



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to sign, in the interest of the European Community, the Protocol amending that Convention

Proposal for a

COUNCIL DECISION

authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to ratify the Protocol amending that Convention, or to accede to it, in the interest of the European Community

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. PURPOSE OF THE PROPOSALS

The Commission proposes that the Council authorise the Member States which are Parties to the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy ("Paris Convention") to sign and ratify the Protocol amending that Convention, which was adopted under the auspices of the Organisation for Economic Cooperation and Development, or to accede to it, in the interest of the European Community.

2. THE PROTOCOL OF AMENDMENT TO THE PARIS CONVENTION

2.1. The Paris Convention

The Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy was concluded in the framework of the Organisation for European Economic Cooperation, now the Organisation for Economic Cooperation and Development. It was adopted in order to provide adequate and fair compensation to the victims of damage caused by nuclear accidents.

The Paris Convention sets up a special system of third party liability in the field of nuclear energy which is adapted to the specific problems in this field and which derogates from common civil liability law on several points. This system is characterised by the objective (without fault) and exclusive liability of the operator of the nuclear installation, who is bound to pay compensation up to a certain amount and is obliged to have insurance or other financial security to cover this liability. The scope extends to nuclear accidents occurring in certain nuclear installations or during transport of the nuclear substances defined by the Convention on the territory of the Contracting States, including territorial waters.

The Paris Convention is supplemented by the Brussels Convention of 31 January 1963 Supplementary to the Paris Convention ("Brussels Supplementary Convention"), which sets up an additional damage payment system using public funds. This compensation system has three tiers. The first tier of compensation, relating to the liability of the operator of the nuclear installation, is covered by the operator's insurance or financial security. The second tier, which covers amounts over and above the amount for which the operator is liable, is funded by public funds allocated by the State where the nuclear installation is situated, up to 175 million special drawing rights (SDR).¹ The third tier, funded by contributions from the Contracting Parties, covers compensation for nuclear damage between 175 and 300 million SDR.

The Paris Convention was amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982. It is currently in force in 15 countries, 12 of which are Member States of the European Community (Austria, Ireland and Luxembourg are not Parties to the Convention).

¹ According to the values of currencies expressed in special drawing rights on 2 January 2002 published by the International Monetary Fund, 1 special drawing right = EUR 1.39732.

2.2. The Protocol of amendment

In order to improve the system of compensation for nuclear damage, the Contracting Parties to the Paris Convention started negotiations in 1998 to revise the Convention. The aim of the revision is to ensure that more funds are available to compensate a greater number of victims on the basis of a wider definition of damage.

The final text of a proposal for a Protocol amending the Paris Convention was approved by the Contracting Parties in February 2002 and was accepted by the OECD's Steering Committee for Nuclear Energy in May 2002.

The most notable amendments relate to extending the geographical scope of the Convention to nuclear damage occurring on the territory or in the maritime area of States which are not Contracting Parties to the Convention, and extending the concept of indemnifiable damage to non-material damage and to the cost of preventive measures and measures to restore the environment.

The most significant improvement is the increase in the liability amounts for operators of nuclear installations. The operator's liability is increased from a maximum amount of 15 million SDR in the current Convention to a minimum reference amount of €700 million, with national governments then being free to set a higher amount or to provide for the unlimited liability of the operator. This increase also concerns low risk installations, where the liability of the operator is increased from 5 million SDR to a minimum of €70 million and for accidents during the transport of nuclear substances, where the liability of the operator is increased from 5 million SDR to a minimum of €80 million.

This increase in the amounts for which operators of nuclear installations are liable is accompanied at the same time by an increase in the amount of supplementary funds provided for by the Brussels Supplementary Convention, which is also being revised. After the proposed amendment, the compensation tiers provided for by the Brussels Supplementary Convention will be as follows: the amount of the first tier relating to the operator's liability will be increased to a minimum of €700 million; the second tier, for which the State where the installation is located is responsible, will be between the amount of the first tier and €1.2 billion; the amount of the third tier will be €300 million. The total of these tiers will therefore amount to €1.5 billion.

3. COUNCIL REGULATION (EC) NO 44/2001

Council Regulation (EC) No 44/2001 of 22 December 2000² lays down rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Regulation binds all the Member States except for Denmark. The 1968 Brussels Convention remains in force in relations between Denmark and the other Member States.

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, while a defendant not domiciled in a Member State may in theory 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).

² OJ L 12, 16.1.2001, p. 1.

