in the first place, on the domicile of the defendant. In addition, in matters relating to tort, delict or quasi-delict, a person domiciled in a Member State may be sued in the Member State where the harmful event occurred or may occur. The place where the harmful event occurred is understood by the Court's case law to mean the place of the act giving rise to the harmful event or the place where the damage occurred. In matters relating to insurance, an insurer domiciled in a Member State may be sued (a) in the courts of the Member State where insurer is domiciled, or (b) in the Member State where the plaintiff is domiciled, in the case of actions brought by the policyholder, the insured person or a beneficiary, or (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer. In respect of liability insurance, the insurer may, in

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<sup>2</sup> [http://ec.europa.eu/energy/nuclear/studies/nuclear\\_en.htm](http://ec.europa.eu/energy/nuclear/studies/nuclear_en.htm)

<sup>3</sup> OJ L 12, 16.1.2001, p. 1

addition, be sued in the courts of the place where the harmful event occurred, and also, if the law of the court so permits, be joined in proceedings brought by the injured party against the insured person.

Council Regulation (EC) No 44/2001 stipulates that a judgment given in one Member State must be recognized and enforced in the others without any special procedure being required. However, a limited number of grounds for non-recognition are permitted to take account of public policy considerations, respect for the rights of the defense and the existence of certain irreconcilable judgments.

### **3.3. Union competence with respect to the 1997 Protocol**

There is no Union legislation governing nuclear third party liability. Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the applicable law to non-contractual obligations ("Rome II") excludes nuclear liability from its scope.

However, the 1997 Protocol contains provisions which affect Council Regulation (EC) No 44/2001. In contrast to the multiple grounds of jurisdiction available under the Regulation, Article XI of the Vienna Convention, as amended by the 1997 Protocol, provides, as a general rule, for the exclusive jurisdiction of the courts of the State Party within whose territory the nuclear incident occurred.

In particular, Article XI of the Vienna Convention assigns exclusive jurisdiction to the courts of the Contracting State on whose territory a nuclear incident has occurred over claims for compensation for damage caused by the incident. If the incident occurred outside the territory of the Contracting Parties or if the place of the accident cannot be determined with certainty, the relevant courts are those of the Installation State of the operator liable.

The 1997 Protocol also provides for the exclusive jurisdiction of the courts of the Contracting Coastal Party for nuclear incidents which occur in its exclusive economic zone. This jurisdiction is granted on condition that the Depositary of the Convention received notification of the zone prior to the nuclear incident.

As regards the rules on the recognition and enforcement, under Article XII of the Vienna Convention, as amended by the 1997 Protocol, any judgement by the competent court that is no longer subject to ordinary forms of review benefits from specific provisions relating to the recognition and enforcement of judgements. With some exceptions<sup>4</sup> Article XII provides that the judgement must be recognized within the territory of all Contracting Parties and is enforceable as if it were the judgement of a national court. Reconsideration of the merits of the case is never allowed.

The European Union has exclusive jurisdiction over the provisions on jurisdiction and the recognition and enforcement of the judgments contained in the 1997 Protocol, as these affect, as defined by the ECJ case law<sup>5</sup>, the corresponding rules of Council Regulation (EC) No 44/2001. The Member States therefore no longer have the right either to derogate from these

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<sup>4</sup> Refusal of recognition is only allowed: (a) where the judgement was obtained by fraud; (b) where the party against whom the judgement was pronounced was not given a fair opportunity to present its case; or (c) where the judgement is contrary to the public policy ("ordre public") of the Contracting Party within whose territory recognition is sought, or is not in accordance with fundamental standards of justice.

<sup>5</sup> ECJ, Case 22/70 ("EART"), [1971] ECR 263.

rules among themselves or to contract obligations with non-member countries which affect these rules.

### **3.4. Authorization of the Member States**

However, the Vienna Convention and the 1997 Protocol have no regional economic organization clause allowing the European Union to become Contracting Party to the Protocol. Consequently, the European Union is not in a position to become a Contracting Party to the 1997 Protocol.

