



## **1999 Atomic Liability Act** *(AtomHG 1999; Atomhaftungsgesetz 1999)*

### **Long title**

Federal Act on Liability under Civil Law for Damage caused by Radioactivity  
 (AtomHG 1999; Atomhaftungsgesetz 1999)

### **Original version:**

Federal Law Gazette I No. 170/1998

### **Amendments:**

Federal Law Gazette I: No. 98/2001; No. 33/2003

### **Text**

## **Section 1 - Scope and Definition of Terms**

### **Scope**

**Article 1.** This Federal Act defines liability under civil law for damages caused to people or property by ionising radiation from nuclear facilities, nuclear material or radionuclides.

### **Definition of Terms**

**Article 2.** For the purposes of this Federal Act the following terms are defined as follows:

1. nuclear material: special fissile material and source (Article II Article 1 nos. 1 to 3 of the Safeguarding Control Act 1991 (Sicherheitskontrollgesetz 1991, published in Federal Law Act No. 415/1992) with the exception of minute and radiologically insignificant amounts (Article II Article 6 para. 2 no. 1 Sicherheitskontrollgesetz 1991);
2. radionuclides: other radioactive substances that emit ionising radiation as a consequence of spontaneous nuclear reactions, including materials or objects that contain radioactive materials or on the surface of which such materials can be found;
3. nuclear facilities: facilities at which nuclear material is handled in a quantity and manner that a chain reaction occurs, or may not be excluded from occurring, in particular nuclear reactors, facilities for the production, processing, utilisation, safekeeping, storage, modification and reprocessing of nuclear material into harmless materials and facilities for the separation of isotopes of fissile material;
4. operating company: a company authorised to operate a nuclear facility and who continuously assesses or can assess at any time its financial performance at any time; the holder of the necessary approval to operate such a facility shall in any case be considered as the operating company;
5. keeper: the person who is authorised to hold radionuclides, and who possessing them for use for their own account;
6. transporter: the person who transports nuclear material either with or without a contract of carriage, by road, rail, air or water.

## **Section 2 - Liability for nuclear facilities and nuclear material**

### **Liability of the operating company**

**Article 3.** (1) The operating company of a nuclear facility shall be liable for damages caused by the operation of the nuclear facility to either people or property. The operation of the nuclear facility also includes the decommissioning of the facility including the disposal of radioactive items.

(2) The operating company of a nuclear facility shall also be liable for damage caused outside the nuclear facility, where such damage



1. arises from nuclear material originating from their nuclear facility, and occur before the operating company of another nuclear facility has assumed the power of disposition over this nuclear material, or
2. arises from nuclear material sent to their nuclear facility with the permission of the operating company, and which occurs once he has already assumed the power of disposition over this nuclear material.

#### **Liability of the transporter**

**Article 4.** The transporter of nuclear material shall be liable for damage to humans or property during the transporting of nuclear material, where the transporter is unable to provide that they did not know or did not have to know that they were transporting nuclear material.

#### **Extent of liability and exclusion of liability**

**Article 5.** (1) the liability of the operating company and the transporter in accordance with Articles 3 and 4 extends to damage caused that are to be traced back to the radioactive properties of nuclear material in conjunction with its toxic, explosive or other hazardous properties.

(2) Liability in accordance with Articles 3 and 4 does not extend to damages

1. sustained at the nuclear facility itself and at other nuclear facilities located on the same site, including such facilities currently under construction,
2. to property located on this site and which are or were used in conjunction with the nuclear facility, and
3. to means of transportation, with which nuclear material is transported.

#### **Safeguarding**

**Article 6.** (1) The operating company of a nuclear facility located in Austria shall take out liability insurance to cover their liability. This liability insurance policy must continue to be held for at least ten years following the cessation of operations of the nuclear facility. It shall extend to cover all forms of damage that were caused during the insurance period, and where the claim was asserted at latest within ten years of its occurrence. This safeguarding obligation does not extend to damages that can be traced back to a war, military conflict, a civil war, a rebellion or an uprising.

(2) The liability insurance policy must cover at least the amount of EUR 406 000 000 per insured event plus an additional EUR 40 600 000 for interest and costs, or in the case of experimental or research reactors the amount of EUR 40 600 000 per insured event plus an additional EUR 4 060 000 for interest and costs.

(3) An insurance obligation shall not exist where the federal government or regional government is liable or has issued a declaration of liability towards the operating company of a nuclear facility up to at least the amount listed in paras. 1 and 2. The Federal Minister of Finance is empower to assume such a liability, where the conclusion of such a liability insurance policy is not economically feasible for the party liable, and where the assumption of liability by the federal government is in the public interest.

