

# Spanish legislation on civil liability for nuclear damage

## Act 12/2011 of 27 May, on Civil Liability for Nuclear Damage or Damage Caused by Radioactive Materials

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### PRELIMINARY TITLE

#### **General provisions**

##### **Article 1. Purpose**

1. The purpose of this Act is to establish a civil liability regime for nuclear damage, without prejudice to the provisions of the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Protocols of 28 January 1964, 16 November 1982 and 12 February 2004 (hereinafter, the Paris Convention) and the Convention of 31 January 1963, supplementary to the former, as amended by the Protocols of 28 January 1964, 16 November 1982 and 12 February 2004 (hereinafter, the Brussels Convention). The clauses contained in these Conventions shall be directly applicable to nuclear installations and to the carriage of nuclear substances.

2. Moreover, Title II of this Act establishes a specific civil liability regime for damage caused by incidents resulting in the emission of ionizing radiations that may occur in the handling, storage and carriage of radioactive materials other than nuclear substances.

##### **Article 2. Geographical scope of application**

1. Title I of this Act applies to nuclear damage as defined in Article 3.1.h) occurring in the territory of; or in the maritime zone established in accordance with international law belonging to; or, except for those States not party to the Paris Convention and which do not meet the requirements of points b), c) and d) below, on board a ship or aircraft registered by:

a) A State that is a Contracting Party to the Paris Convention.

b) A State that is not a Contracting Party to the Paris Convention, but which, at the time of the nuclear incident, is a Contracting Party to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, and to any amendment thereto in force for that Party, as well as to the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, provided

that the nuclear installation of the operator responsible for the incident is located in a State which is a Contracting Party to both the Paris Convention and the Joint Protocol.

c) A State that is not a Contracting Party to the Paris Convention and which, at the time of the nuclear incident, has no nuclear installation in its territory or in any maritime zones it has established in accordance with international law.

d) Any other State that is not a Contracting Party to the Paris Convention which, at the time of the nuclear incident, has in force nuclear liability legislation that affords equivalent reciprocal benefits and that is based on principles identical to those of the Paris Convention including, *inter alia*, the strict liability of the operator liable, the absolute liability of the operator or a provision to the same effect, the exclusive jurisdiction of the competent court, equal treatment of all victims of a nuclear incident, recognition and enforcement of judgements, and free transfer of compensation, interest and costs.

2. Title II of this Act applies to damage occurring during the storage, handling, processing, use in any form or carriage of radioactive materials other than nuclear substances throughout Spain.

### **Article 3. Definitions**

1. For the sole purpose of civil liability for nuclear damage, the following definitions shall apply:

a) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage.

b) "Nuclear installations" means:

1. Nuclear reactors other than those forming part of any means of transport.

2. Factories for the manufacture or processing of nuclear substances.

3. Factories for the separation of isotopes of nuclear fuel.

4. Factories for the reprocessing of irradiated nuclear fuel.

5. Facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances.

6. Installations for the disposal of nuclear substances.

7. Any such reactor, factory or installation that is in the course of being decommissioned.

c) "Radioactive material" means any material containing substances that emit ionizing radiation.

d) "Nuclear fuel" means fissionable material, comprising uranium in the form of metal, alloy or chemical compound (including natural uranium), and plutonium in the form of metal, alloy or chemical compound.

e) "Radioactive products or waste" means any radioactive material produced in or made radioactive by exposure to radiation incidental to the process of producing or utilizing nuclear fuel, but does not include nuclear fuel or radioisotopes outside a nuclear installation which have reached the final stage of fabrication so as to be usable for any industrial, commercial, agricultural, medical, scientific or educational purpose.

f) "Nuclear substances" means nuclear fuel, other than natural uranium and other than depleted uranium, and radioactive products or waste.

g) "Operator of an installation" means the individual or legal entity authorized to carry out the authorized activity.

h) "Nuclear damage" means:

1. Loss of life or bodily injury.

2. Loss of or damage to property.

3. Any economic loss arising from damage as defined in points 1 and 2 above, insofar as it is not covered in those points, if incurred by a person entitled to claim in respect of such damage.