The 1997 Protocol, improving protection for victims in the event of nuclear incidents is particularly important for the European Union and its Member States. On an exceptional basis, it is therefore justified for the Union to exercise its powers through its Member States which are Parties to the Vienna Convention.

However, disregarding those Member States which are already Contracting Parties to the amended Paris Convention, five Member States of the European Union, namely Austria, Ireland, Luxembourg, Malta and Cyprus are not Parties neither to the amended Paris Convention nor to the 1963 Vienna Convention. Consequently, it is considered objectively justified, on an exceptional basis, to allow these five Member States not to become Parties to the 1997 Protocol and therefore to continue to apply the rules of Council Regulation (EC) No 44/2001 in the area covered by the Vienna Convention and the 1997 Protocol. This difference in the application of the rules on jurisdiction within the European Union is justified given that:

- the 1997 Protocol amends a Convention to which these five Member States are not Contracting Parties;
- Council Regulation (EC) No 44/2001 does not affect Conventions to which the Member States are Parties.

As a result, only the Member States which are currently Parties to the Vienna Convention should ratify or accede to the 1997 Protocol in the interest of the European Union. Poland ratified the 1997 Protocol after its accession to the EU. The decision should therefore be addressed to Poland *ex post*. Latvia and Romania had already signed and ratified the 1997 Protocol prior to their accession to the European Union.

For these reasons, the Commission recommends that the EP and the Council adopt the Decision authorizing the Member States which are Parties to the Vienna Convention to ratify, in the interest of the European Union, the 1997 Protocol, or to accede to it.

### **3.5. Reservation on rules on the recognition and enforcement of judgments**

As regards to the rules on recognition and enforcement of judgments, established in Article XII, as amended by Article 14 of the 1997 Protocol, it is necessary to ensure continued application of the relevant rules of Regulation 44/2001, as extended to Denmark by the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>6</sup>, or of the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007<sup>7</sup>. Limiting application of Article XII of the Vienna Convention in this way would ensure unity in the Union judicial area and the free

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<sup>6</sup> OJ L 299, 16.11.2005, p. 62.

<sup>7</sup> OJ L 339, 12.12.2007, p. 3.

circulation of judgments within the EU, without having repercussions on the effective implementation of the Convention, as amended by the Protocol, nor fundamental implications for non-EU States Parties to it.

The 1997 Protocol is silent on the question of permissible reservations. Under Article 19 of the 1969 Vienna Convention on the Law of Treaties, a reservation would be permissible if compatible with “the object and purpose” of the Convention, as is the case here.

In conclusion, when acceding to the 1997 Protocol, Member States must ensure the application of the relevant EU rules on the recognition and enforcement of judgments pronounced by the court of another Member State (including Denmark) or by a non-EU state bound by the Lugano Convention.



Proposal for a

**COUNCIL DECISION**

**authorising the Member States which are Contracting Parties to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 ("Vienna Convention") to ratify the Protocol amending that Convention in the interest of the European Union, or to accede to it**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2), in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Protocol of 12 September 1997 amending the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 (hereinafter referred to as the "Vienna Convention") was negotiated with a view to improving compensation for victims of damage caused by nuclear incidents.
- (2) The European Union has exclusive jurisdiction with regard to consolidated Articles XI and XII of the Vienna Convention insofar as such provisions affect the rules laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>8</sup>. The Member States retain their competence for matters covered by the 1997 Protocol which do not affect European Union law. Given the subject matter and the aim of the 1997 Protocol, acceptance of the provisions of the Protocol which come under European Union jurisdiction cannot be dissociated from the provisions which come under the competence of the Member States.
- (3) The 1997 Protocol is particularly important, in the interest of the European Union and its Member States, because it improves compensation for damage caused by nuclear incidents.
- (4) The Vienna Convention and its 1997 Protocol are not open to participation by regional organizations. As a result, the European Union is not in a position to sign or ratify the Protocol. Under these circumstances, it is justified, on an exceptional basis, that the Member States ratify or conclude the 1997 Protocol in the interest of the European Union.