**Article 7.** (1) The transporter of nuclear material shall conclude a liability insurance policy to cover its liability, where the risk is not already covered by another liability insurance policy. The liability insurance policy shall extend to all damages that can be traced back to the transportation of nuclear material in Austria. This safeguarding obligation does not extend to damages that can be traced back to a war, military conflict, a civil war, a rebellion or an uprising.

(2) The liability insurance policy must cover at least the amount of EUR 40 600 000 per insured event plus an additional EUR 4 060 000 for interest and costs, or in the case of source the amount of EUR 4 060 000 per insured event plus an additional EUR 406 000 for interest and costs.

(3) When transporting nuclear material the proof of insurance (Article 158i of the Insurance Policy Act of 1958 (VersVG; Versicherungsvertragsgesetz 1958) must also be carried, and shown to the bodies at any time upon request that are competent for checking compliance with the relevant legal and safety provisions for transportation.

(4) Article 6 para. 3 about the removal of the safeguarding obligation of the operating company shall also apply to the safeguarding obligation of the transporter of nuclear material.



**Article 8.** (1) A liability insurance policy serving the safeguarding purpose in accordance with Articles 6 and 7 must be concluded with an insurance provider authorised to provide insurance for this insurance class in Austria. Austrian law must be applied in this case. The insurer shall notify the Financial Market Authority (FMA) about the conditions of insurance prior to their use.

(2) The competent body for the notification prescribed in Article 158c para. 2 VersVG is the competent authority for the approval of the operation of a nuclear facility or approval for the transportation of nuclear material.

### **Section 3 - Liability for Radionuclides**

#### **Liability of the Keeper**

**Article 9.** (1) The keeper of a radionuclide shall be liable for damages to humans and property caused by ionising radiation emitted by the radionuclide both separately or in conjunction with its other hazardous properties.

(2) The keeper shall not be liable, where he is able to prove that he and his staff had taken all due care required in accordance with the circumstances of the case in hand to prevent the damage occurring. When using radionuclides for curative medical treatment, it shall be sufficient to prove to the injured patient, that the materials and facilities used were technologically and scientifically up-to-date, and that the damages occurring was not caused by an equipment failure.

#### **Coverage provision**

**Article 10.** (1) The keeper of a radionuclide shall take provisions in a manner and extent as is usual in fair business, either by means of insurance or in an alternative suitable manner, so that compensation obligations in accordance with this Federal Act may be fulfilled.

(2) For radionuclides with a radioactivity of more than 370 Gigabecquerel (GBq) this provision must in any case exist in the form of a liability insurance policy with an insured sum of at least EUR 4 060 000 per insured event. The liability insurance policy must be concluded with an insurance provider authorised to provide insurance for this insurance class in Austria. Austrian law must be applied in this case. The insurer shall notify the Financial Market Authority (FMA) about the conditions of insurance prior to their use.

(3) The competent body for the notification prescribed in Article 158c para. 2 VersVG is the competent authority for the approval in accordance with regulations set out under radiation protection law.

(4) An obligation for the provision of coverage does not exist if the Federal Government, a regional government, an association of local authorities or a local authority with a population of more than 50 000 is the holder of the radionuclide.

### **Section 4 - Subject of Compensation, Presumed Causation and Information Requirements**

#### **Subject of Compensation**

**Article 11.** (1) The obligation to provide compensation for damages sustained by humans and property shall be based on the provisions contained in the General Civil Code (ABGB; Allgemeines Bürgerliches Gesetzbuch). The obligation to provide compensation for damages to property shall also include the costs of rectifying the danger of ionising radiation arising from an object.

(2) If the damage to a physical object also constitutes a significant damage to the environment and it is not realistic for the party liable to restore the previous condition or the party liable is not willing to do so, then the injured party shall also receive compensation for the costs of restoration, where such costs exceed the value of the damaged object. The injured party may demand the costs of restoration in the form of loan, but shall however be required to repay the amount of the loan in the amount by which the value of the object is exceeded, if the injured party does not restore the previous condition within an appropriate period of time.

(3) Moreover, the obligation to compensate also includes the costs of appropriate preventive measures for averting an immediate threat of danger (salvage costs) emanating from a nuclear facility, from nuclear material or radionuclides. The person who actual bears such costs shall have a claim for the compensation of these costs.

All English translation of the authentic German text is unofficial and serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt; BGBl.). All translations have been prepared with great care, but linguistic compromises had to be made. The reader should also bear in mind that some provisions of these laws will remain unclear without certain background knowledge of the Austrian legal and political system. Please note that these laws may be amended in the future and check occasionally for updates.



(4) The obligation to compensate shall also cover the lost earnings of persons who are hindered from performing their gainful employment as a result of preventive measures (para. 3) or as a result of the dangers of ionising radiation, as well as appropriate compensations for the adverse effects suffered. Such claims are limited to a maximum amount of EUR 40 600 per person.