4. 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 point 2 above.

5. Loss of income deriving from a direct 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 point 2 above.

6. The costs of preventive measures and further loss or damage caused by such measures.

With regard to points 1 to 5 above, the loss or damage shall be deemed to constitute nuclear damage when it arises out of or results from ionizing radiation emitted by any of the following substances:

- i) Any source of radiation inside a nuclear installation.
- ii) Nuclear fuel or radioactive waste in a nuclear installation.
- iii) Nuclear substances coming from, originating in, or sent to, a nuclear installation.

In all these cases, nuclear damage shall be deemed to exist if the loss or damage is caused by the radioactive properties of such substances, or by a combination of these properties with toxic, explosive or other hazardous properties of such substances.

i) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities 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 as provided for in the regulation of these measures pursuant to the environmental liability legislation in force. The competent authorities may order measures aimed at reinstating disturbed ecological balance.

j) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident or an event creating a grave and imminent threat of nuclear damage has occurred, to prevent or minimize the nuclear damage referred to in points h)1 to h)5, subject to the approval of the competent authorities as provided for in the regulation of these measures pursuant to the environmental liability legislation in force.

k) "Reasonable measures" means measures that are considered appropriate and proportionate by the competent authorities, taking into account all the circumstances, for example:

1. The nature and extent of the nuclear damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage.
2. The extent to which, at the time they are taken, such measures are likely to be effective.
3. Relevant scientific and technical expertise.

2. For the purpose of civil liability for damage resulting from incidents involving radioactive materials other than nuclear substances:

a) "Incident" means any occurrence or series of occurrences having the same origin which causes damage.

b) "Radioactive installations" means:

1. Installations of any kind containing a source of ionizing radiation.

2. Equipment producing ionizing radiation and operating at more than 5 kV.

3. Premises, laboratories, factories and installations where radioactive materials, other than nuclear substances, are produced, utilized, owned, processed, handled or stored, except for storage incidental to the carriage of such materials.

b-bis) "Nuclear Installations" are those listed in points 1 to 7, both inclusive, of Article 3.1.b).

c) "Damage" means:

1. Loss of life or bodily injury.

2. Loss of or damage to property.

3. Any economic loss arising from damage as defined in points 1 and 2 above, insofar as it is not covered in those points, if incurred by a person entitled to claim in respect of such damage.

4. Environmental damage pursuant to environmental liability legislation in force.

d) "Radioactive material" means any material containing substances that emit ionizing radiation.

e) "Operator of an installation" means the individual or legal entity authorized to carry out the authorized activity.

## TITLE I

### **Civil liability for nuclear damage**

## CHAPTER I

### **Civil liability arising from nuclear damage**

#### **Article 4. Liability of the operator**

1. The operator of a nuclear installation shall be liable for nuclear damage as defined in Article 3.1.h) of this Act upon proof that such damage was caused by a nuclear incident in such installation or by nuclear substances coming from such installation, except as otherwise provided for in Article 7. This liability shall be independent of the existence of intent or fault and shall be subject, in amount, to the limit specified in this Act.

2. If nuclear damage is caused jointly by a nuclear incident and by an incident of another nature, the damage caused by the latter incident shall, insofar as it is not possible to separate it with certainty from the damage caused by the former, also be considered as damage under the liability of the operator for the purposes of the application of the preceding paragraph of this Article.

3. If liability for nuclear damage is borne by more than one operator, they shall be jointly and severally liable for the damage up to the specified limit on coverage.

4. The liability of the operator of a nuclear installation for all nuclear damage caused as a result of each nuclear incident shall be as follows:

a) For damage caused in States which are Contracting Parties to both the Paris Convention and the Brussels Convention, EUR 1.2 billion.

b) For damage caused in Contracting States to the Paris Convention which are not Parties to the Brussels Convention or in those which do not have nuclear installations in their territory, EUR 700 million.

c) For damage caused in the States referred to in Article 2.1.b) and in Article 2.1.d) of this Act, the amount of EUR 700 million shall be lowered to the extent that those States do not afford reciprocal benefits of an equivalent amount.

