Recommendation on the application of the reciprocity principle to nuclear damage compensation funds

This Recommendation was adopted on 12 February 2004 by the Diplomatic Conference convened to adopt and sign the 2004 Protocols to amend the Paris and Brussels Supplementary Convention (Annex III of the Final Act of the Conference, which is available at www.oecd-nea.org/law/final-act-conference-revision-pc-bc.pdf).

THE CONFERENCE,

CONSIDERING that, pursuant to Article 15(b) of the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004 (hereinafter referred to as the “Paris Convention”), a Contracting Party may derogate from the provisions of that Convention insofar as compensation for nuclear damage is in excess of 700 million euro;

CONSIDERING that, pursuant to Article 3(f) of the Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960, as amended by the Additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004 (hereinafter referred to as the “Brussels Supplementary Convention”), a Contracting Party may not, in carrying out that Convention, make use of the right provided for in Article 15(b) of the Paris Convention to apply special conditions, other than those laid down in the Brussels Supplementary Convention itself, to the compensation of nuclear damage using funds referred to in that latter Convention;

DESIROUS of clarifying the right of a Contracting Party to establish conditions of reciprocity for the compensation of nuclear damage using funds which remain available under the Paris Convention after having satisfied its obligations under the Brussels Supplementary Convention;

RECOMMENDS that if a Contracting Party to the Brussels Supplementary Convention has satisfied its obligations under that Convention up to the amount referred to in Article 3(a) thereof, if the amount of nuclear damage to be compensated exceeds the aforementioned amount and if funds remain available, whether provided by insurance or other financial security pursuant to Article 10 of the Paris Convention or by public funds pursuant to national legislation enacted prior to the nuclear incident which requires that a specified amount of public funds will be provided to compensate nuclear damage, it should not make use of the right provided for in Article 15(b) of the Paris Convention to apply special conditions to the compensation of nuclear damage using such remaining funds in respect of:

a) a State referred to in Article 2(a)(i), (ii) or (iv) of the Paris Convention which, at the time of the nuclear incident, has a nuclear installation in its territory or in any maritime zone established by it in accordance with international law and which affords reciprocal benefits of an equivalent amount;

b) any other State which, at the time of the nuclear incident, has no nuclear installation in its territory or in any maritime zone established by it in accordance with international law;

RECOMMENDS that the Contracting Parties to the Brussels Supplementary Convention should notify the Secretary-General of the OECD of the steps that they have taken to implement this Recommendation;

INVITES the Secretary-General of the OECD to communicate any such notification to all Contracting Parties.