

EUR 3127.e

EUROPEAN ATOMIC ENERGY COMMUNITY - EURATOM

**ELEMENTS OF A THIRD-PARTY LIABILITY
INSURANCE CONTRACT FOR OPERATORS
OF FIXED NUCLEAR INSTALLATIONS**

(Euratom skeleton third-party liability policy in respect of installations)

1966



Directorate General for Industry and Economy

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SUMMARY

The Euratom skeleton policy in respect of installations is the result of cooperation between the Euratom Commission and the nuclear insurers, nuclear-industry organizations and electricity producers in the Community.

It contains the elements of a nuclear third-party liability insurance contract. In view of the increasing unification of the nuclear industry in the Community, a standardization of the main clauses in this branch of insurance is recommendable. The skeleton policy is based on the provisions concerning liability in the Convention on Third-Party Liability in the Field of Nuclear Energy dated 29 July 1960 (Paris Convention) and the Supplementary Convention dated 31 January 1963 (Brussels Convention).

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ELEMENTS OF A THIRD-PARTY LIABILITY INSURANCE CONTRACT FOR OPERATORS OF FIXED NUCLEAR INSTALLATIONS (*)

Introductory notes

At the third colloquy on nuclear-risk insurance held at Aix-en-Provence on 28 and 29 May 1964 between Euratom and nuclear insurers it was decided to work out jointly a draft skeleton policy for third-party liability in the field of nuclear energy. As a result of this decision, Euratom and the insurers have together formulated the present framework policy in respect of fixed nuclear installations. The broad lines of this policy were approved during the fourth colloquy on nuclear-risk insurance, which took place at Berlin on 8 and 9 July 1965 and which was attended by the Euratom Commission, the insurers, the various industrial sectors grouped in the Union of Industries of the European Community (UNICE) and the electricity producers represented on the Committee for the European Community of the International Union of Producers and Distributors of Electrical Energy (UNIPED). A number of problems still pending were studied at a subsequent meeting of experts.

Ratification of the Paris Convention on Third-Party Liability in the Field of Nuclear Energy will establish a uniform legal basis in Europe which will make possible a certain standardization of conditions of insurance of this type.

Such a standardization is desirable on account of the development of the nuclear industry at the international level and also because insurance charges vary from country to country, the resultant disparities being regrettable from the standpoint of industry in a common market; furthermore, it facilitates reinsurance, thus enhancing opportunities for insurance.

The provisions of this draft only comprise the elements of a policy, it being impossible at the present stage to contemplate a complete standard specimen policy binding upon the parties concerned. Moreover, the various national laws, and in particular those governing insurance, have not yet been unified. Even so, the provisions of the skeleton policy which are not incompatible with the mandatory prescriptions of the national law should, if possible, be incorporated in their present form in insurance contracts. The skeleton policy could subsequently be reappraised in the light of experience acquired, and in particular when the standardization of the various national laws has been duly implemented.

The proposed policy is designed to cover third-party liability resulting from damage which has been caused by a nuclear incident and for which the Paris Convention has laid down a special liability system. Carriage of nuclear substances and third-party products liability are excluded; the skeleton policy already drawn up for the coverage of third-party liability applying to transportation will be revised.

Although the insurance is of a private character, it may be deemed desirable that both the nuclear and the conventional risk should be covered by one and the same insurer, failing which delimitation of these two risks might give rise to serious practical difficulties.

Another question which arises is whether third-party liability policy conditions should be exactly the same for nuclear and for conventional damage, or whether the insurers

(*) Manuscript received on 12-8-1966.

should apply different conditions to nuclear third-party liability, under the Paris Convention, on the one hand, and to conventional third-party insurance on the other. Standard conditions would undoubtedly offer a great many advantages; however, the nuclear third-party system introduced by the Paris Convention concerns a special type of risk and the terminology in that Convention differs on a number of points from that in the various municipal laws governing third-party liability.

For actuarial reasons, therefore, nuclear insurance must embody numerous special provisions, particularly with regard to exclusions. Moreover, account must be taken of the fact that the amount of the security laid down by the Paris Convention can only be applied to the payment of compensation for damage caused by a nuclear incident within the meaning of the Convention, i.e. whatever the circumstances, separate security must be provided for the non-nuclear risk. Again, it must be remembered that nuclear third-party insurance fulfils a legal requirement concerning financial security, whereas conventional third-party liability in respect of operation insurance is optional. All these factors militate in favour of two distinct systems of insurance, although both the contracts in question are usually drawn up by one and the same insurer.