5. The liability of the operator referred to in the previous paragraph of this Article shall be lowered in the following cases:

a) For the nuclear installations designated by the Ministry of Industry, Tourism and Trade, following a report by the Nuclear Safety Council. Considering their nature and the foreseeable consequences that a nuclear incident could have for them, this liability shall be at least EUR 70 million.

b) For the carriage of nuclear substances designated by the Ministry of Industry, Tourism and Trade, following a report by the Nuclear Safety Council, where, considering the foreseeable consequences of a nuclear incident, this liability shall be at least EUR 80 million.

6. The amounts established in this Article shall be updated by the Government, at the proposal of the Ministry of Industry, Tourism and Trade, when international commitments so require or when the passage of time or the variation of the consumer price index makes it advisable so as to maintain the same level of coverage.

### **Article 5. Availability of public funds**

1. Where the liability of the operator of a nuclear installation, as provided for in paragraphs 4 and 5 of Article 4 of this Act, is not sufficient to cover the compensation for damage caused by a nuclear incident, the Government shall establish appropriate systems or procedures for the payment by the State of compensation for nuclear damage up to a maximum of EUR 700 million or EUR 1.2 billion.

2. Compensation for damage caused by a nuclear incident in Spain or in a State that is a Contracting Party to the Brussels Convention of 31 January 1963, supplementary to the Paris Convention of 29 July 1960, on Third Party Liability in the Field of Nuclear Energy, insofar as it exceeds EUR 1.2 billion and is no more than EUR 1.5 billion, shall be paid from the public funds referred to in Article 3.b.iii) of the aforesaid Brussels Convention.

### **Article 6. Excluded damage**

1. Without prejudice to the liability of the operator of a nuclear installation under other regulations, the following nuclear damage shall not be subject to compensation under the financial guarantees provided for in Article 12 of this Act:

a) Damage caused to the nuclear installation itself and to any other nuclear installation, even if under construction, which is located on the same site as such installation.

b) Damage to property on the same site that is used or is to be used in connection with any of said installations.

c) Any injury sustained by a worker of a nuclear installation or of a carrier of nuclear substances, provided that such injury is classified as an accident at work or occupational illness in accordance with the provisions of Social Security system legislation.

2. If the operator proves that the nuclear damage was wholly or partly caused by a wilful or grossly negligent act or omission on the part of the person affected, the competent court may exonerate the operator wholly or partly from liability towards that person.

3. The operator is not liable for nuclear damage caused by a nuclear incident if said incident is directly caused by acts of armed conflict, hostilities, civil war or insurrection.

### **Article 7. Incident during carriage**

1. If a nuclear incident occurs during the carriage of nuclear substances, the provisions of the Paris Convention shall apply directly.

2. In the carriage of nuclear substances between Spain and the territory of a State which is not a Party to the Paris Convention, the operator of the nuclear installation of origin or destination located in Spanish territory shall be liable, without prejudice to the provisions of Article 2.1, and in accordance with the provisions of this Act, for nuclear damage caused by any nuclear incidents occurring before such substances are unloaded from the means of transport by which they arrived in the territory of said State which is not a Party to the Paris Convention, or after they are loaded onto the means of transport by which they are to leave the territory of said State which is not a Party to the Paris Convention, as the case may be.

3. In the cases indicated in the previous paragraphs of this Article, the carrier of nuclear substances may be held liable, in substitution for the operator of the installation, for the purposes of application of this Act, in relation to nuclear damage caused by such substances, provided that such substitution is authorized by the competent authority, and the agreement of the operator of the installation is obtained. In addition, the carrier must substantiate that it has a financial guarantee covering civil liability that is equal to or greater than that required by this Act.

### **Article 8. Off-site substances**

1. The operator shall remain liable for nuclear damage caused by nuclear substances which have been abandoned, lost or stolen, except in respect of personal injury or damage to property incurred by persons who have participated in these events, and without prejudice to any right of recourse which the operator may have against such persons under the provisions of this Act or any other applicable legislation.

2. For the purposes of the preceding paragraph, said liability shall continue for three years, counted from the date on which such events were brought to the attention of the competent authorities.

