

(Text in force on: 20/11/2013)

Act of 17 March 1979 containing rules on liability for damage caused by nuclear accidents

We Juliana, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered it necessary to lay down rules on liability for damage caused by nuclear accidents in connection with the Convention on Third Party Liability in the Field of Nuclear Energy signed in Paris on 29 July 1960 and the Convention Supplementary to the aforementioned Convention signed in Brussels on 31 January 1963;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Part I: Definitions

Article 1

1. For the purposes of the provisions of or pursuant to this Act, the following terms are defined as follows:

Paris Convention: the Convention on Third Party Liability in the Field of Nuclear Energy signed in Paris on 29 July 1960 (Treaty Series 1961, 27; 1962, 64), as amended by the Additional Protocol to that Convention signed in Paris on 28 January 1964 (Treaty Series 1964, 178) and by the Protocol to that Convention signed in Paris on 16 November 1982 (Treaty Series 1983, 80);

Brussels Convention: the Convention Supplementary to the Paris Convention signed on 31 January 1963 in Brussels (Treaty Series 1963, 171), as amended by the Additional Protocol to that Convention signed on 28 January 1964 in Paris (Treaty Series 1964, 179) and the Protocol to that Convention signed on 16 November 1982 in Paris (Treaty Series 1983, 81);

Joint Protocol: the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention signed on 21 September 1988 in Vienna (Treaty Series 1988, 160);

Nuclear accident, nuclear facility, nuclear materials, operator and damage: as defined in the Paris Convention.

2. For the purposes of the provisions of or pursuant to the Paris Convention, the Brussels Convention and this Act, the operator of a nuclear facility situated in the Netherlands shall be regarded as the person who, being authorized thereto, sets up a nuclear facility, puts it into operation or maintains it in operation. Loss of this authorization as a result of the withdrawal or suspension of the licence or dispensation concerned shall not entail the loss of capacity of operator of a nuclear facility situated in the Netherlands insofar as liability is concerned for damage caused by a nuclear accident involving fissionable materials or radioactive products or wastes in respect of which he was liable at the time of losing his authorization or would have become liable as a result of obligations already entered into at that time, the foregoing until such time as his liability as operator is taken over by another person.

Part II: Implementation of the Paris Convention

Section 2

The provisions of this Act shall be observed when applying the Paris Convention.

Section 2a [To enter into force on the date to be stipulated]

If the operator of a nuclear facility situated in the Netherlands is able to demonstrate that the damage caused by a nuclear accident is wholly or partly the result of either gross negligence on the part of the person suffering the damage, or an act or omission on the part of that person with the intention of causing damage, the competent court may wholly or partly release the operator from his obligation to pay compensation in respect of the damage suffered by that person.

Section 3

The exclusion of liability referred to in Article 9 of the Paris Convention for damage caused by a nuclear accident caused directly due to a grave natural disaster of an exceptional character shall not apply to the liability of the operator of a nuclear facility situated in the Netherlands.

Section 4

Any person who in respect of damage caused by a nuclear accident for which the operator of a nuclear facility situated in the Netherlands is liable has paid compensation pursuant to the provisions of an international agreement other than the Paris and Brussels Conventions or the legislation of other States shall be assigned the rights under this Act of the person who suffered damage and to whom he has paid the compensation, up to the amount that he has paid. Article 6 (g) of the Paris Convention shall apply *mutatis mutandis*.

Section 5

1. The maximum amount of liability of the operator of a nuclear facility situated in the Netherlands shall be set in accordance with Article 7 (b) (i) of the Paris Convention at 1.2 billion Euros.
2. The maximum amount stated at (1) may be changed by administrative order, having regard to the possibilities of obtaining cover.
3. In cases where in the opinion of Our Minister of Finance the nature of the nuclear facility concerned or the nuclear materials concerned and the expected consequences of an accident involving them so warrant he may in agreement with Our Minister of Justice set the maximum amount of liability in force under (1) and (2) for the operator concerned to a lower amount.

Section 6

On request by a carrier and with the consent of the operator of a nuclear facility situated in the Netherlands, Our Minister of Finance, provided the requirements of Article 10 (a) of the Paris Convention are met, may order that, under conditions to be set by him, that carrier shall be liable instead of that operator in accordance with the Paris Convention and this Act.