1 — Definitions

1.1 — Nuclear incident

Nuclear incident means any occurrence or succession of occurrences having the same origin which cause damage, provided that such occurrences, or any of the damage caused, arise out of or result from the radioactive properties, or a combination of radioactive properties with toxic, explosive, or other hazardous properties of nuclear fuel or radioactive products or waste or with any of them.

Where the damage or loss is caused jointly by a nuclear incident and by an incident other than a nuclear incident, that part of the damage or loss which is caused by such other incident shall, to the extent that it is not reasonably separable from the damage or loss caused by the nuclear incident, be considered to be damage caused by the nuclear incident.

1.2 — Nuclear installation

Nuclear installation means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee of the European Nuclear Energy Agency (hereinafter referred to as the «Steering Committee») shall from time to time determine.

1.3 — Nuclear fuel

Nuclear fuel means fissionable material in the form of uranium metal, alloy, or chemical compound (including natural uranium), plutonium metal, alloy, or chemical compound, and such other fissionable material as the Steering Committee shall from time to time determine.

1.4 — Radioactive products or waste

Radioactive products or waste means any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of producing or utilizing nuclear fuel, but does not include (a) nuclear fuel, or (b) radioisotopes outside a nuclear installation which are used or intended to be used for any industrial, commercial, agricultural, medical or scientific purpose.

1.5 — Nuclear substances

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

1.6 — Operator of a nuclear installation

Operator in relation to a nuclear installation means the person designated or recognized by the competent public authority as the operator of that installation.

1.7 — Paris Convention

The *Paris Convention* is the Convention of 29 July 1960 on third-party liability in the field of nuclear energy, text incorporating the Additional Protocol of 28 January 1964.

Notes

The definitions in 1.1 to 1.6 have been taken *verbatim* from Article 1 of the Paris Convention; para. 2 in definition 1.1 is a reproduction of the first sentence of Article 3(b) of the Paris Convention.

It is specified that when damage is caused by a nuclear incident in conjunction with an incident other than a nuclear incident, the entire damage, to the extent that it is impossible to ascertain what part thereof was caused by the non-nuclear incident, shall be deemed to have been caused by the nuclear incident.

Some insurers would like to have had a text adopted which followed the lines of Article IV, 4 of the Vienna Convention rather than Article 3(b) of the Paris Convention; however they agree to comply with the provisions laid down in the Paris Convention.

The difference between these two texts lies mainly in the fact that the Vienna Convention is only applicable to damage other than nuclear damage even when caused by a nuclear incident, whereas the Paris Convention is applicable to all damage — nuclear and other — caused by the nuclear incident.

Re 1.1

The expression used in certain versions of the Paris Convention to express the concept *nuclear incident* may be a source of controversy. This concept is rendered in English by *incident*, in German by *Ereignis*, in Italian by *Incidente*, in French by *Accident* and in Dutch by *Ongeval*. The French and Dutch versions employ the term corresponding to *accident* without assigning to it the definition generally accepted in some branches of insurance, i.e., the sudden, abnormal and violent action of an external force.

The Paris Convention defines a nuclear incident as an occurrence or succession of occurrences having the same origin which cause damage, provided that such occurrences or succession of occurrences, or any of the damage caused, arise out of or result from the radioactive properties with toxic, explosive, or other hazardous properties of nuclear fuel or radioactive products or waste or with any of them.

2 — Subject-matter of the Insurance

2.1 — Risk insured

The insurer covers by the present contract such non-contractual third-party liability as may devolve upon the insured as a consequence of damage caused by a nuclear incident involving either nuclear fuel or radioactive products or waste in, or nuclear substances coming from, the nuclear installation as defined in the special conditions or ionizing radiations emitted by any source of radiation inside the installation.

The insurer does not, however, cover by the present contract third-party liability for damage caused by nuclear substances outside the installation if the incident occurs :

- during carriage or storage incidental thereto;
- after such substances have been taken in charge by a third party to be used for any industrial, commercial, agricultural, medical or scientific purpose.

Notes on 2.1, para 1

By the terms of Article 10 of the Paris Convention, the operator must cover the whole of the liability provided for in this Convention. It is accordingly important that the insurance should cover this liability as completely as is technically possible, and preferably in a single policy. The proposed text fulfils this condition, the cover corresponding to the third-party liability referred to in Article 3 of the Paris Convention, without prejudice to the exclusions set forth in Article 7 of the present skeleton policy. Pursuant to the terms of the Paris Convention, the extent of the compensation is

governed by national law. It may vary, in respect of exactly the same damage, from country to country, and the insurance must cope with this situation.

