

AUSTRIA

Federal Act on Civil Liability for Damage Caused by Radioactivity

(Atomic Liability Act 1999 – AtomHG 1999)*

adopted on 7 October 1998

The National Assembly hereby enacts

Part I

SCOPE OF APPLICATION AND DEFINITIONS

Scope of Application

Section 1

This Federal Act governs civil liability for damage to persons or property by ionising radiation from nuclear installations, nuclear material or radionuclides.

Definitions

Section 2

For the purposes of this Act, the following definitions shall apply:

- (1) “nuclear material” means special fissionable material and source material [See Section II, Sub-section 1, Points 1 to 3, Act on Security Control (*Sicherheitskontrollgesetz*) 1991, *BGBI. (Bundesgesetzblatt)* No. 415/1992] with the exception of the smallest quantities and those which are radiologically insignificant [See Section II, Sub-section 6, Paragraph 2, Point 1, Act on
- (2) “radionuclides” means other radioactive substances which emit ionising

* This is an unofficial translation established by the OECD.

radiation as a result of spontaneous nuclear processes, including substances or objects which contain radioactive substances or those on the surface of which radioactive substances are found;

- (3) “nuclear installations” means installations in which nuclear material is handled in such quantities and in such a manner that a chain reaction takes place or the possibility of such a reaction cannot be ruled out, in particular, nuclear reactors, installations for the manufacture, processing, use, disposal, storage, treatment and rendering harmless of nuclear material as well as installations for the separation of isotopes of fissionable materials;
- (4) “operator” means a person authorised to operate a nuclear installation and who continually realises or at any time could realise the profits thereof; the holder of the requisite operating licence is always deemed to be the operator;
- (5) “holder” means a person with rights in a radionuclide and who uses it for his own purposes;
- (6) “carrier” means a person who carries nuclear material by road, rail, air or water, whether or not pursuant to a contract of carriage.

Part II

LIABILITY FOR NUCLEAR INSTALLATIONS AND MATERIAL

Operator Liability

Section 3

- (1) The operator of a nuclear installation is liable for damage to persons or property caused by the operation of a nuclear installation. Operation of a nuclear installation also includes dismantling of the installation, up until the removal of the stock of radioactive material.
- (2) The operator of a nuclear installation is also liable for damage caused outside the nuclear installation where such damage:
 1. is attributable to nuclear material which originated in his nuclear installation, and was incurred before the operator of another nuclear

- installation assumed control of this material; or
2. is attributable to nuclear material sent to his nuclear installation with his consent, and was incurred after he assumed control of this material.

Carrier Liability

Section 4

The carrier of nuclear material is liable for damage caused to persons or property incident to carriage, unless he can prove that he did not know and could not have known that the material in question was nuclear material.

Scope and Exclusion of Liability

Section 5

- (1) An operator's or carrier's liability under Sections 3 and 4 also extends to damage which is attributable to the radioactive properties of nuclear material combined with its toxic, explosive or other dangerous properties.
- (2) Liability under Sections 3 and 4 does not extend to damage:
 1. to the nuclear installation itself and to other nuclear installations on the site, including those under construction;
 2. to objects present on the site which are or have been used in connection with the nuclear installation; and
 3. to means of transport used to carry nuclear material.

Provision of Security

Section 6

- (1) The operator of a nuclear installation situated in Austria must obtain insurance to cover his liability. This insurance policy must remain in effect for at least ten years after operations at the nuclear installation have ceased. It must extend to all damage caused during the term of the policy and which

gives rise to claims no later than ten years after the damage occurred. This security requirement does not extend to damage resulting from war, armed conflict, civil war, riot or rebellion.

- (2) The insurance policy must provide coverage of at least 406 million Euros per incident plus 40.6 million Euros for interest and costs, except in the case of experimental and research reactors, where the relevant amounts shall be 40.6 million Euros per incident and 4.06 million Euros for interest and costs.
- (3) There is no obligation to insure where the Federal government (*Bund*) or State (*Land*) itself is liable or has assumed the liability of the operator of a nuclear installation for an amount not less than those amounts indicated in Paragraphs 1 and 2. The Federal Minister of Finance is authorised to assume such liability in cases where the purchase of liability insurance is beyond the financial means of the liable person, and where it is in the public interest that the government assume such liability.