### **Article 9. Right of recourse of the liable operator**

The operator shall have a right of recourse in all of the following cases:



1. If the damage results from an act or omission intended to cause damage, against the individual who acted or omitted to act with such intent.

2. When expressly provided by contract.

### **Article 10. Transit through national territory**

1. During the transit through national territory of nuclear substances under the liability of an operator of a nuclear installation or a carrier authorized by a Contracting Party to the Paris Convention, the civil liability of the operator must be guaranteed up to the amount required for said carriage by said Contracting Party, pursuant to Article 7.d) of the Paris Convention. However, in the event that said amount is lower than that required of operators of nuclear installations located in national territory for the carriage of such substances by virtue of Article 4.4 or, as the case may be, Article 4.5.b) of this Act, the amount shall be increased to that value during transit, unless said liable operator or authorized carrier has been explicitly granted a reduction pursuant to the aforementioned Article 4.5.b). Otherwise, transit of such substances through national territory shall not be allowed.

2. During transits of nuclear substances through national territory that are not carried out under the liability of an operator of a nuclear installation or a carrier authorized by a Contracting Party to the Paris Convention, the civil liability must be guaranteed up to the amount stipulated in Article 4.4 of this Act, unless said liable operator or authorized carrier has been explicitly granted a reduction pursuant to the aforementioned Article 4.5.b). Otherwise, transit of such substances through national territory shall not be allowed.

### **Article 11. Precedence of compensation**

1. The payment of compensation for damage caused by a nuclear incident shall be subject, up to the limit of the liability required of the operator by virtue of Article 4, and if applicable, of the public funds provided for in Article 5, to the following order of precedence:

a) First to be paid shall be compensation for death and physical injury caused to persons that is claimed in the first three years counted from the date on which the incident occurred. Such damage may be measured, insofar as this is possible and in the absence of other specific scales, in accordance with the criteria and within the limits for compensation set forth in the "*Sistema para la valoración de los daños y perjuicios causados a las personas en accidentes de circulación*" ["Assessment system for damage and harm caused to persons in traffic accidents"] contained in the Annex to the Consolidated Text of the Act

on Civil Liability and Insurance in Motor Vehicle Traffic, approved by Royal Legislative Decree 8/2004 of 29 October.

b) Second to be paid shall be compensation for measures of reinstatement to redress environmental impairment, the cost of preventive measures, and any loss or damage caused by such measures that is claimed in the first three years counted from the date on which the incident occurred. Such claims shall be addressed without making any distinction between them.

c) Third to be paid shall be compensation for loss of or damage to property, for economic loss arising from injury to persons or damage to property, and for loss of earnings directly related to the use or enjoyment of the environment resulting from significant impairment thereof that is claimed in the first three years counted from the date on which the incident occurred. Such claims shall be addressed without making any distinction between them.

d) Last to be paid shall be compensation for damage that is claimed three years or more after the date on which the incident occurred. Such claims shall be addressed without making any distinction between them.

2. In the event that the liability of the operator pursuant to Article 4 and the public funds provided for in Article 5 were not sufficient to cover the compensation for death, physical injury and the economic loss deriving from said damage, caused to persons in Spain, the State shall establish the legal means to cover such compensation.

3. Without prejudice to an ensuing claim for the cost of such measures pursuant to this Act, the Government may apply, at any time, restorative or preventive measures with respect to the damage caused to the environment affecting or potentially affecting publicly owned sites or property insofar as considered necessary, to be charged to the General State Budget.

## CHAPTER II

### **Financial guarantee**

#### **Article 12. Civil liability guarantee for nuclear damage**

1. All operators of a nuclear installation must establish a financial guarantee to cover the civil liability for any damage that may occur as a consequence of a nuclear incident, in an amount equal to the liability attributed thereto in Article 4.

2. This guarantee must be established through one of the following procedures:

a) By taking out an insurance policy that covers the guarantee required.

b) By lodging another financial guarantee with an institution authorized by the Ministry of Economy and Finance, in the terms stipulated in its specific regulations.

c) A combination of the two, covering the entirety of the guarantee required.

d) By freezing equity of an amount equal to or higher than the liability attributed.