The present skeleton policy covers not only damage caused by nuclear substances but also damage caused by any irradiation source in the installation. The Paris Convention does not lay down any liability for damage caused by such sources but authorizes the Member States, by the terms of Article 3(c), to make such damage subject to the liability system under this Convention.

In a recommendation dated 28 October 1965 (*Journal Officiel*, No. 196 of 18 November 1965), the Euratom Commission invites the Member States to make such damage subject to the system laid down in the Convention. Coverage will thus be in accordance with nuclear liability under this Convention.

Notes 2.1, para 2

Under the Paris Convention, the operator of the installation is liable for damage due to nuclear substances until such time as his liability is assumed by the operator of another nuclear installation. The Paris Convention, however, excludes from third-party liability thereunder all radioisotopes outside a nuclear installation which are used or intended to be used for any industrial, commercial, agricultural, medical or scientific purpose. The same applies to natural and depleted uranium outside a nuclear installation.

Damage due to fuel or to radioactive products or waste inside the installation is in any event covered by the skeleton policy. Damage due to nuclear substances outside the installation is not covered by the skeleton policy in the case of the carriage of nuclear substances, including storage incidental thereto.

In the case of carriage of nuclear substances, the relevant third-party liability is covered by a separate policy. The insurers will cover the damage caused by a nuclear incident occurring subsequently to carriage (including storage incidental thereto) and involving nuclear substances which have been stolen, lost, jettisoned or abandoned.

Nor does the present skeleton policy cover nuclear substances taken in charge by third parties in order to be used for industrial, commercial, agricultural, medical or scientific purposes.

The third-party liability of the operator may be involved in certain cases relating to the supply of nuclear fuels or radioactive products or waste for which, by virtue of this exclusion, no cover is provided under the present skeleton policy. It should be pointed out that as regards the supply of nuclear substances to a *country signatory* to the conventions the liability of the supplying operator is, in practice, seldom involved. If the consignee is the operator of another nuclear installation, the third-party liability will be assumed by the latter as soon as he has taken over the nuclear substances. Nuclear substances supplied to persons who are not *operators of a nuclear installation* within the meaning of the Paris Convention will in nearly every case be radioisotopes, which, as stated above, do not come within the scope of application of the Paris Convention. Furthermore, the possibility of use of nuclear fuels outside a nuclear installation, which would have the effect of maintaining the liability of the supplying operator, is practically non-existent at the present time.

In the case of nuclear substances supplied to a *non-signatory country*, the third-party liability of the supplying operator might be involved under the provisions of that country's civil law and the stipulated exclusion may have a practical significance in this context. The assurers are prepared to cover this products risk, like the transport risk, by a separate policy.

2.2 — Expenses relating to the limitation or minimization of damage

Observations

As regards the manner in which such expenses have to be covered, the attitude of the insurers is not the same as that of the insured.

The insurance takers propose the following clause :

The expenses resulting from the measures which the insured persons have been

constrained by circumstances to take in order to limit or minimize the damage caused to a third party in the event of an occurrence giving rise to an incident shall be payable by the insurer, even if such measures have proved abortive.

This clause corresponds broadly to the provisions of Belgian, German and Dutch legislation on insurance contracts.

The insurers are against the insertion of a standard clause in the skeleton policy. They take the view that it should be left to the various insurers to assume such expenses in accordance with the relevant practice in the country concerned. All nuclear insurers in the Community are prepared to insure expenses of this type. In countries in which, under the national law applicable in the field of insurance contracts, such expenses have to be included in the third-party liability insurance, the insurers simply wish to adopt the provisions laid down by law or the texts in use in the traditional branches of insurance, as these provisions have already given rise to extensive jurisprudence. In other countries, the insurers are prepared to cover the expenses in question, either by a supplementary clause to the third-party liability insurance contract, by a separate insurance contract or by inclusion in the material-damage insurance.

2.3 — Interest and costs

The insurance covers interest and costs relating to an action for damage brought against the persons insured.

Notes

Article 7(g) of the Paris Convention provides that interest and costs involved in an action for compensation are payable by the person liable in addition to any compensation due. They are not considered as compensation within the meaning of this Convention and they cannot be set against the financial security covering the operator's liability. It is accordingly necessary to provide in the policy for a specific amount to cover such sums (see 6).

3 — Persons insured

The person insured under the terms of the present contract is the operator of the nuclear installations described in the special conditions.