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<sup>8</sup> OJ L 12, 16.1.2001, p.1.

- (5) However, five of the Member States of the European Union, namely Austria, Ireland, Luxembourg, Cyprus and Malta are not Parties to the Vienna Convention. Given that the 1997 Protocol amends the Vienna Convention and that Council Regulation (EC) No 44/2001 authorizes the Member States bound by that Convention to continue to apply the rules on jurisdiction provided for in it, it is objectively justified that this Decision should be addressed only to those Member States that are Contracting Parties to the Vienna Convention and to allow, on an exceptional basis, these five Member States not to become Parties to the 1997 Protocol.
- (6) The Member States which are Parties to the Vienna Convention should therefore ratify or conclude the 1997 Protocol in the interest of the European Union, subject to the conditions laid down in this Decision. This Decision is addressed to Poland *ex post* given that it ratified the Protocol in 2010.
- (7) Consequently, as regards the European Union, the provisions of the 1997 Protocol, will be applied only by those Member States which are currently Contracting Parties to the Vienna Convention.
- (8) Member States should finalize, within a reasonable time, their procedures for ratification of, or accession to, the 1997 Protocol, in the interest of the EU. Member States should exchange information on the state of their ratification or accession procedures in order to prepare for depositing their instruments of ratification of, or accession to, the 1997 Protocol.
- (9) The rules on recognition and enforcement of judgments laid down in Article XII of the Vienna Convention, as amended by Article 14 of the 1997 Protocol, should not take precedence either over the relevant rules established in Regulation (EC) No 44/2001, as extended to Denmark by the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or in the Lugano Convention on jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial matters of 30 October 2007. Therefore, when ratifying or acceding to the 1997 Protocol, the Member States must make the declaration with the aim of ensuring continued application of the relevant EU rules.
- (10) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application

HAS ADOPTED THIS DECISION:

*Article 1*

1. Without prejudice to the European Union's powers, the Member States which are currently Parties to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 shall ratify the 1997 Protocol, or accede to it, in the interest of the European Union.
2. The text of the 1997 Protocol is attached to this Decision.
3. In this Decision, the term "Member State" shall mean all Member States which are currently Contracting Parties to the Vienna Convention.

## *Article 2*

1. Member States shall take the necessary steps to deposit their instruments of ratification of, or accession to, the 1997 Protocol with the Director-General of the International Atomic Energy Agency simultaneously within a reasonable time and, if possible, before 31 December 2014.
2. Member States shall inform the Council and the Commission, before [...], of the prospective date of conclusion of their ratification or accession procedures.
3. Member States shall endeavor to exchange information on the state of their ratification procedures.

## *Article 3*

When ratifying or acceding to the 1997 Protocol, Member States shall make the following declaration:

"Judgments on matters covered by the 1997 Protocol, when given by the court of the EU Member State, Contracting Party to the Protocol, shall be recognized and enforced in other EU Member States which are Contracting Parties to the Protocol, in accordance with the relevant rules of the European Union on the subject.

Judgments on matters covered by the 1997 Protocol, when given by a court of the Kingdom of Denmark, shall be recognised and enforced in other EU Member States which are Contracting Parties to the Protocol, in accordance with the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Judgments on matters covered by the Athens Protocol, when given by a court of a non-EU State bound by the Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007 shall be recognised and enforced in the other EU Member States which are Contracting Parties to the Protocol, in accordance with that Convention."

## *Article 4*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

## *Article 5*

This Decision is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

*For the Council*  
*The President*

## ANNEX

Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING that it is desirable to amend the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, to provide for broader scope, increased amount of liability of the operator of a nuclear installation and enhanced means for securing adequate and equitable compensation,

HAVE AGREED as follows,

### *Article 1*

The Convention which the provisions of this Protocol amend is the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, hereinafter referred to as the "1963 Vienna Convention".