Section 7

- (1) The carrier of nuclear material is required to take out third-party liability insurance only if the risk is not covered by other mandatory insurance. The insurance policy must extend to all damages which are attributable to the carriage of nuclear material in Austria. This security requirement does not include damage resulting from war, armed conflict, civil war, riot or rebellion.
- (2) The insurance policy must provide coverage of at least 40.6 million Euros per incident plus 4.06 million Euros for interest and costs, except in the case of source material, where the relevant amounts shall be 4.06 million Euros per incident plus 406 000 Euros for interest and costs.
- (3) The carrier of nuclear material must have an insurance certificate with him at all times (Section 158i of the Insurance Law of 1958 – *Versicherungsvertragsgesetz*) which shall be presented upon demand to authorities responsible for monitoring compliance with the legal and security requirements applicable to such carriage.
- (4) The insurance exemption in Section 6, Paragraph 3 for operators applies equally to carriers of nuclear material.

Section 8

- (1) The mandatory insurance required under Sections 6 and 7 must be secured from an insurer licensed to provide such insurance cover in Austria. The policy must be governed by Austrian law. The insurer shall notify the Financial Markets Regulatory Authority of the terms of the policy prior to its application.
- (2) The office which should receive the insurance notification provided for in Section 158c, Paragraph 2 of the Insurance Law of 1958 is that of the authorities responsible for the licensing of nuclear installations and of the transport of nuclear material.

Part III

LIABILITY FOR RADIONUCLIDES

Liability of Holder

Section 9

- (1) The holder of a radionuclide is liable for damage to persons or property caused by ionising radiation emitted from the isotope itself or combined with its other dangerous properties.
- (2) The holder shall not be liable if he can prove that he and his associates took all necessary precautions in the circumstances to prevent damage. In respect of the use of radionuclides for medical treatment, it shall be sufficient with respect to patients to prove that the materials and equipment used met scientific and technological standards and that the injury was not caused by equipment malfunction.

Insurance Coverage

Section 10

- (1) The holder of a radionuclide shall take precautions of the nature and scope customary in honest business dealings, including insurance cover or other suitable financial security, in order to ensure that his liability under the Act

is covered.

- (2) Where radionuclides in excess of 370 gigabecquerels are involved, such precautions must in any event include liability insurance cover of at least 4.06 million Euros per incident. The policy must be obtained from an insurer licensed to provide such insurance cover in Austria and must be governed by Austrian law. The insurer must notify the Federal Minister of Finance of the terms of the policy prior to its application.
- (3) The office which should receive the insurance notification provided for in Section 158c, Paragraph 2 of the Insurance Law of 1958 shall be the authority competent to grant licences according to the regulations on radioprotection.
- (4) There is no obligation to insure where the holder of the radionuclide is the Federal government (Bund), a State (Land), a county or a local community having more than 50 000 inhabitants.

Part IV

COMPENSABLE DAMAGES, PRESUMPTION OF CAUSATION AND DUTY TO SUPPLY INFORMATION

Compensable Damages

Section 11

- (1) The duty to compensate damage to persons or property shall be governed by the provisions of the ABGB (*Allgemeines Bürgerliches Gesetzbuch*). The duty to compensate property damage shall also include the cost of eliminating the radiation danger presented by such property.
- (2) If the damage to physical property also creates serious harm to the environment and if the person liable is unable or unwilling to restore it to its former condition, then the person who suffered damage shall also be entitled to recover compensation for costs of reinstatement, even if such costs exceed the value of the property damaged. The injured party can request these costs in advance, but must return the excess of costs over

value if he does not restore the damaged property to its former condition within a reasonable time.

- (3) The duty to compensate includes the costs of reasonable preventive measures adopted in order to avoid an imminent threat of emission of ionising radiation from a nuclear installation, nuclear material or a radionuclide (rescue expenses). Such costs shall be recoverable by the person who actually incurs them.
- (4) The duty to compensate shall also include loss of earnings for persons who, due to preventive measures (Paragraph 3) or the dangers of ionising radiation, were hindered in the exercise of their gainful activities. It also covers reasonable compensation for prejudice suffered. Claims are limited to 40 600 Euros per person.

Causation

Section 12

- (1) If the person who suffered damage shows a strong possibility that his body was exposed to ionising radiation from a nuclear installation, nuclear material or radionuclides, then it shall be presumed that the damage was caused by the ionising radiation, insofar as it is the type of damage caused by ionising radiation. The presumption is rebutted if the defendant shows a strong probability that the damage was not caused by ionising radiation.
- (2) The presumption under Paragraph (1) may not be invoked by a patient who is injured through the use of radionuclides in the course of medical treatment.