Observations

The insurers are also prepared to cover, by the insertion of a supplementary clause in the special conditions, the liability of the suppliers designated by name in the contract relating to the risks referred to in Article 2, provided it has been established that the said suppliers have not concluded any other insurance to cover the same risk.

The insured persons, for their part, have agreed to ask their main suppliers whether they have concluded any other insurance covering the nuclear risks resulting from the supplying of nuclear substances and to inform the insurers of the reply.

Notes

Having regard to the legal-channelling principle which underlies the Paris Convention, the incurrance of third-party liability by a person other than the operator is ruled

out under the system in the Paris Convention ⁽¹⁾. Even where third-party liability is governed by the laws of non-signatory states or by other international conventions which do not recognize legal channelling, the persons liable other than the operator have, by subrogation, in the case covered by Article 6(d) and (e) of the Paris Convention, a right of recourse against the operator.

Suppliers are only liable to bear the consequences of damage when they have their principal place of business outside the territory of the signatory States and also if the damage occurs outside such territory. Liability of the supplier in relation to the risk as defined in Article 2.1 hereof will therefore be highly improbable, if not theoretical. However, some suppliers in non-signatory countries ask, as a precautionary measure, to be included in the cover.

In such cases, the insurers are anxious to know whether the suppliers have taken out an insurance covering the supply risks, since they do not wish to insure a second time, by means of reinsurance, the risks which they have insured on behalf of the operator, as this might result in a cumulation of benefits the amount of which would exceed the sum covered by the direct insurance. Since the insurers, at the time of entering into a reinsurance, frequently do not know what the various risks reinsured by them are, it is important for them to ascertain from the takers of the insurance the supply risks which have been insured.

There can in no case be any question of the operator's servants or agents having to bear the financial consequences of a third-party liability.

4 — Territorial field of application

The insurer covers third-party liability for damage suffered anywhere in the world, on the basis of the applicable law in the country concerned.

Notes

The insurance must not be confined to nuclear incidents occurring in the territory in which the Paris Convention applies or to damage suffered in such territory.

Irrespective of the compensation rights provided for in the Paris Convention, there may arise rights to compensation for damage occurring in non-contracting countries to which the Paris Convention does not apply. Within the limits of the insured sum, the skeleton policy also covers actions for damage occurring outside the territorial field of application of the Paris Convention and liability for which is based on different legal principles from those in the Paris Convention. The insured persons are thus spared the trouble of taking out a second policy, providing fresh security, to cover damage which very seldom occurs. Should it prove necessary, however, under the applicable law, to contract a supplementary insurance in respect of damage occurring outside the territorial field of application of the Paris Convention, the insurers will examine each specific case, taking all the relevant possibilities into consideration.

An exception is made to the principle of world-wide coverage in the cases provided for in point 7.5.

5 — Duration of cover

(a) The insurance covers third-party liability arising out of nuclear incidents occurring during the period of insurance coverage.

⁽¹⁾ In the case of those States which, pursuant to a reservation made in the Paris Convention (Annex 1), may adopt a system of economic channelling, persons other than the operator who are not exempt from third-party liability are nevertheless exempt from all the financial consequences thereof. Appropriate cover for economic channelling should include the assumption of third-party liability by the suppliers, employees and all persons who may be liable. If, however, the third-party liability of a person other than the operator is not covered by the financial security obtained by the operator, this does not place any burden on the former, having regard to the fact that — under the aforesaid reservation — he is only liable provided he is covered by the operator's financial security.

(b) Without prejudice to para (d), the insurance does not cover claims submitted following an action for compensation brought by the injured person after a lapse of 10 years as from the date of the nuclear incident.

Additional restriction : In the case of damage caused by a nuclear incident involving fuel or radioactive products or waste which at the time of the incident had been stolen, lost, jettisoned or abandoned and which have not yet been recovered, this 10-year period is computed from the date of such theft, loss, jettisoning or abandonment.

(c) After the expiry of the period referred to in (b), cover is maintained when the conditions laid down in Article 8(d) of the Paris Convention are satisfied.

(d) Furthermore, the insurance does not cover actions for compensation brought after the expiry of a period of three years from the time at which the person suffering damage has knowledge or ought reasonably to have known of both the damage and the operator liable, provided that the law applicable to the liability of the insured persons lays down such an extinction period of three years.