Section 7

1. Without prejudice to the liability periods stated at (2), (4) and (5), a claim for compensation shall expire three years from the start of the day on which the person concerned, or his statutory representative if he has one, had knowledge of, or ought reasonably to have had knowledge of, the damage and of the liable operator.
2. The right to compensation shall expire:
 - a. in respect of damage to persons, if a claim is not instituted within thirty years of the date of the nuclear accident;
 - b. in respect of all other damage, if a claim is not instituted within ten years of the date of the nuclear accident.
3. In respect of the operator's liability in relation to all claims for compensation instituted after a period of ten years has elapsed since the date of the nuclear accident but before a period of thirty years has elapsed since the date of the nuclear accident the Minister of Finance shall enter into insurance contracts or furnish other guarantees as referred to in Section 9.

4. Claims for compensation instituted after a period of ten years has elapsed since the date of the nuclear accident shall be without prejudice to the right to compensation of any person who instituted a claim within that period.
5. In the case of damage caused by a nuclear accident involving fissionable materials or radioactive products or wastes that at the time of the accident were stolen, lost, discarded or abandoned and not recovered, the right to compensation shall expire twenty years after the date of the theft, loss, discarding or abandonment.

Section 8

1. The competent public authority referred to in Article 10 (a) and (b) of the Paris Convention shall be Our Minister of Finance.
2. Our Minister of Finance may, in agreement with Our Ministers concerned, order that two or more nuclear facilities operated by the same operator on the same site, including any other buildings on that site containing radioactive materials, shall be regarded as a single nuclear facility for the purposes of the Paris Convention and this Act.

Section 9

If in the opinion of Our Minister of Finance an operator of a nuclear facility situated in the Netherlands is unable to obtain financial security, or adequate financial security, as referred to in Article 10 (a) of the Paris Convention, or if in the opinion of Our Minister of Finance this financial security can only be obtained for an unreasonable premium or charge, Our Minister aforementioned shall be authorized on behalf of the State as the insurer to enter into insurance contracts to this effect under conditions and for premiums or charges as determined by him, or furnish other guarantees on behalf of the State.

Section 10

1. Insofar as the funds available from the financial security referred to in Article 10 (a) of the Paris Convention are inadequate to compensate for damage for which the operator of a nuclear facility situated in the Netherlands is liable, the State shall make public funds available to that operator up to the maximum amount of his liability.
2. Insofar as the lack of financial security referred to at (1) is the fault of the operator the State shall have the right of recourse against the operator in respect of the funds made available by it in this connection.
3. Up to the amount made available to the operator by the State from public funds under (1) it shall have right of recourse referred to in Article 6 (f) of the Paris Convention against the operator. When exercising this right the State shall take precedence over insurers or other persons that have furnished financial security as referred to in Article 10 (a) of the Paris Convention.

Section 11

Acts on the part of insurers or other persons that have furnished financial security as referred to in Article 10 (a) of the Paris Convention in breach of the provisions of Article 10 (b) of that Convention shall be null and void ipso jure. They shall be declared null and void by the court ex officio.

Part III: Implementation of the Brussels Convention

Section 12

The provisions of this Act shall be observed when applying the Brussels Convention.

Section 13

Insofar as the maximum amount in force under Section 5 of this Act is inadequate to compensate for damage as referred to in Article 2 of the Brussels Convention for which the operator of a nuclear

facility situated in the Netherlands is liable under the Paris Convention, the public funds referred to in Article 3 (b) (ii) and (iii) and (f) of the Brussels Convention shall be made available for compensation for that damage other than to cover that operator's liability.

Section 14

States that have made public funds available pursuant to Article 3 (b) (ii) and (iii) and (f) of the Brussels Convention shall have right of recourse referred to in Article 6 (f) of the Paris Convention against the operator up to the amount thus made available. When exercising this right those States shall take precedence over insurers or other persons that have furnished financial security as referred to in Article 10 (a) of the Paris Convention.