The jurisdiction regime 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 he 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 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 a Member State must be recognised and enforced in the other Member States without any special procedure being required. However, a limited number of grounds of non-recognition are provided to take account of public policy considerations, respect for the rights of the defence and the existence of certain irreconcilable judgments.

4. COMMUNITY JURISDICTION

There is no Community legislation governing nuclear third party liability. However, the new Protocol amending the Paris Convention contains provisions which affect Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In fact, in contrast to the multiple grounds of jurisdiction available under the Regulation, Article 13 of the Paris Convention, as amended by the Protocol, in principle provides for the exclusive jurisdiction of the State Party on whose territory the nuclear accident occurred.

Article 13 of the Paris Convention henceforth allocates exclusive jurisdiction to the courts of the Contracting State on whose territory a nuclear accident has occurred in relation to claims for compensation for damage caused by the accident. If the accident 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 Contracting State on whose territory the nuclear installation of the operator liable is situated.

In addition, owing to the principle of the unity of jurisdiction, the final judgments given by the relevant court will be subject to a reduced exequatur to become enforceable in Contracting States other than that of the relevant court, with no new basic examination of the matter.

The Protocol of amendment also provides for the exclusive jurisdiction of the courts of the Contracting Coastal Party for nuclear accidents which have occurred in its exclusive economic zone (EEZ). This jurisdiction is granted on the condition that the depositary of the Convention received notification of such a zone before the nuclear accident. The Protocol specifies that neither the notification of an exclusive economic zone to the depositary nor the exercise of the competence under the terms of this new provision will create a right or obligation with regard to the delimitation of the maritime borders between States having opposite or adjacent coasts.

On the other hand, if a nuclear accident occurs in a maritime area which is subject to a dispute regarding the delimitation of the maritime borders, jurisdiction should be granted to the court which is judged to be the most directly connected with the accident and affected by its consequences.

The Community has exclusive jurisdiction as regards the provisions on jurisdiction and the recognition and enforcement of the judgments contained in the Protocol of amendment, as these affect, within the meaning of the Court's case law, the corresponding rules of Council Regulation (EC) No 44/2001. The Member States therefore no longer have the right either to derogate from these rules among themselves, or to contract obligations with non-member countries which affect these rules.³

In order to allow the Community to exercise its powers, on 13 September 2002 the Council mandated the Commission to negotiate the Protocol to the Paris Convention of 29 July 1960, for matters falling within the jurisdiction of the European Community. On an exceptional basis, the Council did not provide for the Community's accession to the Convention in this particular case. This situation will not constitute a precedent for the future.

The negotiating directives specified that the Community would keep the proposed amendment of Article 13 of the Paris Convention drawn up by the Contracting Parties and accepted by the Steering Committee for Nuclear Energy in May 2002. This proposal ensures the principle of exclusive jurisdiction of the Paris Convention which is necessary to ensure a fair distribution of the funds available for compensation between victims.

In accordance with the negotiating directives, the Commission officially informed the OECD's Nuclear Energy Agency, the depositary of the Paris Convention, on 25 October 2002, that the Community would accept the proposed amendment of Article 13 of the draft Protocol as approved in February 2002 and that the reservation expressed regarding this Article by twelve of the Contracting States, which are Members of the European Union, could be withdrawn. This acceptance, which was confirmed in an exchange of correspondence between the Commission and the Nuclear Energy Agency, concluded the negotiations.

At the end of the negotiations, the version of the Protocol of amendment which had been approved by the European Commission was finally adopted by the Contracting Parties. The Steering Committee of the Nuclear Energy Agency officially noted its adoption in its 106th session on 24 April 2003 in the presence of a representative from the Commission. The Steering Committee of the Nuclear Energy Agency also noted that the Contracting Parties were ready to sign this Protocol as soon as the authorisation procedure underway within the European Community would allow this.

The text of the Protocol of amendment to the Paris Convention complies with the negotiating directives adopted by the Council. The Community's powers in these fields mean that the European Community becomes a Party to the Protocol of amendment. However, insofar as the Protocol of amendment does not allow the participation of regional integration organisations, the Community is not in a position to sign or ratify the Protocol, or to accede to it.

³ ECJ, Case 22/70, ("EART"), [1971] ECR 263.

The new Protocol to the Paris Convention, by improving protection for victims in the event of nuclear accidents, is particularly important for the European Community and its Member States and, on an exceptional basis, it is therefore justified that the Community exercises its powers through its Member States which are Parties to the Paris Convention.