### *Article 2*

Article I of the 1963 Vienna Convention is amended as follows:

1. Paragraph 1(j) is amended as follows:

- (a) the word "and" is deleted at the end of sub-paragraph (ii) and is inserted at the end of sub-paragraph (iii).
- (b) a new sub-paragraph (iv) is added as follows:

(iv) such other installations in which there are nuclear fuel or radioactive products or waste as the Board of Governors of the International Atomic Energy Agency shall from time to time determine;

2. Paragraph 1(k) is replaced by the following text:

(k) "Nuclear Damage" means -

- (i) loss of life or personal injury;
- (ii) loss of or damage to property;

and each of the following to the extent determined by the law of the competent court;

(iii) economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii), insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage;

(iv) the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii);

(v) loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph (ii);

(vi) the costs of preventive measures, and further loss or damage caused by such measures;

(vii) any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court,

in the case of subparagraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

3. Paragraph 1(l) is replaced by the following text:

(l) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.

4. After paragraph 1(l) four new paragraphs 1(m), 1(n), 1(o) and 1(p) are added as follows:

(m) ""Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.

(n) ""Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in sub-paragraphs (k)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.

(o) ""Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate having regard to all the circumstances, for example -

(i) the nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

(ii) the extent to which, at the time they are taken, such measures are likely to be effective; and

(iii) relevant scientific and technical expertise.

(p) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.

5. Paragraph 2 is replaced by the following text:

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that-

- (a) with respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and
- (b) with respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

### *Article 3*

After Article I of the 1963 Vienna Convention two new *Articles I A* and *I B* are added as follows:

#### *Article I A*

1. This Convention shall apply to nuclear damage wherever suffered.
2. However, the legislation of the Installation State may exclude from the application of this Convention damage suffered -
  - (a) in the territory of a non-Contracting State; or
  - (b) in any maritime zones established by a non-Contracting State in accordance with the international law of the sea.
3. An exclusion pursuant to paragraph 2 of this Article may apply only in respect of a non-Contracting State which at the time of the incident -
  - (a) has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea; and
  - (b) does not afford equivalent reciprocal benefits.
4. Any exclusion pursuant to paragraph 2 of this Article shall not affect the rights referred to in sub-paragraph (a) of paragraph 2 of Article IX and any exclusion pursuant to paragraph 2(b) of this Article shall not extend to damage on board or to a ship or an aircraft.

#### *Article I B*

This Convention shall not apply to nuclear installations used for non-peaceful purposes.

#### *Article 4*

Article II of the 1963 Vienna Convention is amended as follows:

1. At the end of paragraph 3(a) the following text is added:
2. The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to paragraph 1 of Article V.
3. At the end of paragraph 4 the following text is added:

The Installation State may limit the amount of public funds made available as provided for in sub-paragraph (a) of paragraph 3 of this Article.

4. Paragraph 6 is replaced by the following text:  
  
6. No person shall be liable for any loss or damage which is not nuclear damage pursuant to sub-paragraph (k) of paragraph 1 of Article I but which could have been determined as such pursuant to the provisions of that sub-paragraph.

#### *Article 5*

After the first sentence in Article III of the 1963 Vienna Convention the following text is added:

However, the Installation State may exclude this obligation in relation to carriage which takes place wholly within its own territory.

#### *Article 6*

Article IV of the 1963 Vienna Convention is amended as follows:

1. Paragraph 3 is replaced by the following text:
3. No liability under this Convention shall attach to an operator if he proves that the nuclear damage is directly due to an act of armed conflict, hostilities, civil war or insurrection.
2. Paragraph 5 is replaced by the following text:
5. The operator shall not be liable under this Convention for nuclear damage -
  - (a) to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and
  - (b) to any property on that same site which is used or to be used in connection with any such installation.
3. Paragraph 6 is replaced by the following text:
6. Compensation for damage caused to the means of transport upon which the nuclear material involved was at the time of the nuclear incident shall not have the effect of reducing

the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party, or an amount established pursuant to sub-paragraph (c) of paragraph 1 of Article V.