Part IV: Additional Provisions

Section 15

1. The limitations of scope referred to in Article 2 of the Paris Convention shall not apply to the liability of the operator of a nuclear facility situated in the Netherlands for damage:
 - a. suffered on the territory of a State party to the Paris Convention, irrespective of where the accident occurred;
 - b. suffered on the territory of a State other than referred to at (a) that is party to the Joint Protocol that is the result of a nuclear accident that occurred on the territory of a State party to the Joint Protocol; or
 - c. irrespective of where it was suffered, that is the result of a nuclear accident that occurred on the territory of the Netherlands.
2. Insofar as the liability of the operator of a nuclear facility situated in the Netherlands is concerned, exemptions other than those referred to at (1) may be made from the provisions of Article 2 of the Paris Convention by administrative order.
3. If We do not within three months of the entry into force of an administrative order as referred to at (2) send the States General a Bill amending this Act in accordance with that order, or if that Bill is withdrawn or rejected, We shall withdraw the order immediately.

Section 16

The Paris Convention and Parts I, II and V of this Act shall also apply to nuclear facilities situated in the Netherlands that are not included in the list drawn up and maintained in accordance with Article 13 of the Brussels Convention, subject to the proviso that the maximum amount of liability referred to in Section 5 of this Act shall be the amount stated in Article 3 (a) of the Brussels Convention.

Section 17

1. In respect of a nuclear accident that takes place on the territory of the Netherlands, the consigner and carrier of the nuclear materials involved in that accident, and the person who held those materials at the time of the accident, shall be regarded as the operator of a nuclear facility situated in the Netherlands and as such held jointly and severally liable for the damage caused thereby, unless they are able to prove that another person is liable for it under the Paris Convention or the Joint Protocol, subject to the proviso that the maximum amount of their joint liability shall be the amount stated in Article 3 (a) of the Brussels Convention.
2. Article 6 of the Paris Convention and Part V of this Act shall also apply to liability under (1).
3. Paragraph (1) shall not apply:
 - a. to a person who did not have knowledge of, and could not reasonably have been expected to have knowledge of, the nuclear nature of the materials concerned;
 - b. to a person who at the time of the nuclear accident was carrying the nuclear materials concerned, or had them in storage in connection with such carriage, in fulfilment of a carriage

contract, if he could reasonably assume:

- 1st. that another person would be liable for the damage under the Paris Convention, or
- 2nd. that another person would be liable under (1) for the damage and was in possession of an insurance policy or other financial security to cover his liability approved by Our Minister of Finance.

Section 17a [To enter into force on the date to be stipulated]

The operator of a nuclear facility situated in the Netherlands who has nuclear materials transported to or from an operator on the territory of a State party to the Joint Protocol but not party to the Paris Convention shall be liable for damage during that carriage if the Brussels Convention would have applied to that carriage if the State concerned had not been party to the Joint Protocol.

Section 18

1. If on the territory of the Netherlands as a result of a nuclear accident damage is suffered for which compensation is required to be paid under the Brussels Convention or this Act, and the funds available for this from other sources are inadequate to compensate for that damage up to an amount of 2,268,901,080.45 Euros, the State shall make available the public funds required to pay compensation for that damage up to that amount.
2. The State shall have the right of recourse in respect of the sums paid out and the costs incurred in that connection against those persons who are liable under this Act.
3. Section 14 shall apply mutatis mutandis to the making available of public funds under (1).
4. The provisions of (1) shall also apply to damage as referred to there, suffered in States that are party to the Brussels Convention in which at the time of the nuclear accident concerned legislation was in force that is equivalent in its nature, scope and amount to the present Act.
5. More detailed rules may be laid down by or pursuant to administrative order concerning the making available of public funds under (1).

Section 19

Our Minister of Finance may charge the operator an amount to be determined by him for the making available by the State of public funds under Section 13 or 18.

Section 20

Insofar as in compensation for the damage there is an entitlement to benefit under Dutch social legislation, the right to compensation for that damage under the Paris and Brussels Conventions, the Joint Protocol and this Act shall be enjoyed by those persons by whom the costs of those benefits are borne, subject to the proviso that in the case of regular benefits the damage shall be regarded as the capitalized value of the benefits payable. The provisions of the said legislation shall otherwise remain in force.