Duty to Supply Information

Section 13

- (1) If circumstances suggest that damage has been caused by ionising radiation, the person who suffered damage is entitled to demand, from every operator of a nuclear installation, carrier of nuclear material or holder of radionuclides, who, in view of the location or the nature of the radiation, could possibly have caused the damage, information regarding all

circumstances relevant for purposes of evaluating the cause and extent of the damage.

- (2) An operator of a nuclear installation, carrier of nuclear material or holder of radionuclides against whom a claim for liability under this Federal Act is brought, is entitled to demand information whom a claim for liability under this Federal Act is brought, is entitled to demand information within the meaning of Paragraph (1) from every other operator of a nuclear installation, carrier of nuclear material or holder of radionuclides.
- (3) No such right to information exists if it would be unduly burdensome to an operator of a nuclear installation, carrier of nuclear material or holder of radionuclides to supply such information, in particular because of the costs involved in so doing, because a criminal prosecution could result there from, or because it would force disclosure of a trade secret worth substantially more than the alleged damage.
- (4) The operator of a nuclear installation, carrier of nuclear material or holder of radionuclides from whom such information is demanded may in turn demand information from the person seeking information, if necessary to determine whether and to what extent the injury was caused by the latter himself or by other factors, as long as, in light of all the decisive interests in the matter, it does not impose an undue burden on the person who suffered damage to supply this information.
- (5) Extrajudicial proceedings concerning the supply of information and judicial proceedings to enforce demands for information shall suspend the running of the limitation period provided for under this Federal Act.

Section 14

- (1) Information obtained under Section 13 may be used solely for the purposes of claims brought under this Federal Act.
- (2) If, during judicial proceedings, trade secrets or other information under Section 13 are discussed or admitted in evidence in connection therewith, then, on application by one of the parties, the case should be heard in camera.

Part V

MISCELLANEOUS PROVISIONS

Contributory Fault

Section 15

Section 1304 *ABGB* shall apply where the person who suffered damage, or another person for whose conduct he is responsible, is at fault.

Miscellaneous Claims for Compensation

Section 16

- (1) Provisions under the *ABGB* and other laws governing damages of a broader scope or liability of persons other than those provided for under this Federal Act shall remain unaffected hereby. Persons having suffered damage may bring such claims directly in the courts.
- (2) Persons having suffered damage may also bring proceedings directly in the courts against persons who delivered goods or rendered services to the operator, except where the defendant can prove that:
 1. judgement is expected within a reasonable time on a previous complaint filed against the operator of a nuclear installation;
 2. the judgement will be enforceable against the operator; and
 3. adequate funds are available for compensation in the event of the operator's liability.

Liability for Employees

Section 17

If a person liable under this Federal Act employs other persons, he is also liable in cases where the claim brought by the person who suffered damage is governed by the *ABGB*, and the damage was caused by the conduct of these other persons.

Multiple Liability

Section 18

Where liability attaches to multiple persons under this Federal Act or other legal instruments and the damage attributable to each individually cannot be ascertained, all shall be jointly liable. Nevertheless, each shall be liable only on the grounds and for the amounts set out in the provisions applicable in each case.

Recourse and Contribution

Section 19

- (1) Where several persons are liable under this Federal Act or other legal instruments for damage caused to third parties, the duty to compensation will be apportioned among them, as determined by the circumstances of the individual case, and in particular to what extent fault or cause can be attributed with reasonable certainty. Such apportionment shall also govern such persons' claims for contribution *inter se*.
- (2) Nevertheless, each of the several liable persons shall be liable only on the grounds and for the amounts set out in the provisions applicable in each case.
- (3) The operator of a nuclear installation is only entitled to recourse, however, if the damage arises out of acts or omissions deliberately intended to do harm or where such recourse is contractually provided for.

Limitation Period

Section 20

Claims for compensation under this Federal Act which are not brought within three years from the date on which the person entitled to compensation learned of the damage and the identity of the person liable therefore, irrespective of the manner in which this knowledge was acquired, shall be time-barred; however, the limitation period shall be thirty years from the date on which the damage was incurred if it was caused by one or more criminally punishable acts, which could

only have been intentionally committed, and which carry penalties of more than one year's imprisonment. With regard to the recovery of costs incurred for preventive measures, these terms start to run at the earliest on the date on which the person who suffered damage incurred such costs. Otherwise, limitation periods are to be governed by the *ABGB*.

