

Pursuant to Article IV.4.a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the 55th session of the House of Representatives, held on 24 and 28 October 2013, and at the 33rd session of the House of Peoples, held on 5 November 2013, enacted the

LAW
ON LIABILITY FOR NUCLEAR DAMAGE

PART ONE – GENERAL PROVISIONS

Article 1
(Subject)

This law governs the matters of civil liability for nuclear damage resulting from the use of nuclear energy for peaceful purposes and wherever suffered, and also other important matters regarding the liability.

Article 2
(Definitions)

(1) The terms, as used in this law, shall have the following meaning:

- a) 'Economic loss' means a financial loss for the person who suffered nuclear damage, arising as a direct or indirect consequence of such damage.
- b) 'Measures of reinstatement' means any reasonable measures approved by the ministries or other authorities competent for the environmental protection matters, and which aim is to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalents of these components into the environment.
- c) 'Nuclear damage' means:
 - 1) loss of life, any personal injury or other damage to the human health;
 - 2) loss of or damage to property;
 - 3) economic loss to the extent determined by the competent court, arising from loss or damage referred to in indents 1) and 2) of this point, insofar as not included in indents 1) and 2), if incurred by a person entitled to the compensation claim in respect of such loss or damage;
 - 4) the costs of measures of reinstatement of impaired environment to the extent determined by the competent court, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in indent 2);
 - 5) loss of income deriving from an economic interest in the use or enjoyment of the environment to the extent determined by the competent court and incurred as a result of a significant impairment of that environment, and insofar as not included in indent 2) of this point;
 - 6) the costs of preventive measures to the extent determined by the competent court, and further loss or damage caused by such measures;
 - 7) any other economic loss to the extent determined by a competent court, other than any caused by the impairment of the environment, if permitted by the applicable law on obligations;
 - 8) within the meaning of indents 1), 2), 3), 4), 5) and 7), nuclear damage means damage to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from

nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

- d) 'Nuclear material' means:
- 1) nuclear fuel, other than natural or depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material; and
 - 2) radioactive products or waste.
- e) 'Nuclear reactor' means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.
- f) 'Nuclear incident' means any occurrence or series of occurrences having the same origin and causing nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage,
- g) 'Nuclear fuel' means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission.
- h) 'Nuclear installation' means:
- 1) any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;
 - 2) any factory using nuclear fuel for the production of nuclear material or any factory for the processing of nuclear material, including any factory for the reprocessing of irradiated nuclear fuel;
 - 3) any facility where nuclear material is stored, other than storage incidental to the transport;
 - 4) all other installations in which there are nuclear fuel or radioactive products or waste with nuclear fuel or radioactive products or waste as the Board of Governors of the International Atomic Energy Agency shall determine.
- i) 'Operator of nuclear installation' (hereinafter: operator) means the person designated or recognized by the Installation State as the operator of that installation.
- j) 'Preventive measures' means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in indents 1 to 5 and indent 7) of point c), subject to any approval by the ministries or other authorities competent for environmental protection matters.
- k) 'Carrier' means a person transporting nuclear or radioactive material by road, railway, sea or air.
- l) 'Radioactive products or waste' mean any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for scientific, medical, agricultural, commercial or industrial purpose.
- m) 'Reasonable measures' means measures which are found under the applicable legislation to be appropriate and proportionate having regard to all the circumstances, and in particular:

- 1) the nature and extent of the damage suffered 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) The gender specific terms used here shall equally refer to both masculine and feminine gender.