3. For the purposes of paragraph 2 of this Article, a system for guaranteeing the coverage of nuclear damage not insurable by insurance institutions wherein the cost thereof is charged to the charges associated with the costs of the electricity system may be established by law by including said category of costs among those provided for, to this purpose, in the legislation governing the electricity sector. The premiums required of the operators for the provision of said guarantee must also be taken into account.

### **Article 13. Publicly owned nuclear installations**

When the operator of a nuclear installation is one of the publicly owned bodies referred to in Act 6/1997 of 14 April, on the Organization and Functioning of the General State Administration, it shall not be obliged to lodge a financial guarantee, but must pay the corresponding compensation pursuant to this Act and to international conventions.

## CHAPTER III

### **Liability claims for nuclear damage**

#### **Article 14. Claims procedure**

1. The action of filing a liability claim for nuclear damage, as well as the procedure for the exercise thereof, shall be governed by Act 1/2000 of 7 January, on Civil Prosecution. It shall be the responsibility of the Nuclear Safety Council, in accordance with its duties, to prepare a mandatory technical report on the nuclear incident, its causes and its effects, which shall be requested by the competent court acting on its own initiative as part of its proceedings.

2. Without prejudice to the above paragraph, the injured party or their heirs may bring a direct action against the insurer to demand that it fulfil its obligation to provide compensation, without prejudice to the insurer's right of recourse against the insured party, in the event that the damage or injury to the third-party was caused by the wilful

misconduct of the insured. Direct action is not subject to any of the defences that may be available to the insurer against the insured. The insurer may, however, allege that the injured party is guilty of a wilful or grossly negligent act or omission, and may also raise the personal defences it has against them. For the purposes of the exercise of direct action, the insurer shall be obliged to inform the injured third party or their heirs of the existence of the insurance contract and the contents thereof.

### **Article 15. Period of the guarantee and of the claim**

1. The operator of a nuclear installation shall be liable to the injured parties:

a) In the event of injury to persons, for a period of thirty years, counted from the nuclear incident.

b) In the event of any other nuclear damage, for a period of ten years, counted from the nuclear incident.

2. Any action to claim compensation for damage caused by a nuclear incident shall be subject to a time limitation of three years counted from the date on which the injured party becomes aware of the nuclear damage and of the identity of the liable operator, or from the date on which they ought reasonably to have become aware thereof, without any possibility of exceeding the deadlines set forth in the paragraph above.

3. Any party that brings an action for compensation within the corresponding legally stipulated period may make a supplementary claim in the event that the damage worsens after said period, and provided that the competent court has not handed down a final judgement.

## TITLE II

### **Civil liability for damage caused in incidents involving radioactive materials other than nuclear substances**

#### **Article 16. Liability of operators of radioactive installations**

Operators of radioactive installations located in national territory at which radioactive materials other than nuclear substances are handled, stored, processed or transformed shall be liable, even when there has been no intent or fault, pursuant to this Act, for any damage as defined in Article 3.2.c) herein, caused in national territory, which is the

consequence of an incident, provided that such damage occurs as a result of the emission of ionizing radiation, and regardless of whether said incident occurs at the installation or during the carriage, storage or handling of said materials anywhere outside said installation.

### **Article 17. Exceptions**

1. Without prejudice to the liability of the operator of a radioactive installation under other regulations, the following damage shall not be subject to compensation from the financial guarantee lodged in accordance with Article 21:

a) Damage caused to the installation of the operator and to any other installation belonging thereto, even if under construction, which is located on the same or on an adjacent site.

b) Damage to property that is or is to be used in connection with the operation of the installation of the operator or of any other installation belonging thereto that is located on the same or on an adjacent site.

c) Any injury sustained by a worker of a radioactive installation that is classified as an accident at work or occupational illness in accordance with the provisions of Social Security system legislation.

d) Any injury sustained by a person when such injury is the result of the application of ionizing radiation in the course of any medical treatment or diagnosis to which they may be subject.