However, three of the Member States of the European Union, namely Austria, Ireland and Luxembourg, are not Parties to the Paris Convention. It has been deemed objectively justified, on an exceptional basis, to allow these three Member States not to become Parties to the Protocol and therefore to continue to apply the rules of Council Regulation (EC) No 44/2001. This difference in the application of the rules on jurisdiction within the Community is justified for three reasons:

- the Protocol amends a convention to which these three Member States are not Contracting Parties;
- Council Regulation (EC) No 44/2001 does not affect conventions to which the Member States are Parties; and
- the Protocol does not make any fundamental amendments to the Convention's rules on jurisdiction.

As a result, the negotiating directives provided that the procedures will be started so that only the Member States which are currently Parties to the Paris Convention sign and ratify the Protocol, or accede to it, in the interest of the European Community.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not bound by Council Regulation (EC) No 44/2001 nor subject to its application. Consequently, Denmark is not taking part in the adoption of these decisions, which do not bind Denmark and do not apply to Denmark.

CONCLUSION

For these reasons, the Commission recommends that the Council adopt the following Decisions:

- firstly, a Decision authorising the Member States which are Parties to the Paris Convention to sign, in the interest of the European Community, the Protocol amending that Convention;
- secondly, a Decision authorising the Member States which are Parties to the Paris Convention to ratify the Protocol amending that Convention, or to accede to it, in the interest of the European Community.

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authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to sign, in the interest of the European Community, the Protocol amending that Convention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c), Article 67(5) and the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,⁴

Whereas:

- (1) The Protocol amending the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereinafter referred to as the "Paris Convention") was negotiated with a view to improving compensation for victims of damage caused by nuclear accidents. It provides for increasing liability amounts and extending the system of nuclear third party liability to environmental damage.
- (2) In accordance with the Council's negotiating directives of 13 September 2002, the Commission negotiated the Protocol of amendment to the Paris Convention for matters falling within the jurisdiction of the European Community. However, the Council's negotiating directives did not provide for negotiating a clause allowing the accession of the Community to the Protocol.
- (3) The Protocol was finally adopted by the Contracting Parties to the Paris Convention. The text of the Protocol complies with the Council's negotiating directives.
- (4) The Community has exclusive jurisdiction with regard to amending Article 13 of the Paris Convention where such amendment would 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. The Member States retain their jurisdiction for matters covered by the Protocol which do not affect Community law. Given the subject matter and the aim of the Protocol of amendment, acceptance of the provisions of the Protocol which come under Community jurisdiction cannot be dissociated from the provisions which come under the jurisdiction of the Member States.

⁴ OJ C [...], [...], p. [...] .

- (5) The Protocol of amendment to the Paris Convention is particularly important in the light of the interests of the Community and its Member States, because it improves compensation for damage caused by nuclear accidents.
- (6) The Paris Convention and its Protocol of amendment are not open to participation by regional organisations. As a result, the Community is not in a position to sign or ratify the Protocol, or to accede to it. Under these circumstances, and only on a very exceptional basis, it is justified that the Member States sign the Protocol in the interest of the Community.
- (7) However, three of the Member States of the European Community, namely Austria, Ireland and Luxembourg, are not Parties to the Paris Convention. Given that the Protocol amends the Paris Convention, that Council Regulation (EC) No 44/2001 authorises the Member States bound by that Convention to continue to apply the rules on jurisdiction provided for in it and that the Protocol does not substantially amend the rules on jurisdiction of the Convention, it has been deemed objectively justified, on an exceptional basis, to allow these three Member States not to become Parties to the Protocol.
- (8) The Member States which are Parties to the Paris Convention should therefore sign, in the interest of the European Community and subject to the conditions laid down in this Decision, the Protocol amending the Paris Convention, subject to its possible conclusion at a later date.
- (9) Consequently, the provisions of the Protocol, as regards the European Community, will be applied only by those Member States which are currently Parties to the Paris Convention.
- (10) The United Kingdom and Ireland are bound by Council Regulation (EC) No 44/2001 and are therefore taking part in the adoption of this Decision. The United Kingdom is also taking part in the application of this Decision.
- (11) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is therefore not bound by it or subject to its application.

HAS DECIDED AS FOLLOWS:

Article 1

1. Without prejudice to the Community's powers, the Member States which are currently Parties to the Paris Convention shall sign, in the interest of the European Community, the Protocol amending the Paris Convention, subject to its possible conclusion at a later date.
2. The text of the Protocol amending the Paris Convention is attached to this Decision.
3. In this Decision, the term "Member State" shall mean all Member States which are currently Parties to the Paris Convention, with the exception of Denmark.

Article 2

Member States shall endeavour to sign the Protocol before 31 December 2003.