PART TWO – LIABILITY FOR NUCLEAR DAMAGE

Article 3 (Liability of the operator for nuclear damage)

- (1) Under the provisions of this law, the operator shall be solely liable for nuclear damage wherever it is suffered, upon proof that such damage has been caused by a nuclear incident in his nuclear installation.
- (2) Under this law, the operator shall incur the objective liability for nuclear damage except in the cases provided for in Article 7 of this law.
- (3) The operator shall also be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident:
 - a) involving nuclear material coming from or originating in his nuclear installation, and occurring:
 - 1) before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;
 - 2) in the absence of the express terms of the contract in writing referred to in indent 1), before the operator of another nuclear installation has taken charge of the nuclear material;
 - 3) where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person duly authorized to operate such reactor has taken charge of the nuclear material;
 - 4) where the nuclear material has been sent to an operator in the territory of a non-Contracting Party to the Vienna Convention on Civil Liability for Nuclear Damage of 1997 (hereinafter: Vienna Convention), before it has been unloaded from the means of transport by which it has arrived in the territory of that non-Contracting Party to the Vienna Convention.
 - b) involving nuclear material sent to its nuclear installation, and occurring:
 - 1) after liability with regard to nuclear incidents involving the nuclear material has been assumed by him, pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;
 - 2) in the absence of the express terms of a contract in writing referred to in indent 1) of this point, after he has taken charge of the nuclear material;

- 3) after he has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;
- 4) where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting Party to the Vienna Convention, only after it has been loaded on the means of transport by which it is to be carried from the territory of that Party.

Article 4
(Liability time period)

The operator shall be liable for nuclear damage as long as his installation is operational.

Article 5
(Special cases of liability)

The operator who has been last authorized for a nuclear practice shall be responsible for nuclear damage caused by the nuclear material that was stolen, lost, abandoned or discarded from his installation.

Article 9
(Joint and several liability of the operators)

Where nuclear damage engages the liability of more than one operator, and the damage attributable to each operator is not reasonably separable, the operators involved shall be jointly and severally liable.

Article 7
(Exemptions from objective liability)

- (1) If the operator proves that nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the court may relieve the operator wholly or partly from his obligation to pay compensation for the damage suffered by such person.
- (2) The operator shall not be liable for nuclear damage if he proves that nuclear damage is directly due to an act of an armed conflict, hostilities, civil war or insurrection.

Article 8
(Unlimited liability)

In the event of a nuclear incident in the territory of Bosnia and Herzegovina or in its exclusive economic zone, the operator's liability for the nuclear damage resulting from the incident shall not be limited as to the amount of funds.

Article 9
(Financial security for transport)

- (1) For the transport of nuclear material through the territory of Bosnia and Herzegovina or its exclusive economic zone, the operator shall have an appropriate insurance covering liability for nuclear damage under the laws of his Installation State, or another financial security covering nuclear damage under the laws of that State.

- (2) Before the transport through the territory of Bosnia and Herzegovina or its exclusive economic zone, the operator shall provide the carrier with a certificate issued by the insurer or other financial guarantor furnishing the financial security.
- (3) The certificate of financial security referred to in paragraph (2) of this Article shall be submitted to the State Regulatory Agency for Radiation and Nuclear Safety before issuance of an approval for the transport of nuclear material, and it shall contain:
 - a) the name and address of the operator;
 - b) the amount, type and duration of the security;
 - c) a description of the nuclear material for which the security is given;
 - d) a statement by the competent government authority of the Installation State that the person named is an operator within the meaning of the Vienna Convention or other international conventions covering the compensation of nuclear damage.
- (4) The insurer or other person by whom or on whose behalf the certificate was issued shall not dispute the statements in the certificate.
- (5) The insurer or other person by whom or on whose behalf the certificate was issued shall not suspend or cancel the insurance or other financial security during the transport.

PART THREE – SPECIAL PROVISIONS

Article 10 (Competence of the court)

- (1) For a nuclear incident in the territory of Bosnia and Herzegovina or in its exclusive economic zone, the court having jurisdiction over the territory where the incident occurred or the court having jurisdiction over the territory where a harmful consequence resulted shall be competent for deciding on the compensation for nuclear damage.
- (2) If it is not possible to establish with certainty that a nuclear incident occurred in the territory of Bosnia and Herzegovina, a court of the Installation State shall be competent for deciding on the compensation for nuclear damage.