2. If the operator proves that the damage was wholly or partly caused by a wilful or grossly negligent act or omission on the part of the person affected, the competent court may exonerate the operator wholly or partly from liability to that person.

3. The operator shall not be liable for damage caused by an incident if said incident is directly caused by acts of armed conflict, hostilities, civil war, insurrection or a natural disaster.

4. If damage is caused jointly by an incident that gives rise to the emission of ionizing radiation and by an incident of another nature, the damage caused by the latter incident, insofar as it is not possible to distinguish it with certainty from the damage caused by the former, shall also be considered damage under the liability of the operator for the purposes of the application of Article 16 of this Act.

### **Article 18. Carriage**

1. In the carriage of radioactive materials other than nuclear substances, including the storage incidental to such carriage, when

both the installation of origin and that of destination are located in national territory:

a) The operator of the radioactive installation of origin shall be liable for any damage, pursuant to this Act, that is proven to have been caused by an incident involving materials from the installation of origin that occurs outside said installation and leads to the emission of ionizing radiation, under the condition that the incident occurs before the operator of another installation has assumed liability for any incidents caused by said materials, pursuant to the terms of a written contract.

b) The operator of the radioactive installation of destination shall be liable for any damage, pursuant to this Act, that is proven to have been caused by an incident involving materials in the course of carriage to said destination that occurs outside said installation and leads to the emission of ionizing radiation, under the condition that the incident occurs after the liability for any incidents caused by such materials has been transferred to them by the operator of the installation of origin, pursuant to the terms of a written contract.

2. In the carriage of radioactive materials other than nuclear substances whose origin or destination is located outside national territory, the operators of origin or destination whose installations are located in national territory shall be liable for any damage caused in Spanish territory, and the stipulations of Article 20 shall be applicable in the event of any incident involving materials under the liability of several operators pursuant to this Act.

3. The transit of radioactive materials other than nuclear substances shall be subject to the same obligations as the carriage of such materials whose origin or destination is in national territory. For the purpose of this Act, the shipping company shall be liable for any damage caused in national territory by an incident involving such materials, and the stipulations of Article 20 shall be applicable in the event of an incident involving materials coming from several shippers.

4. Before commencement of any carriage, the operator of the radioactive installation, or the shipping company in the case of transit, which, pursuant to this Act, shall be liable for any damage caused in national territory by an incident involving radioactive materials other than nuclear substances, shall hand over to the carrier the documentation substantiating the existence of a financial guarantee covering civil liability that is equal to or greater than that required by this Act for the materials to be carried throughout the duration of the carriage, including storage incidental to the carriage, until the liability has been transferred to a third party, or, in the case of transit, for as long as the carriage is taking place in national territory.

5. The carrier of radioactive materials other than nuclear substances may be held liable, in substitution for the operator of the installation of origin or destination, for the purposes of application of this Act, in relation to damage caused by such materials, provided that such substitution is authorized by the competent authority, and the agreement of the operator of the installation of origin or destination is obtained.

### **Article 19. Continuance of liability for materials outside the installation**

1. The owner of a radioactive installation shall remain subject to the liability attributed by this Act for any damage caused in national territory as a consequence of the emission of ionizing radiation in an incident involving radioactive materials other than nuclear substances even when such materials are handled, stored, carried or processed outside said installation, unless said liability has been transferred to a third party in a written contract that clearly stipulates the date of transfer.

2. The operator of a radioactive installation, or a shipper in the case of transit, shall remain subject to the liability attributed by this Act for any damage caused by an incident in which ionizing radiation is emitted involving materials other than nuclear substances which have been abandoned, lost or stolen, except in respect of personal injury or damage to property incurred by persons who have participated in these events, and without prejudice to any right of recourse which the operator may have against such persons under the provisions of this Act or any other applicable legislation. For these purposes, said liability shall continue for three years, counted from the date on which such events were brought to the attention of the competent authorities.