Article 3

When signing the Protocol of amendment to the Paris Convention, Member States shall inform the Secretary-General of the Organisation for Economic Cooperation and Development in writing that signature has taken place in accordance with this Decision.

Done at Brussels, [...]

*For the Council
The President*

Proposal for a

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authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to ratify the Protocol amending that Convention, or to accede to it, in the interest of the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c), Article 67(5), the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,⁵

Having regard to the assent of the European Parliament,⁶

Whereas:

- (1) The Protocol amending the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereinafter referred to as the "Paris Convention") was negotiated with a view to improving compensation for victims of damage caused by nuclear accidents. It provides for increasing liability amounts and extending the system of nuclear third party liability to environmental damage.
- (2) In accordance with the Council's negotiating directives of 13 September 2002, the Commission negotiated the Protocol of amendment to the Paris Convention for matters falling within the jurisdiction of the European Community. However, the Council's negotiating directives did not provide for negotiating a clause allowing the accession of the Community to the Protocol.
- (3) The Protocol was finally adopted by the Contracting Parties to the Paris Convention. The text of the Protocol complies with the Council's negotiating directives.
- (4) The Community has exclusive jurisdiction with regard to amending Article 13 of the Paris Convention where such amendment would 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. The Member States retain their jurisdiction for matters covered by the Protocol which do not affect Community law. Given the subject matter and the aim of the Protocol of amendment,

⁵ OJ C [...], [...], p. [...] .

⁶ OJ C [...], [...], p. [...] .

acceptance of the provisions of the Protocol which come under Community jurisdiction cannot be dissociated from the provisions which come under the jurisdiction of the Member States.

- (5) The Protocol of amendment to the Paris Convention is particularly important, in the light of the interests of the Community and its Member States, because it improves compensation for damage caused by nuclear accidents.
- (6) The Protocol was signed by the Member States which are Parties to the Convention, on behalf of the European Community, on 2003, subject to its possible conclusion at a later date, in accordance with Council Decision../.../EC of 2003.⁷
- (7) The Paris Convention and its Protocol of amendment are not open to participation by regional organisations. As a result, the Community is not in a position to sign or ratify the Protocol, or to accede to it. Under these circumstances, it is justified, on a very exceptional basis, that the Member States ratify or accede to the Protocol in the interest of the Community.
- (8) However, three of the Member States of the European Community, namely Austria, Ireland and Luxembourg, are not Parties to the Paris Convention. Given that the Protocol amends the Paris Convention, that Council Regulation (EC) No 44/2001 authorises the Member States bound by that Convention to continue to apply the rules on jurisdiction provided for in it and that the Protocol does not substantially amend the rules on jurisdiction of the Convention, it has been deemed objectively justified, on an exceptional basis, to allow these three Member States not to become Parties to the Protocol.
- (9) The Member States which are Parties to the Paris Convention, should therefore ratify the Protocol amending the Paris Convention, or accede to it, in the interest of the European Community, subject to the conditions laid down in this Decision.
- (10) Consequently, the provisions of the Protocol, as regards the European Community, will be applied only by those Member States which are currently Parties to the Paris Convention.
- (11) The United Kingdom and Ireland are bound by Council Regulation (EC) No 44/2001 and are therefore taking part in the adoption of this Decision. The United Kingdom is also taking part in the application of this Decision.
- (12) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is therefore not bound by it or subject to its application.

⁷ OJ L [...], [...], p. [...].

HAS DECIDED AS FOLLOWS:

Article 1

1. Without prejudice to the Community's powers, the Member States which are currently Parties to the Paris Convention shall ratify the Protocol amending the Paris Convention, or accede to it, in the interest of the European Community.
2. The text of the Protocol amending the Paris Convention is attached to this Decision.
3. In this Decision, the term "Member State" shall mean all Member States which are currently Parties to the Paris Convention, with the exception of Denmark.

Article 2

1. Member States shall take the necessary steps to deposit their instruments of ratification of the Protocol, or accession to it, with the Secretary-General of the Organisation for Economic Cooperation and Development within a reasonable time and, if possible, before 31 December 2008.
2. Member States shall inform the Council and the Commission, before 31 December 2006, of the prospective date of conclusion of their ratification or accession procedures.
3. Member States shall endeavour to exchange information on the state of their ratification or accession procedures.

Article 3

When ratifying or acceding to the Protocol of amendment to the Paris Convention, Member States shall inform the Secretary-General of the Organisation for Economic Cooperation and Development in writing that ratification or accession has taken place in accordance with this Decision.

Done at Brussels, [...]

*For the Council
The President*

ANNEX