4. Paragraph 7 is replaced by the following text:

7. Nothing in this Convention shall affect the liability of any individual for nuclear damage for which the operator, by virtue of paragraph 3 or 5 of this Article, is not liable under this Convention and which that individual caused by an act or omission done with intent to cause damage.

#### *Article 7*

1. The text of Article V of the 1963 Vienna Convention is replaced by the following text:

1. The liability of the operator may be limited by the Installation State for any one nuclear incident, either -

- (a) to not less than 300 million SDRs; or
- (b) to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage; or
- (c) for a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds shall be made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs.

2. Notwithstanding paragraph 1 of this Article, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2 of this Article and paragraph 6 of Article IV shall apply wherever the nuclear incident occurs.

2. After Article V, four new Articles *VA*, *VB*, *VC* and *VD* are added as follows:

#### *Article VA*

1. Interest and costs awarded by a court in actions for compensation of nuclear damage shall be payable in addition to the amounts referred to in Article V.



2. The amounts mentioned in Article V and paragraph 6 of Article IV may be converted into national currency in round figures.

#### *Article V B*

Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

#### *Article V C*

1. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the public funds required under sub-paragraphs (b) and (c) of paragraph 1 of Article V and under paragraph 1 of Article VII, as well as interest and costs awarded by a court, may be made available by the first-named Contracting Party. The Installation State shall reimburse to the other Contracting Party any such sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.
2. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the Contracting Party whose courts have jurisdiction shall take all measures necessary to enable the Installation State to intervene in proceedings and to participate in any settlement concerning compensation.

#### *Article V D*

1. A meeting of the Contracting Parties shall be convened by the Director General of the International Atomic Energy Agency to amend the limits of liability referred to in Article V if one-third of the Contracting Parties express a desire to that effect.
2. Amendments shall be adopted by a two-thirds majority of the Contracting Parties present and voting, provided that at least one-half of the Contracting Parties shall be present at the time of the voting.
3. When acting on a proposal to amend the limits, the meeting of the Contracting Parties shall take into account, inter alia, the risk of damage resulting from a nuclear incident, changes in the monetary values, and the capacity of the insurance market.
4. (a) Any amendment adopted in accordance with paragraph 2 of this Article shall be notified by the Director General of the IAEA to all Contracting Parties for acceptance. The amendment shall be considered accepted at the end of a period of 18 months after it has been notified provided that at least one-third of the Contracting Parties at the time of the adoption of the amendment by the meeting have communicated to the Director General of the IAEA that they accept the amendment. An amendment accepted in accordance with this paragraph shall enter into force 12 months after its acceptance for those Contracting Parties which have accepted it.  
  
(b) If, within a period of 18 months from the date of notification for acceptance, an amendment has not been accepted in accordance with sub-paragraph (a), the amendment shall be considered rejected.

5. For each Contracting Party accepting an amendment after it has been accepted but not entered into force or after its entry into force in accordance with paragraph 4 of this Article, the amendment shall enter into force 12 months after its acceptance by that Contracting Party.
6. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 4 of this Article shall, failing an expression of a different intention by that State -
  - (a) be considered as a Party to this Convention as so amended; and
  - (b) be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