Article 11 (Extinction of the right to compensation for damage)

- (1) The right of compensation for nuclear damage under this law shall be extinguished if an action is not brought within:
 - a) with respect to loss of life or personal injury, 30 years from the date of the nuclear incident;
 - b) with respect to any other nuclear damage as specified in indents 3), 4), 5), 6), 7) and 8) of Article 2(1)(c), 10 years from the date of the nuclear incident.
- (2) The right of compensation for nuclear damage under this law shall be extinguished if an action is not brought within three years from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage.
- (3) Any person who claims to have suffered nuclear damage and who has brought an action for compensation within the period provided for in paragraph (1) of this Article may amend the

claim to take into account any aggravation of the damage, even after the expiration of that period, provided that a final judgement has not been entered.

Article 12
(Direct action against the insurer)

Any person entitled to compensation for nuclear damage under this law may bring a direct action against the liable operator or directly against the insurer or any other person furnishing financial security in case of nuclear damage.

Article 13
(Determining the compensation)

- (1) The nature, form and extent of the compensation for nuclear damage, as well as the equitable distribution thereof, shall be determined in accordance with the provisions of applicable law on obligations in the territory of the Federation of Bosnia and Herzegovina or the Republic of Srpska or the Brcko District of Bosnia and Herzegovina, depending on the place where the nuclear damage occurred insofar as these laws are not contrary to the provisions of the Vienna Convention.
- (2) Where claims exceed or are likely to exceed the compensation amount established by the Installation State, compensation for nuclear damage shall be provided first to those claimants who suffered the nuclear damage referred to in indent 1) of Article 2(1)(c) of this law, and after all these claims have been satisfied, claims for other loss or damage shall be compensated.

Article 14
(The right to recourse)

- (1) If a person who is a national of a Contracting Party to the Vienna Convention, other than the operator, has paid compensation for nuclear damage under an international convention or under the law of a non-Party to the Vienna Convention, such person shall, up to the amount which he has paid, acquire by subrogation the rights under this law, of the person so compensated, in which no rights shall be so acquired by any person to the extent that the operator has a right of recourse against such person under this law and under the Vienna Convention.
- (2) The operator shall have a right of recourse:
 - a) if it is expressly provided for by a contract in writing;
 - b) if the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

Article 15
(Compensation based on other systems)

If the compensation for nuclear damage is provided for in regulations on health insurance, social insurance, insurance for work accidents or occupational diseases, rights of beneficiaries of such systems to obtain compensation and rights of recourse by virtue of such systems against the operator shall be determined under the laws establishing such systems.

PART FOUR – TRANSITIONAL AND FINAL PROVISIONS

Article 16 (Prohibition of discrimination)

This law shall apply without any discrimination based upon nationality, residence or domicile.

Article 17 (Application of other legislation)

The matters that are not regulated under this law shall be governed by the provisions of the Vienna Convention and the provisions of the law on obligations applicable in the territory of the Federation of Bosnia and Herzegovina or the Republic of Srpska or the Brcko District of Bosnia and Herzegovina, in which the latter provisions shall apply provided that they are not contrary to the provisions of the Vienna Convention.

Article 18 (Expiry of legal provisions)

The provisions of Article 1(3) and Article 3(jj) of the Law on Radiation and Nuclear Safety in Bosnia and Herzegovina (*Official Gazette of BiH*, No 88/07) shall expire upon entry into force of this law.

Article 19 (Entering into force)

This law shall enter into force on the eighth day following that of its publication in the *Official Gazette of BiH*.

No 01, 02-02-1-14/13
5 November 2013
Sarajevo

SPEAKER

**House of Representatives
Parliamentary Assembly of BiH
Dr Denis Bećirović**

SPEAKER

**House of Peoples
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Dr Dragan Čović**