Unenforceable Agreements

Section 21

Liability under this Statute for personal injury may not be limited or excluded in advance.

Jurisdiction

Section 22

- (1) Claims and applications for interim injunctions filed under this Federal Act or other legal instruments for damage caused by ionising radiation, shall be heard by the Court of First Instance. This provision shall apply equally to claims and applications for interim injunctions to recover the costs of preventive measures.
- (2) With regard to the claims and applications referred to in paragraph (1), the Court of First Instance shall also have territorial jurisdiction when this court is in the district in which the damage was caused or sustained or the preventive measures were taken.

Applicable Law

Section 23

- (1) Where damage is caused in Austria by ionising radiation, non-contractual claims for compensation shall be governed by Austrian law at the request of the person who suffered damage.
- (2) Where damage is caused by ionising radiation abroad and is governed by

Austrian law, damages shall be awarded only if and to the extent that the national law of the person who suffered damage makes provision therefore.

Direct Claims

Section 24

- (1) The person who suffered damage may also proceed directly against the insurer under the policy provided for in Sections 6, 7 and 10. The insurer is then jointly liable with the other liable persons. If the risk is insured by several insurers, they shall be jointly liable.
- (2) Paragraph 1 does not apply where the Federal or State government has assumed liability Section 6, Paragraph (3) and Section 7, Paragraph (4).

Criminal Penalties

Section 25

- (1) Whoever operates a nuclear installation or who carries nuclear material, having failed to acquire or maintain third-party liability insurance, compulsory insurance or alternative financial security or maintain third-party liability insurance, compulsory insurance or alternative financial security provided for in Sections 6 and 7, is guilty of an administrative violation (*Verwaltungsübertretung*) and thereby subjects himself to a fine of up to 36 000 Euros, unless the act constitutes a criminal offence within the court's jurisdiction for which its perpetrator may be tried.
- (2) Whoever:
 1. holds radionuclides having failed to acquire the insurance provided for in Section 10; or
 2. carries nuclear material without also carrying an insurance certificate with him; is guilty of an administrative violation and thereby subjects himself to a fine of up to 3 600 Euros, unless the act constitutes a criminal offence within the court's jurisdiction for which its perpetrator may be tried.

Part VI

FINAL PROVISIONS

References

Section 26

- (1) References in this Federal Act to other Federal Acts are deemed to refer to those Acts in their current version.
- (2) References in other Federal Acts and regulations to provisions which have been amended or repealed by this Federal Act shall be construed in accordance with the corresponding provisions of this Act.

Provisions on Social Insurance

Section 27

Laws governing social insurance shall not be affected by this Federal Act.

Enforcement

Section 28

The following persons are entrusted with the enforcement of this Federal Act:

- (1) in respect of Sections 6, 7, 8, Paragraph (1) and Section 10, Paragraphs (1), (2) and (4): the Minister of Finance in co-operation with the Minister of Justice;
- (2) in respect of Sections 8, paragraph (2), 10, paragraph (2) and 25: the Chancellor or Minister of Science;
- (3) in respect of Section 30: the Federal Government; and
- (4) in respect of all remaining provisions: the Minister of Justice.

Entry into Force

Section 29

- (1) This Federal Act shall enter into force on 1 January 1999 and shall apply to damage caused after that date.
- (2) Liability under Section 16, paragraph 1 shall arise only if the act causing damage take place after this Federal Act enters into force.
- (3) Sections 6, 7, 10, 11, 25 and 29 as amended by Federal Law BGBl. I Nr. 98/2001 enter into force on 1 January 2002.
- (4) Section 11 as amended in paragraph 3 is applicable to damages which were caused after 31 December 2001. Section 25 as amended in paragraph 3 is applicable to criminal offences which were committed after 31 December 2001.

Section 30

The Federal government shall report to the National Assembly not later than 31 December 2001, and every third year thereafter, in respect of the development of international instruments on liability for nuclear injury, especially in respect of amounts of compensation available on an international scale.

Repeal

Section 31

Upon the entry into force of this Federal Act, the Federal Act of 29 April 1964 on liability for nuclear damage (Atomic Liability Act), *BGBl. (Bundesgesetzblatt)* No. 117/1964, last amended by Federal Act *BGBl* No. 140/1997, shall be repealed, although it shall continue to apply to injuries caused prior to that date.