#### *Article 8*

Article VI of the 1963 Vienna Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:
  - (a) Rights of compensation under this Convention shall be extinguished if an action is not brought within -
    - (i) with respect to loss of life and personal injury, thirty years from the date of the nuclear incident;
    - (ii) with respect to other damage, ten years from the date of the nuclear incident.
  - (b) If, however, under the law of the Installation State, the liability of the operator is covered by insurance or other financial security including State funds for a longer period, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after such a longer period which shall not exceed the period for which his liability is so covered under the law of the Installation State.
  - (c) Actions for compensation with respect to loss of life and personal injury or, pursuant to an extension under sub-paragraph (b) of this paragraph with respect to other damage, which are brought after a period of ten years from the date of the nuclear incident shall in no case affect the rights of compensation under this Convention of any person who has brought an action against the operator before the expiry of that period.
2. Paragraph 2 is deleted.
3. Paragraph 3 is replaced by the following text:
  3. Rights of compensation under the Convention shall be subject to prescription or extinction, as provided by the law of the competent court, if an action is not brought within three years from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, provided that

the periods established pursuant to sub-paragraphs (a) and (b) of paragraph 1 of this Article shall not be exceeded.

#### *Article 9*

Article VII is amended as follows:

1. In paragraph 1, the following two sentences are added at the end of the paragraph and the paragraph so amended becomes sub-paragraph (a) of that paragraph:

Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable, provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

2. A new sub-paragraph (b) is added to paragraph 1 as follows:

(b) Notwithstanding sub-paragraph (a) of this paragraph, where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided pursuant to sub-paragraph (a) of this paragraph.

3. In paragraph 3, the words "or sub-paragraphs (b) and (c) of paragraph 1 of Article V" are inserted after the words "of this Article".

#### *Article 10*

Article VIII of the 1963 Vienna Convention is amended as follows:

1. The text of Article VIII becomes paragraph 1 of that Article.

2. A new paragraph 2 is added as follows:

2. Subject to application of the rule of sub-paragraph (c) of paragraph 1 of Article VI, where in respect of claims brought against the operator the damage to be compensated under this Convention exceeds, or is likely to exceed, the maximum amount made available pursuant to paragraph 1 of Article V, priority in the distribution of the compensation shall be given to claims in respect of loss of life or personal injury.

#### *Article 11*

In Article X of the 1963 Vienna Convention, a new sentence is added at the end of the Article as follows:

The right of recourse provided for under this Article may also be extended to benefit the Installation State insofar as it has provided public funds pursuant to this Convention.

#### *Article 12*

Article XI of the 1963 Vienna Convention is amended as follows:

1. A new paragraph 1bis is added as follows:

1bis. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the Depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea.

2. Paragraph 2 is replaced by the following text:

2. Where a nuclear incident does not occur within the territory of any Contracting Party, or within an area notified pursuant to paragraph 1bis, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

3. In paragraph 3, first line, and in sub-paragraph (b), after the figure "1", insert ", 1bis".

4. A new paragraph 4 is added as follows:

4. The Contracting Party whose courts have jurisdiction shall ensure that only one of its courts shall have jurisdiction in relation to any one nuclear incident.

#### *Article 13*

After Article XI a new *Article XI A* is added as follows:

#### *Article XI A*

The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage -

- (a) 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; and
- (b) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

#### *Article 14*

The text of Article XII of the 1963 Vienna Convention is replaced by the following text:

#### *Article XII*

1. A judgment that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized, except -
  - (a) where the judgment was obtained by fraud;
  - (b) where the party against whom the judgment was pronounced was not given a fair opportunity to present his case; or
  - (c) where the judgment is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.
2. A judgment which is recognized under paragraph 1 of this Article shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgment of a court of that Contracting Party. The merits of a claim on which the judgment has been given shall not be subject to further proceedings.

#### *Article 15*

Article XIII of the 1963 Vienna Convention is amended as follows:

1. The text of Article XIII becomes paragraph 1 of that Article.
2. A new paragraph 2 is added as follows:
  2. Notwithstanding paragraph 1 of this Article, insofar as compensation for nuclear damage is in excess of 150 million SDRs, the legislation of the Installation State may derogate from the provisions of this Convention with respect to nuclear damage suffered in the territory, or in any maritime zone established in accordance with the international law of the sea, of another State which at the time of the incident, has a nuclear installation in such territory, to the extent that it does not afford reciprocal benefits of an equivalent amount.