Notes on a)

This provision accords with the traditional rules applied in insurance contracts. A special problem arises, however, in the case of nuclear insurance, as the liability of the operator may also be involved when the nuclear installation has been completely closed down; nuclear substances originating from such an installation may, several years after having been lost or submerged, cause an accident for which the operator is liable. The insurers do not wish to include in the present skeleton policy coverage of risks arising out of such an extension of the term of the liability: they are, however, prepared to cover such risks either by a supplementary clause in the third-party liability insurance or by a separate contract. To ensure full coverage, the supplementary policy covering the risk of theft, loss, jettisoning or abandonment of nuclear substances should (Article 8b) of the Paris Convention) be taken out for a period of not more than twenty years as from the date of the occurrence (theft, loss, etc.). For a similar provision concerning third-party liability insurance covering carriage, see notes on 2.1, para 2.

Notes on b)

The Paris Convention lays down as a general time-limit for bringing an action for damage 10 years from the date of the nuclear incident; furthermore, when nuclear substances have been stolen, lost, jettisoned or abandoned, the right to compensation is extinguished not later than 20 years after the date of such theft, loss, jettisoning or abandonment. Third-party liability therefore ceases 10 years after the incident or in any event 20 years after the theft, loss, jettisoning or abandonment (see Article 8a) and b) of the Paris Convention).

The takers of insurance are extremely anxious that the cover should extend up to the time at which their liability is no longer involved, even in cases of theft, loss, jettisoning or abandonment. Some insurers are prepared to cover such liability for a period of 10 years from the date of the nuclear incident provided it occurs within the period of insurance coverage (see 5a)).

Other insurers are not prepared, in cases of theft, loss, jettisoning or abandonment, to provide indemnity for a period of 10 years after an incident but only agree to grant cover for a period of 10 years from the date of theft, loss, jettisoning or abandonment of nuclear substances. They are therefore desirous that para 2 of (b) should be included in the policy. Should this clause be adopted, cases might arise in which certain of the insured's risks would not be covered by the insurer.

While under Article 8(a) of the Paris Convention the Contracting States are empowered to fix a period of more than 10 years from the date of the nuclear incident for extinction of the right to compensation, the insurers for their part are unwilling, even in the event of an extension of this period by the national legislation, to grant cover for more than 10 years.

Notes on (d)

The three-year time-limit corresponds to that laid down in Article 7 of the Supplementary Convention, based on Article 8(c) of the Paris Convention. The recommendation addressed by the Commission to the Member States on 28 October 1965 urged them to adopt this period of limitation.

6 — Amount of cover

Observations

The amount of the cover cannot be fixed so long as the maximum third-party liability amounts provided by the national laws have not been standardized.

Because of the magnitude of the amount of cover required and the smallness of the number of installations insured, the insurers are not in a position to furnish cover per incident, as is customary in ordinary third-party liability policies.

The insurers shall only grant cover comprising in each specific case a single, limited amount, which shall be degressive in proportion to the number of accidents occurring, whatever the third-party liability admitted by the operator, for a fixed period which is normally the period of operation of the installation in question. By the terms of the Paris Convention, however, the operator is liable for every further accident up to the maximum liability.

In the case of a degressive-cover policy, the competent authority may, where appropriate, withdraw authorization after an accident if coverage was no longer in accordance with legal requirements. In that event, the insured shall be required to re-establish the cover by either taking out a fresh or a supplementary insurance or obtaining another form of financial security. It is in the period immediately after a nuclear incident that the problem of public cover actually arises. Some insurers grant cover per installation in an amount higher than that required per incident. This amount is reduced and finally exhausted by every compensation payment effected by the insurer in compensation of damage caused by one or several consecutive nuclear incidents. Payments in respect of one and the same incident may not, of course, exceed the maximum liability fixed by the national law. As regards the ratio between the amounts, concepts vary; the overall amount of cover per installation may exceed the amount of cover per incident by 20 % but it may also be twice or three times as high.

It is necessary to establish insurance cover :

- (1) To meet the operator's liability.

This amount must be used solely for compensation of the damage caused by the nuclear incident, as the action for compensation may be based upon legal principles other than those in the Paris Convention.

- (2) To meet the expenses incurred in limitation and minimization of the damage.

To the extent that third-party liability policies may include coverage for such expenses, they must provide special or subsidiary cover.

- (3) To meet interest and costs relating to actions for compensation.

By the terms of Article 7(d) of the Paris Convention, such expenses are payable by those liable in addition to any compensation due. They may not be set against the amount of the financial security covering the operator's liability. Provision must be made for a separate cover in respect of such expenses.