Section 21

Our Minister of Finance shall be authorized, in respect of compensation for damage caused by a nuclear accident other than under the Paris Convention and this Act, on behalf of the State as the insurer to enter into insurance contracts to this effect with the operator of a nuclear facility situated in the Netherlands under conditions and for premiums or charges as determined by him, or furnish other guarantees on behalf of the State, up to a maximum amount of 2,268,901,080.45 Euros per nuclear accident.

Part V: Procedural Law

Section 22

1. The The Hague District Court shall have exclusive jurisdiction in the first instance.
2. If there could reasonably be a possibility of the total of the claims exceeding the maximum amount of the operator's liability under Section 5 of this Act, the The Hague District Court, at the request of an interested party, having heard the operator and Our Minister of Finance, shall issue an injunction forbidding payment in respect of compensation for the damage, appoint a delegated judge to lay down distribution lists for the amounts referred to in the opening of Section 27 (1) and also appoint a committee of liquidators, hereinafter referred to as 'the committee'. The district court may appoint more than one delegated judge and may replace a delegated judge on retirement. It may make changes to the composition of the committee.
3. The clerk of the court shall immediately notify the operator and the insurers or other persons that have furnished financial security as referred to in Article 10 (a) of the Paris Convention, the persons required to pay under the Joint Protocol, and Our Minister of Finance of the decision referred to at (2). The clerk of the court shall also immediately publish the decision in the Government Gazette, stating the provisions of the second sentence of (4).
4. Payments in breach of an injunction as referred to at (2) shall be null and void ipso jure from such time as the person who made the payment gained knowledge of the decision. From that time all claims for compensation for the damage shall be submitted to the committee for verification by submitting an account or other written statement indicating the nature and amount of the claim, accompanied by supporting documents or copies thereof. The committee shall immediately send the operator and Our Minister of Finance a copy of all the documents submitted.
5. The operator and the insurers or other persons that have furnished financial security as referred to in Article 10 (a) of the Paris Convention, the persons who are required to pay under the Joint Protocol, and the State shall, when ordered by the delegated judge, remit to an account to be designated by the committee the amounts to comply with the provisions of Section 29, subject to the proviso that the amounts that each person paid in respect of compensation for the damage before he gained knowledge of the decision referred to at (2) shall be deducted from the total amount to be remitted by that person.
6. Amounts remitted under (5) may not be seized.

Section 23

1. Following submission of a claim the committee, at the request of one of the persons required to remit under Section 22 (5) or otherwise, or on its own initiative, shall enter into consultation with the interested parties.
2. The committee may at any time consult experts to be appointed by it.
3. The delegated judge, having heard the committee, shall whenever necessary determine the date or dates, stating time and place, on which it will verify submitted claims.
4. The committee shall have the right to demand that a creditor submit any missing documents and provide access to the original supporting documents.
5. The committee shall draw up a list of the claims submitted, briefly stating the grounds on which it intends to contest a claim at a hearing as referred to in Section 24 (1). This list shall be deposited at the office of the clerk of the court for inspection by anyone free of charge for at least three weeks before the date set for the verification.

Section 24

1. The delegated judge shall hold one or more public hearings in the presence of the committee or one or more of its members on the date or dates determined under Section 23 (3).
2. All creditors, the persons required to remit under Section 22 (5) and the committee may contest a claim at the hearing.

3. Claims that are not contested shall be set by the delegated judge at the amount claimed.
4. If a claim is contested, the delegated judge shall refer the parties, if he is unable to reconcile them, to one or more district court hearings to be set by him to decide the point at issue.

Section 25

1. If the creditor requesting verification does not appear at the hearing to which the case has been referred under Section 24 (4), he shall be deemed to have withdrawn his claim, insofar as it is contested.
2. If a person who has contested a claim does not appear, he shall be deemed to have abandoned this challenge.
3. The court proceedings following referral shall otherwise take place in accordance with the provisions of Book 1 of the Code of Civil Procedure.

Section 26

1. Following the hearings referred to in Section 24 or, if they have given rise to a challenge, once this has been decided irrevocably, the committee shall draw up a distribution list which shall be subject to the approval of the delegated judge.
2. The distribution list shall state separately the interest payable to each creditor and who shall bear the costs of the case.