#### Causation

**Article 12.** (1) If the injured party is able to demonstrate that it is probable that his/her body was exposed to ionising radiation from a nuclear facility, from nuclear material or from radionuclides, then it is claimed that the damage is to be traced back to the ionising radiation, provided that ionising radiation is capable of causing such damage. This claim shall be disproven if the party against whom the claim is made is able to demonstrate that it is probable that the damage was not caused by ionising radiation.

(2) The claim in accordance with para. 1 shall not be valid in favour of the injured patient where radionuclides have been used in curative medical treatment.

#### Information requirements

**Article 13.** (1) Where circumstances exist for the assumption that damage has been caused by ionising radiation, then the injured party shall have a right to information about all circumstances, for which knowledge is necessary to assess the cause and the extent of the damage, against all operating companies of a nuclear facility, transporters of nuclear material or keepers of radionuclides, which may be considered by their location and depending on the type of radiation as being the cause of the damage.

(2) The operating company of a nuclear facility or the transporters of nuclear material or keepers of radionuclides, whose liability in accordance with this Federal Act is claimed, shall have a right to information as defined in para. 1 against other operating companies, transporters or holders.

(3) A right to information does not exist, where the operating company, transporters or holders would be disproportionately burdened by providing the information, in particular because of the necessary expenditures for doing so, because of the consequent threat of criminal prosecution or due to the necessity of revealing a trade or company secret that is substantially more significant in relation to the extent of the damage.

(4) The operating company, transporter or keeper from who information is requested shall have a right of information against the party requesting the information, about whether and to what extent the damage was caused by the party requesting the information itself or by other causes, and where the injured party in weighing up of all appropriate interests would not be disproportionately burdened by information being provided.

(5) The continuation of the period of limitation of a claim in accordance with this Federal Act shall be suspended by out-of-court negotiations about providing of information as well as legal proceedings to exert the right of information.

**Article 14.** (1) Information acquired in accordance with Article 13 shall only be allowed to be used for the purpose asserting of claims in accordance with this Federal Act.

(2) If in court proceedings trade or business secrets or the content or information in accordance with Article 13 are identified or evidence recorded in this regard, then the general public shall be excluded from the proceedings upon request made by a party.

### Section 5 - Other provisions

#### Contributory negligence

**Article 15.** In the case that blame is apportioned to the injured party or someone who the injured party represents, then Article 1304 ABGB shall apply.

#### Other claims for compensation

**Article 16.** (1) Provisions in the ABGB and other legal regulations, in accordance with which damages are to be compensated to a greater extent or by other persons than in accordance with this Federal Act, shall remain unaffected. The injured party may directly assert such claims at a court of law.

(2) The injured party may directly assert claims at a court of law against persons who have delivered property or have provided services to the operating company, in the case that a party other than the respondent proves that



1. a previous complaint against the operating company of a nuclear facility allows a ruling to be expected within a reasonable period of time,
2. this ruling against the operating company may also be enforced, and
3. adequate funds are available for compensation within the scope of the liability of the operating company.

#### **Liability for Accomplices**

**Article 17.** If a party liable in accordance with this Federal Act employs other persons, then the party liable shall also be liable, in such cases in which the compensation claims of the injured party are to be assessed in accordance with the ABGB, for the fault of his employees, where their action caused the damage.

#### **Liability of several Liable Parties**

**Article 18.** If several persons are liable in accordance with this Federal Act or other legal regulations, then they shall be jointly and severally liable where the damages to be apportioned to the individual liable parties cannot be determined. Every liable party shall however only be liable in accordance with the basis and amount set out in accordance with the provisions that apply for him.

#### **Claims for recourse and compensation**

**Article 19.** (1) If several persons are liable towards a third party in accordance with this Federal Act or other legal regulations, then the obligation for compensation and its extent shall be shall depend on the circumstances of and be in proportion to the case in hand, in particular depending to what extent one or other of the liable parties was to blame for or otherwise caused the damage. The same shall apply for the mutual obligation for compensation.

(2) Every one of the several parties liable shall however only be liable in accordance with the basis and amount set out in accordance with the provisions that apply for him.

(3) A right of recourse shall however only exist for the operating company of a nuclear facility, where the damage arises from an act or omission conducted with the intention to cause damage, of where such recourse is explicitly contractually stipulated.

#### **Period of Limitation**

**Article 20.** Claims for compensation in accordance with this Federal Act shall expire in three years from the day on which party entitled to compensation became aware of the damage and about the party liable, regardless of such knowledge or in the case of the damages being caused by one or several acts punishable under penal law, which would only have been committed deliberately, and which carry a custodial penalty of more than one year, however within 30 years of the damage being caused. For the compensation of costs from preventive measures, such periods shall at earliest begin at the point in time at which the injured party bore the costs. Otherwise the applicable provisions of the ABGB shall apply with regard to the period of limitation.