- (4) To meet damage caused by other sources of radiation inside the nuclear installation which have not been made subject to the liability system in the Paris Convention, as is permitted by Article 3(c) thereof.

In its recommendation dated 28 October 1965, the Euratom Commission urged the Member States to make such sources subject to the Liability system in the Paris Convention. It will probably be unnecessary, therefore, to provide for special coverage of such risks.

7 — Exclusions

7.1 — Material damage to the nuclear installation and property on the site thereof

The insurance does not cover the third-party liability in respect of damage caused to the nuclear installation itself and any property on the site thereof which is used or to be used in connection therewith.

Notes

This exclusion is on all fours with the liability limitation under Article 3(a) ii 1 of the Paris Convention. In the case of property belonging to the operator of the nuclear installation there is, of course, no cover under a third-party liability policy. This exclusion is therefore only operative in the case of property belonging to third parties which is inside the installation and used in connection therewith. As third-party liability in respect of such property is excluded by Article 3(a) ii of the Paris Convention, save in the case of an act or omission done with intent to cause damage, it is therefore, only in this latter case that the exclusion in question is of any practical significance.

7.2 — Acts of war, natural and other disasters

The insurance does not cover compensation rights exercised following nuclear incidents due directly to acts of armed conflict, hostilities, civil war or insurrection or to natural disasters of an exceptional nature.

Notes

The Paris Convention excludes liability of the operator for damage due directly to acts of armed conflict, hostilities, civil war or insurrection or to natural disasters of an exceptional nature.

It does, however, permit reinclusion in the operator's third-party liability, by the applicable national legislation, of damage due directly to natural disasters of an exceptional nature. It is also possible that the legislations of Non-Contracting States do not provide for the exclusion of third-party liability in all cases of armed conflict, natural disasters and other occurrences of this type.

As the insurers do not wish to cover such risks, it is necessary to provide for the inclusion in the insurance contract of a clause incorporating the conclusions derived from Article 9 of the Paris Convention. However, insurers are uneasy concerning the use of the word *directly*, which, having regard to the customary exclusion clauses and the relevant jurisprudence, might be interpreted to their detriment. They therefore desire the deletion of the word *directly*.

Some insurers further demand a wider exclusion, extending to strikes and riots, as is frequently done in insurance contracts.

7.3 — Damage due to weapons or to devices for military purposes

The insurance does not cover damage due to nuclear incidents attributable to the nuclear effects of various weapons or devices of a nuclear character used or designed to be used for military purposes.

Notes

The Paris Convention does not exclude such liability, but the insurers consider that such damage should be covered by the public authorities.

7.4 — Normal operation

Excluded under this head is damage caused by irradiation or contamination due to the deliberate release of ionizing radiations from the insured's installations, save where an act of God has contributed to cause such damage.

Notes

The insurers are unwilling to cover damage resulting solely from *normal operation* and therefore not constituting an act of God.

The text is modelled on a formula employed by the Belgian nuclear insurance pool. The definition of the concept *act of God* is based on the Belgian law of 11 June 1874 relating to insurance contracts.

7.5 — Judgments rendered by courts with jurisdiction in Non-Contracting States

The insurer is not obliged to pay compensation under the present contract if the right to compensation for damage suffered has been recognized by a court of a State non-signatory to the Paris Convention and if :

- judgment has been obtained by fraudulent means;
- the person against whom judgment has been given has not had the opportunity to present his case in equitable conditions;
- the judgment is contrary to the public policy of the State whose law governs the relations between the parties to the present contract or is incompatible with the fundamental rules of justice.

Notes

This exclusion concerns the unwarranted award of damages by courts with jurisdiction in countries having markedly different legal concepts. It is modelled on the system laid down in Article XII 1) of the 1963 Vienna Convention, which article relates to the enforcement of judgments rendered in foreign countries.

This exclusion will be applied in the case of judgments rendered by courts in Non-Contracting States. In most cases, the person suffering damage will, in his own interest, avoid bringing the matter before a court in a Non-Contracting State, as only an exequatur judgment by a court in the country in which the installation is situated can make such a judgment enforceable in that country. However, should the person suffering damage adopt this course, he can apply for an exequatur judgment, which the court will only grant if it does not infringe public policy. The exclusion will be applied when there is no occasion for enforcement in one of the Contracting States, e.g. when the insured pays without the adoption of enforcement procedure or when he possesses in the country in which the court has jurisdiction property to which an enforcement measure can be applied.