### **Article 20. Liability corresponding to several operators or shippers**

In the event that an incident involves radioactive materials other than nuclear substances belonging to several operators, or to several shippers in the case of transit, the operators or shippers to which this Act attributes liability for damage caused as a consequence of the emission of ionizing radiation shall be liable for such damage insofar as it is not possible to distinguish which materials have caused said damage, in proportion with the minimum mandatory guarantee stipulated in Article 21.

### **Article 21. Guarantee for damage to persons, property and economic loss**

1. To cover the liability for damage defined in Articles 3.2.c)1, 3.2.c)2 and 3.2.c)3, the operators, or the shipping companies in the case of transit, must lodge a financial guarantee to cover civil liability in an amount equal to or greater than that corresponding to the type of radioactive material other than nuclear substances that requires the highest coverage pursuant to the stipulations of the Appendix.

2. This guarantee must be lodged through one of the following procedures:

a) By taking out an insurance policy that covers the guarantee required.

b) By lodging another financial guarantee with an institution authorized by the Ministry of Economy and Finance, in the terms stipulated in the specific regulations for such a guarantee.

c) A combination of the two, covering the entirety of the guarantee required.

3. The amounts set forth in the Appendix may be updated by the Government, at the proposal of the Ministry of Industry, Tourism and Trade, when the passage of time or the variation of the consumer price index makes it advisable so as to maintain the same level of coverage.

## **Article 22. Claims for damage to persons, property and economic loss**

1. The procedure for filing a liability claim for the damage referred to in Article 21 shall be subject to the provisions of Articles 14 and 15 of this Act regarding claims for damage caused by nuclear substances, except with respect to the guarantee period set forth in Article 15.1, which shall, in all cases, be ten years counted from the incident.

2. The payment of compensation for the damage referred to in Article 21 that is caused by an incident shall be subject to the following order of precedence:

a) First to be paid shall be compensation for death and physical injury caused to persons that is claimed in the first three years counted from the date on which the incident occurred. Such damage may be measured, insofar as this is possible and in the absence of other specific scales, in accordance with the criteria and within the limits for compensation set forth in the "*Sistema para la valoración de los daños y perjuicios causados a las personas en accidentes de circulación*" ["Assessment system for damage and harm caused to persons in traffic accidents"] contained in the Annex to the Consolidated Text of the Act



on Civil Liability and Insurance in Motor Vehicle Traffic, approved by Royal Legislative Decree 8/2004 of 29 October.

b) Second to be paid shall be compensation for loss of or damage to property and for economic loss arising from injury to persons or damage to property that is claimed in the first three years counted from the date on which the incident occurred. Such claims shall be addressed without making any distinction between them.

c) Third to be paid shall be claims made three years or more after the date on which the incident occurred. Such claims shall be addressed without making any distinction between them.

3. The right of recourse with regard to compensation paid for the damage referred to in Article 21 shall be governed by the stipulations of Article 9 for claims for damage caused by nuclear substances.

### **Article 23. Liability for environmental damage**

Liability for environmental damage, as defined in Article 3.2.c)4, caused by an incident involving radioactive materials other than nuclear substances in which ionizing radiation is emitted shall be governed by the provisions of Act 26/2007 of 23 October, on Environmental Liability.

### **Article 24. Public ownership of radioactive installations**

When the operator of a radioactive installation is a publicly owned body, it shall not be obliged to lodge a financial guarantee, but must pay the corresponding compensation pursuant to this Act.

### **Additional Provision Four. Application of Title II to nuclear installations**

Title II shall be applicable to nuclear installations with regard to those radioactive materials other than nuclear substances to which Title I is not applicable.

### **Single Repeal Provision. Regulatory repeal**

1. Chapter VII, except for Article 45, Chapters VIII, IX and X of Act 25/1964 of 29 April, on Nuclear Energy, and Additional Provision Two of Act 17/2007 of 4 July, amending Act 54/1997 of 27 November, on the Electricity Sector, to adapt it to the provisions of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, are hereby repealed.

2. Also hereby repealed are Article 9.2 of the Regulation on Nuclear and Radioactive Installations, approved by Royal Decree 1836/1999 of

3 December, and, insofar as it is inconsistent with the provisions of this Act, the Regulation on Coverage of Nuclear Risk, approved by Decree 2177/1967 of 22 July.