#### **Ineffective arrangements**

**Article 21.** It shall not be possible to exclude or limit liability in advance for liability in accordance with this Federal Act for personal injuries.

#### **Competence**

**Article 22.** (1) The court of first instance shall be competent for cases brought and applications for the issuing of injunctions, submitted on the basis of this Federal Act or on the basis of other legal regulations due to damaged caused by ionising radiation. The same shall apply for cases brought and applications for the issuing of injunctions, with which the compensation of the costs sustained in preventive measures are asserted.

(2) For the cases and applications listed in para. 1 the court of first instance is locally competent in the district in which the damage was caused or occurred, or the preventive measures were conducted.

#### **Applicable Law**

**Article 23.** (1) If damages occur in Austria caused by ionising radiation, then the non-contractual claims to compensation for this damage shall be assessed at the request of the injured party in accordance with Austrian law.



(2) If damages occur in a foreign country caused by ionising radiation to be assessed in accordance with Austrian law, then the damage shall only be compensated in the case and to the extent that the personal statute of the injured party also stipulates this.

#### **Direct claims**

**Article 24.** (1) The injured party may also exercise the claims to which he/she is entitled in accordance with the insurance contract against the liability insurer stepping in in accordance with Articles 6, 7 and 10. The insurer and the party liable shall be jointly and severally liable. If the insured risk is borne by several insurers, then they shall be jointly liable towards the injured person.

(2) Para. 1 shall also apply to a declaration of liability of the Federal Government or regional government (Article 6 para. 3 and Article 7 para. 4).

#### **Penal provisions**

**Article 25.** (1) Any person who operates a nuclear facility or who transports nuclear material, without holding or maintaining the requisite liability insurance policy, obligatory insurance or other safeguards in accordance with Articles 6 and 7, commits, where the offence does not constitute a criminal offence falling within the jurisdiction of the courts, an administrative offence and shall be punished with a fine of up to EUR 36 000.

(2) Any person who,

1. possesses radionuclides, without holding the liability insurance policy prescribed in Article 10, or
2. transports nuclear material, without also carrying a proof of insurance,

unless the act constitutes a criminal offence falling under the jurisdiction of the courts, commits an administrative offence and shall be punished with a fine of up to EUR 3 600.

### **Section 6 - Final provisions**

#### **References**

**Article 26.** (1) Where references to other federal acts are made in this federal act, those acts are to be applied in their respective current versions.

(2) Where references are made to other federal acts and regulations to provisions which have been amended by or repealed by this federal act, the reference shall obtain its content from the corresponding provisions in this federal act.

#### **Social Insurance Regulations**

**Article 27.** Regulations relating to social insurance remain unaffected by this Federal Act.

#### **Enforcement**

**Article 28.** The following shall be responsible for the enforcement of this Federal Act:

1. the Federal Minister of Finance in coordination with the Federal Minister for Justice with regard to Articles 6 and 7 Article 8 para. 1 as well as Article 10 paras. 1, 2 and 4,
2. the Federal Chancellor or the Federal Minister for Science and Transport with regard to Article 8 para. 2, Article 10 para. 2 and Article 25,
3. the Federal Government with regard to Article 30, and
4. the Federal Minister for Justice with regard to all other provisions.

#### **Entry into force**

**Article 29.** (1) This Federal Act shall enter into force on 1 January 1999. It shall be applied to damages which occurred after this point in time.

(2) Liability in accordance with Article 16 para. 1 shall only apply, where the damaging action only occurred following the entry into force of this Federal Act.

(3) Articles 6, 7, 10, 11, 25 and 29 in the version of the Federal Act amended in Federal Law Gazette I No. 98/2001 shall enter into force on 1 January 2002.

(4) Article 11 in the version mentioned in para. 3 shall be applied to damage events, which happened after 31 December 2001. Article 25 in the version mentioned in para. 3 shall be applied to criminal offences that were committed after 31 December 2001.



**Article 30.** The Federal Government shall report to the National Council at latest by 31 December 2001, and every three years thereafter on the development of international instruments for liability for damage cause by nuclear installations, in particular with regard to the extent of compensation amounts available internationally.

#### **Repeals**

**Article 31.** With the entry into force of this federal act, the Federal Act of 29 April 1964 on the Liability for Nuclear Damage (Atomic Liability Act) published in Federal Law Gazette No. 117/1964, last amended by the Federal Act in Federal Law Gazette I No. 140/1997 shall be repealed. It shall continue to apply to damages which occurred prior to this point in time.