Section 27

1. If the total of the claims exceeds the maximum amount of the operator's liability under Section 5 of this Act, the amount stated in Article 3 (a) of the Brussels Convention or the amount stated in Section 18 (1) of this Act, the following rules shall apply to the claims, each insofar as it can be compensated from these amounts:
 - a. if the claims relate solely to damage to persons, they shall be reduced proportionately;
 - b. if the claims relate solely to damage not referred to at (a), they shall be reduced proportionately;
 - c. if the claims relate to both damage as referred to at (a) and damage referred to at (b), two-thirds of the amount concerned shall be used solely to meet the claims as referred to at (a), which claims may – if necessary – be reduced proportionately, and the remainder shall be used to meet the claims as referred to at (b) and the claims as referred to at (a) insofar as these are still unmet. If, in accordance with the last part of the preceding sentence, an amount remains after the claims as referred to at (a) have been met, the remainder shall be used to meet the claims as referred to at (b) insofar as these are still unmet.
2. When applying Section 18 the compensation for claims in respect of damage to persons instituted after a period of ten years has elapsed since the date of the nuclear accident shall be at least ten per cent of the amount to be made available by the State.

Section 28

1. The distribution list laid down by the delegated judge shall be deposited at the office of the clerk of the court for inspection by the parties free of charge for three months. During this period they may lodge an objection to the distribution list with the district court by filing a notice of objection, stating reasons, at the office of the clerk of the court.
2. Once the period has expired, the district court shall give its decision, having heard or duly summoned the parties.

Section 29

Once a distribution list has been laid down by the delegated judge or – if an objection has been lodged in time – by the district court, the committee shall pay the creditors the amounts payable to them.

Section 30

1. During the period preceding the laying-down of the distribution list the delegated judge may, in response to a proposal by the committee, grant advance payments as necessary to those who have suffered damage as a result of a nuclear accident. Section 22 (5) shall apply *mutatis mutandis*.
2. During the period stated at (1) the delegated judge may also lay down a provisional distribution list, in which case Section 22 (5) and Sections 26-29 shall apply *mutatis mutandis*.
3. The delegated judge may require creditors to whom a payment is made under the provisions of (1) or (2) to furnish a form of security to be designated by him.

Section 31

1. The decisions of the delegated judge, the decision of the district court granting a request as referred to in Section 22 (2) and the decision of the district court pursuant to Section 28 (2) shall not be open to appeal or appeal in cassation.
2. The procedure and place for the submission of claims to the committee, the decisions of the delegated judge and those of the district court pursuant to Section 28 (2) and all depositions shall be brought to the knowledge of the interested parties by the committee in the manner to be determined by the delegated judge.
3. Subject to the application of paragraph 2 of Division 12 of Title 2 of Book 1 of the Code of Civil Procedure, the costs arising from the application of this Part shall be borne by the persons required to remit under Section 22 (5) in proportion to the amounts payable by them.

Section 32 [Deleted with effect from 01/01/2002]

Part VI: Final Provisions

Section 33

1. The Act of 27 October 1965 containing rules on third party liability in the field of nuclear energy (Bulletin of Acts and Decrees 546) is hereby repealed.
2. The Act referred to at (1) shall continue to apply to damage caused by a nuclear accident that took place before this Act entered into force.
3. The Royal Decree of 28 December 1965, Bulletin of Acts and Decrees 647, implementing Section 2 of the Act referred to at (1), and the decisions of Our Minister of Finance under Section 1 (2) and Section 10 (2) of that Act shall be deemed to have been issued under the corresponding provisions of this Act and shall remain in force until they are withdrawn or superseded.

Section 34

1. This Act may be cited as the 'Nuclear Accidents (Liability) Act'.
2. It shall enter into force on the date to be stipulated by Us.

We order and command that this Act shall be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials whom it may concern shall diligently implement it.

Lech, 17 March 1979

Juliana

The State Secretary for Finance,
Nootboom

The Minister of Justice,
J. de Ruiter

The Minister of Foreign Affairs,
C.A. van der Klaauw

The Minister of Economic Affairs,
G.M.V. van Aardenne

The Minister of Transport, Public Works & Water Management,
D.S. Tuijnman

Issued this third day of May 1979

The Minister of Justice,
J. de Ruiter