#### *Article 16*

The text of Article XVIII of the 1963 Vienna Convention is replaced by the following text:

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

#### *Article 17*

After Article XX of the 1963 Vienna Convention a new *Article XX A* is added as follows:

#### *Article XX A*

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.
2. If a dispute of this character referred to in paragraph 1 of this Article cannot be settled within six months from the request for consultation pursuant to paragraph 1 of this Article, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2 of this Article. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 of this Article with respect to a Contracting Party for which such a declaration is in force.
4. A Contracting Party which has made a declaration in accordance with paragraph 3 of this Article may at any time withdraw it by notification to the depositary.

#### *Article 18*

1. Articles XX to XXV, paragraphs 2, 3 and paragraph number "1." of Article XXVI, Articles XXVII and XXIX of the 1963 Vienna Convention are deleted.
2. The 1963 Vienna Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single text that may be referred to as the 1997 Vienna Convention on Civil Liability for Nuclear Damage.

#### *Article 19*

1. A State which is a Party to this Protocol but not a Party to the 1963 Vienna Convention shall be bound by the provisions of that Convention as amended by this Protocol in relation to other States Parties hereto, and failing an expression of a different intention by that State at the time of deposit of an instrument referred to in Article 20 shall be bound by the provisions of the 1963 Vienna Convention in relation to States which are only Parties thereto.
2. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the 1963 Vienna Convention and to this Protocol with respect to a State which is a Party to the 1963 Vienna Convention but not a Party to this Protocol.

#### *Article 20*

1. This Protocol shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna from 29 September 1997 until its entry into force.
2. This Protocol is subject to ratification, acceptance or approval by States which have signed it.
3. After its entry into force, any State which has not signed this Protocol may accede to it.
4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director General of the International Atomic Energy Agency, who shall be the depositary of this Protocol.

#### *Article 21*

1. This Protocol shall enter into force three months after the date of deposit of the fifth instrument of ratification, acceptance or approval.
2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the fifth instrument of ratification, acceptance or approval, this Protocol shall enter into force three months after the date of deposit by such State of the appropriate instrument.

#### *Article 22*

1. Any Contracting Party may denounce this Protocol by written notification to the depositary.
2. Denunciation shall take effect one year after the date on which the notification is received by the depositary.
3. As between the Parties to this Protocol, denunciation by any of them of the 1963 Vienna Convention in accordance with its Article XXVI shall not be construed in any way as denunciation of the 1963 Vienna Convention as amended by this Protocol.
4. Notwithstanding a denunciation of this Protocol by a Contracting Party pursuant to this Article, the provisions of this Protocol shall continue to apply to any nuclear damage caused by a nuclear incident occurring before such denunciation takes effect.

#### *Article 23*

The depositary shall promptly notify States Parties and all other States of:

- (a) each signature of this Protocol;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession;

- (c) the entry into force of this Protocol;
- (d) any notification received pursuant to paragraph 1bis of Article XI;
- (e) requests for the convening of a revision conference pursuant to Article XXVI of the 1963 Vienna Convention and for a meeting of the Contracting Parties pursuant to Article V D of the 1963 Vienna Convention as amended by this Protocol;
- (f) notifications of denunciations received pursuant to Article 22 and other pertinent notifications relating to this Protocol.

*Article 24*

1. The original of this Protocol, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary.
2. The International Atomic Energy Agency shall establish the consolidated text of the 1963 Vienna Convention as amended by this Protocol in the Arabic, Chinese, English, French, Russian and Spanish languages as set forth in the annex to this Protocol.
3. The depositary shall communicate to all States the certified true copies of this Protocol together with the consolidated text of the 1963 Vienna Convention as amended by this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Vienna, the twelfth day of September, one thousand nine hundred and ninety-seven.