7.6 — Sureties, bonds and fines

The following are never borne by the insurer :

- (a) any sureties and bonds imposed on the assured in the form of a penalty by an administrative or legal authority;
- (b) fines, and expenses arising out of criminal proceedings.

7.7 — Genetic injuries

Observations

As regards genetic injuries one pool calls for the exclusion of this risk.

8 — Duration of the insurance contract

8.1 — Attachment

Attachment of the insurance shall commence upon the signing of the contract by the insurer, the insured, and, in the event of the latter's not being the operator, by the operator.

If, however, the contract is concluded before the operating permit comes into effect, attachment of the insurance shall not operate prior to such coming into effect.

Should the contract stipulate a different date, the latter shall be specified as to day and hour.

Notes

The contract must specify the time from which cover becomes operative.

The insurers are entitled to refuse to grant cover for the nuclear risk before the operating permit comes into effect.

8.2 — Cancellation

The term of the contract shall be indefinite.

The contract may be cancelled at the end of any one-year insurance period. Notice of cancellation must be given to the contracting party and the public authority not less than two months prior to the expiry of the period in question.

The contract may be cancelled by the insurer after an accident and by either contracting party in other cases provided for in the contract. Cancellation shall become effective two months after notice has been given to the contracting party and the competent public authority.

Notes

The right of cancellation on an annual basis accords with the wishes of the insurers, who in view of the novelty of the risk, are unwilling to commit themselves for a longer period than a year. The insurance takers, for their part, would prefer that contracts could only be cancelled after longer periods.

In the Community countries, all insurance contracts make provision for cancellation by the insurer after an accident.

The two months' notice is laid down by the Paris Convention (Article 10(b)). This period is necessary because coverage of such risks is prescribed by law. The insured must have time to find other financial security. Similarly, this period enables the competent authority to withdraw the operating permit.

9 — Rights and obligations arising out of the insurance

9.1 — Payment of premiums

Observations

In view of the practical difficulties inherent in any insurance contract, it has been decided to leave it to the parties concerned to determine the substance of this clause.

9.2 — Variation of the risk

The insured undertakes to notify the insurer of any variation of the risk by registered letter. Aggravation resulting from an act of the insured must be declared by the latter in advance. Should aggravation not result from an act of the insured, it must be declared by the latter as soon as he becomes aware of it.

Should there occur variation of the risk such that the parties concerned would not have entered into the contract or would have done so on different terms had they known of the new situation at the time of concluding the contract, either party may request revision of the contract; in the event of disagreement, either of the parties may cancel the contract.

9.3 — Modification of the legal provisions

If, after the conclusion of the contract, the obligations of the contracting parties undergo, as a result of a modification of the legal provisions, changes likely to cause a substantial variation of the risk, in such a way that if, at the time of concluding the contract, the contracting parties had been aware of the legal tradition thus modified, they would not have concluded the contract, at least in this form, they shall have the right to amend the contract accordingly or, failing agreement within a reasonable time-limit, to cancel it anticipatively.

Notes on paras. 9.2 and 9.3

The insurance takers are in favour of going further than the mere choice between agreement and cancellation and propose that provision be made for arbitration by experts.

The insurers, however, consider that they should, after consultation with the insured, have the right to decide freely and on their own responsibility whether it is advisable to continue with the contract.

9.4 — Rights of inspection and information

The insured shall grant the insurer right of inspection involving the obligation for the latter to comply with the safety regulations.

The insured shall at all times allow the insurer access to all reports relating to radio-activity inside and outside the installation containment and buildings, as well as to reports relating to members of the personnel and all other reports in the field of safety that may have to be submitted to or compiled by the authorities.

The insurer, for his part, undertakes to maintain secrecy in respect of the information received.

9.5 — Obligations in the event of accidents

The insured is required to notify the insurer without delay of any event known to him which may involve damage to third parties, as well as of any claim for compensation.

He is also required to furnish the insurer in due time with all necessary information and documents, including any summonses or writs, and generally with any legal instrument whatsoever.

In the event of an accident, the insurer shall negotiate in place of the insured with the victims or their assigns and shall compensate them if necessary; for this purpose, he reserves the right to enter into negotiations with them and, should there be an action at law, the right to follow and conduct the case to the extent that civil interests are involved or are liable to be endangered. Nevertheless, the insured reserves the right for himself and

his servants to have every facility for participating in his defence in criminal proceedings. He is required to attend or have himself legally represented at hearings and to perform all such acts of procedure as may be requested by the insurer.

Any admission of third-party liability, any settlement, any fixing of damages and any payment or promise to pay by the insured without authorization in writing from the insurer are prohibited.