**Final Provision One. Amendment of Article 45 of Act 25/1964 of 29 April, on Nuclear Energy**

Article 45 of Act 25/1964 of 29 April, on Nuclear Energy, is hereby amended and now reads as follows:

“The operator of a nuclear installation or of a radioactive installation shall lodge a financial guarantee to cover the civil liability deriving from nuclear incidents involving nuclear substances, as well as from incidents involving radioactive materials other than nuclear substances that result in the emission of ionizing radiation, in the terms stipulated in the specific legislation on civil liability for nuclear damage.”

**Final Provision Two. Amendment of Article 9 of the consolidated text of the Legal Statute of the Insurance Compensation Consortium, approved by Royal Legislative Decree 7/2004 of 29 October**

Article 9 of the consolidated text of the Legal Statute of the Insurance Compensation Consortium, approved by Royal Legislative Decree 7/2004 of 29 October, is hereby amended and now reads as follows:

“1. The Consortium shall cover the risks that are insurable by entities insuring against civil liability for nuclear incidents caused by nuclear substances, or incidents involving radioactive materials other than nuclear substances that result in the emission of ionizing radiation, as follows:

a) In the event that the amount covered by all the insuring entities considered jointly does not reach the minimum limit for liability set forth in the Act on Civil Liability for Nuclear Damage or Damage Caused by Radioactive Materials, the Consortium shall participate in the coverage by covering the remaining difference until said limit is reached.

b) The Consortium shall act as a reinsurer in the manner and amount determined by the Ministry of Economy and Finance.

2. For the purposes of this Legal Statute, the term nuclear incident shall be understood as defined in Article 3.1.a) of the

Act on Civil Liability for Nuclear Damage or Damage Caused by Radioactive Materials.”

**Final Provision Three. Jurisdictional authority**

This Act has been passed in the framework of Article 149.1.8 of the Constitution, which attributes exclusive competence to the State over civil legislation, with the exception of Chapter III of Title I and of Article 22.1, which have been passed in the framework of Article 149.1.6 of the Constitution, which attributes exclusive competence to the State over procedural legislation.

**Final Provision Four. Implementing regulations**

The Government may lay down the necessary provisions for the implementation of this Act and, in particular, may incorporate into domestic law the decisions taken by the Steering Committee of the Nuclear Energy Agency of the Organisation for Economic Co-operation and Development (OECD) by virtue of the stipulations of Articles 1.a)ii, 1.a)iii and 1.b) of the Paris Convention.

**Final Provision Five. Deductible**

The Ministry of Industry, Tourism and Trade, with the aim of facilitating contracting between the parties, may establish, through an order, a deductible for the insured party in relation to the risk for nuclear damage covered by the insuring entities and depending on the market circumstances existing at any given time.

Madrid, 27 May 2011

## APPENDIX

Amount of the minimum mandatory guarantee for civil liability coverage for incidents caused by radioactive materials other than nuclear substances

| Natural uranium hexafluoride UF <sub>6</sub>              |         |                |                |                  |           |
|---|---------|----------------|----------------|------------------|-----------|
| Activity (TBq)  | < 0.4   | ≥ 0.4 and < 10 | ≥ 10 and < 100 | ≥ 100            |           |
| Minimum guarantee (€)                                     | 300,000 | 600,000        | 1,200,000      | 2,400,000        |           |
| Natural uranium concentrate U <sub>3</sub> O <sub>8</sub> |         |                |                |                  |           |
| Activity (TBq)  | < 0.4   | ≥ 0.4 and < 10 | ≥ 10 and < 100 | ≥ 100            |           |
| Minimum guarantee (€)                                     | 150,000 | 300,000        | 600,000        | 1,200,000        |           |
| Other radioactive materials                               |         |                |                |                  |           |
| Activity (TBq)  | < 0.1   | ≥ 0.1 and < 10 | ≥ 10 and < 100 | ≥ 100 and < 1000 | ≥ 1000    |
| Minimum guarantee (€)                                     | Exempt  | 150,000        | 300,000        | 600,000          | 1,200,000 |