Notes

This provision accords with usual insurance practice. The provisions concerning the right to take part in criminal proceedings (para. 3, second sentence) assume particular importance in countries in which judgment can be rendered on a civil action involved in criminal proceedings. Acknowledgement of the materiality of the facts is not deemed to be admission of liability.

9.6 — Measures aimed at the prevention and minimization of damage

The insured is required to take the necessary measures to prevent or minimize any damage and to give his executive personnel instructions to the same effect.

Notes

This provision, which, moreover, constitutes the application of what is a general rule in bonds and contracts, approximates to the provisions of Article 2.2 hereof.

9.7 — Subrogation to right of recourse

If the insured has right of recourse against a third party who is liable in respect of damage, the insurer shall be subrogated to such right up to the amount of the indemnity paid.

9.8 — Effect of cancellation of premiums

In the event of his cancelling the contract, the insured shall not be entitled to claim reimbursement of the part of the premium relating to the remainder of the current insurance period.

The same applies if the contract is cancelled by the insurer when the insured has failed to fulfil his obligations.

If the contract has been cancelled by the insurer without the insured's having failed to fulfil his obligations, the insurer shall be required to reimburse to the insured a part of the premium proportionate to the unexpired portion of the insurance period. However, the amount to be refunded shall not exceed the annual premium less the amount of compensation paid or to be paid in respect of nuclear incidents occurring during the insurance period.

Notes

The insurers point out that in cases of anticipated cancellation they continue to assume the expenses. Should the insured cancel the contract, or should the insurers themselves cancel the contract on account of the fact that the insured has failed to fulfil his obligations, the part of the premium relating to the unexpired portion of the insurance period will not be reimbursed. However, part of the premium will be reimbursed in the event of the insurer's cancelling the contract for a reason other than failure of the insured to fulfil his obligations.

9.9 — Non-fulfilment of obligations

1. The insurer may cancel the contract in the following cases :

- (a) If the insured has not paid the outstanding premium within two weeks following receipt of a notice, having force of summons to pay and signified by registered letter;
- (b) if the insured knowingly and wilfully prevents or interferes with the exercise of the insurer's right of inspection and information;
- (c) if the insured or the chief executive at the installation contravenes the provisions of the operating permit, the standing orders issued in pursuance thereof and the directives of the competent public authority.

The contract may be cancelled by either party in the event of other fundamental breaches of the obligations arising out of the contract.

2. The insurer has the right of recourse against the insured to the extent of the compensation paid :

- (a) when the operator of or the chief executive at the installation has caused the damage by an act or omission performed with intent to cause hurt to another person or persons;
- (b) if the insured makes knowingly inaccurate or incomplete declarations relating to aggravation of the risk, unless he is able to prove that such aggravation has neither caused nor increased the damage.

3. The present Article in no way affects the legal provisions applicable in cases of violation of contractual obligations.

Notes

Non-fulfilment of obligations may involve four legal consequences, i.e. :

- 1. termination
- 2. insurer's right to withhold his benefits
- 3. right of recourse
- 4. award of damages

Re 1 (termination) : see Notes on 8.2.

Re 2 and 3. Insurer's right to withhold his benefits and right of recourse : The insurer is required to pay compensation even in cases of infringements committed by the insured. In the cases provided for in para 2 of the present article, he has, however, right of recourse against the insured to the extent of the compensation.

Re 4. Damages : The skeleton policy contains no clause relating to actions for damages. In this field and in respect of other consequences not contemplated by the present policy — coming under the head of non-fulfilment of contractual obligations — the legal provisions will be applied.

9.10 — Operator of the installation

If the insured is not also the operator of the installation, the latter is subject, by virtue of his signing the contract as provided in Article 8.1 hereof, to the same obligations as the insured.

Notes

The purpose of this clause is to provide for cases in which the insured and the operator of the installation are different persons. In such cases, the operator is subject to the same obligations as the insured. He is accordingly required to countersign the contract as provided in Article 8.1 hereof.

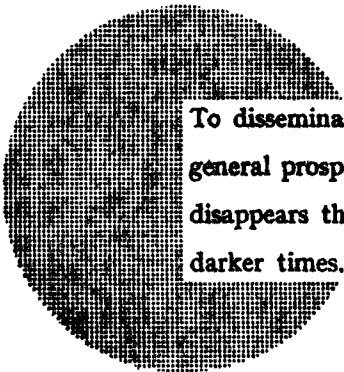
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Alfred Nobel

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